



Standing International Forum  
of Commercial Courts

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# Report of the third full meeting

## Hosted by Singapore

March 2021



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To view any of the sessions, please go to:

<https://www.youtube.com/channel/UC3259nSK-bUsfSm9w4L-oMQ>

Written resources can be found here: <https://sifocc.org/resources/resources-2/>



# Introduction

With the arrival of the global COVID-19 pandemic, the third full meeting of the Standing International Forum of Commercial Courts (SIFoCC) was postponed from 2020 to March 2021 and held fully online.

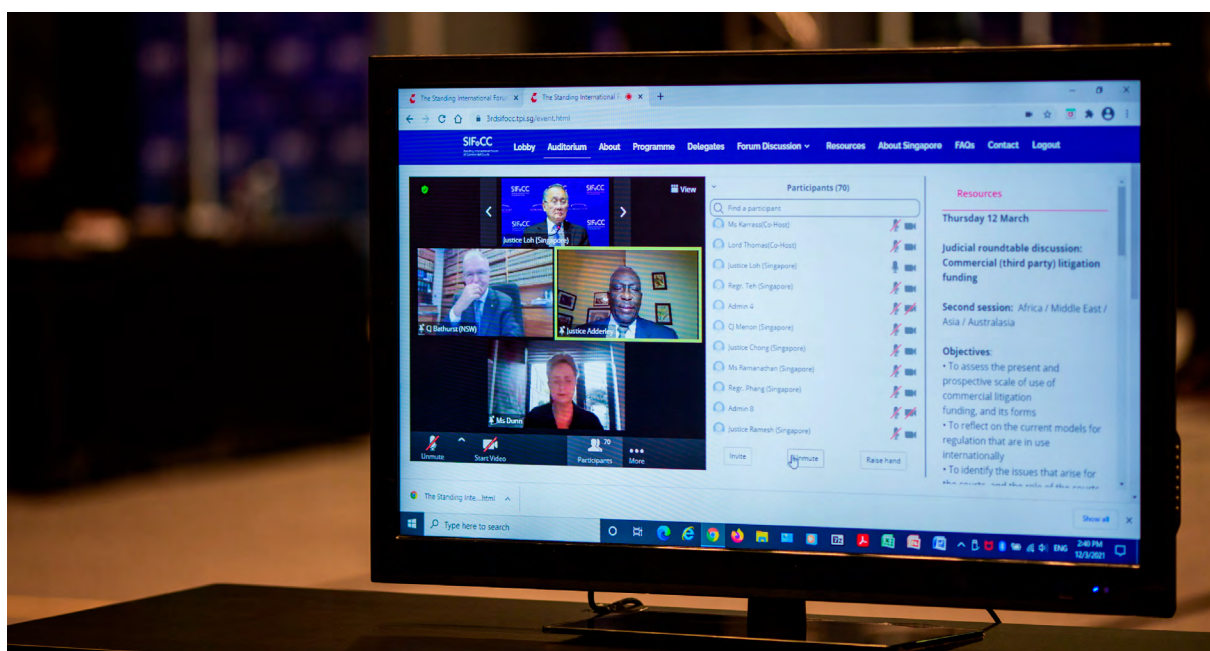
London and New York had hosted the first and second full meetings. Singapore was an outstanding host in every way for the third meeting. Led by Chief Justice Sundaresh Menon, Singapore's approach was consistently supportive of SIFoCC's objectives. It met every challenge and worked seamlessly throughout with the SIFoCC Secretariat and SIFoCC's steering group.

The range of attendance from judiciaries across the world increased further still, assisted by the meeting being online. However, this fact inevitably reduced the informal interaction that a physical face-to-face meeting allows.

As at previous full meetings, all delegates were encouraged to participate in live judicial roundtable discussions. In the spirit of SIFoCC, the aim is to draw in and share perspectives and experience worldwide. Everyone has something to contribute and something to learn, and this is also a continuing opportunity to identify areas for collective or collaborative endeavour.

For the first time, all live sessions were recorded and have been made publicly available after the meeting. We envisage increased public engagement ahead, with the help of technology and regional activity.

Australia has kindly agreed to host the fourth full meeting of SIFoCC in October 2022.









# List of Attendees

## Africa

### The Gambia

#### The Supreme Court of The Gambia

**Hon. Chief Justice Hassan Jallow,**  
Chief Justice of The Gambia

#### The High Court of The Gambia

**Hon. Justice Zainab Jawara Alami,**  
Justice of the High Court of The Gambia

### Kenya

#### High Court

**Hon. Lady Justice Mary Kasango,**  
Judge of the High Court

**Hon. Lord Justice Alfred Mabeya,**  
Presiding Judge of the Commercial  
& Tax Division of the High Court

**Chief Magistrate Liz Gicheha**

**Deputy Registrar Elizabeth Tanui,**  
SIFoCC Judicial Observation Programme  
participant 2021

### Nigeria

#### Federal High Court of Nigeria

**Justice Ibrahim N. Buba**

**Justice Nnamdi Dimgba**

### Sierra Leone

#### Supreme Court of Sierra Leone

**Hon. Chief Justice Babatunde Edwards,**  
Chief Justice of the Republic of  
Sierra Leone

#### Court of Appeal

**Hon. Justice Allan B Halloway,**  
Justice of the Court of Appeal

#### High Court

**Hon. Justice Lornard Taylor,**  
Justice of the High Court

### Uganda

#### Supreme Court of Uganda

**Hon. Chief Justice Alfonse Owiny-Dollo,**  
Chief Justice of Uganda Hon.

**Justice Stella Arach Amoko,**  
Justice of the Supreme Court of Uganda

#### Court of Appeal

**Hon. Justice Barishaki Cheborion,**  
Justice of the Court of Appeal of Uganda

#### High Court

**Hon. Justice Susan Abinyo,**  
Judge of the Commercial Court

**Hon. Justice Anne Bitature,**  
SIFoCC Judicial Observation Programme  
participant 2021

**Hon. Justice Boniface Wamala,**  
Judge of the High Court



## Asia

### People's Republic of China

#### International Commercial Court of the Supreme People's Court of the People's Republic of China

**Ms Shen Hongyu** Deputy Chief Judge  
of the Fourth Civil Division of the  
Supreme People's Court and Judge of  
the International Commercial Court

**Mr Xi Xiangyang,**  
Judge of the International  
Commercial Court

**Mr Guo Guo Zaiyu,**  
Judge of the International  
Commercial Court

**Ms Long Fei,**  
Deputy director of the Coordination  
and Guidance Office of the International  
Commercial Court

**Guo Qingbin,**  
Official of the European Affairs  
Division of the International  
Cooperation Department

### Hong Kong SAR

#### Hong Kong Judiciary

**Hon. Chief Justice Andrew Cheung,**  
Chief Justice of the Court of Final  
Appeal of Hong Kong

**Hon. Justice Jeremy Poon Shiu-Chor,**  
Chief Judge High Court

### India

#### Supreme Court of India

**Hon Justice L. Nageswara Rao,**  
Justice of the Supreme Court

#### Delhi High Court

**Hon Justice Prateek Jalan,**  
Justice of the High Court

### Japan

(Participating as Observers)

#### Tokyo High Court

**Hon. Justice Hashizume Makoto,**  
Judge of the Tokyo High Court

#### Supreme Court, Secretary Division, General Secretariat

**Judge Katase Akira,**  
Director for International Relations

### Kazakhstan

#### Supreme Court of Kazakhstan

**Justice Madiyar Balken**

#### Astana International Financial Centre (AIFC) Court

**Rt Hon. Lord Jonathan Mance,**  
Chief Justice

**Christopher Campbell-Holt,**  
Registrar and Chief Executive

## Asia (continued)

### Malaysia

#### Federal Court of Malaysia and Court of Appeal of Malaysia

Hon. Justice Nallini Pathmanathan

#### Court of Appeal

Hon. Justice Darryl Goon Siew Chye

#### High Court of Malaya

Hon. Justice Ahmad Fairuz bin  
Zainol Abidin

### Singapore

#### Supreme Court of Singapore

Hon. Chief Justice Sundaresh Menon,  
Chief Justice of Singapore

Hon. Justice Steven Chong,  
Justice of the Court of Appeal

Hon. Justice Quentin Loh,  
Judge of the Appellate Division

Hon. Justice Kannan Ramesh,  
Judge of the High Court

Teh Hwee Hwee,  
Registrar

Juthika Ramanathan,  
Chief Executive

Phang Hsiao Chung,  
Deputy Registrar

### South Korea

(Participating as Observers)

#### Supreme Court of Korea

Presiding Judge Sung-Keun Yoon

Presiding Judge Yoon Jong Kim

Presiding Judge Jiyong Jang

Judge Junheyon Yi

### Sri Lanka

#### Supreme Court of Sri Lanka

Hon. Chief Justice Jayantha Jayasuriya,  
Chief Justice of Sri Lanka

Hon. Justice Priyantha Jayawardena P.C

Hon. Justice Mahinda Samayawardhena

#### Commercial High Court

Hon. Justice M.A.R Marikar

Hon. Justice Priyantha Fernando,  
SIFoCC Judicial Observation Programme  
participant (2021)



## Australasia

### Federal Australia

#### Federal Court of Australia

**Hon. Chief Justice James Allsop AO,**  
Chief Justice

**Hon. Justice Michael Lee**

**Hon. Justice John Middleton**

### Victoria

#### Supreme Court of Victoria

**Hon. Justice Peter Riordan,**  
Principal Judge of the Commercial Court  
of Victoria

**Associate Registrar Julian Hetey,**  
Judicial Registrar of the Commercial  
Court of Victoria

**Judicial Registrar Fiona Steffensen,**  
Judicial Registrate of the Commercial  
Court of Victoria

### New South Wales

#### Supreme Court of New South Wales

**Hon. Chief Justice Tom Bathurst,**  
Chief Justice of New South Wales

**Hon. Justice David Hammerschlag,**  
Head of Commercial List

**Hon. Justice Julie Ward,**  
Chief Judge in Equity,  
New South Wales

### New Zealand

#### High Court of New Zealand

**Hon. Justice Susan Thomas,**  
Chief Judge of the High Court of  
New Zealand

**Hon. Justice Geoffrey Venning,**  
Justice of the High Court  
Commercial Panel

## Europe

### France

#### International Chamber of the Paris Court of Appeal

Judge François Ancel,  
President

Judge Fabienne Schaller,  
Appeal Judge

Judge Laure Aldebert,  
Appeal Judge

### Germany

#### Federal Court of Justice Dr Jan Tolkmitt

#### Landgericht Stuttgart Commercial Court

Dr. Patrick Melin,  
Presiding Judge

### Netherlands

#### Netherlands Commercial Court Judge Martin Vaessen

Judge Duco Oranje

Registrar Willem A. Visser,  
Registrar and Senior Law Clerk

### Republic of Ireland

#### High Court

Justice David Barniville

Justice Michael Quinn

### United Kingdom

### England and Wales

#### High Court of England and Wales

Rt Hon. Lord Ian Burnett of Maldon,  
Chief Justice of England and Wales

Rt Hon. Sir Geoffrey Vos,  
Master of the Rolls

Rt Hon. Sir Julian Flaux,  
Chancellor of the High Court

Hon. Mrs Justice Sara Cockerill,  
Judge in Charge of the  
Commercial Court.

### Northern Ireland

#### High Court of Northern Ireland

Hon. Mr Justice Mark Horner,  
High Court Judge in Charge of the  
Commercial List

### Scotland

#### Court of Session, Scotland

Rt Hon. Lord Colin Tyre,  
Senior Judge in the Court of Session,  
Scotland

Hon. Lady Sarah Wolffe,  
Judge in the Court of Session,  
Scotland



## Middle East

### Abu Dhabi

#### Abu Dhabi Global Market Courts

**Rt Hon. Lord David Hope of Craighead KT,**  
Chief Justice of the Abu Dhabi Global Market Courts

**Hon. Justice William Stone,**  
Justice of the Abu Dhabi Global Market Courts

**Linda Fitz-Alan,**  
Registrar and Chief Executive,  
Abu Dhabi Global Market Courts

#### Abu Dhabi Commercial Court

**Judge Sultan Al Nyadi,**  
Chief Justice

#### Abu Dhabi Judicial Department

**Mr Abdulla Zahran,**  
Director of Strategic Planning and  
Organizational Development Division

### Dubai

#### Dubai International Financial Centre Courts

**Chief Justice Zaki Azmi**

**Justice Sir Richard Field**

**Justice Ali Al Madhani**

**Amna Al Owais,**  
Chief Registrar

**Nour Kirk,**  
Registrar

### Qatar

#### Qatar International Court and Dispute Resolution Centre

**Rt Hon. Lord John Thomas of Cwmgiedd,**  
President of the Qatar International Court

**Faisal Rashid Al-Sahouti Al-Mansoori,**  
Chief Executive of the Qatar International Court and Dispute Resolution Centre

**Christopher Grout,**  
Registrar of the Qatar International Court

**Abdullatef Al Mohannadi,**  
Deputy Registrar of the Qatar International Court

## North America and the Caribbean

### The Bahamas

#### Supreme Court of The Bahamas

Hon. Chief Justice Brian M. Moree

#### Chief Justice of The Bahamas

Justice Ian Winder

### Canada

#### Ontario Superior Court of Justice

Hon. Chief Justice Geoffrey Morawetz

### Cayman Islands

#### Grand Court of the Cayman Islands (Financial Services Division)

Hon. Justice Nick Segal

### Eastern Caribbean

#### Eastern Caribbean

#### Supreme Court

Hon. Mr Justice Gerhard H.A. Wallbank,  
Judge of the Commercial Division

### Jamaica

#### Supreme Court of Jamaica

Hon. Chief Justice Bryan Sykes,  
Chief Justice of Jamaica

Hon. Justice Lisa Palmer-Hamilton

Hon. Justice David Batts

Hon. Justice Kissock Laing

### Turks and Caicos

Hon. K. Neville Adderley,  
Non-Resident Justice of Appeal

## **United States of America**

### **New York**

#### **United States District Courts - Southern District of New York**

**Hon. Loretta A. Preska,**  
Senior District Judge

**Hon. P. Kevin Castel,**  
Senior District Judge

#### **Commercial Division – New York Supreme Court**

**Hon. Lawrence K. Marks,**  
Chief Administrative Judge of the  
Courts, State of New York

**Hon. Joel M. Cohen,**  
Judge of the Commercial Division,  
New York State Supreme Court.

**Hon. Charles E. Ramos,**  
Senior Justice, Commercial Division (Ret.).

### **Philadelphia**

#### **Philadelphia Court of Common Pleas**

**Hon. Judge Gary Glazer,**  
Supervising Judge of the Court  
of Commerce



## South America

### Brazil

#### **Supreme Federal Court of Brazil**

**Hon. Chief Justice Luiz Fux,**  
Chief Justice of Brazil

**Ambassador Ricardo Neiva Tavares,**  
Chief Advisor for International Affairs

#### **National Council of Justice**

**Judge Valter Shuenquener de Araújo,**  
Secretary General

**Judge Marcus Livio,**  
Secretary of Project Management,  
Research and Strategic Planning

## Attendees

### SIFoCC Steering Group

**Lord John Thomas of Cwmgiedd,**  
Chair of the SIFoCC Steering Group

**Chief Justice James Allsop,**  
(Chief Justice of Australia's  
Federal Court)

**Justice Sir William Blair,**  
Justice, Qatar International Court

**Chief Justice (Emeritus) Bart Katureebe,**  
(Former Chief Justice of Uganda)

**Chief Justice Geoffrey Ma,**  
(Former Chief Justice of Hong Kong SAR)

**Chief Justice Sundaresh Menon,**  
(Chief Justice of Singapore)

**Hon. Loretta Preska,**  
(Senior Judge, former Chief Justice,  
US District Courts, Southern District of  
NY, USA)

**Mr Justice Robin Knowles,**  
Judge of the Commercial Court of  
England & Wales

### Guests

**Indranee Rajah SC,**  
Minister in the Prime Minister's Office,  
Second Minister for Finance and Second  
Minister for National Development,  
Singapore

**Edwin Tong SC,**  
Minister for Culture, Community and  
Youth and Second Minister for Law,  
Singapore

**Professor Maxi Scherer,**  
Queen Mary University, London

**Susan Dunn,**  
Chair of the Association of Litigation  
Fundors; International Legal Finance  
Association

**Wong Taur-Jiun,**  
Head of Legal and Sustainability,  
Rabobank Singapore

**Shuva Mandal,**  
General Counsel, Tata International

**Cavinder Bull SC,**  
Governing Board of the International  
Council for Commercial Arbitration  
(ICCA)

**Audley Sheppard QC,**  
Chairman, Board of the London Court of  
International Arbitration (LCIA)

**Justice Aedit Abdullah,**  
Supreme Court of Singapore

**Sir Peter Gross**

**Shen Enhui**

**Paul Mylvaganam**

**Bee Ezete**

**Dr Karen Brewer,**  
Secretary General Commonwealth  
Magistrates and Judges Association  
(CMJA)

## **Singapore Hosting Committee**

**Una Khng,**  
Assistant Registrar

**Colin Seow,**  
Assistant Registrar

**Navin Anand,**  
Assistant Registrar

**Kenneth Wang,**  
Assistant Registrar, Special Assistant to  
CJ Menon

**Reuben Ong,**  
Assistant Registrar, Special Assistant to  
CJ Menon

**Julie Sim,**  
Director, Office of Public Affairs

**Khurshed Haron,**  
Assistant Director, Office of Public Affairs

**Nurul Sultana Ali Ahamed,**  
Manager, Office of Public Affairs

## **SIFoCC Secretariat**

**Grace Karrass,**  
Head of SIFoCC Secretariat

**Adenike Adewale,**  
International Team, SIFoCC Secretariat

**Ben Yallop,**  
Private Secretary to the Lord Chief  
Justice of England and Wales

**Michele Souris,**  
Senior Personal Assistant to the Lord  
Chief Justice of England and Wales

**Roshani Palamakumbura,**  
Head of International, Judicial Office

**Rachel Guy,**  
Clerk to Mr Justice Robin Knowles CBE





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# Programme

**Day 1 – Thursday 11 March 2021**

## Opening Session

### Opening remarks

**Lord John Thomas** (Chairman, Steering Group) and **Chief Justice Sundaresh Menon**

### SIFoCC Progress Report

**Mr Justice Robin Knowles** and **Grace Karrass** (Head of Secretariat)

### Report of First SIFoCC International Working Group

Working Presumptions on international best practice in Case Management:  
**Chief Justice James Allsop** and **Sir Peter Gross** (Working Group co-chairs)

### Report of Second SIFoCC International Working Group

Common Themes in international enforcement of judgments:  
**Justice Sir William Blair** and **Judge Francois Ancel** (Working Group co-chairs)

### The SIFoCC Judicial Programme of Observation and Study

**Chief Justice Sri Lanka Jayantha Jayasuriya**

## Technology in a new world

### Objectives:

1. To examine the use of technology as an enabler
2. To consider issues arising from the use of technology – open justice, transparency and security, problems and opportunities presented by data, and ethical and regulatory issues arising from artificial intelligence
3. To prepare for the procedural, evidential and substantive questions that will face commercial courts in the age of technology in commerce, such as understanding smart contracts, receiving evidence of what is on a blockchain and intervening in a contract that is self-executing

### Chair:

**Chief Justice Sundaresh Menon** (Singapore)

### Contributor:

**Professor Maxi Scherer**, Queen Mary University, London

### Live introductory addresses:

**Sir Geoffrey Vos MR** (England and Wales)

**Judge Valter Shuenquener de Araújo**, Secretary General, National Council of Justice on behalf of **Chief Justice Fux** (Brazil)

### Closing remarks:

**Justice L. Nageswara Rao** (India)



## Commercial (third-party) litigation funding

### Objectives:

1. To assess the present and prospective scale of use of commercial litigation funding and its forms
2. To reflect on the current models for regulation that are in use internationally
3. To identify the issues that arise for the courts and the role of the courts

### Chair session one:

**Hon Loretta Preska** (USA)

### Chair session two:

**Chief Justice Tom Bathurst** (New South Wales, Australia)

### Pre-recorded contributions:

**Mr Edwin Tong SC**, Minister for Culture, Community and Youth and Second Minister for Law

**Ms Susan Dunn**, Chair of the Association of Litigation Funders and board member of International Legal

**Lord David Hope**, Chief Justice of Abu Dhabi Global Markets Courts

### Written contribution:

**Justice John Middleton (Australia)** – final report: 'Integrity, fairness and efficiency – an inquiry into class action proceedings and third-party litigation funders' (2018)

## Day 2 – Friday 12 March 2021

### Meeting the needs of court users

#### Objectives:

1. Responding to user needs given the economic consequences of the pandemic
2. Identifying appropriate ways of courts keeping in touch with user needs
3. Focussing on the importance of the rule of law to users

#### Co-chairs:

**Chief Justice Emeritus Bart Katureebe** (Uganda)  
**Justice Geoffrey Venning** (New Zealand)

#### Pre-recorded contributions:

**Mr Wong Taur-Jium**, Head of Legal and Sustainability, Rabobank Singapore  
**Mr Shuva Mandal**, General Counsel, Tata International  
**Mr Cavinder Bull SC**, member of the Governing Board of the International Council for Commercial Arbitration (ICCA)  
**Mr Audley Sheppard QC**, Chair, London Court of International Arbitration (LCIA)

#### Live introductory addresses:

**Chief Justice James Allsop** (Australia Federal Courts)  
**Dr Jan Tolkmitt** (Germany)

#### Live roundtable discussion to include specific contributions from:

**Sir Julian Flaux CHC** (England and Wales)  
**Registrar Christopher Grout** (Qatar)  
**Justice Kannan Ramesh** (Singapore)  
**Justice Sir Richard Field** (Dubai)

## **Closing session: short final reflections on the present and future role for the world's commercial courts, and for SIFoCC**

### **Reflections** (facilitated by **Mr Justice Robin Knowles**):

**Justice Madiyar Balken** (Kazakhstan)

**Presiding Judge S. K. Yoon** (South Korea)

**Chief Justice Andrew Cheung** (Hong Kong SAR)

**Judge Fabienne Schaller** (France)

**Judge Nallini Pathmanathan** (Malaysia)

**Mr Justice Prateek Jalan** (India)

### **Closing address:**

**Lord Chief Justice Ian Burnett** (England and Wales)

### **Agreed actions, forward look and details of next meeting:**

**Lord John Thomas**

### **Closing remarks:**

**Chief Justice Sundaresh Menon**







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# Progress report for the third full meeting (as of March 2021)

SIFoCC is now in its fourth year. Its membership exceeds 40 jurisdictions from six continents, and from common law and civil law traditions. 12 of the jurisdictions are in the G20.

We are delighted to welcome Brazil, India, Jamaica, Kenya, South Korea and The Bahamas to their first full meeting.

After the New York meeting, SIFoCC established two international working groups drawn from across the membership.

The co-chairs of the first SIFoCC international working group (Chief Justice Allsop of the Federal Court of Australia and Sir Peter Gross from London) reported at the third full meeting on the achievement through SIFoCC of published international judicial consensus on general principles of best practice in case management. Among other things, this work plays an important part in tackling the backlog caused by the COVID-19 pandemic and in fashioning developments in dispute resolution that are now possible with technology.

SIFoCC has now published two editions of its 'Multilateral memorandum on enforcement of commercial judgments for money', with the participation of 40 jurisdictions. The co-chairs of the second SIFoCC international working group (Sir William Blair from London and Judge Francois Ancel, President of the International Chamber of the Paris Court of Appeal) reported on the second edition and on SIFoCC's publication of a distillation of general themes derived from it. One important theme is the general approach of judiciaries worldwide to enforce, rather than decline to enforce, each other's commercial judgments. The memorandum itself will help to reassure jurisdictions for which reciprocity is a consideration that broadly speaking, it can be expected.

The COVID-19 pandemic brought truly significant challenges. Member jurisdictions from all parts of the world responded to the steering group's call to pool and share their early experience on using technology, in a first SIFoCC COVID-19 memorandum in May 2020. A similar collective effort has seen the publication of a second SIFoCC COVID-19 memorandum, this time addressing the future use of technology experienced during the pandemic. Maintaining open justice and transparency when technology is used is a key consideration.

SIFoCC has also taken the opportunity to work in partnership. In the summer, we held a roundtable jointly with the Commonwealth Magistrates and Judges Association, with another to follow. In the next months, there will be seminars held in partnership with the Commonwealth Lawyers Association and at London International Disputes Week. The SIFoCC website carries interviews with senior judges from the USA and Malaysia to mark International Women's Day.

**SIFoCC's three objectives remain:**

- to share best practice
- to assist courts to work together to make a stronger contribution to the rule of law
- to support developing countries in their work on resolving commercial disputes

The impact goes beyond commercial dispute resolution. It is striking that 17 of the delegations at the third meeting were led by a Chief Justice. The President of the Federal Court of Justice of Germany puts things in this way:

"In times where we observe the rise of unilateral ideas worldwide, it gives hope to remember that the fortunes of the countries already are inextricably linked by business and commerce and hopefully will continue to be. In this respect, effective and predictable justice on commercial matters as promoted by SIFoCC is not only an essential element of international trade relations, but may also contribute to ensure freedom, justice and prosperity."

At all times, the steering group warmly encourages member jurisdictions to raise ideas. SIFoCC's website is there to be made the most of. The Secretariat is here to help.

In its continuing work to assist developing countries, the SIFoCC Judicial Observation Programme has provided intensive support to further judges, this time from Kenya, Sri Lanka and Uganda. The Chief Justice of Sri Lanka emphasised the enduring value of this programme, which does not have a parallel.

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# Transcript of the welcoming remarks

Given by **Minister Indranee Rajah SC**, Minister in the Prime Minister's Office, Second Minister for Finance and Second Minister for National Development, Singapore.

Available here: <https://youtu.be/ieaHlgtVmiA>

**Distinguished guests, ladies and gentlemen,**

## Introduction

On behalf of Singapore, I am delighted to welcome you to the third meeting of the Standing International Forum of Commercial Courts (which I shall refer to, in short, as 'the forum').

We were all looking forward very much to hosting you last year, before the COVID-19 pandemic took the world by storm. While we had hoped to welcome you physically this year, the ongoing pandemic situation has made this unadvisable, if not impossible. We are nonetheless delighted that technology has enabled us to host the forum online this year. Your attendance and contributions at this online meeting speak of the incredible commitment that we share towards achieving the goals of this forum.

As many among us will know, this forum was established in 2017 for three foundational reasons.<sup>1</sup>

Firstly, users of commercial courts will be better served if courts work together to keep pace with rapid changes in the commercial world.<sup>2</sup> International cooperation in this area is essential, because commerce is increasingly international. Today, commercial courts around the world deal with similar issues and grapple with similar challenges. These include the rising costs of litigation, the increasing complexity of disputes, concerns about delays in proceedings and rapid developments in technology, just to name a few. This forum allows us to share our experiences and solutions, collectively refine our ideas and develop international best practices.

The second reason for the forum is that together, courts can make a stronger contribution to the rule of law than they can separately.<sup>3</sup> With the internationalisation of commerce, the rule of law has become critical, not just within our jurisdictions but across jurisdictional boundaries. It cannot be overemphasised that the rule of law is critical to stability and prosperity worldwide. After all, stable legal environments are vital for commerce, as they provide the bedrock for investor confidence and the impetus for parties to deal fairly with each other.

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<sup>1</sup> Standing International Forum of Commercial Courts, 'Aims of SIFoCC': [sifocc.org/about-us/#history](https://sifocc.org/about-us/#history)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

Thirdly, the forum provides a means of supporting developing countries in offering effective means for resolving commercial disputes.<sup>4</sup> This will, in turn, increase their attractiveness to investors. As already alluded to, a functioning and efficient commercial dispute resolution system is integral for attracting investment, which depends heavily on the protection of property rights and the enforcement of contractual obligations.

### Progress of the forum

At the first meeting of the forum in 2017, the Rt Hon Lord Thomas astutely highlighted the “potentially huge and very significant” contribution that this forum can make.<sup>5</sup> He also underscored the importance of this forum being more than just a “talking shop”.<sup>6</sup> I am pleased to say that – four years on – this forum has indeed walked the talk. It has made some very substantial contributions to the three causes it has set out to promote. To give a flavour of some of these contributions, in the past year alone, we saw at least four significant developments.

On 27 May, the forum’s first international working group published a set of working presumptions for best practices

in case management.<sup>7</sup> This is a useful resource upon which individual courts may develop approaches suitable for their unique contexts.

Two days later, on 29 May, the forum launched a memorandum on ‘Delivering justice during the COVID-19 pandemic and the future use of technology’.<sup>8</sup> This memorandum examined the ways in which fair and open justice can be maintained amidst the pandemic, and how we can harness the power of technology to do so. The memorandum is accompanied by an impressive annex which details the methods employed by courts across the world to respond to the pandemic.

In June, a meeting of the forum’s Judicial Observation Programme was held virtually.<sup>9</sup> Judges from eight different countries, spanning six different time zones, met to share experiences and engage in discussions. Topics covered included case management best practices, dealing with backlogs and the handling of witnesses online.

In December, the forum published the second edition of its ‘Multilateral memorandum on enforcement of commercial judgments for money’.<sup>10</sup>

<sup>4</sup> Ibid.

<sup>5</sup> Standing International Forum of Commercial Courts, ‘Report on the first meeting’: <http://www.sifocc.org/app/uploads/2019/02/First-SIFOCC-Report-FINAL.pdf> at page 15.

<sup>6</sup> Ibid.

<sup>7</sup> Standing International Forum of Commercial Courts, ‘International best practice in case management’ (27 May 2020): <https://sifocc.org/2020/05/27/case-management-best-practice-working-presumptions-produced-by-first-sifocc-international-working-group/>

<sup>8</sup> Standing International Forum of Commercial Courts, ‘Delivering justice during the COVID-19 pandemic and the future use of technology’ (29 May 2020): <https://sifocc.org/2020/05/29/delivering-justice-during-the-covid-19-pandemic-and-the-future-use-of-technology/>

<sup>9</sup> Standing International Forum of Commercial Courts, ‘Virtual meeting of the SIFoCC Judicial Observation Programme’ (29 June 2020): <https://sifocc.org/2020/06/29/virtual-meeting-of-the-sifocc-judicial-observation-programme/>

<sup>10</sup> Standing International Forum of Commercial Courts, second edition of the SIFoCC ‘Multilateral memorandum on enforcement of commercial judgments for money’ (16 December 2020): <https://sifocc.org/2020/12/16/2nd-edition-of-the-sifocc-multilateral-memorandum-on-enforcement-of-commercial-judgments-for-money/>



The memorandum outlines the way in which judgments from one jurisdiction may be enforced in another, and covers more than 30 jurisdictions across Africa, Asia, Australia, Europe, North America and South America.

It is all the more impressive that these developments took place during the pandemic and, indeed, in response to it.

## **The pandemic**

The pandemic has had such far-reaching effects that these days, one can hardly make a speech without making some reference to it. COVID-19 has severely weakened the global financial market, disrupted supply chains and caused widespread rising unemployment. Just last month, the International Monetary Fund released a report estimating the global growth contraction for 2020 at -3.5%.<sup>11</sup>

As the pandemic wrecks its way through the global economy, businesses around the world are already confronting the fallout from failed enterprises, contractual breaches and other commercial disputes. At the same time, even as critical cashflow issues demand the prompt resolution of disputes, many have fewer resources than ever to expend on dispute resolution.

Despite the dark clouds, the pandemic has – as with past crises – illuminated human ingenuity and engendered the spirit of cooperation. Courts around the world, including those represented in this forum, have responded promptly and purposefully to the pandemic.

While the instinct is of course to find immediate solutions, we must also seize the opportunity to look further ahead, for the pandemic has given us the impetus to rethink, reshape and reimagine the face of commercial dispute resolution. I will touch on just two areas for consideration.

## **Mediation**

Firstly, the role of mediation. Mediation enhanced access to justice as a cost-efficient method of dispute resolution. By encouraging constructive dialogue between the parties, mediation also has the ability to repair and reinforce relationships. Further, parties are able to fashion creative and mutually beneficial solutions which may not be available in litigation and arbitration.

We in Singapore recently experienced these benefits first-hand. When COVID-19 disrupted the Supreme Court's hearing diaries, the court promptly collaborated with the Singapore Mediation Centre to roll out an initiative known as the SGUnited Mediation Initiative. The mediation services provided under this initiative helped many parties to resolve their disputes amicably, and at a far lower cost. At the same time, it reserved judicial resources for cases where adjudication would be more appropriate, thus facilitating the optimal deployment of such resources.

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<sup>11</sup> International Monetary Fund, 'World economic outlook update' (January 2021): <https://www.imf.org/en/Publications/WEO/Issues/2021/01/26/2021-world-economic-outlook-update>

At the international level, there is now greater impetus to utilise mediation for resolving commercial disputes. Previously, the lack of certainty in cross-border enforcement of mediated settlement agreements was one of the downsides of mediation.<sup>12</sup> However, a gamechanger entered into force on 12 September 2020. I speak here of the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation. The convention provides a framework for the international enforcement of mediated settlement agreements, thus giving businesses greater certainty in cross-border enforcement. The convention now has more than 50 signatories, including two of the world's largest economies<sup>13</sup> and three of Asia's largest economies.<sup>14</sup>

Against this backdrop, it is useful to consider how mediation can play a greater or more formalised role in the resolution of commercial disputes.

## Technology

The second and final facet I will touch on concerns the use of technology.

Technology has been an excellent enabler in our pandemic response. The most noticeable change in this regard, insofar as courts are concerned, is the rapid pivoting to remote online court hearings. This enabled courts to continue resolving disputes when the

pandemic precluded physical court attendance. Of course, remote online hearings have introduced a separate set of issues. These include the possibility of witness coaching, difficulties in ensuring open justice and the need to ensure that those who are less technologically inclined or equipped will still have access to justice. In the face of these issues, the work of the forum has only become more important. It is vital that courts around the world come together to discuss and share ideas on how to best meet the challenges wrought by technology.

The now-ubiquitous use of videoconferencing technology does not, however, mark the endpoint for using technology in court processes. Technology can certainly be further leveraged in the pursuit of justice and, in this regard, it is very timely that the forum will be discussing issues relating to blockchain technology, artificial intelligence and big data, as well as their roles in the justice system. Putting our heads together is an excellent way to explore the untapped transformative potential of technology, while keeping a keen eye on attendant practical and ethical considerations.

## Conclusion

Let me conclude my remarks by wishing everyone a most productive meeting and the very best of health. Thank you.

<sup>12</sup> See, e.g., Global Pound Conference Series, Herbert Smith Freehills and PwC, 'Global Pound Conference Series: Global data trends and regional differences' (2018) at page 20: <https://www.imimediation.org/download/909/reports/35507/global-data-trends-and-regional-differences.pdf>

<sup>13</sup> China and the USA

<sup>14</sup> China, India and South Korea

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# Key points discussed

## 1. Technology in the new world

The second SIFoCC full meeting in New York in 2018 addressed existing uses of technology in and by courts. Before the COVID-19 pandemic, many courts were beginning to use telephone and video hearings for interlocutory matters and, in certain circumstances, were receiving evidence over live video. Some courts had or were implementing electronic case filing systems.

The pandemic has shown, at pace, more of what technology can do. Integrating where appropriate what has been learned from this period in the longer term will be a crucial challenge. The trust, consent and commitment to the justice process, given by society and by those involved in litigation especially, requires particular attention as change involving technology is made.

The pandemic leaves damage to economies and wholesale change in business. In legal systems, pre-existing problems are more acute. These include dispute backlog in some areas, further damage at least to some parts of the legal profession and increased calls for better access to justice for those without means. The new world of technology, including its potential to improve efficiency, access and cost effectiveness, may be more important than ever.

Fundamental to the administration of justice is its independence, openness and transparency. Technology may enable greater public access to hearings and decisions or judgments. It may provide an overdue opportunity to use data to show what is and what is not working in a justice system. But at the same time, security and respect for privacy and personal data all require close attention.

The future of technology includes the further development of artificial intelligence (AI). The implications of this need to be identified, understood and addressed.

Alongside the use by courts of technology, courts can increasingly expect to be resolving disputes about technology.

For the discussion in full, please see the video on YouTube: <https://www.youtube.com/watch?v=vc8yKdjxCis>

The discussion included the following points:

- The major question on the future of technology is not how we can translate analogue tools into technological ones, but how technology will affect business and the disputes themselves, and how justice systems can respond.
- We have to ask what the new disputes are that will require resolution in the new technological era.

- The way we have approached technology thus far in most jurisdictions has largely been to adapt the technology to meet the traditional manner in which we conduct litigation in our commercial courts. This has certainly improved efficiency.
- What we have not done is adapt the procedural aspects of the judicial process as they currently exist, to meet the needs of current and emerging technology, commerce or new commercial inventions as they continue to evolve.
- Online dispute resolution has a number of advantages.
- There are examples of large one-stop dispute resolution platforms. Cases mediated online have decreased court volume.
- Increasing transparency and accountability are important, as are open justice and security.
- Some judiciaries are transforming the understanding of justice to 'justice as a service'.
- The training needs of judiciaries must be focused on dealing with a new world. Therefore, training must equip judges to understand the new rules for dealing with electronic documentation and contracts.
- We need to rethink education and training and radically transform the curriculum in universities, as lawyers of the future will need new skills. The future shape of the legal profession will change.
- We have to think about how we can share experiences with the profession and users, so that technology is an enabler.
- Technology can advance access to justice.
- It is important to address the position where there is a digital divide or no access to technology. This issue may decline over time but in the meantime, we have to use intermediate steps.
- There are potential uses for AI. Judges should not fear it, but have an informed awareness of its use and the issues.
- Some algorithmic tools are being tested for motor accident claims.
- The ultimate question is that AI decision making has to be accepted by the public.
- We have to be aware of the ethical use of AI in justice systems, which has not kept pace with the use and growth of AI technology. This must be a matter of debate and awareness. We have to ensure that AI systems remain human-centric and serve human values.
- Complexification of disputes and issues is a challenge – the increasingly heavy load of data is changing how we manage the disputes.
- SIFoCC could play a role by obtaining consensus on the best practices for online dispute resolution.
- We have to continue to achieve the trust and confidence of society.

## 2. Commercial (third-party) litigation funding

Litigation funding by third parties was a 'radar' subject at the second full meeting of SIFoCC in New York in 2018. It continues to grow. So too does available experience of its impact and potential, and of the opportunities and risks it presents. But much of that experience remains fragmented and many courts encounter issues arising from litigation funding only on a case-by-case basis, rather than through a systemic analysis or with the support of data.

In practice, litigation funding can take many forms. It can have a range of consequences or effects, including for the litigation, for the funder and ultimately for a legal system. Some jurisdictions seem to resist it, while others seem to accept it as inevitable. Others encourage it either generally or for some purposes. There are debates about regulation (legal and financial) and transparency. Associations of funders are developing.

Some litigation funders wait for cases to arise, while some are active in bringing them about. The issues can include the terms of the funding, capital adequacy, influence on litigation, exit from litigation and appeals. Some of these issues are already present with some forms of litigation insurance, litigation finance, assignment or transfer of claims, and where parties are acquired for their litigation potential.

There may be the potential for litigation funding to develop to take a full part in a justice system, or simply to proceed in its own right. An area where it can have particular significance is in proceedings for collective redress. More broadly, it may have the potential to address access to justice issues, but this may require more deliberate engagement with the litigation funding sector.

For the discussion in full, please see the videos for session one (<https://www.youtube.com/watch?v=7cdztwoThqY>) and session two (<https://www.youtube.com/watch?v=IhS41n9AHNA>) on YouTube.

The discussion included the following points:

- There is significant recent growth in commercial litigation funding.
- Some markets for litigation funding are more mature than others, and some courts may need to do more in the meantime to ensure a level playing field.
- Funding can be more often for large commercial disputes rather than smaller disputes of other types.
- Different jurisdictions use different approaches.
- A helpful question to ask must be: what are we trying to achieve with litigation funding?
- We need to understand the effects of funding.
- There has to be a discipline about funding and running of cases.



- The rise of third-party funding in litigation has positive aspects – increasing access to justice and equality of arms – but it also risks justice systems being used for profit-making purposes and subject to the rise of unmeritorious claims.
- There is a balance to be struck.
- We have learned that it is important to think ahead with costs and litigation. Otherwise, you are dealing with rear-guard actions in this area.
- One view is that the fear of third-party funding raising bad claims is not correct, because the funders will wish to win and there is usually due diligence by the funders. Furthermore, third-party funding can create an equality of arms.
- The view has been expressed that we are in the position where litigation is already used for economic gain and profit, and control is the issue now.
- Litigation funding allows cases to be brought that have merit, but that otherwise would not have been brought without the additional resource.
- Litigation funding can help weed out non-meritorious cases as they won't be funded.
- Third-party funding should be regulated and there should be more disclosure. But currently, there is variation between jurisdictions.
- There are moves to explore regulation within jurisdictions – a mix of legislation and soft law.
- Courts, with the advantage of information and expertise, would be in the best place to agree their own supervisory and regulatory approach, to understand the issues and to set the regulations.
- Courts are in the best place to understand the conflict, and well placed to regulate and influence cost. However, this may be less so with the use of techniques such as referees.
- A phased approach has been taken by some, allowing third-party funding into some categories of litigation, with broadening the categories and reviewing safeguards and controls then being considered. The challenge is meeting the balance between flexibility and regulation.
- The regulatory focus may be on considering whether the funders (rather than the funding) are appropriate.
- In some jurisdictions, the approach by judges has been broadly supervisory.
- One view is that courts should supervise litigation funding and the terms should be disclosed to court, funders and class members.
- If courts retain the enforcement of agreements and rules, does it help us to maintain high standards?
- It would be useful to have an international set of rules, but the challenge is that there is such variation between jurisdictions and we are a long way from uniform rules.

- There are models allowing solicitors to apply, and the court will analyse what total of the award should be charged. The solicitors have to take responsibility for the conduct of the action and security for costs.
- It is important to work with lawyers to review the data and make realistic claims.
- Some litigation funders will be staffed by lawyers and engage third-party lawyers to review cases.
- Lawyers may overestimate the worth of a claim and underestimate its costs, with a risk that claimants end up with less than expected. But there are ways to rigorously test the value of the case and minimise this risk.
- How far should funding regulations extend? Would they cover, for example, a claimant's relative lending the claimant money to allow them to bring a small case to court?
- Rules on disclosure of funding vary significantly by jurisdiction.
- Courts need to have more oversight of funding agreements to ensure that the primary portion of costs recovered goes to the party or class.
- Individual judges are starting to ask for disclosure on funding, although there is no wider requirement that they do so. Some jurisdictions do not ask for disclosure of the agreement content and don't seek to regulate their content.
- Funders often ask for pre-contract communications to be sealed.
- From experience, common interest privilege is well regarded and adhered to.
- Funders should not have influence over a party or their legal advisors, including if it comes to settlement. This is clear for some funders and jurisdictions (for example, with a mediation agreement in the funding agreement).
- Some jurisdictions have provided rules to address respect for the court's rules, adherence to confidentiality requirements and ensuring that the litigant fully understands the funding agreement. The funding agreement may not be enforced if these three points are not met, or the litigant is allowed to approach the court to request intervention.
- There is an overall question as to whether these matters should be regulated, dealt with within court rules or left to self-regulation. Legislation may be inflexible, while practice directions and court rules may be more receptive to changing circumstances.
- The underlying litigation may originate in one state, but the funding may be governed by another. Some favour the idea of regulation that would require a funding dispute to be heard by the same court as the underlying litigation. Context and a full picture are important in deciding a case.

- 5% to 10% of work takes place in litigation funding in arbitration, but there is not a lot of success here and it is hard to understand the outcomes and the lack of appeal position.
- Generally speaking, courts cannot control private arbitration, but there have been occasions where a jurisdiction has sought to impose some controls on arbitration and the rules apply whether in mediation and arbitration.
- Again, it is the same mix of regulation and soft laws. The same rule of trying to regulate the quality of the funder also applies in arbitration and the extent to which there can be professional obligations on the lawyers as well (for example, conflict and disclosure).
- It is one thing to think about controlling funding, but sometimes a more significant result is achieved by acquisition or taking control of the corporate party – especially where the litigation is the main asset of the corporate party.
- What is the role for associations of funders?
- The risks associated with the ability of directors to get insurance deserve consideration.
- How do we share experience internationally?
- International consistency is desirable.

### 3. Meeting the needs of court users

The court system exists to serve all. The legal profession is an important user of the court system. But the parties and those who might become parties are the ultimate users and may be able to speak directly about user needs, including through representative organisations or associations in a sector.

In some jurisdictions, the pandemic has seen users helping systems to continue to function. With the economic consequences of the pandemic, users will have ideas to help the courts prepare, and to make good decisions about improvements to the system at a time of great potential for change.

It is important that the forms of engagement with users do not compromise confidence in the courts. Councils, user committees, working committees, consultations and surveys have been used in some jurisdictions, sometimes generally and sometimes on a specific subject. Objective research informed by data is increasingly possible and may be increasingly important.

The relationship between the courts and arbitration and mediation extends the subject of user needs to those forms of dispute resolution. This includes the appropriate encouragement of mediation and the enforcement of arbitration awards.

The rule of law is the most fundamental user need. In business and investment, the stability, confidence, feasibility, standards and fairness that the rule of law brings is fundamental. There may be ways in which this can be recognised more explicitly and developed, through the work of the world's commercial courts. Engagement with users may also illuminate how commercial courts can contribute effectively and appropriately to higher corporate standards and greater corporate responsibility.

For the discussion in full, please see the video on YouTube: <https://www.youtube.com/watch?v=hv2uhKBnTio>

The discussion included the following points:

- The pandemic has affected all of us, but court users have perhaps been worst off.
- The pandemic did not always hit parts of the business community evenly.
- Courts have shown in the pandemic how they can maintain contact and preserve the rule of law.
- Parties should be at the centre of courts' attention. Mindset is important.
- In an 'opt-in' jurisdiction, customer service is important.
- Courts need to 'put themselves out there' more. Courts serve communities and they must be self-reflective and adaptable.

- The growth of SIFoCC is significant. It brings recognition of specialised decision making in commercial matters, and the need for close understanding of the court-user community's needs and of change in the business environment.
- Public confidence and trust is important.
- Considerations may work themselves out through lived experience.
- Tools for identifying user needs include court conferences, court-user groups or committees, bringing courts and representatives together, and surveys.
- Financial regulatory bodies are part of the user community. Individual lay users also need to be heard. Pro bono representatives are also heard.
- It can be important to bring in international experience.
- SIFoCC holds a highly valuable platform in learning from an international perspective. We must keep a close eye on the development of user needs, including on a local level.
- Some governments needed encouragement to view courts as an essential service.
- Court-user committees (with clients or associations, not just lawyers, and also including the arbitration community) have allowed engagement and feedback, both positive and negative, on administration of commercial matters. They can allow users as a community to raise matters of concern and provide a constructive opportunity to discuss the workings of court.
- Virtual committees allow for greater attendance.
- Committee members should feel that they are heard and listened to. Committee members should be invited to contribute to the agenda. The meetings should be chaired properly, and what happens after is important.
- User committees can consult with members before any changes to rules of procedure are amended.
- Court guides are developed with working groups that include judges and court users.
- A client charter has been tailored to the user needs of a commercial court. A series of practice directions has been used on issues such as virtual hearings.
- In the interests of users, technology must be used in a balanced way.
- Talking formally and informally with users has helped us during crises to check new technological procedures, particularly in relation to hybrid hearings.
- There have been reduced costs, for example in travel, and reduced delays by deformatising some procedures.
- Greater flexibility allows more opportunities for diversity.
- This is also important for access to justice, including access to choice of legal representation (lawyers do not have to be local, including pro bono lawyers).



- Technology assistance may also impose an economic cost. There is a cost to the lack of human interaction. Technology may not be appropriate in sensitive matters or with unwieldy parties.
- We must keep up with far-reaching changes in process and mindset. Adjustments should be made in conjunction with users.
- From the perspective of court users, are links with arbitration sufficient? On the national side, there is some good work. Does SIFoCC have a role in dealing with international or transnational arbitration?
- What is the true extent of the importance of the rule of law to users? How can this be furthered, and what part does international judicial cooperation play?







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# Extract from the closing reflections

**Given by Judge Nallini Pathmanathan, Federal Court of Malaysia**

"SIFoCC ... serves to engender both efficiency and trust amongst the individual judicial arms of sovereign states. It does so, as we have seen, by:

- collating and disseminating commercial practices and laws globally
- promoting the comprehension of commercial legislation and practices in individual states, and particularly why national courts in various countries function as they do
- contributing substantially towards the harmonisation of commercial best practices and laws globally, in accordance with the rule of law
- increasing the use of technology in national commercial courts
- for the future, encouraging a diversity of thought and philosophy in commercial jurisprudence and developing newer theories to meet the ever-changing face of the law and commerce

These measures will ensure procuring an effective remedy, an essential component of access to justice, at a global level. In this context, a core aspect of the rule of law is that the various nations in this grouping are at different levels, both economically and in terms of the maturity of their commercial court systems. There is always the danger that the perspectives of less mature economies and commercial court systems might go unrecognised, as international trade is often dominated by the views of the more developed states. This grouping should set a standard of best practices that accommodate the diversity and varied philosophies of the member states.

The sharing of knowledge on the working of the commercial courts and the different paces of economic development can help to pave the way for a more efficient system of national commercial courts, working together to oversee international trade using their shared understanding of these differences. Ultimately, we are fostering trust in our individual judicial systems within the grouping, and that must be the strongest way to ensure greater cooperation and harmonisation with each other."

# Transcript of the closing remarks

## Given by the Lord Chief Justice of England and Wales, Lord Burnett of Maldon

Many of us were looking forward to meeting in Singapore last March. I suspect that when, inevitably, the meeting of SIFoCC was postponed, none of us realised we would be denied the pleasure of each other's physical company a year later. For all of us, the last 12 months have been extraordinarily difficult, but this conference is a living illustration of how quickly the legal and judicial world – indeed the whole world – has adapted to the assault that COVID-19 has made on ordinary ways of living and working.

When the current emergency is over, none of us will be returning to the ways of living and working we enjoyed in past years. The fascinating discussion of technology in the new world demonstrated that both business and the law are on a rapid journey as technology develops as an aid to all that we do.

This third full meeting of SIFoCC comes at a time when the need for commercial dispute resolution is likely to grow. We have all seen in the past that times of economic and business distress are often followed by litigation. The impact of COVID-19 has not been uniform in all countries, but there has been both short-term and lasting damage to many businesses while others have powered ahead. Mr Justice Robin Knowles reminded us yesterday of the three core aims of SIFoCC:

- to serve business and markets by sharing best practice between courts and enabling us to keep pace with rapid commercial change
- to assist courts to work together in order to make a strong contribution to the rule of law internationally
- to support jurisdictions in less well-developed economies to enhance attractiveness to investors by offering effective means for resolving commercial disputes

SIFoCC was the brainchild of my predecessor, Lord Thomas, and held its first meeting in London in 2017 with the participation of fewer than 30 jurisdictions. Now, there are almost 40, with representation today from Africa, Asia, Australasia, the Caribbean, Europe, the Middle East, North and South America, and both common law and civilian jurisdictions. This conference has confirmed that there is much that we can learn from each other. I was struck, for example, by the short discussion on case management and the observation in a later session of Chief Justice Menon that the length of written submissions has got out of hand. SIFoCC's work on this topic is invaluable. Procedural rules and judicial case management exist to encourage the swift, cost-effective and fair resolution of disputes in the interests of justice. The interests of justice are rarely the same as the interests of lawyers, or even, dare I say it, the interests of judges.

The sessions on meeting the needs of court users and on third-party litigation funding provided further examples of the sharing of information and practice in areas which are not free from difficulty. Of course, the work of SIFoCC continues between its full meetings. A great deal of work, shared among the members, has been done not only on case management, but also on mutual enforcement of judgments, technology and sharing the experience of long-established commercial courts with those in jurisdictions developing their own capability.

SIFoCC continues to work with international organisations to share experience and to support the rule of law.

Above all that, SIFoCC provides an opportunity for judges from jurisdictions of many different sorts to come together at meetings, work together on projects in between and come to know and understand each other better.

May I finish by echoing the thanks that have been expressed throughout this meeting by many speakers to Chief Justice Menon and his team in Singapore, and to Lord Thomas and the steering committee and Secretariat in London. The organisation has been flawless. I continue to marvel at how, simultaneously, we can hear contributions from six continents with only a small number of broadband wobbles. The silver lining of current circumstances is that we can now, more easily than ever, keep in touch with colleagues all over the world. Nonetheless, I hope that the fourth full meeting of SIFoCC will enable many of us to meet once more in person.







# SIFoCC Judicial Observation Programme

"Participating in this observatory programme is the best thing that happened to me during COVID-19. I gained an analytical insight into our problems and practical solutions to overcome them."

- **Justice Priyantha Fernando**

SIFoCC, in partnership with the Supreme Court of Singapore, facilitated the SIFoCC Observation Programme that took place online from Thursday 4 March to Tuesday 8 March 2021. The four-day programme of judicial study and observation was attended by Justice Anna Bitature Mugenyi (Judge of the High Court of the Commercial Division of the High Court of Uganda), Justice Priyantha Fernando (Judge of the High Court and Presider of the Commercial High Court No. 2 of Colombo, Sri Lanka) and Hon Elizabeth Tanui (Senior Principal Magistrate in the Commercial and Tax Division of the High Court of Kenya).

The three judges are now part of a growing alumni network of the SIFoCC Observation Programme, which includes participants from the London 2018 programme and continues to remain active. The first programme aimed to assist courts to build capacity, develop sustainable peer-to-peer relationships and promote discussion on judicial best practice and its wider application. A case

study of SIFoCC's work by ROLE UK, which can be found online, details the outcomes of the first programme.<sup>15</sup> The second programme took place in New York in 2018. Due to the pandemic, face-to-face contact in Singapore was not possible and therefore, the decision was taken to hold this iteration via Zoom.

Each judge was allocated a judicial mentor, who were senior sitting members of the Singaporean judiciary. The judges attended hearings remotely and were able to discuss salient legal issues with the judges who presided over the sessions. Despite the difference in time zones, sitting commitments and occasional IT complications, the three judges participated and engaged in the full programme, which also consisted of both SICC and SIFoCC meetings.

Meetings with Singaporean judges and registrars took place throughout the week. The themes discussed were case management, the use of e-litigation, docketing and e-filing. Hon Elizabeth Tanui advised that the Chief Justice of Kenya has recently launched an e-filing system to enable litigants to file and track their cases. E-filing was therefore a useful discussion. The insight into the Singaporean structure of case management was also extremely beneficial. Justice Anna Bitature found that the conversation on case

<sup>15</sup> ROLE UK, 'Peer-to-peer in action: a case study of SIFoCC': [https://www.roleuk.org.uk/sites/default/files/files/P2P%20in%20action\\_SIFoCC%20case%20study\\_FINAL\\_ONLINE.pdf](https://www.roleuk.org.uk/sites/default/files/files/P2P%20in%20action_SIFoCC%20case%20study_FINAL_ONLINE.pdf)

management and issuing peremptory orders with cases where lawyers seek unnecessary adjournments interesting.

Justice Fernando has found that the theme of digitalisation has generated wider discussions in his court and among his judiciary. The Ministry of Justice has started a major digitisation project and is planning to upgrade 70 courts within four years. This reform will positively impact the Commercial High Court, as it is the only court in the country where commercial and foreign investment matters are resolved.

All three judges continue to communicate with each other and engage in follow-up discussions since the programme. SIFoCC continues to engage with all three jurisdictions to support their judiciary, share best practice and promote the rule of law.

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## **SIFoCC steering group:**

Lord John Thomas (chairman)

Chief Justice James Allsop

Sir William Blair

Chief Justice Bart Katureebe (Emeritus)

Chief Justice Geoffrey Ma

Chief Justice Sundaresh Menon

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