
**Legal Responses to China’s “Belt and Road” Initiative:
Necessary, Possible or Pointless Exercise?**

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INTRODUCTION

China's "Belt and Road Initiative" (BRI) is currently controversially discussed all around the world. Numerous academic and non-academic publications, conferences, and other initiatives have addressed different BRI aspects in recent years. Many of these publications claim to cover legal issues. The large number of contributions is, on the one hand, not surprising, given the perceived huge potential of BRI.¹ On the other hand, until recently, nobody has until now really explained what BRI is and what it stands for. In contrast, scholars are discussing many general trends and concrete projects under the BRI header. However, often there is no justification as to why. Furthermore, as far as the legal discussion is concerned, one has to acknowledge that there are hardly any BRI norms and there is absolutely no special BRI law. Having said that, BRI is an extremely important topic from the legal point of view,

¹ *Infra*, Section II.E.

because BRI represents China's global ambitions, and it is essential to understand that these ambitions could change the global legal order in due course.

China's international activities, including BRI, have attracted a lot of criticism in recent years. All too often, such criticism reflects the interests of different non-Chinese stakeholders who are concerned about China's speedy rise to a global mega-power. In contrast, it appears that objective BRI assessments are rare. For example, Chinese outbound investments were more than welcome between 2008 and 2010 and have arguably helped to speed up the recovery of the Western world from the problems created by the global financial crisis. In contrast, China's global investment projects are nowadays often seen as a threat and many countries are taking steps to limit Chinese inbound investments ostensibly for national security reasons. All of this is supported by anti-China rhetoric found both within and outside of BRI states.

It is not the purpose of this Article to assess if concerns regarding China's expanding global engagement are, in all respects, justified. Rather, this Article aims to explore both actual and potential legal responses to BRI by asking if and how different stakeholders have reacted, or can or should react to BRI legally. In fact, in light of the global interest in BRI, it is somewhat surprising that until now, legal responses to BRI have hardly attracted any attention at all. This Article attempts to fill the gap by going far beyond the existing BRI literature. It aims to create transparency regarding legal responses to BRI in the past and in relation to future options. It pursues the ultimate goal to empower all stakeholders to develop legal BRI strategies which allow for the creation of real win-win situations.

This Article first summarizes the general BRI background based on the latest developments. The main part of the article discusses actual and potential legal responses to BRI from the viewpoint of different stakeholder groups—namely from China, non-Chinese BRI states, and the rest of the world. This Article ends with a summary of the findings and conclusions of a more general nature.

I. BACKGROUND

A. *General*

This section highlights the development of BRI so far in order to set the scene for the subsequent chapters. It then discusses the stated and perceived motives behind BRI and explains which countries are covered. This discussion is followed by a brief report on the economic potential of BRI. Finally, this section summarizes the main points of BRI criticism that have emerged until now.

B. What is BRI?²

China's President Xi Jinping had announced the "One Belt, One Road" (OBOR) initiative in September 2013 during a visit to Astana (renamed in 2019 to: Nur-Sultan), the capital of Kazakhstan. OBOR originally built upon the idea of the historical Silk Road, which had developed during the Han Dynasty (206 BC to 220 AD) for the export of Chinese silk to India, Mesopotamia, North Africa, and Europe.³

The OBOR initiative is supplemented by the so-called "21st Century Maritime Silk Road Initiative," which had been announced shortly afterward, on October, 3 2013.⁴ This initiative is meant to connect China via sea routes with maritime border states all the way to Europe.⁵ In this Article, the OBOR

² The following discussion is based on and partly borrowed from Lutz-Christian Wolff, China's 'Belt and Road' Initiative – An Introduction, in *Legal Dimensions of China's Belt and Road Initiative* 1–31 (Lutz-Christian Wolff & Chao Xi eds., 2016); Lutz-Christian Wolff, From a 'Small Phrase with Big Ambitions' to a Powerful Driver of Contract Law Unification? – China's Belt and Road Initiative and the CISG, 34 *J. Cont. L.* 50, 50–69 (2017); see also Andrew Leung, Opportunities Galore, *South China Morning Post* (May 6, 2016), available at <https://www.andreweleunginternationalconsultants.com/publications/2016/05/despite-risks-one-belt-one-road-has-opportunities-galore.html>; Denise Tsang, Hong Kong firms urged to take advantage of opportunities in Central Asia as part of 'One Belt, One Road' strategy, *South China Morning Post* (Nov. 2, 2015), <https://www.scmp.com/news/hong-kong/economy/article/1874676/hong-kong-firms-urged-to-take-advantage-opportunities-central>; Ben Westcott, *Hong Kong companies failing to take advantages of China's 'One Belt, One Road' policy, experts tell annual forum*, *SOUTH CHINA MORNING POST* (Nov. 2, 2015), <https://www.scmp.com/news/hong-kong/economy/article/1874888/hong-kong-companies-failing-to-take-advantage-chinas-one-belt>; George Yeo, *China's Grand Design: Pivot to Eurasia*, *GLOBALIST* (Nov. 8, 2015), <https://www.theglobalist.com/china-economy-gdp-asia>; cf. Poomintr Sooksripaisarnkit & Sai Ramani Garimella, *The role of private international law in the context of the One Belt One Road initiative*, in *CHINA'S ONE BELT ONE ROAD INITIATIVE AND PRIVATE INTERNATIONAL LAW* 1–15 (Poomintr Sooksripaisarnkit & Sai Ramani Garimella eds., 2018) (for attempts to trace the BRI idea back to 2011 when the "then Prime Minister Wen Jiabao of China broke the news that China had been consulting with academics since 2010 on the thought of developing economically closer ties between countries along the old Silk Road" during a meeting of government heads of 22 Central and Eastern European countries).

³ See Press Release, Nat'l Dev. and Reform Comm'n, Ministry of Foreign Aff., and Ministry of Com. of China, Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road (Mar. 3, 2015), https://reconasia-production.s3.amazonaws.com/media/filer_public/e0/22/e0228017-7463-46fe-9094-0465a6f1ca23/vision_and_actions_on_jointly_building_silk_road_economic_belt_and_21st-century_maritime_silk_road.pdf [hereinafter "NDRC"] (under Part IV "Cooperation Priorities, Unimpeded trade"); Kevin Sneader, *China's 'One Belt, One Road' is the perfect stage for Hong Kong to showcase its strengths*, *SOUTH CHINA MORNING POST* (May 17, 2016), <https://www.scmp.com/print/comment/insight-opinion/article/1946161/chinas-one-belt-one-road-perfect-stage-hong-kong-showcase>.

⁴ Ronald A. Brand, *Recognition of Foreign Judgments in China*, 37 *J. L. & COM.* 29, 29–56 (2018).

⁵ Sneader, *supra* note 4; Wolff 2017, *supra* note 3, at 51; see NDRC, *supra* note 4, at 4–5 (under Part III "Framework"); Tsang, *supra* note 3; see also Phil Stewart & Idrees Ali, *Pentagon warns on risk of Chinese submarines in Arctic*, *REUTERS* (May 2, 2019, 4:55 PM), <https://www.reuters.com/article/us-usa-china-military-arctic-idUSKCN1S829H> (propounding the idea of a "Polar Silk Road," China's development of "lanes for shipping opened by global warming" in the Arctic region); cf. Sooksripaisarnkit & Garimella, *supra* note 3, at 2 (listing ancient predecessors of the "21st Century

initiative, as well as the 21st Century Maritime Silk Road, will be subsumed under the now commonly used abbreviation "BRI".

BRI also includes six so-called transnational corridors, i.e. (i) the New Eurasia Land Bridge Economic Corridor (to connect via cargo train transport routes the port of Lianyungang in China's Jiangsu with Rotterdam), (ii) the China-Mongolia-Russia Economic Corridor, (iii) the China-Central Asia-West Asia Economic Corridor, (iv) the Indochina Peninsula Economic Corridor, (v) the Bangladesh-China-India-Myanmar Economic Corridor,⁶ and (vi) the China-Pakistan Economic Corridor.⁷ These corridors are focus areas for China to build infrastructure with the goal to create logistic connectivity.

Official statements have emphasized from the beginning that BRI is not limited to trade and investment.⁸ BRI is therefore not just a new name for the Chinese "Going Out Policy" of the 1990s—when the central government started to encourage domestic enterprises to set up business abroad.⁹ On the contrary, BRI is supposed to be much broader, although it is still not really clear what this means.¹⁰

Maritime Silk Road"); Zhang Lulu, *Chronology of China's Belt and Road Initiative*, CHINA.ORG.CN (Jan. 5, 2017), http://www.china.org.cn/china/2017-01/05/content_40044651.htm (providing the history of China's BRI).

⁶ Note that, as further explained, India declared that it will not participate in BRI. *See infra* Sections II.D, II.F. The Bangladesh-China-India-Myanmar Economic Corridor must therefore be regarded as comprising of Bangladesh, China and Myanmar only.

⁷ *Cf.* Leung, *supra* note 3; Abdur Rehman Shah, *How does China-Pakistan Economic Corridor Show the Limitations of China's 'One Belt One Road' Model*, 5 ASIA & PAC. POL'Y STUD. 378–85. (2018); Sooksripaisarnkit & Garimella, *supra* note 3, at 3-6; Zachary Strom, *A "Silk Road" for Capital: Trade Policy and Foreign Investment Laws of China's Neighbors*, 38 NW J. INT'L L. & BUS. 483–86 (2018); Tsang, *supra* note 3. For the inclusion of Myanmar see Bob Savic, *China flexes its diplomatic muscle on the Rohingya crisis, cashing in on ties with Myanmar and Bangladesh*, SOUTH CHINA MORNING POST: OPINION (Nov. 26, 2017, 1:00 PM), <https://www.scmp.com/comment/insight-opinion/article/2121415/china-flexes-its-diplomatic-muscle-rohingya-crisis-cashing>. For the support that the plan is to complete the corridors by 2019, *see* Eric Ng, *Chinese firms' planned investments of US\$350b in projects along New Silk Road exposed to risk*, SOUTH CHINA MORNING POST : BUS. COMPANIES (Oct. 24, 2017, 6:00 PM), <https://www.scmp.com/business/companies/article/2116784/chinese-firms-planned-investments-us350b-projects-along-new-silk>; James Schwemlein, *What Malaysia and Pakistan could teach both China and the US about the Belt and Road Initiative*, SOUTH CHINA MORNING POST: OPINION (Nov. 3, 2018, 3:01 PM), <https://www.scmp.com/comment/insight-opinion/united-states/article/2171338/what-malaysia-and-pakistan-could-teach-both> ("economic bright spot for a crisis economy").

⁸ *See* NDRC, *supra* note 4, at 4 (under Part III "Framework").

⁹ *See* LUTZ-CHRISTIAN WOLFF, *MERGERS & ACQUISITIONS IN CHINA: LAW AND PRACTICE*, 217–221 (5th ed. 2014); LUTZ-CHRISTIAN WOLFF, *CHINA OUTBOUND INVESTMENTS – A GUIDE TO LAW AND PRACTICE* 1–5 (2011).

¹⁰ *Cf.* Brand, *supra* note 5, at 12 ("sort of catchall for much more than new openings for international trade and investment for China"); Leung, *supra* note 3 ("little more than a buzz word"); Sneader, *supra* note 4 ("ambitious diplomatic programme"); Westcott, *supra* note 3 ("still not clearly defined"); Peter Wong, *Financial leap*, SOUTH CHINA MORNING POST May 26, 2016, at A11 ("a small phrase with big ambitions"); Yeo, *supra* note 3 ("far more than a slogan").

C. BRI Motives

The actual implementation of BRI started in 2015. An official document issued jointly by the National Development and Reform Commission (NDRC), the Ministry of Foreign Affairs (MFA), and the Ministry of Commerce (MOFCOM) on 28 May of that year,¹¹ identifies five “cooperation priorities,”¹² namely (i) policy coordination, (ii) facilities connectivity,¹³ (iii) unimpeded trade, (iv) financial integration,¹⁴ and (v) people-to-people bonds.¹⁵ Commentators have tried to interpret these priorities through the comparison of open versus hidden BRI goals pursued by China. In contrast, China has tried to emphasize the neutral character of BRI as expressed by China’s President Xi Jinping in late 2018: “The belt and road [plan] is an open platform for cooperation. [It is] neither designed to serve any hidden political agendas nor to target anyone It does not cause debt traps, as some want to label it, [but] is a transparent project that brings common development to the world.”¹⁶

Despite this, and other reassuring statements from the Chinese government, many commentators have speculated that it is the main goal of

¹¹ NDRC, *supra* note 4; cf. Brand, *supra* note 5, at 13.

¹² NDRC, *supra* note 4, at 5–9 (under Part IV “Cooperation Principles”).

¹³ Cf. Leung, *supra* note 3 (“One Belt, One Road’ will deepen China’s infrastructural, economic, institutional and cultural connectivity with key parts of the globe.”); Tsang, *supra* note 3.

¹⁴ Cf. Wilson Lau, *Driving Force*, SOUTH CHINA MORNING POST, S4 (Apr. 11, 2016).

¹⁵ Cf. Liu Xiaoming, *Advance China-UK Belt and Road Cooperation for Common Development and Prosperity of Mankind*, CHINA DAILY [http://www.chinadaily.com.cn/a/201802/23/WS5a8fe4dca3106e7dcc13da7b_2.html__last updated Feb. 23, 2018, 17:54](http://www.chinadaily.com.cn/a/201802/23/WS5a8fe4dca3106e7dcc13da7b_2.html__last_updated_Feb_23_2018_17:54)) (giving the examples of city partnerships and mutual visa exemption or visa-on-arrival arrangements).

¹⁶ Kinling Lo, Lee Jeong-ho, & Bhavan Jaipragas, *Xi, Pence exchange barbs over trade war at Apec summit while selling visions for regional cooperation*, SOUTH CHINA MORNING POST (Nov. 17, 2018, 7:45 PM), <https://www.scmp.com/news/china/diplomacy/article/2173739/xi-jinping-mike-pence-trade-barbs-over-trade-war-apec-summit>; cf. Jane Cai, *Xi Jinping sends message to US and West that ‘China is committed to opening up’ at Belt and Road Forum*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Apr. 27, 2019, 2:00 AM), <https://www.scmp.com/news/china/diplomacy/article/3007885/xi-jinping-sends-message-us-and-west-china-committed-opening>; Lucy Hornby, *China pledges to address debt worries over Belt and Road*, FINANCIAL TIMES (Apr. 24, 2019), <https://www.ft.com/content/f7442058-66f9-11e9-9adc-98bf1d35a056>; Kinling Lo & Jane Cai, *China seeks to prove critics wrong with star belt and road projects*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Apr. 29, 2019, 10:00 AM), <https://www.scmp.com/news/china/diplomacy/article/3008020/china-seeks-prove-critics-wrong-star-belt-and-road-projects>; Anthony Rowley, *China’s belt and road initiative may have its flaws, but some critics are taking it too far*, SOUTH CHINA MORNING POST: OPINION (Jan. 20, 2019, 1:00 PM), <https://www.scmp.com/business/money/article/2182789/chinas-belt-and-road-initiative-may-have-its-flaws-some-critics-are> (“Even the president of the Asian Development Bank, Takehiko Nakao, suggested . . . that such over-lending can be the result of the eagerness of competing Chinese state-owned banks to lend on projects without always coordinating their lending.”).

BRI to strengthen China's geopolitical position.¹⁷ Indeed, any increase of China's influence in the BRI area would underscore China's international ambitions, particularly in Central, Southern, and Southeast Asia.¹⁸ At the same time, BRI could make American and Russian attempts to expand their own sphere of influence in the region very difficult for the decades to come.¹⁹

Along comes China, offering loans, companies that can deliver projects rapidly and few value judgments about the governance or the countries in question. There may be some political pressures, but these initially are kept light, and are often focused on matters of relatively marginal concern to the countries at hand: recognition of Taiwan, or willingness to back China in the United Nations. Over time, this dynamic can change. As countries find themselves unable to repay debt, they will accumulate more.²⁰

¹⁷ Cf. Agence France-Presse, *China courts eastern European investment in wake of US trade battle*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (July 7, 2018, 12:10 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2154207/china-courts-eastern-europe-investment-wake-us-trade> (“[F]ears the summit could be an attempt by China to vie with EU projects and aid by funding infrastructure under its global Belt and Road Initiative and thus divide the block.”); NDRC, *supra* note 4, at 4–5; Tsang, *supra* note 3; Wendy Wu, *Where the rubber meets the ‘Belt and Road’ – German ambassador answers the big questions*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (May 13, 2017, 3:32 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2093707/german-ambassador-answers-belt-and-road-questions> (quoting Michael Clauss, the former German ambassador to China, as saying “Chinese companies I speak to are somewhat reluctant to invest in countries which are economically or politically unstable, while a number of state-owned enterprises investing overseas are highly leveraged”).

¹⁸ Cf. NDRC, *supra* note 4; Tsang, *supra* note 4, at A4.

¹⁹ Cf. Jean-Pierre Lehmann, *China has the power, now can ‘One belt, One Road’ take it down the path to glory?*, SOUTH CHINA MORNING POST: OPINION (Sept. 15, 2016, 4:56 PM), <https://www.scmp.com/comment/insight-opinion/article/2019640/china-has-power-now-can-one-belt-one-road-take-it-down-path>.

²⁰ Keegan Elmer, *Is China's investment in infrastructure projects driving Western Balkan nations into debt?*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (May 22, 2018, 9:01 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2147293/chinas-investment-infrastructure-projects-driving>; Raffaello Pantucci, *Why developing countries can't resist joining China's massive infrastructure plan*, SOUTH CHINA MORNING POST: OPINION (July 7, 2018, 10:00 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2154002/why-developing-countries-cant-resist-joining-chinas>; cf. David Dodwell, *Tillerson's final warning on Belt and Road financing only proves China's influence on the rise*, SOUTH CHINA MORNING POST: OPINION (Mar. 23, 2018, 10:46 PM), <https://www.scmp.com/business/global-economy/article/2138539/tillersons-final-warning-belt-and-road-financing-only-proves>; He Huifeng, *Is China's belt and road infrastructure development about to run out of money?*, SOUTH CHINA MORNING POST: CHINA (Apr. 14, 2018, 10:00 PM), <https://www.scmp.com/news/china/economy/article/2141739/chinas-belt-and-road-infrastructure-development-plan-about-run>; Richard B. Stewart, *TPP's Regulatory Capitalism and China's Belt and Road Challenges*, DIPLOMAT: PACIFIC MONEY (May 25, 2018), <https://thediplomat.com/2018/05/tpps-regulatory-capitalism-and-chinas-belt-and-road-challenges> (for the labelling of loan-financed Chinese investments against political concessions as “Angola model”); Catherine Wong, *China aims for ‘sustainable’ debt with Africa as Belt and Road Initiative comes under fire from West*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Aug. 28, 2018, 9:32

It would, in fact, be naive to believe that China is not pursuing its own geopolitical BRI goals. But there is no hard evidence that China has actively pursued debt-trap strategies.²¹ And, since the reputational risks and resulting potential for harm to the whole BRI project should have been predictable, one may question if the Chinese government would have really chosen to go down this road. An alternative interpretation could therefore be that Chinese parties themselves were taken by surprise by the borrowers' repayment problems in the context of BRI financing. Accordingly, there are also much more sympathetic accounts of China's outbound activities:

[U]nlike the approach taken by Western investors, Chinese lending often takes the form of patient capital. By emphasizing nonintervention in sovereign affairs and refraining from imposing conditions like fiscal austerity or transparency, as Western governments do, China promises its financing horizon will not be influenced by such short-term policy targets. That helps regions have the flexibility to spend during economic downturns. China's patient capital also tends to align better with debtors' long-term development goals, allowing countries to incrementally correct policy errors without the threat of abrupt financial destabilization.²²

Other observers regard economic reasons as the main drivers behind China's BRI strategy. After years of almost unlimited growth China's economy has experienced difficulties in recent times.²³ Commentators have therefore

PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2161737/china-aims-sustainable-debt-africa-belt-and-road>; Catherine Wong, *Xi Jinping says belt and road plan isn't about creating a 'China club'*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Aug. 27, 2018, 11:30 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2161580/xi-jinping-says-belt-and-road-plan-isnt-about-creating>.

²¹ Nathaniel Taplin, *One Belt, One Road, and a Lot of Debt*, WALL ST. J.: MARKETS (May 2, 2019, 5:33 AM), <https://www.wsj.com/articles/one-belt-one-road-and-a-lot-of-debt-11556789446> ("Beijing isn't creating vassal states through predatory lending. But it is winning friends and influencing people – and allowing other problems to build up."). *But cf.* Shi Jiangtao, *Trade deal nears, but tensions are rising over China's inroads into America's Backyard*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Apr. 15, 2019, 12:00 AM), <https://www.scmp.com/news/china/diplomacy/article/3006126/trade-deal-nears-tensions-are-rising-over-chinas-inroads> (quoting U.S. Secretary of State Mike Pompeo as saying: "We don't want China to show up with bags full of money and bribe officials. We don't want China to show up and put Huawei or Chinese technology into the infrastructure of these countries so that the citizens . . . have their information . . . stolen by the Chinese government. . ."). For the use of debt-trap strategies by the U.S. for decades in Central and South America, see JOHN PERKINS, *THE NEW CONFESSIONS OF AN ECONOMIC HIT MAN*, (2015).

²² Stephen Kaplan, *China is investing seriously in Latin America. Should you worry?*, WASH. POST: MONKEY CAGE (Jan. 24, 2018, 6:00 AM), https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/24/china-is-investing-seriously-in-latin-america-should-you-worry/?noredirect=on&utm_term=.c0df5ef34442.

²³ *Id.*; Frank Ching, *China has all but ended the charade of peaceful rise*, SOUTH CHINA MORNING POST: OPINION (Aug. 26, 2016, 1:21 PM), <https://www.scmp.com/comment/insight-opinion/article/2008900/china-has-all-ended-charade-peaceful-rise> ("China sees its dominance as

suggested that BRI aims to open up new markets for China, thus benefitting China's domestic economy. Indeed, it has been said that "[w]hile the EU is focusing on the rule of law, aid and business development, the US has put a premium on security, Russia on energy and foreign policy and China on infrastructure and markets . . ."²⁴

The current focus on infrastructure projects in the BRI context can be explained accordingly. Countries along OBOR and the 21st Century Maritime Silk Road have significant infrastructure deficits, which in turn prevent Chinese investors from engaging in viable investment projects.²⁵ The building of infrastructure could therefore be a first step to allow the implementation of broader Chinese investment strategies at a later point.

The official BRI document of 2015²⁶ also mentions facilities connectivity²⁷ and people-to-people bonds. One may therefore consider whether BRI aims to

crucial because of its own development needs. . . . It will continue its stick-and-carrots policy, using trade and investment as weapons. The China-initiated Asian Infrastructure Investment Bank, with capital of US\$100 billion, has begun approving its first projects, greatly elevating Chinese bargaining power. The 'One Belt, One Road' plan will also bring investment to nearby countries"; Lehman, *supra* note 20 ("Globalization on which China has depended so much, has stalled, and is possibly in reverse gear."); Daniel Shane, *China posts slowest economic growth since 1990*, CNN BUS., <https://edition.cnn.com/2019/01/20/economy/china-economy-q4/index.html> (last updated Jan. 21, 2019); Gabriel Wildau & Emily Feng, *China growth cut to 3-decade low by trade war and debt crackdown*, FIN. TIMES (Jan. 21, 2019), <https://www.ft.com/content/9706b890-1ad7-11e9-9e64-d150b3105d21>.

²⁴ Bloomberg News, *Chinese investment is winning hearts and minds in western Balkans*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (June 25, 2018, 12:35 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2152298/chinese-investment-winning-hearts-and-minds-western>. For the Middle East, compare Laura Zhou, *China pledges US\$23 Billion in loans and aid to Arab states as it boosts ties in Middle East*, SOUTH CHINA MORNING POST: MORNING POST (July 10, 2018, 6:04 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2154642/china-pledges-us23-million-loans-and-aid-arab-states-it>. For the role of the Asian Infrastructure Investment Bank (AIIB), see Daniel C. K. Chow, *Why China Established the Asia Infrastructure Investment Bank*, 1255–98 (Ohio State Public Law, Working Paper No. 333, 2016), see also Gerard J. Sanders, *The Asian Infrastructure Investment Bank and the Belt and Road Initiative: Complementarities and Contrasts*, 16 CHINESE J. INT'L L. 367, 367–71 (2017).

²⁵ This point was made during a round-table discussion (subject to Chatham House Rules) organized by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies together with Chatham House in Colombo, Sri Lanka, on November, 1 2018.

²⁶ NDRC, *supra* note 4.

²⁷ Cf. David Dodwell, *Turning China's Belt and Road Initiative into a new cold war weapon by the US is deeply frustrating*, SOUTH CHINA MORNING POST: OPINION (Apr. 21, 2019, 3:53 PM), <https://www.scmp.com/business/article/3007061/turning-chinas-belt-and-road-initiative-new-cold-war-weapon-us-deeply> ("The belt and road plan was built in recognition of this infrastructure-building imperative. It was forged in China's own experience over the past 50 years, where the building of strong and efficient local infrastructure has been crucial to development of a robust and efficient economy, creating jobs and lifting its huge population out of poverty."); Leung, *supra* note 3 ("One Belt, One Road' will deepen China's infrastructural, economic, institutional and cultural connectivity with key parts of the globe."); Tsang, *supra* note 3.

serve, at least partly, as a development aid program²⁸ or as a tool to strengthen the cultural ties between the peoples of BRI states. For example, there is hardly any university in the Greater China area that is not talking, or already actively pursuing, collaborations with sister institutions in BRI states. Mainland China's Xiamen University has just opened the first ever offshore campus of a Chinese tertiary institution near Kuala Lumpur in Malaysia.²⁹ It is important in this connection that the terms "connectivity" and "people-to-people bonds" normally imply some degree of reciprocity. In contrast, the BRI discussion, as well as concrete BRI projects implemented so far, are normally only one directional, i.e. from China into BRI countries. This could be seen as evidence of China's outward BRI motives or as a result of the fact that China was the BRI initiator.

Finally, Michelle Miao has drawn attention to the fact that in order to legitimize the Chinese government, BRI is as important as China's current anti-corruption campaign.³⁰

The investment and trade facilitated by . . . [BRI] provides the "hardware" for economic growth across the Eurasian continent. It promises to bring immense opportunities for development and prosperity to all [BRI] countries. . . . In contrast, anti-corruption measures represent the "software" solution to many social problems in both China and other [BRI] countries. . . . [D]espite the huge risks involved, both initiatives will boost the legitimacy of the Chinese Party-state. Indeed, they have and will continue to enhance the prestige of the Xi Jinping administration. However, the failure of either would be detrimental to President Xi's legacy and to the rule of the Chinese Communist Party.³¹

D. BRI States

Especially mysterious in the BRI context is the question of which countries are covered and why. China has always claimed that every country and region

²⁸ Cf., e.g. Agence France-Presse, *China to unveil \$46bn investment in Pakistan during visit by Xi Jinping*, GUARDIAN WORLD NEWS: PAKISTAN (Apr. 19, 2015), <https://www.theguardian.com/world/2015/apr/20/china-to-unveil-46bn-investment-in-pakistan-during-visit-by-xi-jinping>. As there are no viable investment options in Pakistan worth USD \$46 billion, William H. Overholt described related Chinese investments as de facto development aid on December, 15 2016 during a conference at The Chinese University of Hong Kong.

²⁹ See XIAMEN UNIVERSITY MALAYSIA, <http://www.xmu.edu.my> (last visited Apr. 8, 2020).

³⁰ Cf. Ling Li, *Politics of Anticorruption in China: Paradigm Change of the Party's Disciplinary Regime 2012-2017*, 28 J. CONTEMP. CHINA 47, 47-63 (2019).

³¹ Michelle Miao, *Audacity and Dilemma – China's One Belt, One Road Initiative and Xi Jinping's Anti-Corruption Campaign*, in LEGAL DIMENSIONS OF CHINA'S BELT AND ROAD INITIATIVE, supra note 3, (under Part 5 "Conclusion"); Schwemlein, supra note 8.

including Taiwan, can join.³² Originally, China had listed 65 BRI states from East Asia, Southern and Southeast Asia, Central and West Asia, the Middle East, and Africa as well as Central and Eastern Europe.³³ China's official BRI website then increased the number of BRI states to 80,³⁴ and in September 2019, the number had again gone up to 138,³⁵ now including Austria, New Zealand, Antigua and Barbuda, Columbia, South Africa, and Mali. Already, in January 2018, China had announced the extension of BRI to Latin America.³⁶

It is entirely unclear why, and on what basis, particular countries are regarded as BRI countries. However, it has become clear that BRI is on the one hand no longer restricted to the original ideas of OBOR and the 21st Century Maritime Silk Road,³⁷ but must be understood as a label for China's global ambitions and outreach activities. On the other hand, apart from Austria, Portugal, and most recently Italy,³⁸ BRI does, for the time being, not include

³² Cf. Brand, *supra* note 5, at 14; Kristin Huang & Eva Li, New Silk Road still open for Taiwanese firms despite tensions, Beijing says, SOUTH CHINA MORNING POST: CHINA POLITICS (Nov. 30, 2016, 11:30 PM), <https://www.scmp.com/news/china/policies-politics/article/2050548/new-silk-road-still-open-taiwanese-firms-despite>.

³³ Lehmann, *supra* note 20; Sun Zhiming (孙志明), '一带一路'新布局 ('One Belt One Road' a New Layout) 国家发展和改革委员会 (NDRC), 西部开发司 (Western Region Development Division), (Dec. 26, 2014), <http://www.chinanews.com/cj/2014/12-26/6914764.shtml>; cf., e.g. Julia Hollingsworth, Business association works to grow One Belt, One Road, SOUTH CHINA MORNING POST: BUS. (Sept. 18, 2016, 9:00 PM), <https://www.scmp.com/business/article/2020194/business-association-works-grow-one-belt-one-road> ("Non-profit World Trade Centre Association want more countries to get involved with China's continent spanning infrastructure project").

³⁴ See Annex, countries marked with *.

³⁵ See *Belt and Road Portal*, STATE INFO. CTR., https://eng.yidaiyilu.gov.cn/info/iList.jsp?cat_id=10076&cur_page=1 (last visited Apr. 8, 2020) (under tab "International Cooperation," follow "Profiles" hyperlink); Catherine Wong, *China, Japan moving from competition to cooperation, leaders say*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Oct. 26, 2018, 11:31 PM), <https://www.scmp.com/news/china/diplomacy/article/2170436/china-japan-moving-competition-cooperation-leaders-say> ("[Li Keqiang] also welcomed Japan's participation in China's 'Belt and Road Initiative'").

³⁶ Kaplan, *supra* note 23; cf. Jiangtao, *supra* note 22 (showing China's growing influence in the Caribbean Shi). For a chart which lists the 131 BRI states listed on China's official BRI website plus China, see the Annex.

³⁷ *Supra* Section II.B.

³⁸ Cf. Kinling Lo, *G7 stays silent over China's Belt and Road Initiative after failing to reach consensus*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Apr. 7, 2019, 4:39 PM), <https://www.scmp.com/news/china/diplomacy/article/3005023/g7-stays-silent-over-chinas-belt-and-road-initiative-after> ("During [China's president] Xi's official visit to Rome from March 21–23, the Italian government signed a memorandum of understanding to be part of China's New Silk Road strategy. ... For the EU Commission, Italy's uncoordinated approach has undermined the bloc's attempt to present a united European front on Beijing, which is now regarded by the union as an 'economic competitor' and 'systematic rival'. ... Unity is always hard to build within the EU, notably when it comes to security and military affairs. The Chinese leadership knows it very well, inasmuch as it still has room to play 'divide and rule' in Europe – despite Xi saying that a united EU is a key plank of the multipolar world that he envisions."); Emanuele Scimia, *The EU's China strategy, while avoiding Trump-style confrontation, puts European unity to the test*, SOUTH CHINA

other Western European countries. Furthermore, China had listed India as a BRI state since the BRI start, but openly declared that it would not join.³⁹ China took until May 2019 to finally remove India from its' official list of BRI states. Skepticism is also growing in other countries such as Malaysia,⁴⁰ Pakistan,⁴¹ Nepal⁴², Myanmar⁴³ and Kyrgyzstan⁴⁴ as further discussed below.⁴⁵

MORNING POST: OPINION (Mar. 27, 2019, 11:00 PM), <https://www.scmp.com/comment/insight-opinion/article/3003463/eus-china-strategy-puts-european-unity-test>. For the fact that Switzerland has apparently already signed a MoU with China, see Evelyn Cheng, *China tackles worries about Belt and Road debt as it notches a Swiss endorsement*, CNBC (May 7, 2019, 2:06 PM), https://www.cnbc.com/2019/05/01/china-signs-mou-with-finance-giant-switzerland-on-belt-and-road.html?_source=twitter%7Cmain.

³⁹ Ashok K. Kantha, *Why India is cool towards Beijing's Belt and Road*, SOUTH CHINA MORNING POST: THIS WEEK IN ASIA: OPINION (May 14, 2017, 12:00 PM), <https://www.scmp.com/week-asia/opinion/article/2094167/why-india-cool-towards-chinas-belt-and-road>; Xie Yu, *Beijing's global trade scheme faces challenges from capital control, regional competition*, SOUTH CHINA MORNING POST: OPINION (May 19, 2017, 10:28 AM), <https://www.scmp.com/business/banking-finance/article/2094904/beijings-global-trade-scheme-faces-challenges-capital>. For the reasons see *infra*, IV.D.iii.a(1).

⁴⁰ Agence France-Presse, *Beijing-backed Malaysian megaprojects on agenda for Mahathir's August China trip*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (July 6, 2018, 5:26 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2154122/beijing-backed-malaysian-megaprojects-agenda-mahathirs>; Bhavan Jaipragas, *Malaysia revived China deals to boost Belt and Road Forum spirits*, country's foreign minister says, SOUTH CHINA MORNING POST: THIS WEEK IN ASIA GEOPOLITICS (Apr. 22, 2019, 9:18 AM), <https://www.scmp.com/week-asia/geopolitics/article/3007090/malaysia-revived-china-deals-boost-belt-and-road-forum>; Bhavan Jaipragas, *Chinese projects will not go on: Mahathir blasts Najibs 'stupidity'*, SOUTH CHINA MORNING POST: SOUTHEAST ASIA (Aug. 21, 2018, 12:45 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2160627/chinese-projects-will-not-go-mahathir-blasts-najibs>; Bhavan Jaipragas, *Malaysia to go ahead with China-backed East Coast Rail link*, SOUTH CHINA MORNING POST: THIS WEEK IN ASIA: GEOPOLITICS (Apr. 12, 2019, 11:56 PM), <https://www.scmp.com/week-asia/geopolitics/article/3005831/malaysia-decide-today-stalled-china-backed-east-coast-rail>; Schwemlein, *supra* note 8.

⁴¹ Peter Guy, *Belt and road projects face stiff challenges*, SOUTH CHINA MORNING POST, B5 (Nov. 20, 2017); Tom Hussain, *On the Road to a Debt Crisis*, SOUTH CHINA MORNING POST, A6 (July 14, 2018); Tom Hussain, *Corridors of Power*, SOUTH CHINA MORNING POST, A8–10 (May 20, 2017); Schwemlein, *supra* note 8; Sarah Zheng, *Warning of conflict over Beijing investments*, SOUTH CHINA MORNING POST, A6 (July 4, 2018); Viola Zhang & Wendy Wu, *China Denies Blame For Collapse of Dam Deal*, SOUTH CHINA MORNING POST, A3 (Dec. 9, 2017).

⁴² Guy, *supra* note 42, at B5.

⁴³ *Smaller port deal signed with China amid debt fear*, SOUTH CHINA MORNING POST, A9, (Nov. 10, 2018).

⁴⁴ *Anti-Chinese protesters detained in Kyrgyzstan*, SOUTH CHINA MORNING POST, A10 (Jan. 19, 2019).

⁴⁵ Cf. Schwemlein, *supra* note 8 (“The challenges will not stop at Malaysia and Pakistan—similar reviews are likely to take place in Indonesia, if presidential hopeful Prabowo Subianto is elected, the Maldives and other states in coming months.”); Resty Woro Yuniar, *Jakarta woos investors from Gulf states Indonesia seeks Saudi cash as alternative to 'aggressive' China: Widodo ally*, SOUTH CHINA MORNING POST (Nov. 13, 2018 8:00 AM), <https://www.scmp.com/week-asia/economics/article/2172822/indonesia-seeks-saudi-cash-alternative-aggressive-china-widodo>.

E. The (Perceived) Economic Potential of BRI

It is generally acknowledged that the political, economic, and cultural BRI potential is enormous.⁴⁶ The original 65 BRI states alone are home to half of the world's population, 75% of the known energy reserves and 40% of the world's GDP.⁴⁷ In 2018, 40% of China's total outbound investment went to BRI countries, which was twice as much as in 2017.⁴⁸

Commentators have guessed that the economic value of Chinese investments in the BRI area will be twelve times the value of the Marshall Plan, with which North America helped re-build Europe after World War II.⁴⁹ Between 2014 and 2017 China invested sixty billion dollars into various BRI states.⁵⁰

Of course, whether the BRI's economic potential can be fully realized in the future depends on many factors. Most importantly, China's own economic capabilities are key for the success of BRI. The so-called "trade war" between China and the USA is already taking its toll and has forced China to take a more careful approach towards investments in BRI countries.⁵¹ China's GDP in 2018 rose by only 6.6%, which is the slowest yearly performance since the year 1990.⁵² Nonetheless, it would be imprudent to assume that BRI will soon be a matter of the past even in light of the COVID-19 outbreak.⁵³ Too much is

⁴⁶ Leung, *supra* note 3; Tsang, *supra* note 3; Westcott, *supra* note 3; Yeo, *supra* note 3; cf. Central Committee of the Communist Party of China (CPC), Recommendations for the 13th Five-Year Plan for Economic and Social Development, CENTRAL COMPILATION & TRANSLATION PRESS, Beijing (Dec. 2015), at 20; NDRC, MFA, & MOFCOM, *supra* note 4 (under Part VI "China's Regions in Pursuing Opening-Up").

⁴⁷ Hollingsworth, *supra* note 34, at B6.

⁴⁸ Laura Zhou, *Chinese outbound projects plunge, investors pull back from US*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Jan. 22, 2019, 8:30 PM), <https://www.scmp.com/news/china/diplomacy/article/2183032/chinese-outbound-projects-plunge-investors-pull-back-us>.

⁴⁹ Leung, *supra* note 3.

⁵⁰ Xiaoming, *supra* note 16, at 2 (Note that China has recently committed the same amount to investments in Africa for the period from 2012 to 2018); see Christian Shepherd & Ben Blanchard, *China's Xi offers another \$60 billion to Africa, but says no to 'vanity' projects*, REUTERS (Sept. 3, 2018, 12:03 AM), <https://www.reuters.com/article/us-china-africa/chinas-xi-offers-another-60-billion-to-africa-but-says-no-to-vanity-projects-idUSKCN1LJ0C4>.

⁵¹ Cf. Georg Blume, *Geostrategisches Grossprojekt – Rueckschlag fuer Chinas Seidenstrasse*, DER SPIEGEL (July 21, 2018), <http://www.spiegel.de/wirtschaft/china-rueckschlag-fuer-grossprojekt-neue-seidenstrasse-a-1218361.html>; Guy, *supra* note 42; Jake van der Kamp, *China's got a trade problem that can't be solved by Belt and Road*, SOUTH CHINA MORNING POST: OPINION: JAKE'S VIEW (Feb. 19, 2018, 8:23 PM), <https://www.scmp.com/business/companies/article/2133858/chinas-got-trade-problem-cant-be-solved-belt-and-road>.

⁵² Shane, *supra* note 24; Wildau & Feng, *supra* note 24.

⁵³ *But see* Plamen Tonchev, *The Belt and Road After Covid-19*, THE DIPLOMAT (April 7, 2020), <https://thediplomat.com/2020/04/the-belt-and-road-after-covid-19/>; see also GORDON G. CHANG, THE COMING COLLAPSE OF CHINA (2001).

at stake for China and too many efforts have already gone into its planning and implementation.

[T]he idea that the belt and road plan is floundering is nonsense. It remains at the heart of Chinese foreign policy. First, the initiative is not a grab-bag of random big infrastructure projects but a 100-year vision of how China sees its place in the world as it emerges from a century of poverty, turmoil and introversion to re-engage with the global economy. ... The initiative is here to stay for another good reason: the need for better infrastructure is gigantic and largely unmet. The ADB says the Asia-Pacific alone needs to spend US\$26 trillion on infrastructure between now and 2030 – that includes not just roads, bridges, ports and power plants, but also clean water systems and strong digital infrastructure.⁵⁴

F. BRI Criticism

The increase of China's geopolitical power over the past years could be seen as a natural consequence of China's rise to a global mega-power over the past decades. However, China is a newcomer and newcomers are not always welcome, especially when they threaten the position of established players or even the conventional global order as such.⁵⁵ Other countries have criticized China for its outbound activities even before BRI was announced. In particular, China's investments in Africa had come under close scrutiny in the global community and were widely discussed as being controversial.⁵⁶ BRI has given China's international ambitions a name and a framework, and thus, now allowed criticism to take a more structured and targeted form.

The global BRI criticism has increased significantly in the past years.⁵⁷ In particular, suspicions regarding China's dubious BRI motives, and accusations

⁵⁴ David Dodwell, *China's Belt and Road Initiative is here to stay, whether the US likes it or not*, SOUTH CHINA MORNING POST (Feb. 2, 2019, 3:00 AM), <https://www.scmp.com/comment/insight-opinion/united-states/article/2184602/chinas-belt-and-road-initiative-here-stay>.

⁵⁵ Lutz-Christian Wolff, *The Flexibility of Chinese Law – Trick or Treat for the “Belt and Road” Initiative*, in LEGAL DIMENSIONS OF CHINA'S BELT AND ROAD INITIATIVE, *supra* note 3, at 9.

⁵⁶ *E.g.*, DEBORAH BRAUTIGAM, THE DRAGON'S GIFT: THE REAL STORY OF CHINA IN AFRICA (2009); Emily Feng & David Pilling, *The Other Side of Chinese Investment in Africa*, FIN. TIMES: THE BIG READ: AFRICAN ECON. (Mar. 27, 2019), <https://www.ft.com/content/9f5736d8-14e1-11e9-a581-4ff78404524e> (quoting a McKinsey study according to which “there are more than 10,000 Chinese businesses operating in Africa, 90 per cent of them privately owned”).

⁵⁷ Rupert Walker, *Is China's ambitious Belt and Road Initiative a risk worth taking for foreign investors?*, SOUTH CHINA MORNING POST, (Mar. 11, 2018, 11:02 AM), <https://www.scmp.com/business/companies/article/2136372/chinas-ambitious-belt-and-road-initiative-risk-worth-taking> (“China's ‘Belt and Road Initiative’ has aroused almost as much skepticism as it has raised expectations.”).

that China is pursuing a debt-trap diplomacy,⁵⁸ are rather common in this context. Chinese sources have often claimed that BRI creates win-win situations.⁵⁹ Observers have remarked that this may be true, but that it may only mean that China will win twice.

Critics point to the US\$20 billion on-again-off-again East Coast Rail Project in Malaysia, to Sri Lanka's Hambantota port where Chinese contractors have converted debt into a 99-year lease to operate the port, to controversial hydropower dam projects in Pakistan and Myanmar. They point to dirty coal-fired plants being built in Serbia and multibillion-dollar projects being agreed on without transparent, competitive tendering processes.⁶⁰

Commentators have often alleged poor governance of BRI projects and a lack of transparency.

As belt and road investments have rolled out across the world, they have been dogged by allegations of corruption and enabled by Beijing's willingness to seemingly ignore poor governance in its partners Beijing should see the reactions of new governments in Malaysia and Pakistan as a warning the belt and road projects could be at risk without a course of correction. First, Beijing must improve transparency and accountability standards, which should be consistent with Xi's anti-corruption drive.⁶¹

Furthermore, there are allegations that agreements arranged between China and other BRI states are unfair because they create dependencies for the BRI states. This is particularly true for agreements related to infrastructure projects. Some countries are apparently already unable to service their China debts. Malaysia's new president, Mahathir Mohamad, has consequently announced a temporary suspension of controversial infrastructure projects in his country worth twenty-two billion US dollars, which had been initiated by his predecessor Najib Razak.⁶² Additionally, in

⁵⁸ *Supra* Section II.C.

⁵⁹ *E.g.*, Xiaoming, *supra* note 16.

⁶⁰ Dodwell, *supra* note 55.

⁶¹ Schwemlein, *supra* note 8; *see also* Miao, *supra* note 32 (for China's anti-corruption campaign and its significance for BRI); Tribune News Service, *New Maldives government to begin untangling secret building deals with China amid warnings of 'land grab' and US\$3 billion debt*, SOUTH CHINA MORNING POST: SOUTH ASIA (Nov. 9, 2018, 12:10 PM), <https://www.scmp.com/news/asia/south-asia/article/2172236/new-maldives-government-begin-untangling-secret-building-deals>.

⁶² Jaipragas, *Chinese 'projects will not go on'*, *supra* note 41 ("While stating that US\$20 billion East Coast Rail Link and two pipelines worth over US\$2 billion had been cancelled outright, he [Mahathir] also said they may be 'deferred'. He suspended the projects in July, citing their 'lopsided' terms against Malaysia and high costs. His government alleges the large loans the Najib

other BRI countries, important voices have requested to re-adjust, or even to stop, BRI projects with China.⁶³ It was reported that as a result “Chinese engineers now face an annual average of US \$8 billion in impaired or failed contracts.”⁶⁴ Even anti-Chinese public protests have taken place.⁶⁵

In light of international criticism and emerging financial burdens arising out of BRI,⁶⁶ as well as security problems in some BRI states,⁶⁷ China itself has started to tune down its BRI rhetoric and to be more selective with BRI projects.⁶⁸ During the first five months of 2018 the total BRI contract volume

administration took out from the Chinese Export-Import Bank for the projects had been drawn down by the mainland firms involved in them.”); Bhavan Jaipragas & Tashny Sukumaran, *What Malaysia’s Mahathir really plans for China-backed projects (but can’t admit to in public)*, SOUTH CHINA MORNING POST: THIS WEEK IN ASIA: POLITICS (Aug. 29, 2018, 1:30 PM), <https://www.scmp.com/week-asia/politics/article/2161805/what-malaysias-mahathir-really-plans-china-backed-projects-cant>. For more information on the more favorable conditions for Malaysia regarding the East Coast Rail Link, which have now been reached, see Jaipragas, *Malaysia, supra* note 41; Jaipragas, *Chinese ‘projects will not go on’, supra* note 41 (“The Mahatir government on April 12 announced the ECRL—stalled since it came to power last May—would go ahead after China shaved off nearly a third of its cost.”).

⁶³ For Maldives, see Shasenk Bengali, *How an island nation’s new leaders are trying to unravel a web of secret deals with China*, LA TIMES (Nov. 6, 2018, 3:00 AM) (“The island nation had racked up huge debts to China during an unchecked, five-year building spree. . . .”). For Myanmar, see *Myanmar signs smaller Chinese port deal amid ‘debt trap’ fears, supra* note 44.

⁶⁴ Zhou, *supra* note 49 (quoting Washington-based American Enterprise Institute).

⁶⁵ For Kyrgyzstan, see *Anti-Chinese protesters arrested as police break up rally in Kyrgyzstan, where fear and anger at Beijing’s influence grow, supra* note 45 (“An angry group of protesters who gathered the central square [of the capital Bishkek] demanded curbs on work permits for Chinese citizens as well as a reduction of Kyrgyzstan’s debt to China and called for other measures to reduce the Chinese presence, including a ban of Kyrgyz-Chinese marriages.”).

⁶⁶ Cf. Yubaraj Ghimire, *China eyes exit, Nepal’s West Seti hydropower project in jeopardy*, SOUTH CHINA MORNING POST: THIS WEEK IN ASIA: GEOPOLITICS (Aug. 31, 2018, 1:30 PM), <https://www.scmp.com/week-asia/geopolitics/article/2161968/nepals-west-seti-hydropower-project-jeopardy-china-eyes-exit>.

⁶⁷ Henry Huang Ningning & Terri Tian Chenyue, *Turning Current Scepticism into Future Success: Observations on the Cooperation between China and Pakistan*, in LEGAL DIMENSIONS OF CHINA’S BELT AND ROAD INITIATIVE, *supra* note 3, at 60–63. For analysis on Pakistan, see Keegan Elmer & Agencies, *7 killed in attack on Chinese consulate in Karachi claimed by local terrorist group*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Nov. 23, 2018, 1:30 PM), <https://www.scmp.com/news/asia/south-asia/article/2174655/gunmen-police-exchange-fire-near-chinese-consulate-pakistans>. (“Balochistan is the centre of the massive China-Pakistan Economic Corridor (CPEC) which is a major component of China’s ‘Belt and Road Initiative’. More than 30,000 Chinese nationals live in Pakistan, and many of them work on projects under the infrastructure development plan in which Beijing has invested tens of billions of dollars. . . . Militants have repeatedly attacked construction sites and targeted Chinese workers.”); Raffaello Pantucci, *The lesson of the Pakistan suicide attack: China will have to pay a high price for its infrastructure plan*, SOUTH CHINA MORNING POST: OPINION (Aug. 26, 2018, 12:16 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2160918/lesson-pakistan-suicide-attack-china-will-have-pay-high>.

⁶⁸ See Blume, *supra* note 52; Guy, *supra* note 42; van der Kamp, *supra* note 52; see also Jane Cai, Catherine Wong, & Wendy Wu, *Never mind the ‘Belt and Road’ cash, what about China’s growing clout?*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (May 10, 2017, 11:11 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2094309/never-mind-belt-and-road-cash->

consequently dropped by 6% as compared with the previous year to 36.2 billion American dollars.⁶⁹ Furthermore, because of the continuing criticism, China's state media ran a fervent BRI promotion campaign in August 2018.⁷⁰

In many countries BRI has now also been acknowledged as an important emerging domestic political topic. In China, the political opponents of President Xi Jinping, whose very broad anti-corruption campaign has affected many influential figures and their supporters, are using subtle BRI criticism to denounce the Chinese government as a whole. In BRI countries, governments which have supported BRI projects are being attacked for selling out to China. Despite those who are criticizing the Chinese BRI, *vice versa*, those who have rejected Chinese investments face the risk of being challenged for not taking advantage of seemingly obvious opportunities. Often polemics, rather than fact-based arguments, are dominating the debate, thus blurring any objective assessment of the advantages and disadvantages of BRI as a whole. In turn this is also harming the objective assessments of particular BRI projects.

II. BRI LAW

As mentioned above, numerous articles, books and conference contributions (ostensibly) addressing legal aspects of BRI have been published in recent years.⁷¹ This is somewhat surprising in light of the fact that there is no specific BRI law.

First, BRI does not have any basis in public international law. China has entered into memoranda of understanding (MoUs) and other cooperative agreements with numerous BRI states,⁷² many of these agreements are listed

what-about-chinas-growing (reporting on major BRI setbacks amongst others in relation to the Sino-Thai high-speed rail line, the Colombo port project, the lack of transparency of BRI projects and security problems in particular in the context of the China-Pakistan Economic corridor); Tom Holland, *Puffing across the 'One Belt, One Road' rail route to nowhere*, SOUTH CHINA MORNING POST: OPINION: ABACUS (Apr. 24, 2017, 9:30 AM), <https://www.scmp.com/week-asia/business/article/2089507/puffing-across-one-belt-one-road-rail-route-nowhere>.

⁶⁹ Blume, *supra* note 52; cf. Dodwell, *supra* note 28 ("Without question, some belt and road projects have provided painful and embarrassing learning experiences; the creation of heavy debt burdens; unwelcome environmental or community impacts; the fragility and unfamiliarity of legal systems in many recipient countries that have created unexpected and unwelcome challenges in dealing with legal disputes. It has reminded Chinese investors that the biggest obstacle to infrastructure-building is not a shortage of cash, but a shortage of well-designed 'investor-ready' projects.").

⁷⁰ Sarah Zheng, *China embarks on belt and road publicity blitz after Malaysia says no to debt-heavy infrastructure projects*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Aug. 27, 2018, 10:30 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2161418/china-embarks-belt-and-road-publicity-blitz-after>.

⁷¹ See *Global China Research Programme: Research*, CHINESE U. H. K. http://www.gcr.cuhk.edu.hk/law_n_governance.php (last visited Mar. 25, 2020).

⁷² Wolff 2017, *supra* note 3, at 53.

on China's official BRI website.⁷³ However, most of them are rather general and many do not even relate to BRI. Many bilateral agreements have been concluded amongst different BRI states. Examples are bilateral investment treaties (BITs),⁷⁴ double taxation treaties, and judicial assistance treaties.⁷⁵ However, hardly any of these agreements are BRI-based or provide BRI-specific elements.

The picture is similar at a domestic legal level. Every BRI state has its own investment system comprising of specific investment rules or being based on general law. Neither China nor any other BRI country has enacted real BRI law or rules and regulations with specific BRI relevance.⁷⁶ Consequently, the academic and non-academic discussion⁷⁷ on BRI-related legal aspects has only been able to do two things: either assess the current status of the law in different BRI states or the international treaties between them. Some of these

⁷³ See *Belt and Road Portal*, *supra* note 36 (under the heading "International Cooperation – Bilateral Documents").

⁷⁴ Cf. *Investment Policy Hub, International Investment Agreements Navigator*, UNCTAD <https://investmentpolicy.unctad.org/international-investment-agreements> (last visited Mar. 25, 2020); Tyler Cohen & David Schneiderman, *The Political Economy of Chinese Bilateral Investment Treaty Policy*, 5 CHINESE J. COMP. L. 110, 110–128 (forthcoming); Mark Feldman, *State Owned Enterprises as Claimants in International Investment Arbitration*, 31 ICSID R. FOREIGN INV. L.J. 24, 24–35 (2016); Shu Zhang, *China's Approach in Drafting the Investor-State Arbitration Clause: A Review from the 'Belt and Road' Regions' Perspective*, 5 CHINESE J. COMP. L. 79 (2017); Qianwen Zhang, *The next generation of Chinese investment treaties: A balanced paradigm in an era of change*, COLUM. FDI PERSPECTIVES (Apr. 2019), <http://ccsi.columbia.edu/files/2018/10/No-250-Zhang-FINAL.pdf>; Twenty Essex, *One Belt, One Road@20EssexStreet: State owned enterprises as claimants*, LEXOLOGY (Feb. 22, 2019), <https://www.lexology.com/library/detail.aspx?g=391f4905-bb0c-43fe-9d00-cc5a8312f552> (for the question of whether state owned enterprises are covered by BITs).

⁷⁵ For details of the existing treaty framework see the chart in the Annex of this Article.

⁷⁶ *But see*, 中国保监会关于保险业服务“一带一路”建设的指导意见 [Guidance on the construction of the "Belt and Road" insurance services] (promulgated by the China Insurance Regulatory Comm., enacted on and in force since Apr. 27, 2017) (discussing at the national level); 税务总局关于落实“一带一路”发展战略要求做好税收服务与管理工作的通知 [Notice on doing a good job in tax service and management for the implementation of the "Belt and Road" development strategy] (promulgated by State Administration of Taxation, enacted on and in force since Apr. 21, 2015); 国家邮政局关于推进邮政业服务“一带一路”建设的指导意见 [National Post Office Guidance on promoting the construction of the "Belt and Road" service in the postal industry] (announced by the State Post Bureau on Dec. 20, 2017); 国防科工局发展改革委关于加快推进“一带一路”空间信息走廊建设与应用的指导意见 [Guidance of the Development and Reform Commission of the State Administration of Science and Technology and National Defense on speeding up the construction and application of the "Belt and Road" spatial information corridor] (announced by the Nat'l Dev. and Reform Comm. on Nov. 23, 2016). At the municipal level, examine 北京市外国留学生“一带一路”奖学金项目管理办法(试行) [Beijing City Measures for the management of the "Belt and Road" scholarship project for foreign students (trial implementation)] (enacted by the Beijing Municipal Education Comm. on Nov. 17, 2016 and in force since Dec. 19, 2018); 浙江省发展改革委关于印发《宁波“一带一路”建设综合试验区总体方案》的通知 [Notice of Zhejiang Provincial Development and Reform Commission on issuing the overall plan of Ningbo "Belt and Road" construction comprehensive test area] (announced by the Zhejiang Provincial Dev. and Reform Comm. on Sept. 20, 2017).

⁷⁷ Cf. *Global China Research Programme: Research*, *supra* note 72.

studies have engaged in comparative surveys as BRI provides for the (methodological) justification of the selection of particular BRI countries for comparative purposes.⁷⁸ Alternatively, BRI-related legal publications have explored if (and how) law in the BRI area might develop in the future.

III. LEGAL RESPONSES TO BRI

A. General

The previous sections have highlighted various general aspects of BRI. This section now discusses which legal responses are possible (if even possible) from the viewpoint of different stakeholders. Three questions are of major importance in this regard and will be addressed in turn. First, why should legal responses to BRI be necessary? Second, who should respond to BRI legally? Third, which kinds of legal BRI responses are available and appropriate?

B. Why Should Legal Responses to BRI be Necessary?

The first of the three questions identified in the previous section is relatively easy to answer. BRI is still a rather new initiative, which has tremendous potential and thus opens lots of opportunities—if it really holds what it promises. On the flip side, BRI also carries many risks. These opportunities and risks are often legal in nature. As far as they concern politics, business, culture, or technical aspects, or other non-legal features, they will need a basis in law and require legal support in different forms. Consequently, it is commonly acknowledged that BRI has already triggered an increasing need for legal action and will create much more in the future.

C. Who Should Respond to BRI?

A simple answer to the second of the above three questions, i.e. who should respond to BRI, is this: almost everybody! In fact, BRI has wide ranging implications not only for China and the BRI states, but for the entire world. Various Chinese stakeholders have to uphold and continue tinkering with the program in order to ensure the success of BRI in pursuance of their own respective missions.⁷⁹ Non-Chinese BRI parties, including states and non-state entities, have to assess their own positions vis-à-vis BRI and consider what Chinese inbound investments mean for them. Conversely, non-BRI parties have to acknowledge that BRI has already made a significant impact, thus substantially strengthening China's influence in the BRI region. The question

⁷⁸ Cf. Lutz-Christian Wolff, *Comparing Chinese Law . . . But with Which Legal Systems?*, 6 CHINESE J. COMP. L. 151, 170–71 (2018).

⁷⁹ *Supra* Section II.C.

is no longer if, but rather how, to respond legally and normatively to BRI's alteration of the geo-political and geo-economic environment.

D. How to Respond to BRI?

(i) Conflicting Interests

The answer to the last of the three questions posed previously, i.e. what kind of legal responses to BRI are possible or even required, depends on the varying interests of the three different stakeholder groups: Chinese parties, non-Chinese BRI parties, and non-BRI parties. These stakeholder groups pursue different, and sometimes conflicting, goals and even within these groups, the interests of particular stakeholders may vary significantly. Furthermore, the interests between stakeholders belonging to different groups may (of course) also overlap. For the sake of a structured analysis, the following sections will nevertheless discuss common positions separately for each of the three stakeholder groups with cross-references where appropriate to avoid redundancies and with a focus on the special situation of particular stakeholders where merited. By doing so, this Article seeks to make the varying BRI goals and the motives transparent, thus explaining the legal responses they have generated so far or may generate in the future.

(ii) Chinese Responses

A. *THE CHINESE STATE*

(1) Specifying BRI Goals

As outlined above, BRI is still an evolving concept, where even rudimentary features of BRI currently remain unclear.⁸⁰ In particular, China's BRI goals have remained rather vague until today and therefore left much room for speculation.⁸¹

Originally, BRI was defined with reference (only) to the ancient Silk Road,⁸² and furthermore, the global and domestic discussion focused on the BRI area as defined accordingly. However, with the rapid expansion of the BRI states,⁸³ this old analytical template can no longer be upheld. BRI has, on the one hand, become a name for China's overall foreign policy approach. On the other hand, all Chinese activities in any of the BRI countries are now labelled as falling within the scope of BRI. As a consequence, the meaning of BRI has become increasingly vague. China has to acknowledge, and is actually

⁸⁰ Cf. *supra* Section II.B–E.

⁸¹ *Supra* Section II.C.

⁸² *Supra* Section II.B.

⁸³ *Supra* Section II.D.

acknowledging, that BRI must be given a proper direction.⁸⁴ China realizes that BRI goals must be clearly defined, and that a convincing roadmap for future implementation must be produced to avoid the degeneration of BRI into an empty phrase covering everything and nothing. In contrast, laying out a detailed BRI strategy would create transparency, and thus help to avoid the legitimacy issues discussed above.⁸⁵ Last but not least, a clear BRI strategy would inform legal action on the part of China in support of BRI.

(2) Debt-trap Allegations

Chinese lawmakers have already tried to respond to the common debt-trap allegations⁸⁶ and concerns regarding the viability of its BRI projects.

Beijing has drafted a new regulation designed to improve the management of its foreign aid programme amid allegations it has engaged in debt-trap diplomacy and that some of its investment projects have failed to benefit local communities. The document, titled 'Measure for the Administration of Foreign Aid', was published on the website of the China International Development Cooperation Agency (CIDCA), which was set up earlier this year to evaluate and administer the nation's aid programme. It will remain available for public comment until late December [2018].⁸⁷

It remains to be seen if general steps of this kind are sufficient to address the existing and future challenges.

(3) Improving China's Treaty Network with BRI States

⁸⁴ Teddy Ng & Kinling Lo, *Belt and Road Forum: China tipped to counter critics with showcase projects*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Apr. 24, 2019, 8:00 PM), <https://www.scmp.com/news/china/diplomacy/article/3007532/belt-and-road-forum-china-tipped-counter-critics-showcase> ("[O]bservers said that one urgent task was to lay out a clear definition of the initiative by first restricting the use of the name.").

⁸⁵ *Supra* Section II.C; *cf.*, *e.g.*, Bhavan Jaipragas *India and China can be good for each other but Beijing must reassure its neighbours, former Indian diplomat says*, SOUTH CHINA MORNING POST: THIS WEEK IN ASIA: GEOPOLITICS (Nov. 9, 2018, 3:05 PM), <https://www.scmp.com/week-asia/geopolitics/article/2172461/india-and-china-can-be-good-each-other-beijing-must-reassure> ("To some degree, when you suddenly become very powerful, it is important you reassure everybody on your street.").

⁸⁶ *Cf. supra* Section II.C.

⁸⁷ Laura Zhou, *Debt-trap allegations push China to tighten reins on foreign aid programme*, SOUTH CHINA MORNING POST: CHINA DIPLOMACY (Nov. 14, 2018, 6:49 PM), <https://www.scmp.com/news/china/diplomacy/article/2173235/debt-trap-allegations-push-china-tighten-reins-foreign-aid> ("New financing criteria from the finance ministry and People's Bank of China are intended to attract foreign investment partners by easing some of their concerns about debt. China is now supposed to take into account a country's total debt load and local currency financing ability and offer more transparency when lending."); *see also* Hornby, *supra* note 17.

China has entered into numerous bilateral treaties and other arrangements with BRI states.⁸⁸ On the basis of clearly (re)defined BRI goals and a widely communicated implementation strategy, the central Chinese government has to consider how this treaty network can be improved in support of BRI.⁸⁹ It is important to note that China's position has changed in this regard over the last 20 years. Previously, China was concerned with the interests of capital-importing countries. Now, as the global "No. 3" in terms of outbound investments,⁹⁰ China needs to protect its own interests and the interests of Chinese outbound investors.⁹¹ This change is reflected by the contents of bilateral investment treaties (BITs) and double taxation treaties (DTTs) concluded by China in recent years.⁹²

Furthermore, Chinese lawmakers may consider whether BRI-specific contents have to be added to BITs, DTTs, as well as other bilateral treaties, or if BRI steers treaty making into a particular direction. It is important to note in this regard that BRI is no longer limited to Eurasia, but has expanded beyond the areas originally envisaged by OBOR and the 21st Century Maritime Silk Road to many other parts of the world.⁹³ It may therefore be difficult to identify any particular BRI features which could, or should, shape China's bilateral treaties.⁹⁴

(4) Protecting Offshore Operations

China's economic expansion into the world over the last decade goes side by side with an increased global military presence.⁹⁵ It is not surprising that

⁸⁸ Compare the chart in the Annex.

⁸⁹ Cf. Ahmad Ghouri, *Towards Greater Integration? Legal and Policy Directions of Chinese Investments in Pakistan on the Advent of the Silk Road Economic Belt*, 4 CHINESE J. COMP. L. 36 (2015).

⁹⁰ UNCTAD, *World Investment Report 2018*, 6 (2018), https://unctad.org/en/PublicationsLibrary/wir2018_en.pdf.

⁹¹ Cf. Brand, *supra* note 5, at 21; Zhang, *supra* note 75, at 2 ("China can be expected to emphasize outward FDI protection more, especially in implementing the Belt and Road initiative.").

⁹² For bilateral and multilateral investment treaties, compare Cohen & Schneiderman, *supra* note 75, and Shu Zhang, *supra* note 75, with Donovan Ferguson, James McKenzie, & Felicity Ng, *A practical guide to Chinese investor protection along the Belt and Road*, KING & WOOD MALLESONS (Apr. 12, 2018), <https://www.kwm.com/en/hk/knowledge/insights/a-practical-guide-to-chinese-investor-protections-along-the-belt-and-road-20180412> (For bilateral and multilateral investment treaties).

⁹³ See *supra* Section II.D.

⁹⁴ For the investor-state disputes on the basis of bilateral investment treaties compare *infra* Section IV.D.ii.a(6).

⁹⁵ Cf. Hal Brands, *China's Master Plan: A Global Military Threat*, BLOOMBERG (June 10, 2018), <https://www.bloomberg.com/opinion/articles/2018-06-10/china-s-master-plan-a-global-military-threat>; Minie Chan, *China threatens to blunt US military edge, Pentagon warns*, SOUTH CHINA MORNING POST (May 4, 2019), <https://www.scmp.com/news/china/military/article/3008804/china->

this has attracted even more criticism from the global community. For example, it has been said that “[t]he Asian Infrastructure Investment Bank and the Belt and Road Initiative are the economic prongs of Chinese diplomacy. Its less benign prongs include the militarisation of the South China Sea and efforts to create naval access to countries in the Indo-Pacific region.”⁹⁶

The focus and scope of this Article do not allow a discussion of the legal aspects of China’s global military strategy. However, it has to be acknowledged that China is facing security issues in BRI states and also in other parts of the world. In particular, Chinese companies have been attacked by terrorists in Pakistan on many occasions.⁹⁷ Commentators have therefore observed that BRI, “which aims to strengthen the infrastructure of land and sea routes linking Asia, Europe and Africa—is largely commercial in nature, but has also triggered the need for China to bolster its military presence to protect its growing interests abroad.”⁹⁸

(5) Upgrading China’s Outbound Investment Regime

BRI investments have been one-directional up to now, i.e. from China into other BRI states. It is therefore necessary to explore the status of China’s outbound investment regime and determine if BRI merits any upgrades. Again, it needs to be considered that China has not enacted any special BRI law.⁹⁹ China’s “normal” rules and regulations governing outbound investments therefore also apply in relation to BRI-related investments.

China has liberalized its outbound investment law system significantly in recent years.¹⁰⁰ As a matter of principle, Chinese outbound investments are nowadays only subject to registration requirements with the National

threatens-blunt-us-military-edge-pentagon-warns; Lee Jeong-ho, *How the tiny African nation of Djibouti became the linchpin in China’s belt and road plan*, SOUTH CHINA MORNING POST (Apr. 28, 2019), <https://www.scmp.com/news/china/diplomacy/article/3007924/how-tiny-african-nation-djibouti-became-linchpin-chinas-belt>; (“Beijing’s juggling of commercial and military objectives amid Western suspicion about its motives.”); Scimia, *supra* note 39 (“China’s growing military capabilities, along with its ambition to have the technologically most-advanced armed forces by 2050”); William Zheng, *China’s military build-up just starting – a lot more to come, expert says*, SOUTH CHINA MORNING POST (Feb. 25, 2019), <https://www.scmp.com/news/china/diplomacy/article/2187487/chinas-military-build-you-aint-seen-nothing-yet-expert-says>.

⁹⁶ Derwin Pereira, *China is not the new America, and will never be*, SOUTH CHINA MORNING POST, (Aug. 25, 2018), <https://www.scmp.com/comment/insight-opinion/united-states/article/2160964/china-not-new-america-and-will-never-be>.

⁹⁷ Elmer & Agencies, *supra* note 68.

⁹⁸ Lee Jeong-ho, *supra* note 96.

⁹⁹ Wolff 2017, *supra* note 3.

¹⁰⁰ WOLFF 2014, *supra* note 10, at 21.

Development and Reform Commission (NDRC)¹⁰¹ and the Ministry of Commerce (MOFCOM).¹⁰² NDRC verification and MOFCOM approval are required for investments in sensitive countries and in sensitive industries.¹⁰³ Furthermore, outbound investments by Chinese state-owned enterprises can be subject to approval by the State-owned Assets Supervision and Administration Commission (SASAC).¹⁰⁴ Outbound investments in regulated industries, such as in the financial sector, may as well be subject to special approval requirements.¹⁰⁵ Approval requirements may also exist under China's merger control regime¹⁰⁶ and—in relation to money transfers—under China's foreign exchange control law.¹⁰⁷ Finally, special approval and registration requirements exist for so-called round-trip investments, i.e. where Chinese investors set up investment vehicles abroad to re-invest in China.¹⁰⁸

Chinese outbound investments came under special scrutiny starting in 2016 when many realized that certain overseas investment projects were used to pursue hidden goals, were economically unviable, or affected China's capital reserves due to massive money transfers to foreign destinations.¹⁰⁹ As a result,

¹⁰¹ See 企业境外投资管理办法 [Administrative Measures for Enterprise Overseas Investments] (promulgated by the Nat'l Dev. and Reform Comm. on Dec. 26, 2017 and in force since Mar. 1, 2018); cf. WOLFF 2014, *supra* note 10, at 222–229.

¹⁰² 境外投资管理办法 [Administrative Methods for Overseas Investments] (promulgated by Ministry of Commerce on Mar. 16, 2009, in force since May 1, 2009, and revised on Sept. 6, 2014); cf. WOLFF 2014, *supra* note 10, at 221.

¹⁰³ 企业境外投资管理办法 [Administrative Measures for Enterprise Overseas Investments], *supra* note 102, art. 13; cf. WOLFF 2014, *supra* note 10, at 224.

¹⁰⁴ 中央企业境外投资监督管理办法 [Measures for the Supervision and Administration of Overseas Investment of Central Enterprises] (promulgated by the State-owned Assets Supervisions and Admin. Comm. on and in force since Jan. 7, 2017); cf. WOLFF 2014, *supra* note 10, at 229.

¹⁰⁵ 保险集团公司管理办法(试行) [Measures for the Administration of Insurance Group Companies (Trial Implementation)] (promulgated by the China Insurance Regulatory Comm. on and in force since Mar. 12, 2010), art. 9, 15; 保险公司设立境外保险类机构管理办法 [Provisions on the Administration of Insurance Companies] (promulgated by the China Insurance Regulatory Comm. on Sept. 25, 2009 and in force since Oct. 1, 2009), art. 74; 证券公司监督管理条例 [Regulations on the Supervision and Administration of Securities Companies] (promulgated by the State Council on Apr. 23, 2008, in force since June 1, 2008, and revised on July 29, 2014), art. 13; 保险公司设立境外保险类机构管理办法 [Measures for the Administration of the Establishment of Overseas Insurance Institutions by Insurance Companies] (promulgated by the

China Insurance Regulatory Comm. on July 31, 2006 and in force since Sept. 1, 2006), art. 14; cf.

WOLFF 2014, *supra* note 10, at 229.

¹⁰⁶ Cf. WOLFF 2014, *supra* note 10, at 280–318.

¹⁰⁷ *Id.* at 254–259; cf. 国有企业境外投资财务管理暂行办法 [Ministry of Finance Measures for the Financial Management of Outbound Investments Made by State-owned Enterprises] (promulgated by the Ministry of Finance on June 12, 2017 and in force since Aug. 1, 2017).

¹⁰⁸ WOLFF 2014, *supra* note 10, at 230–235.

¹⁰⁹ Cf. Angus Grigg & Lisa Murray, *China tightens controls on moving money overseas*, FINANCIAL REVIEW (Jan. 20, 2016), <http://www.afr.com/news/world/asia/china-tightens-controls-on-moving->

restrictions were (re)introduced—originally without a proper legal basis—through informal “guidance” provided to concerned parties. For a certain period of time, banks simply did not process instructions relating to any outbound money transfers.¹¹⁰ As a result, in 2017 China’s total outbound investment volume saw a decline of 29.4% as compared with the previous year to 120.08 billion US dollars.¹¹¹

In the past, China’s restrictive outbound investment regime has seriously hindered the ability of Chinese outbound investors to compete for lucrative targets abroad. The previously existing approval and registration requirements placed Chinese outbound investors at a serious disadvantage, because the scheme prevented quick decisions on binding offers. While the reforms outlined in the previous paragraph were meant to address the situation, BRI investments may turn out to be very different. They are not necessarily driven by economic goals of individual companies, but are backed by the government,¹¹² and even regarded as crucial for the survival of the Xi Jinping administration.¹¹³ It is for this reason that China’s current outbound investment system does not pose major problems for BRI investments, even if outbound investment procedures have to be followed. From the BRI perspective, a pressing need for further liberalization does therefore not seem to exist.

(6) CSR, Transparency, and Governance

Chinese outbound investors have sometimes been criticized for pursuing their own goals without considering the target countries’ special needs. It is important in this regard that China has acknowledged the importance of corporate social responsibility (CSR),¹¹⁴ not only in the BRI context, but

money-overseas-20160120-gma7g3; *PRC State Council Issues Guidelines on Overseas Investments*, CLIFFORD CHANCE (Sept. 2017), <https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/client-briefings/2017/09/prc-state-council-issues-guidelines-on-overseas-investments--sep.html>; Tim Wang, *China Introduces New Rules on Outbound Investment*, CLIFFORD CHANCE (Jan. 17, 2018), <https://www.cliffordchance.com/briefings/2018/01/china-introducesnewrulesonoutboundinvestment.html>; Stephen D. Wortley et al., *China’s Capital Controls – Implications for China Focused Companies*, MCMILLAN LLP (Jan. 2017), <http://mcmillan.ca/Chinas-Capital-Controls-Implications-for-China-Focused-Companies>.

¹¹⁰ Cf. Grigg & Murray, *supra* note 110; see cf., Wortley et al., *supra* note 110.

¹¹¹ BLOOMBERG NEWS, *China’s Outbound Investment Slumped in 2017 as Deals Scrutinized* (Jan. 16, 2018), <https://www.bloomberg.com/news/articles/2018-01-16/china-s-outbound-investment-slumped-in-2017-as-deals-scrutinized>. Cf. Eugene Tang & Zhou Xin, *IMF Chief Christine Lagarde expresses concern over rising global debt levels, including China*, SOUTH CHINA MORNING POST (Apr. 11, 2018), <https://www.scmp.com/news/china/economy/article/2141325/imf-chief-christine-lagarde-expresses-concern-over-rising-global>.

¹¹² *Supra* Section II.C.

¹¹³ *Id.*

¹¹⁴ CSR has become a very broadly discussed topic in recent years. However, its precise meaning and contents are still in a process of development where no commonly accepted understanding

generally for all outbound activities of Chinese entities. In particular, China has pro-actively promulgated goals and strategies for environmental protection within BRI investment projects.¹¹⁵

While it seems that China has consequently already done more than most other capital-exporting countries, a comprehensive CSR system is not (yet) in place. The establishment and implementation of such a system does not only have the potential to significantly improve the quality of BRI projects in different target countries, but it also exists to steer these projects away from becoming “white elephants.”¹¹⁶ It would also give China credibility and thus a very powerful tool to promote BRI.¹¹⁷

As mentioned earlier,¹¹⁸ major concerns regarding transparency and governance standards have arisen in the context of BRI projects. Transparency in general, as well as in relation to particular BRI projects, is the precondition of accountability and thus of proper governance. However, the lack of publicly available information prevents both objective assessment of these projects and the possibility to hold the project’s decision makers accountable. Furthermore, intra-transparency carries reputational risks as a result of the spreading of incorrect or unverifiable information. This seems to suggest that legislative or other action may be required in order to improve the dissemination of BRI-related information. Four aspects are important in this regard.

First, the details of particular business projects can be sensitive, and the publication of deal details may expose the project and the concerned parties to certain risks, including, the risk of legal liability, e.g. in the case of contractually imposed confidentiality. A call for absolute disclosure of all BRI-related information cannot therefore be justified. Second, available are alternative options of more limited transparency. For example, access to

exists. It is the general idea of CSR that companies, rather than focusing solely on profit-maximization for the benefit of their shareholders, also have to be concerned with the interests of other stakeholders beyond what is mandated by the law. CSR covers a wide range of topics including human rights, labor issues, environmental standards, and anti-corruption principles. LUTZ-CHRISTIAN WOLFF, *THE LAW OF CROSS-BORDER BUSINESS TRANSACTIONS – PRINCIPLES, CONCEPTS, SKILLS*, 449–50 (2nd ed. 2018).

¹¹⁵ 关于推进绿色“一带一路”建设的指导意见 [Guiding opinions on promoting the construction of green ‘Belt and Road’] (announced on Apr. 26, 2017), <https://eng.yidaiyilu.gov.cn/zchj/qwfb/12479.htm>. During a round-table discussion (subject to Chatham House Rules) organized by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies, Colombo, Sri Lanka, together with Chatham House in Colombo, Sri Lanka, on November, 1 2018, one speaker emphasized that due to its sheer size, BRI is the greatest threat to bio-diversity the world has ever seen. *Id.*

¹¹⁶ *Cf.* Schwemlein, *supra* note 8; Yuen Yuen Ang, *What’s next for the belt and road plan? China must start thinking small and high-quality*, SOUTH CHINA MORNING POST (Apr. 24, 2019, 2:00 PM), <https://www.scmp.com/comment/insight-opinion/article/3007244/whats-next-belt-and-road-plan-china-must-start-thinking>.

¹¹⁷ For the advantages generally ascribed to CSR see WOLFF, *supra* note 115, at 460–461.

¹¹⁸ *Supra* Section II.E; *cf.* Schwemlein, *supra* note 8.

confidential information could be offered to an independent third-party entrusted with an objective assessment, which could then be made public without disclosing sensitive details. Third, China has in fact made efforts to publish BRI information online.¹¹⁹ Up to now the available information is, however, not comprehensive and does not, for example, include project details of all BRI projects. Having said that, no other country has come under pressure to disclose comprehensive data related to outbound investment activities and there is no reason stricter standards should apply to China. Finally, it has been pointed out that the problems of BRI projects are often not caused by the Chinese side, but by China's partners in the respective host countries of BRI investments.¹²⁰ Having said that, modern CSR theory does not allow individual parties in global value chains to escape responsibility for the improper action of their partners. In contrast, well-functioning CSR systems monitor the performance of partners and trigger action if problems emerge.¹²¹

(7) Making Commercial Dispute Settlement BRI-compatible

Increased economic activities of Chinese parties in BRI states, and with BRI parties, will naturally lead to an increase of the potential for legal disputes. Legal disputes can arise at two levels, i.e. first, (horizontally) in the form of commercial disputes between private parties and then, (vertically) as investor-state disputes between Chinese investors and the host BRI countries or government authorities of the BRI host countries. This section only looks at the former, while the next section will address the latter.

China has already taken steps to respond to the increased potential for commercial disputes in the BRI context with attempts to strengthen its private

¹¹⁹ See 中国一带一路网 [China Belt and Road website], http://www.yidaiyilu.gov.cn/info/iList.jsp?cat_id=10045&cur_page=1 (follow “企业风采” [Enterprise styles] hyperlink, then “项目案例” [Project cases]).

¹²⁰ Schwemlein, *supra* note 8.

¹²¹ WOLFF, *supra* note 115, at 461.

international law¹²² and its commercial dispute settlement regime.¹²³ As far as private international law is concerned on June 16th, 2015, China's Supreme People's Court (SPC) promulgated the *Several Opinions on Providing Judicial Services and Guarantee for the Building of One Belt One Road by People's Courts (Several Opinions)*.¹²⁴ The *Several Opinions* instruct China's People's Courts at different levels to create "a sound legal environment" for the implementation of BRI.¹²⁵ Amongst other goals set by the SPC, courts shall strengthen the criminal law work to fight cross-border crime, terrorism and

¹²² Sooksripaisarnkit & Garimella, *supra* note 3; *see also* Brand, *supra* note 5, at 1–30 (2: "a broadened role for China in the realm of private international law"). China is not yet a member of the *Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents* and has only 37 bilateral judicial assistance treaties (on civil matters) with other countries of which 31 are BRI countries. *Id.* at 1–30. There is no judicial assistance treaty in civil matters between China and the USA. For mutual legal assistance in criminal matters between China and USA see 中华人民共和国政府和美利坚合众国政府关于刑事司法协助的协定 [Agreement Between the Government of the United States and the Government of the People's Republic of China on Mutual Legal Assistance in Criminal Matters], China-U.S., June 19, 2000, English version available at www.state.gov/s/l/treaty/tias/2000/126767.htm. For the first recognition and enforcement of a US judgment in China in June 2017, compare *id.* at 6–8 (arguing that in this case recognition and enforcement was not based on a bilateral treaty, but on a broad application of the principle of reciprocity, that the USA judgment was a default judgment, that service by publication was regarded as satisfactory after unsuccessful attempts of personal service and that the Chinese court expressly rejected any review of the merits of the case). For the enforcement of judgments from other jurisdictions *see* Brand, *supra* note 5, at 9–11. For the fact that China is taking steps to ensure the enforcement of judgments in favor of Chinese parties abroad *see* Nicolas Groffman, *Why English law could rule on China's belt and road disputes*, SOUTH CHINA MORNING POST (Mar. 10, 2018, 8:00 AM), <https://www.scmp.com/week-asia/opinion/article/2135329/why-english-law-could-rule-chinas-belt-and-road-disputes>.

¹²³ *See* Groffman, *supra* note 123; Zhengxin Huo, *Proof of Foreign Law Under the Background of the Belt and Road Initiative*, in CHINA'S ONE BELT ONE ROAD INITIATIVE AND PRIVATE INTERNATIONAL LAW, *supra* note 3, at 137; *see also* Sai Ramani Garimella, *OBOR and the syncretic private international law in India – Time for Accession to Harmonised Legal Regimes*, in CHINA'S ONE BELT ONE ROAD INITIATIVE AND PRIVATE INTERNATIONAL LAW, *supra* note 3, at 84; Man Yip, *Navigating the Singapore's Private International Rules in the Age of Innovative Cross-Border Commercial Litigation Framework*, in CHINA'S ONE BELT ONE ROAD INITIATIVE AND PRIVATE INTERNATIONAL LAW, *supra* note 3, at 59. Also note that on February 25, 2019 China's Supreme People's Court published six Guiding Cases related to BRI. The SPC had introduced the Guiding Cases system in 2010 based on the 关于案例指导工作的规定 [Provisions on the Guidance to Be Obtained from Prior Judicial Decisions] (issued on July 30, 2010 and revised on Dec. 9, 2015 and Apr. 4, 2019) (Chinese version available at http://www.spp.gov.cn/zdgz/201601/t20160119_111257.shtml), with the goal to standardize Chinese court practice. Wolff, *supra* note 79, at 168. Guiding Cases are not binding, but the system is often seen as a move towards a case law system. *Id.* Cf. *China Guiding Cases Project*, STAN. LAW SCH., <https://cgc.law.stanford.edu> (last visited Apr. 3, 2020) (explaining the mission of the China Guiding Cases Project to collect and transcribe these guiding cases for future reference by scholars and the Chinese judiciary).

¹²⁴ Zuigao Renmin Fayuan [SPC][Supreme People's Court], Jun. 16, 2016, *Several Opinions of the Supreme People's Court on Providing Judicial Services and Safeguards for the Construction of the "Belt and Road" by People's Courts*, No.9 2015 (China), Chinese-English version available at <http://en.pkulaw.cn/display.aspx?cgid=251003&lib=law>.

¹²⁵ *Id.* at item 2.

separatist as well as religious extremist forces.¹²⁶ They are also asked to try cases in an efficient manner and to treat foreign and Chinese parties equally.¹²⁷ Furthermore, jurisdiction arrangements and other choices made by the parties shall be respected and the applicable law shall be determined accordingly and in a “scientific and reasonable manner”.¹²⁸ The *Several Opinions* are drafted in a rather general way, but are apparently aimed to emphasize that Chinese courts shall, and will, conduct BRI-related work according to international and domestic law thus portraying Chinese courts as well-functioning, impartial and therefore reliable dispute resolution bodies.¹²⁹

There is currently no special BRI court or arbitration body, although the usefulness of a central BRI dispute settlement body has been the topic of some discussion.¹³⁰ In China, special international commercial tribunals have recently been established in Xi'an and Shenzhen.¹³¹ This development has often been mentioned in the BRI context and therefore requires a short explanation as follows.

International commercial courts, which combine the advantages, and avoid the disadvantages, of state court procedures¹³² on the one hand, and of arbitration procedures¹³³ on the other hand, for the benefit of a more effective dispute settlement in international economic cases, are currently very popular. For example, in January 2015, Singapore established the Singapore International Commercial Court (SICC) as a division of the Singapore High

¹²⁶ *Id.* at item 3.

¹²⁷ *Id.* at item 4.

¹²⁸ *Id.* at item 5, 11.

¹²⁹ *Cf.* Zhengxin Huo, *supra* note 124, at 140.

¹³⁰ See China International Commercial Court, *The Executive Office of the CPC Central Committee and the General Office of the State Council issued “Opinions on the establishment of the ‘Belt and Road’ international commercial dispute settlement mechanism and institutions”* (中共中央办公厅、国务院办公厅印发‘关于建立“一带一路”国际商事争端解决机制和机构的意见’) (Jun. 27, 2018), <http://cicc.court.gov.cn/html/1/218/149/192/602.html>; Sienho Yee, *Dispute Settlement on the Belt and Road: Ideas on System, Spirit and Style*, 17 CHINESE J. INT'L. L. 907, 908–911 (1986).

¹³¹ *Cf.* A Brief Introduction of China International Commercial Court, CHINA INTERNATIONAL COMMERCIAL COURTS, <http://cicc.court.gov.cn/html/1/219/193/195/index.html> (last updated June 28, 2018); Lin Siyi, *China's International Commercial Court under the “Belt and Road Initiative”*, 11 INT'L COMPANY AND COM. L. R. 664, 664–670 (2018).

¹³² Normally the following issues are seen as disadvantages of court proceedings: (1) appeal options lead to a long duration until a final award can be obtained, (2) no secrecy, (3) judges do not necessarily possess area-specific know-how and qualification, (4) rigid procedures, and (5) high costs.

¹³³ Normally the following issues are seen as disadvantages of arbitration proceedings: (1) high costs, (2) no sanction available against parties who fail to cooperate, (3) difficulty to involve third parties or to get involved as third party, (4) slowness of proceedings, and (5) lack of transparency of the proceedings.

Court.¹³⁴ Other countries, such as Dubai,¹³⁵ Abu Dhabi,¹³⁶ Kazakhstan,¹³⁷ the Netherlands,¹³⁸ and Belgium have taken, or are about to take, similar steps.¹³⁹ France¹⁴⁰ and Germany¹⁴¹ have even allowed the use of English as an official court language in particular courts in certain situations.

The international commercial tribunals which have now been established in China's Xi'an and Shenzhen¹⁴² are aimed to provide an efficient, cheap, and fair dispute settlement mechanism for international commercial disputes.¹⁴³ Contrary to common perception, and to the often wrongly used name "international commercial courts," these tribunals are not independent courts, but rather form part of the SPC.¹⁴⁴

¹³⁴ *About the SICC*, SINGAPORE INT'L COM. COURT (May 2, 2019), <https://www.sicc.gov.sg>.

¹³⁵ *Cf. About the DIFC Courts*, DIFC COURTS, <https://www.difccourts.ae/about-courts> (last visited June 14, 2020).

¹³⁶ *See generally The Foundation of ADGM Courts*, ADGM COURTS, <https://www.adgm.com/doing-business/adgm-courts/home/> (last visited June 14, 2020).

¹³⁷ Astana International Financial Center, *About*, AIFC COURT, <https://aifc.kz/structure/aifc-court> (last visited June 14, 2020).

¹³⁸ *Who we are*, NETHERLANDS COMMERCIAL COURT (NCC), <https://www.rechtspraak.nl/English/NCC/Pages/default.aspx> (last visited Apr. 4, 2020).

¹³⁹ Geert Van Calster, *The Brussels International Business Court-Council of State continues to resist*, GVAC LAW, <https://gavclaw.com/2018/11/14/the-brussels-international-business-court-council-of-state-continues-to-resist> (last visited Mar. 21, 2019).

¹⁴⁰ Emmanuel Gaillard et al., *The International Chambers of the Paris Courts and Their Innovative Rules of Procedure*, SHEARMAN & STERLING (Apr. 23, 2018), <https://www.shearman.com/perspectives/2018/04/paris-courts-and-their-innovative-rules-of-procedure>.

¹⁴¹ Jenny Gesley, *Germany: Regional Court of Frankfurt Establishes English-Speaking Chamber for Commercial Matters*, L. LIBRARY OF CONG. (Dec. 6, 2017), <http://www.loc.gov/law/foreign-news/article/germany-regional-court-of-frankfurt-establishes-english-speaking-chamber-for-commercial-matters/>.

¹⁴² Susan Finder, *Comments on China's international commercial courts*, SUPREME PEOPLE'S COURT MONITOR (July 9, 2018), <https://supremepeoplescourtmonitor.com/2018/07/09/comments-on-chinas-international-commercial-courts>; *see generally International Commercial Litigation and Diversified Dispute Resolution*, CHINA INT'L COM. CT., <http://cicc.court.gov.cn/html/1/219/208/210/index.html> (last visited Apr. 4, 2020).

¹⁴³ Senior Judge Gao Xiaoli, Presentation at the City University of Hong Kong (May 18, 2018).

¹⁴⁴ 最高人民法院关于设立国际商事法庭若干问题的规定 [*Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court*] (July 1, 2018), <https://cge.law.stanford.edu/belt-and-road/b-and-r-texts/20180701-provisions-re-intl-commercial-courts/>; *see also* Supreme People's Court of the People's Republic of China, *About China International Commercial Court*, <http://cicc.court.gov.cn/html/1/219/193/195/index.html> (last visited June 28, 2018).

It has been commonly assumed that China's international commercial tribunals would be tasked to take up special roles in relation to BRI disputes.¹⁴⁵ However, the *Judicial Interpretation*,¹⁴⁶ the founding document on the basis of which the international commercial tribunals have been established, makes no reference to BRI at all. In contrast, jurisdiction of the tribunals can be established in cases which meet the rather broad definition of "international commercial matters" and that fall into five special categories.¹⁴⁷ This does, of course, not preclude the understanding that the establishment of the tribunals is mainly BRI-driven.

Currently, China's law of civil procedure prevents the international commercial tribunals in Xi'an and Shenzhen to be equipped with those features which are normally cited as advantages of international commercial courts. In particular, Chinese civil procedure law does not allow (i) the appointment of non-Chinese judges¹⁴⁸(the SPC has, however, published in August 2018 a list of 31 members of an international advisory board),¹⁴⁹ (ii) the admittance of

¹⁴⁵ Cf. Christopher Chan et al., *The Belt and Road Initiative: Dispute Resolution along The Belt and Road*, HFW (Aug. 9, 2018), <http://www.hfw.com/The-Belt-and-Road-Initiative-Dispute-Resolution-along-The-Belt-And-Road> (under heading "China's new Belt and Road Courts").

¹⁴⁶ Xiaoli, *supra* note 144.

¹⁴⁷ 最高人民法院关于设立国际商事法庭若干问题的规定 [*Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court*], *supra* note 145, art. 2 ("The International Commercial Court accepts the following cases:

(1) First instance international commercial cases in which the parties have chosen the jurisdiction of the Supreme People's Court according to Article 34 of the Civil Procedure Law, with an amount in dispute of at least 300,000,000 Chinese yuan;

(2) First instance international commercial cases which are subject to the jurisdiction of the higher people's courts who nonetheless consider that the cases should be tried by the Supreme People's Court for which permission has been obtained;

(3) First instance international commercial cases that have a nationwide significant impact;

(4) Cases involving applications for preservation measures in arbitration, for setting aside or enforcement of international commercial arbitration awards according to Article 14 of these Provisions;

(5) Other international commercial cases that the Supreme People's Court considers appropriate to be tried by the International Commercial Court.").

¹⁴⁸ 中华人民共和国法官法 [*Judge's Law of the People's Republic of China*] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 23, 2019, effective Oct. 1, 2020), English version available at <https://www.chinalawtranslate.com/en/judges-law-of-the-prc-2019/>; cf. *International Commercial Litigation and Dispute Resolution: About the CICC*, CHINA INT'L COMMERCIAL COURT, <http://cicc.court.gov.cn/html/1/219/193/196/index.html> (last visited Apr. 4, 2020) (follow hyperlink "Judges") (listing Chinese judges of the International Commercial Tribunal Supreme People's Court of the People's Republic of China).

¹⁴⁹ Cf. 最高人民法院关于聘任国际商事专家委员会首批专家委员的决定 [*Decision of the Supreme People's Court on the Appointment of the First Group of Expert Members of the International Commercial Expert Committee*], SUPREME PEOPLE'S COURT, Aug. 24, 2018, <http://cicc.court.gov.cn/html/1/218/149/192/949.html>; 国际商事专家委员会专家委员简历 [*Resumes of Experts of International Commercial Expert Committee*], SUPREME PEOPLE'S COURT,

non-Chinese trial representatives,¹⁵⁰ (iii) the use of non-Chinese court languages,¹⁵¹ (iv) non-public trials,¹⁵² and (v) choice of court agreements without concrete connection to the tribunal of competent jurisdiction.¹⁵³ It has been reported that the SPC is currently working on legislative solutions to address these issues.¹⁵⁴

(8) Addressing Chinese Interests in BRI Investor-State Dispute Settlement

The importance of investor-state disputes (ISDs) has increased significantly in recent times. However, in terms of case numbers, ISDs are still far less important than international commercial disputes.¹⁵⁵ Investor-state dispute settlement options can become available on the basis of a waiver of the concerned state's sovereign rights in multilateral or bilateral treaties or in dispute settlement clauses in contracts concluded between investors and host states of investments. If dispute settlement options are not provided for in international treaties or in investor state contracts, investor-state disputes may be subject to the jurisdiction of the host state's courts.¹⁵⁶

Of the currently 86 bilateral investment treaties (BITs) between China and the other 138 non-Chinese BRI states,¹⁵⁷ 75 provide for ISD settlement options.¹⁵⁸ ISD settlement clauses are a phenomenon of the latest generation of BITs. They have come under special scrutiny by host states of foreign

<http://cicc.court.gov.cn/html/1/218/226/234/index.html> (last visited Apr. 12, 2020) (listing the founding members of the expert committee and their resumes).

¹⁵⁰ See 国家司法考试 施办法 [Rules on Sitting for the National Judicial Examination], PKU L., art. 15 (Aug. 9, 2008), https://www.pkulaw.com/en_law/deebfa705bd8c827bdfb.html?flag=english.

¹⁵¹ 中华人民共和国民事诉讼法 [Civil Procedure Law of the People's Republic of China] (Revised in 2017), CHINA INT'L COMMERCIAL COURT, art. 262, *PRC Civil Procedure Law*, art. 262 (July 1, 2017), English version available at <http://cicc.court.gov.cn/html/1/219/199/200/644.html>.

¹⁵² *Id.* art. 134.

¹⁵³ *Id.* art. 34.

¹⁵⁴ Xiaoli, *supra* note 144.

¹⁵⁵ According to United Nations Conference on Trade and Development, 75 investor-state arbitration proceedings had been initiated in 2017. *Investment Dispute Settlement Navigator*, INVESTMENT POLICY HUB, <https://investmentpolicyhub.unctad.org/ISDS/FilterByYear> (including statistics that show in the same year the International Chamber of Commerce Court of International Arbitration (ICCCIA) alone accepted 810 new commercial arbitration cases); cf. INTERNATIONAL CHAMBER OF COMMERCE, ICC DISPUTE RESOLUTION BULLETIN 52 (Julien Fouret et al. eds., Issue 2, 2018). <https://iccwbo.org/content/uploads/sites/3/2018/07/2017-icc-dispute-resolution-statistics.pdf>.

¹⁵⁶ WOLFF, *supra* note 115, at 567.

¹⁵⁷ Cf. *supra* Section II.D.

¹⁵⁸ Note that some countries do not disclose their treaties, e.g. Bangladesh, Cameroon, Equatorial Guinea, Gabon, Moldova, Mozambique, Sudan, Tajikistan, Turkmenistan, Ukraine and Yemen, for which reason it is unknown if their BITs also include an investor-state dispute settlement clause.

inbound investments since investors are becoming increasingly aware of, and are more and more taking advantage of, the option to initiate legal proceedings against host states which allegedly fail to fulfill their legal obligations towards the investor.

BRI investments are for the time being one-directional, i.e. (only) from China into BRI states. And, it is not foreseeable that massive volumes of investments will in the short and medium term be made from BRI states into China. ISDs settlement options in China's BTIs with other BRI states should consequently be in China's interest.¹⁵⁹

(9) Legal Harmonization or Unification

Major differences exist in terms of substance and state of development between the legal systems of the 138 BRI states. This creates significant obstacles for cross-border legal transactions.¹⁶⁰ Consequently, if it is the goal of the BRI initiative to foster connectivity, then it seems a natural step for China—as the originator of and driving force behind BRI—to consider legal harmonization, or even unification, within the BRI area.¹⁶¹ Legal harmonization or unification projects could also help lift the quality of the legal systems of all BRI states to a higher level if they are based on state-of-the-art models. The question is, however, if projects of this kind do make any sense in the BRI context.

In particular in Asia, the discussion as to whether regional harmonization is preferable over global harmonization has a very long tradition.¹⁶² It has been correctly remarked in this context that regional harmonization should only be considered if encouraged by region-specific factors, such as a particular legal culture, specific legal institutions or common customs.¹⁶³ In view of the significant political, economic, cultural and legal differences among the BRI states it appears more than questionable if such kind of BRI-specific factors can be identified.

It also needs to be taken into account that BRI is no longer limited to the (Eurasian) region. In contrast, the number of BRI states seems to be increasing, at least as far as the official Chinese account is concerned. The resulting volatility of the BRI system makes legal harmonization or unification projects

¹⁵⁹ *But see* Ferguson et al., *supra* note 93.

¹⁶⁰ *See* Huo, *supra* note 124, at 138.

¹⁶¹ *See, e.g.*, Sooksripaisarnkit & Garimella, *supra* note 3, at 19–35.

¹⁶² *See* UCHE ANYAMELE, THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS: A PROPOSAL FOR NIGERIA 4 (Nov. 29, 2011) (ebook), <http://www.cisg.law.pace.edu/cisg/biblio/anyamele.html>; *cf.* Gary F. Bell, *Harmonisation of Contract Law in Asia – Harmonising Regionally or Adopting Global Harmonisations – The Example of the CISG*, SING. J. OF L. STUD. 362, 367 (2005).

¹⁶³ ANYAMELE, *supra* note 163, at 4.

rather complicated. Also, as mentioned,¹⁶⁴ BRI criticism is growing and not all countries that are listed as BRI states by China are willing to join BRI-related activities. Finally, if BRI was meant to reshuffle the world legal order under China's leadership,¹⁶⁵ then global, rather than geographically limited, harmonization and unification projects would be helpful. In this case however, it must be asked if harmonization or unification initiatives should or can carry any BRI-specific features.

While legal harmonization, or even unification, among BRI states therefore does not seem to be a realistic option, it is of course interesting to explore from a comparative point of view what the status of global harmonization and unification initiatives in the BRI area is. A number of related studies have already been conducted.¹⁶⁶ The *United Nations Convention on Contracts for the International Sale of Goods* (CISG), which has entered into force on January 1, 1988, can be quoted as one example in this regard.¹⁶⁷

The CISG applies in relation to cross-border contracts of sale between parties located in CISG member states,¹⁶⁸ or if the rules of private international law lead to the application to the law of a CISG member state.¹⁶⁹ It is the idea of the CISG "to provide a modern, uniform and fair regime for contracts for the international sale of goods. Thus, the CISG contributes significantly to introducing certainty in commercial exchanges and decreasing transaction costs."¹⁷⁰

As of February 2019, the CISG had 89 contracting states,¹⁷¹ including all major trading nations, such as Australia, Canada, Brazil, the Russian

¹⁶⁴ *Supra* Section II.F.

¹⁶⁵ *Cf. supra* Section IV.D.ii.a(1).

¹⁶⁶ *Cf.* Yaodong Yu et al., *The 'One Belt One Road' Initiative and its Impact on Shipping Law in China*, 87 MARINE POL'Y 291 (2018); CIRS, *The Belt and Road Initiative Construction and the Global Implementation of GHS*, CIRS (June 5, 2018), <http://www.cirs-reach.com/news-and-articles/The-Belt-and-Road-Initiative-Construction-and-the-Global-Implementation-of-GHS.html>.

¹⁶⁷ *See* Wolff 2017, *supra* note 3.

¹⁶⁸ ANYAMELE, *supra* note 163, art. 1(1)(a); *see also* INGEBOG SCHWENZER ET AL., INTERNATIONAL SALES LAW 1–10 (Hart Publishing, 2nd ed. 2012) (providing a detailed commentary on Article 1(1)(a) CISG).

¹⁶⁹ ANYAMELE, *supra* note 163, art. 1(1)(b); PETER HUBER ET AL., THE CISG – A NEW TEXTBOOK FOR STUDENTS AND PRACTITIONERS 52–54 (2007) (providing a detailed commentary); LISA SPAGNOLO, CISG EXCLUSION AND LEGAL EFFICIENCY 12–19 (Wolters Kluwer, 2014). Note, however, that according to Article 95 CISG member states can declare that they will not be bound by Article 1 (1) (b) CISG). United Nations Convention on Contracts for the International Sale of Goods art. 95, Apr. 11, 1980, U.N. Doc. A/CONF.97–18, 1498 U.N.T.S. 3.

¹⁷⁰ United Nations Commission on International Trade Law, *United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) (CISG)*, UNITED NATIONS, https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg (last visited Apr. 13, 2020).

¹⁷¹ *Id.*

Federation, China,¹⁷² Germany, France, and the USA, but not England. The CISG has also stood as a model for many domestic legislative activities. Contract law legislations of China,¹⁷³ Germany,¹⁷⁴ and Israel¹⁷⁵ are examples in this regard.¹⁷⁶ Also, the modernized *Civil Code of Cambodia* of 2008 follows the CISG closely, although Cambodia is not yet a CISG member state.¹⁷⁷ What is important is that¹⁷⁸

(a)ll the negative predictions which were sources of reluctance in acceding to the CISG in the early 1990s turned out to be wrong. The number of Contracting States has more than doubled. With the emergence of the vast array of court and arbitral decisions, and the enormous amount of scholarly writings, doubts about the predictability of the CISG have diminished as well. This has impact both on the legal community and the business community.¹⁷⁹

Sixty-one of the 131 BRI States are CISG contracting states.¹⁸⁰ Some Southeast Asian countries, namely Indonesia, Laos PDR, the Philippines, and

¹⁷² Cf. WEI LI, *THE INTERPRETATION OF THE CISG IN CHINA* CISG METHODOLOGY 343–353 (André Janssen et al. eds., 2009).

¹⁷³ Gary F. Bell, *Harmonisation of Contract Law in Asia – Harmonising Regionally or Adopting Global Harmonisations – The Example of the CISG*, SING. J. OF L. STUD. 362, 365–366 (2005).

¹⁷⁴ Peter Schlechtriem, *Basic Structures and General Concepts of the CISG as Model for a Harmonization of the Law of Obligations*, JURIDICA INT'L 27, 30 (2005), available at https://www.juridicainternational.eu/public/pdf/ji_2005_1_27.pdf; Claus-Wilhelm Canaris, *Das allgemeine Leistungsstörungenrecht im Schuldrechtsmodernisierungsgesetz [The General Law Governing Impairment of Performance under the Law for the Modernization of the Law of Obligations]*, 34 ZEITSCHRIFT FÜR RECHTSPOLITIK 329 (2001); Claus-Wilhelm Canaris, *Die Reform des Rechts der Leistungsstörungen [The Reform of the Law Governing Impairment of Performance]*, 56 JURISTENZEITUNG 499 (2001).

¹⁷⁵ See Albert H. Kritzer, *CISG: Table of Contracting States*, PACE L. SCH. INST. OF INT'L COM. L., <http://www.cisg.law.pace.edu/cisg/countries/cntries.html> (last updated Jan. 8, 2016) (follow "Israel" hyperlink).

¹⁷⁶ See also Hiroo Sono, *Japan's Accession to the CISG: The Asia Factor*, 20 PACE INT'L L.R. 105, 109–114 (2008) (stating that it is, "natural that the CISG will have impact on this upcoming revision" with regard to Japan).

¹⁷⁷ INGEBORG SCHWENZER ET AL., *GLOBAL SALES AND CONTRACT LAW* 32 (2012).

¹⁷⁸ Cf. Sieg Eiselen, *Adopting the Vienna Sales Convention: Reflections Eight Years Down the Line*, 19 SA MERCANTILE L. J. 14, 24–25 (2007), available at <http://www.cisg.law.pace.edu/cisg/bibliol/eiselen8.html>; Silvia E. Nikolova, *UK's Ratification of the CISG – An Old Debate or a New Hope for the Economy of the UK on its Way out of the Recession: The Potential Impact of the CISG on the UK's SME's*, 3 PACE INT'L L. R. ONLINE COMPANION 69, 109–10 (Feb. 2012); Ulrich G. Schroeter, *Reservations and the CISG: The Borderland of Uniform International Sales Law and Treaty Law After Thirty-Five Years*, 41 BROOKLYN J. OF INT'L L. 203, 206 (2015); Sono, *supra* note 177, at 108.

¹⁷⁹ Sono, *supra* note 177, at 108.

¹⁸⁰ *Supra* Section II.D.

Thailand, all of which are not yet CISG contracting states, are currently considering joining.¹⁸¹

The main points which are normally quoted as major advantages of the CISG can be regarded as reasons also for these countries to join.¹⁸² *Vice versa*, apart from general arguments which are put forward by CISG critiques against the CISG,¹⁸³ some BRI states may not have joined for country specific reasons or reasons embedded in particular legal traditions. For example, common law BRI states, like Bangladesh, Bhutan, Brunei,¹⁸⁴ Malaysia, Myanmar, Pakistan, and Sri Lanka¹⁸⁵ are not (yet) CISG contracting states and seem to follow England in this regard.¹⁸⁶ In contrast, Singapore and Israel are CISG contracting member states, demonstrating that the common law tradition is not an obstacle to joining the CISG.¹⁸⁷

Of those BRI countries which are members of the Commonwealth of Independent States (CIS) only Kazakhstan, Tajikistan, and Turkmenistan are not CISG contracting states. It can be assumed that these countries have more fundamental issues to deal with than the CISG.¹⁸⁸

B. CHINESE OUTBOUND INVESTORS

(1) Addressing BRI Goals

BRI is, of course, also a very important topic also for China's outbound investors, i.e. the Chinese multinational enterprises (MNEs).¹⁸⁹ These

¹⁸¹ *Id.*

¹⁸² Wolff 2017, *supra* note 3, at 56–57.

¹⁸³ *Id.* at 61–62.

¹⁸⁴ The government of Brunei has indicated that the country may join the CISG soon. See Jennifer Fong, *The CISG: will widespread adoption in ASEAN result in the growth of arbitration?*, GLOBAL ARB. NEWS (Apr. 29, 2015), <http://globalarbitrationnews.com/cisg-will-widespread-adoption-asean-result-growth-arbitration>.

¹⁸⁵ Like Brunei, the government of Sri Lanka has also indicated their intention to join the CISG in due course. See *id.*

¹⁸⁶ See ANYAMELE, *supra* note 163, at 4 (discussing reasons why England has not joined the CISG); Sono, *supra* note 177, at 106; Ahmad Azzouni, *The Adoption of the 1980 Convention on the International Sale of Goods by the United Kingdom*, PACE INT'L. L. R. (May 27, 2002), <http://www.cisg.law.pace.edu/cisg/biblio/azzouni.html>.

¹⁸⁷ Wolff 2017, *supra* note 3, at 63.

¹⁸⁸ *Id.* at 64; cf. Associated Press, *US-China belt and road row weakens United Nations resolution on Afghanistan*, SOUTH CHINA MORNING POST (Mar. 16, 2019, 4:51 PM), <https://www.scmp.com/news/china/diplomacy/article/3001987/us-china-belt-and-road-row-weakens-united-nations-resolution>.

¹⁸⁹ Cf. Desheng Hu et al., *On the Environmental Responsibility of Chinese Enterprises for Their FDIs in Countries within the One Belt and One Road Initiative*, 5 THE CHINESE J. OF COMP. L. 36, 38–39 (2017).

investors have to position themselves and consider economic, political and legal implications of BRI.¹⁹⁰ MNEs which engage in cross-border investment activities would normally pursue economic goals in the first place. It is important that the situation may be very different in the BRI context where investments are conducted as part of the overall BRI strategy of the Chinese state. This means on the one hand that Chinese outbound investors can count on the support of the Chinese government. It also means that the commercial viability may not be the most important aspect when deciding whether to engage in a particular BRI investment project. Sometimes, the commercial viability of a BRI investment project may not play a role at all. On the other hand, all those issues of BRI relevance discussed in previous sections, in particular the lack of clearly defined BRI goals,¹⁹¹ can—at least indirectly—affect China's outbound investors. The following sections shall discuss two additional topics which require legal responses from the viewpoint of those Chinese MNEs which engage in BRI investment projects, namely (i) potential legal risks in BRI countries, and (ii) the question of how Chinese outbound investment deals are structured and whether there are alternative options.

(2) Legal Risks in BRI Countries

Apart from the concerns about economic viability,¹⁹² legal risks are a main concern in any cross-border business transaction.¹⁹³ Within BRI there are highly developed legal systems such as those in Singapore, New Zealand, and Austria. However, many BRI states qualify as developing countries and this is in particular true for BRI countries in Central and Western Asia as well as in Africa. In relation to these countries, one may assume that their legal systems are not stable, that legal certainty can therefore not be expected, and that legal risks are consequently very high. However, assumptions of this kind have to be considered with great care as an interesting study conducted by Professor Xi Chao shows.¹⁹⁴

For his study, Xi Chao analyzed three of the most important legal risk reports with regard to the original 65 BRI countries, namely (i) the World

¹⁹⁰ Ferguson et al, *supra* note 93.

¹⁹¹ *Supra* Section II.C.

¹⁹² Contra Laura Zhou, Chinese private investment in belt and road projects may be losing steam, *SOUTH CHINA MORNING POST* (Nov. 15, 2018), <https://www.scmp.com/news/china/diplomacy/article/2173467/chinese-private-investment-belt-and-road-projects-may-be-losing> (“The BRI is a proposal but it is the projects on the ground that are making profits, and firms should make adequate risk assessments before they take the next step”).

¹⁹³ See Dodwell *supra* note 28, at B3 (“[T]he fragility and unfamiliarity of legal systems in many of the recipient countries that have created unwelcome challenges in dealing with legal disputes.”); Bruno Zeller, *One Belt One Road – One Law?*, in *CHINA'S ONE BELT ONE ROAD INITIATIVE AND PRIVATE INTERNATIONAL LAW*, *supra* note 3, at 149.

¹⁹⁴ Chao Xi, *Legal and Regulatory Risks of “Belt and Road” Countries: An Index-Based Approach*, in *LEGAL DIMENSIONS OF CHINA'S BELT AND ROAD INITIATIVE*, *supra* note 3, at 33–54.

Bank's Doing Business Index,¹⁹⁵ (ii) the World Justice Programme's Rule of Law Index,¹⁹⁶ and (iii) the World Governance Indicators: Regulatory Quality and the Rule of Law.¹⁹⁷ For each of these three studies he assessed if—based on legal risks—a particular BRI state falls within the global top 25%, i.e. where legal risks are relatively low, the global top 50%, the global top 75%, or into the last 25% globally, i.e. where legal risks are very high. Xi Chao assigned 4, 3, 2 and 1 points to the respective categories. He then calculated a medium score, thus developing a special BRI Index which represents the three reports together.¹⁹⁸

Xi Chao himself has pointed to the methodological challenges of his approach and called his conclusions “crude and primitive, and indicative only.”¹⁹⁹ However, even from an indicative point of view his conclusions are still very interesting. Amongst the originally 65 BRI States 20 fall within the global top 25%. Forty-three BRI countries, i.e. more than two-thirds of the BRI countries including China, fall within the global top 50%. Fourteen countries are below the global average, but at least better than the worst 25%. It is not surprising that Afghanistan, Iraq, Myanmar, Syria, Timor-Leste, Turkmenistan and Yemen are found within the last 25% of all countries, i.e. where legal risks are the highest.²⁰⁰

Again, Xi Chao's study can only be regarded as indicative. Moreover, it must be remembered that the number of BRI states as reported on the official Chinese BRI website has in the meantime been increased to 138 (not including China), while the study only covered the original 65 BRI states.²⁰¹ And yet, the conventional wisdom regarding legal risks related to BRI states may not be completely accurate if challenged from different angles.

(3) BRI Deal Structuring

Speaking in very general terms, cross-border investment projects can be structured in three different ways, namely as greenfield projects, as acquisitions, and in hybrid forms. Hybrid forms are in practice more common than “plain vanilla” deals, which rarely meet the complex interests of the concerned parties in particular from the tax point of view.

¹⁹⁵ Cf. *id.* at 35–38.

¹⁹⁶ *Id.* at 38–41.

¹⁹⁷ *Id.* at 41–45.

¹⁹⁸ See *id.* at 45–50 (detailing this procedure).

¹⁹⁹ Xi, *supra* note 195, at 49.

²⁰⁰ *Id.* at 46–49. Note that this adds up only to 64 countries because no data are available for Palestine.

²⁰¹ *Supra* Section II.D.

The term greenfield investments normally refers to the establishment of an investment project from zero either by the investor alone or together with other local or international partners.²⁰² In other words, rather than acquiring or merging with an already existing business entity as in the case of M&A deals, in a greenfield project the investor establishes a new enterprise in the target country by way of (legally) creating an investment vehicle, setting up operation premises (factories, offices, other buildings, etc.) and recruiting staff and workers supported by contributions in cash or in kind.²⁰³

As compared with acquisitions, the main advantages of greenfield investment projects are (i) that no target company needs to be identified, (ii) that the acquisition of pre-existing risks and liabilities linked to a target company can be avoided, (iii) that there is no need to engage in sometimes very time-consuming negotiations with a seller, and (iv) that greenfield investment projects can be designed from scratch according to the needs of the investor within the constraints of the applicable law.²⁰⁴ It is noteworthy, however, that when greenfield investment projects are established in the form of joint ventures,²⁰⁵ issues similar to those of acquisitions may arise in relation to the joint venture partner.

The obvious disadvantage of greenfield investments is the fact that the whole project needs to be set up anew, which can be time and cost intensive. Moreover, there is no previous record of any commercial success of the project. In other words, the project has yet to establish itself as a successful player within the given market(s) and become viable.²⁰⁶

The meaning of the second form of cross-border investment projects, i.e. of acquisitions, is that

one party takes over all or part of the shares (share deal) or of the assets (asset deal) of another party, i.e., of the target. The major advantage of acquisitions normally lies in the fact that the investor avoids the difficulties of the pre-closing and the start-up phase which may save time and reduce investment risks. Second, since an already existing entity or its assets are acquired the investor has – at least in theory – the chance to analyse the target beforehand, i.e., to assess the potential and the risks of the investment by way of conducting a due diligence. Third, the ability to employ skilled workforce and management is always crucial for the success of any

²⁰² ALEX EASSON, TAXATION OF FOREIGN DIRECT INVESTMENT – AN INTRODUCTION 90 (1999).

²⁰³ WOLFF, *supra* note 115, at 341.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 356–357.

²⁰⁶ *Id.* at 342.

investment project. Share deals and (subject to related contractual arrangements) asset deals normally provide the possibility to retain staff, workers and management, who are familiar with the target and may have a track record of success.²⁰⁷

At the current stage, the BRI discussion focuses on the building of new infrastructure. Infrastructure investment projects cannot normally rely on any pre-existing business. For Chinese infrastructure investments in BRI countries, the acquisition mode is therefore not suitable.

Infrastructure projects often fall into the genuine scope of responsibility of states and concern the building of highways, ports, airports, railway networks, and power plants. They involve massive investments in terms of money, time, as well as manpower. Infrastructure projects also require very specialized know-how regarding their legal design and implementation. All of this is normally not readily available in developing countries. Infrastructure projects in developing countries are therefore often designed as so-called public private partnerships (PPPs), i.e. as cooperation projects between host state governments and foreign investors. While the structure of PPPs can differ significantly, three of the most basic PPP patterns are discussed below.

First, in so-called build-operate-transfer (or: build-operate-trade = BOT) projects, a (foreign) private investor establishes and operates an investment project for a certain time period during which the investment can be recovered and a certain profit margin can be obtained. After the end of the agreed period, the project is transferred to the host country of the investment without any further reimbursement.²⁰⁸ Second, the build-transfer-operate (also: build-trade-operate = BTO) model is a variation of BOT. BTO means that the private investor hands the facility over to the host state immediately after completion, but retains the right to operate it for an agreed period of time or to use a facility operator to operate and maintain the facility with the goal to recover the investment plus some profit to make the project viable.²⁰⁹ Finally, build-transfer-lease (BTL) projects are like BTO projects except that the investor leases the facility back from the host state upon completion for operation for an agreed period of time.²¹⁰

These general PPP structuring options are based on the understanding that a private investor engages in the investment project with the goal to generate profits. As discussed above, in the BRI context this goal may often not be the most important one. In fact,

²⁰⁷ *Id.* at 344.

²⁰⁸ WOLFF, *supra* note 115, at 343.

²⁰⁹ *Id.*

²¹⁰ *Id.*

[s]tate-owned companies remain the dominant investors in 'Belt and Road Initiative' projects – mostly in energy and transport – but the share of private firms is shrinking The private company share stood at 28 per cent of overall investment in the [belt and road] projects by the end of June It was down by 12 per cent in the first half from the same time a year [previous].²¹¹

It is the general assumption that—despite the fact that Chinese state-owned enterprises (SOEs) are legally organized as private enterprises²¹²—state ownership also means that SOEs pursue the (strategic) BRI goals of the Chinese government rather than aiming to achieve commercial targets. And, this assumption could be seen as being supported by the observation that BRI investments in certain developing countries, such as Pakistan, have indeed no prospect of becoming commercially viable in the near future. Considering the strategic dimension of Chinese BRI investments, as well as the lack of commercial potential of certain BRI projects, the BOT, BTO, and BTL structures may therefore be much less desirable from the Chinese outbound investors' point of view than "normal" greenfield investment options. This is because a return on their investments during the period of operation, and thus a core goal of PPP projects, would in these cases not be achievable. In contrast, the greenfield option would at least grant the investor long-lasting control over the project.

So far, this section has only considered different structuring options in the abstract. But, how are BRI projects structured in practice? Unfortunately, not much information is publicly available. For example, in relation to Chinese investments in the Maldives, it has been remarked that "nearly all of it was done under secret terms, without other bids and at inflated prices that raised questions of corruption, according to people with knowledge of the contracts."²¹³

Anecdotal evidence suggests that the classic BRI investment model implies a Chinese greenfield investment in the target BRI country, with financing provided by a Chinese bank for the payment of Chinese engineering and construction services delivered by Chinese entities, as well as for the acquisition of machines and equipment sourced from China. Furthermore, many Chinese investments in BRI countries seem to involve the acquisition of land or land use rights or a long-term lease. Take the example of Pakistan:

²¹¹ Zhou, *supra* note 193.

²¹² These SOEs are organized in the form of limited liability companies or companies limited by shares. 中华人民共和国公司法 [*Company Law of the People's Republic of China*] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 29, 1993, rev'd Dec. 28, 2013), English version available at http://www.fdi.gov.cn/1800000121_39_4814_0_7.html.

²¹³ Tribune News Service, *supra* note 62.

The China-Pakistan Economic Corridor is a US\$62 billion collection of projects funded by Beijing. . . . Reportedly, although China has lent Pakistan US\$26 billion –US\$30 billion for power and transport projects that are part of the economic corridor, not a single dollar has entered Pakistani banking channels. Instead, Chinese banks give the loans to Chinese companies, which buy equipment in China and use it in Pakistan. Consequently, instead of gaining economic benefits, Pakistan is running up huge debts and risking fiscal default. . . . [T]he financial details . . . were closely guarded secrets under the previous government. If the current government makes the details public, the programme is likely to come under more fire in Pakistan.²¹⁴

The traditional BRI investment structure—to the extent that it can be verified—has on the one hand attracted lots of criticism exactly because of the lack of transparency, the potential of being exploited for illegitimate purposes and because this structure seems to favor Chinese interests. As already mentioned above,²¹⁵ it would, on the other hand, be naive to assume that China's BRI investments are not (also) driven by self-interest. In fact, the traditional BRI investment model makes perfect sense from the Chinese point of view.

Furthermore, it also has to be acknowledged that Chinese control and management of BRI investment projects guarantees that projects are carried out by experienced Chinese parties using tried and tested Chinese equipment, thus offering major advantages in terms of speed and quality.²¹⁶ For example, the USD \$500 million plus Colombo International Container Terminal, a joint venture project between China Merchants Port Holdings (85%) and the Sri Lanka Port Authority (15%), was completed in only five years between December 2011 and December 2016.²¹⁷ It is rather doubtful if local parties alone would have been able to push the project through in such a short period of time.

C. OTHERS

In addition to the Chinese state and Chinese outbound investors, there are of course many other Chinese parties who should, and are, responding to BRI.

²¹⁴ Adnan Aamir, *Why Pakistan is backing away from Chinese-funded infrastructure projects*, SOUTH CHINA MORNING POST (Oct. 19, 2018, 8:30 PM), <https://www.scmp.com/comment/insight-opinion/united-states/article/2169365/why-pakistan-backing-away-chinese-funded>.

²¹⁵ *Supra* Section II.C.

²¹⁶ *Cf.* Pantucci *supra* note 21.

²¹⁷ Information kindly provided during an oral presentation on November 2, 2018 by a representative of Colombo International Container Terminals Limited a subsidiary of China Merchants Port Holdings.

Just four obvious examples shall be mentioned here, i.e. China's arbitration industry, China's legal service sector, the Chinese providers of legal education, and last but not least, legal academia.

First, as explained above,²¹⁸ while their statutorily defined jurisdiction is not BRI specific, the international commercial tribunals recently established in Xi'an and Shenzhen are catered to deal with cross-border disputes arising out of BRI activities. This creates challenges for China's other dispute settlement bodies, in particular China's international arbitration commissions,²¹⁹ when competing for potentially lucrative BRI cases. It requires them to increase their efforts to be recognized as reliable dispute settlement bodies capable of handling BRI cases objectively and efficiently. It is also noteworthy that on January 24, 2019, the China Council for the Promotion of International Trade (CCPIT) and the Singapore International Mediation Centre (SIMC) have established an international mediator panel to resolve BRI disputes.²²⁰ Apparently, mediators also feel the need to market their services under the BRI header.

Second, increased Chinese economic activity in BRI countries will require legal support, and Chinese law firms are certainly ready to take advantage of the new business opportunities. Third, if BRI develops as projected, there will be increasing manpower needs in China on all fronts with BRI-specific knowledge and skills. China's education and training industry will have to respond with focused courses and programs. In particular, the providers of legal education will have to aim at creating lawyers who possess the knowledge and skills required to support BRI-related cross-border transactions.²²¹ Finally, legal academia in China and elsewhere has taken a lot of interest in BRI. In particular, BRI welcomes food for thought for legal comparatists,²²² thus informing BRI-related legal work on the ground.

²¹⁸ *Supra* Section IV.D.ii.a(6).

²¹⁹ WOLFF, *supra* note 115, at 548–49.

²²⁰ *Singapore, China to Set Up International Panel of Mediators for Belt and Road Projects*, MAXWELL CHAMBERS (Jan. 24, 2019), <https://www.maxwellchambers.com/2019/01/25/singapore-china-to-set-up-international-panel-of-mediators-for-belt-and-road-projects>; see also Herbert Smith Freehills LLP, *Is mixed-mode dispute resolution the answer to Belt and Road disputes?*, LEXOLOGY (Mar. 11, 2019), <https://www.lexology.com/library/detail.aspx?g=8f4074be-1547-41db-babd-efc83cfc6074>.

²²¹ Yang Han, *BRI spurs demand for legal talent*, CHINA DAILY (Sept. 27, 2018, 6:14 PM), <https://www.chinadailyhk.com/articles/154/225/153/1537772420507.html>; see also Lidong Cai, *The "Belt and Road" Initiative and Legal Education in China*, in LEGAL DIMENSIONS OF CHINA'S BELT AND ROAD INITIATIVE, *supra* note 3, at 469–80.

²²² *Cf.* Wolff, *supra* note 79, at 170–71.

(iii) Non-Chinese BRI Responses

A. STATES

(1) Rejecting BRI

The situation, interests, and goals of the non-Chinese BRI states vary significantly. This section highlights major issues of common concern, again with a focus on actual and possible legal responses to BRI. In this regard, one option for non-Chinese BRI countries would, of course, be to reject the BRI idea altogether and to simply refuse any participation. As already mentioned,²²³ originally China had listed India as a BRI state, while India had openly declared that it will not join. Only in May 2019 India was finally removed from China's official BRI website.

India's BRI opposition is mainly motivated by geopolitical considerations. The China-Pakistan Economic Corridor²²⁴ includes areas which are disputed between India and Pakistan. From India's point of view, BRI therefore affects nothing less than India's territorial sovereignty.²²⁵ Furthermore, BRI significantly increases China's influence in countries which are located in India's close proximity and previously fell into India's sphere of influence.²²⁶ The most prominent example in this regard is China's BRI engagement in Sri Lanka. India's repudiation of BRI is therefore not surprising. India has also criticized the lack of transparency in relation to BRI projects, in particular from a financing point of view.²²⁷

While BRI criticism is growing also elsewhere²²⁸ no other country listed on China's official BRI website has rejected BRI altogether.

(2) Protecting National Interests

Many of the BRI aspects and related legal responses discussed in the previous sections in relation to China²²⁹ are also relevant for other BRI states. In particular, the lack of clear BRI goals in general, and of clarity in relation to Chinese motives behind particular BRI projects, also create problems for the

²²³ See *supra* Section II.D.

²²⁴ See *supra* Section II.B.

²²⁵ Professor S.D. Muni, Professor Emeritus J.N.U. a former ambassador, during the 14th GCR Working Seminar on "India and China's Belt and Road Initiative", held on November 27, 2018 at The Chinese University of Hong Kong.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Supra* Section II.F.

²²⁹ *Supra* Section IV.D.ii.

²²⁹ Muni, *supra* note 226.

non-Chinese BRI states. After all, a lack of transparency prevents objective assessments, therefore makes the protection of their own interests difficult.

As mentioned above,²³⁰ it is one of the underlying themes of the nowadays very popular BRI criticism, that BRI investments are in the interest of China, but disregard the position of the target countries. It is often ignored, in this context, that the non-Chinese BRI countries are in principle free to decide whether to accept Chinese investment proposals or to reject them if they do not work in their favor. Furthermore, it is not necessarily China that dictates BRI investment projects and their design in the respective BRI target countries. In contrast, according to anecdotal, informal evidence non-Chinese BRI states are asked to make proposals regarding those BRI investment projects to be conducted by Chinese parties.²³¹

Of course, many BRI states are in urgent need of infrastructure development but lack the means to steer projects of this scale through by themselves. While the resulting imbalance in terms of bargaining power must be acknowledged,²³² it is still important for every single BRI state to be conscious about their own BRI objectives. In other words, the conditions which are acceptable and those which are not must be clearly defined. A balanced assessment of the advantages and disadvantages of foreign inbound investments on the basis of a comprehensive due diligence exercise in relation to each inbound BRI project are therefore an absolute must. In particular, a thorough assessment of the financial viability of each project can exclude any debt-trap risks.²³³ As far as Chinese investments without any government involvement are concerned, legislative bodies of the target countries must consider if the investment regime of the target country allows or should allow for any protection against foreign control in particular industry sectors.²³⁴

If BRI investment projects have already run into problems, it must be assessed if an adjustment, or even the termination, of the project is possible and advisable. As explained above,²³⁵ some BRI states are indeed currently trying to selectively withdraw from certain BRI projects. Whether such

²³⁰ *Supra* Section II.F.

²³¹ Information provided during a round-table discussion (subject to Chatham House Rules) organized by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies together with Chatham House in Colombo, Sri Lanka, on November 1, 2018.

²³² *Cf. infra* Section IV.D.iii.a(3).

²³³ Rowley, *supra* note 17; *cf.* Catherine Wong, *Philippines is Determined to Avoid Infrastructure Debt Traps, Finance Minister Carlos Dominguez Tells China*, SOUTH CHINA MORNING POST (Mar. 21, 2019, 7:00 AM), <https://www.scmp.com/news/china/diplomacy/article/3002546/philippines-finance-minister-dominguez-tells-china-manila>.

²³⁴ For related developments in the European Union, see also Carlos Esplugues, *A future European FDI screening system: solution or problem?*, 245 COLUM. FDI PERSP. (Feb. 11, 2019), <http://ccsi.columbia.edu/files/2018/10/No-245-Esplugues-Final.pdf>.

²³⁵ *Supra* Section II.F.

withdrawals are legally possible and—if so—subject to which conditions is a matter of the applicable law, contractual arrangements, and the factual details of each case.

(3) Bargaining Power

It is a common perception that many of the legal and other problems arising in the BRI context are a result of China's dominating position and the weak bargaining power of individual BRI states.²³⁶ In fact, many of the BRI states do not have much to offer in return of urgently needed infrastructure investments and may have to accept the terms imposed by inbound investors or related investment projects may not go ahead at all.

It has been proposed to increase the bargaining power of BRI states with similar interests, e.g. due to the geographic proximity, through coordinated efforts. This could involve the development of joint BRI strategies which may or may not be documented in jointly adopted "Rules of BRI Engagement."²³⁷ Such strategies could also imply multi-party negotiations with Chinese counterparts with the goal to improve BRI states' standing in this context.²³⁸ Finally, non-Chinese BRI states may attempt to improve their position by bringing in "white knights," i.e. potential investors from other countries so as to create alternatives. Indonesian President Joko Widodo's daughter and member of his 2018 re-election campaign, Zannuba Ariffah Chafsoh Rahman Wahid, has been quoted as saying "you cannot just stay silent and hope that people will knock on your door . . . you need to knock on their door and invite them in . . . (t)his is what we are doing now.' . . ."²³⁹

Whether any such approach can successfully be applied when dealing with China in the BRI context is, however, questionable. As already pointed out, investment projects in BRI states are often not lucrative. At the same time, it is not realistic to expect foreign investors, including Chinese parties, to conduct unviable investments for purely altruistic reasons, i.e. without any return on their investment. In situations of this kind it appears only natural for investors to consider alternative benefits, including, for example, geopolitical advantages if the investment is state-driven.

Different countries may take very different views in regard to the question of which benefits justify an inbound investment. Past experience in the BRI context shows that countries other than China are reluctant to provide *de facto* development aid in the form of unviable infrastructure investments. For

²³⁶ *Cf. id.*

²³⁷ This point was made during a round-table discussion (subject to Chatham House Rules) organized by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies together with Chatham House in Colombo, Sri Lanka, on November 1, 2018.

²³⁸ *Id.*

²³⁹ Yuniar, *supra* note 46.

example, in 2015–16, Sri Lanka had put all Chinese inbound investment projects on hold for one year for re-assessment purposes and in order to secure alternative support from the EU, the USA, or Japan. Since no other country was willing to step in, the cooperation with Chinese investors then had to be resumed in order to continue the country's ambitious development plan.

Furthermore, international politics may also play a role in shaping BRI strategies. Take again the example of Sri Lanka. China had supported Sri Lanka's position before the UN Human Rights Council²⁴⁰ in relation to allegations of war crimes committed during the civil war which officially ended in May 2009. Concessions in relation to Chinese BRI investments in Sri Lanka are now one way for Sri Lanka to pay China back for the support in the past.²⁴¹

(4) Transparency and Governance Problems

Governance has been identified as an issue of concern of many BRI projects.²⁴² Again, while China usually has to take the blame, many of the problems are actually generated by the BRI target countries, and it should consequently be for them to take action. For example, it is commonly acknowledged that "weak institutions, endemic corruption and a range of insurgencies in areas slated to host the" China-Pakistan Economic Corridor (CPEC) pose severe challenges for BRI projects.²⁴³

Good governance requires first of all transparency. Anecdotal evidence suggests that comprehensive data regarding BRI investment projects are not even available at the level of governments of BRI states. To remedy the situation, it has been suggested that each BRI country should centralize the BRI data collection by establishing (at least) one unit or platform where all

²⁴⁰ See, e.g., Jeff M. Smith, *China's Investments in Sri Lanka*, FOREIGN AFFAIRS (May 23, 2016), <https://www.foreignaffairs.com/articles/china/2016-05-23/chinas-investments-sri-lanka> (follow hyperlink "A Friend in Need"); see also Nick Cumming-Bruce, *In Resolution, U.N. Council Presses Sri Lanka on Civilian Deaths*, N.Y. TIMES (Mar. 22, 2012), <https://www.nytimes.com/2012/03/23/world/asia/rights-body-passes-measure-on-sri-lanka.html> (reporting that China and Russia had opposed the Resolution).

²⁴¹ This point was made during a round-table discussion (subject to Chatham House Rules) organized by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies together with Chatham House in Colombo, Sri Lanka, on November 1, 2018.

²⁴² *Supra* Section II.F.

²⁴³ Elmer, *supra* note 68; see also Nectar Gan & Robert Delaney, *United States under Donald Trump is veering away from China's belt and road*, SOUTH CHINA MORNING POST (Apr. 25, 2019, 1:00 AM) <https://www.scmp.com/news/china/article/3007504/united-states-under-trump-veering-away-chinas-belt-and-road>.

BRI data can be accessed by authorized parties²⁴⁴ whenever need arises.²⁴⁵ Furthermore, “Rules of BRI Engagement” jointly adopted by different BRI countries could prescribe, among other things, if and how information must be made available and to whom. Last but not least, good governance does, of course, also require robust anti-corruption laws and their uncompromising implementation.²⁴⁶

(5) Chinese Legal Dominance in the BRI Area

BRI is a Chinese initiative. China is the mastermind of, and the driving force behind, BRI. This provokes the next question: will China influence or even dominate legal developments in the BRI states and is any response required from the non-Chinese BRI states to counter developments of this kind? In an attempt to answer this question some intriguing aspects have to be considered.

At the level of law-making in non-Chinese BRI countries, it must first be acknowledged that, at least on paper, the Chinese legal system is in many areas much more developed than the legal systems of other BRI states, in particular, those BRI states which are currently target countries of Chinese outbound investments in the infrastructure sector. With increasing intra-BRI legal relationships, there is a chance that China will play the role of a model jurisdiction.

Furthermore, in the past, many Western countries have provided “legal development aid” to China in order to support the establishment of the Chinese legal system after the beginning of the reform process in the late 1970’s.²⁴⁷ Realistically speaking, these legal knowledge transfer projects are not done only for humanitarian reasons. Rather, they are based on the hope that China will eventually adopt legal principles of the country that provides this kind of

²⁴⁴ See *supra* Section IV.D.11.a(6) (showing that it appears unreasonable to demand general open access to all BRI data).

²⁴⁵ This point was made during a round-table discussion (subject to Chatham House Rules) organized by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies together with Chatham House in Colombo, Sri Lanka, on November 1, 2018.

²⁴⁶ Transparency International’s Corruption Perception Index ranks countries according to the perceived corruption level. In the 2018 Corruption Perception Index, only 23 of the 131 BRI states rank in the top 50, i.e. with a perceived lower level of corruption. 39 of the 131 BRI states rank between 51 and 100. *Corruption Perceptions Index 2018*, TRANSPARENCY INT’L (2018), <https://www.transparency.org/cpi2018>. 8 BRI states are not covered by the Corruption Perception Index. *Id.*; see also *Hong Kong’s Anti-Graft Commissioner Warns of Corruption on Belt and Road*, HONG KONG LAWYER (July 20, 2018), <http://www.hk-lawyer.org/content/hong-kongs-anti-graft-commissioner-warns-corruption-belt-and-road>; Miao, *supra* note 32 (discussing China’s anti-corruption campaign).

²⁴⁷ Jianfu Chen, *Modernisation, Westernisation, and Globalisation: Legal Transplant in China*, in ONE COUNTRY, TWO SYSTEMS, THREE LEGAL ORDERS - PERSPECTIVES OF EVOLUTION 91, 92 (Jorge Costa Oliveira & Paulo Cardinal eds., 2009).

support, which may then facilitate economic relationships and political cooperation.

Acknowledging China's new role as a global leader, one can expect that China will adopt similar strategies within the BRI area and beyond. China's legal circles have become more self-confident in recent years, and anecdotal evidence suggests that Chinese legal academics and practitioners are no longer just glorifying foreign law, but rather trying to develop and implement legal positions which suit China's situation.

At a conference in December 2017, a Scandinavian colleague who had been working for legal development aid projects in China for many years commented²⁴⁸ on the situation with the sentence, "In a couple of years Chinese judges will tell European judges what law is really about." This statement, and the fact that the growing global influence of Chinese law and Chinese legal culture is addressed at all in this section, shows some skepticism towards the Chinese legal system. One must ask, however, if such skepticism is justified. What are the disadvantages if China exports Chinese law and Chinese legal culture to other BRI countries and beyond?

First of all, it is questionable if it can be claimed without further proof that there are disadvantages to Chinese law or that Chinese law is not in all aspects up to standard, or at least not below the standard of Western legal systems. Xi Chao's study, in which China ranks in the global top 50%, reveals that—in terms of legal risks—the Chinese legal system appears to be better than most of the legal systems in the world.²⁴⁹

In 2015 another study with a much more limited scope was aimed to develop an "Index of Legal Certainty," with the ultimate goal to promote continental European law.²⁵⁰ The study covered 13 countries and ranked them in terms of legal certainty as follows: (1) Norway, (2) Germany, (3) France, (4) UK, (5) China, (6) Morocco, (7) Senegal, (8) Italy, (9) Canada, (10) Argentina, (11) Japan, (12) USA, and (13) Brazil.²⁵¹ One may also object to this study for a number of methodological reasons and doubt its empirical accuracy. But it is worth serious consideration that China ranks "No. 5" before countries like Canada, Japan, and the USA.²⁵²

²⁴⁸ In a private conversation with the author.

²⁴⁹ *Supra* Section IV.D.ii.b(2).

²⁵⁰ BRUNO DEFFAINS & CATHERINE KESSEDJIAN, INDEX OF LEGAL CERTAINTY: REPORT FOR THE CIVIL LAW INITIATIVE (May 2015), available at https://www.fondation-droitcontinental.org/en/wp-content/uploads/2015/06/NS_Rapport-complet-5-juin-2015_EN.pdf. *But see id.* at 9–10 ("Predictability is already more complex to judge given that it depends partially and indirectly on the interpretation and application of the law by a judge or arbitrator.").

²⁵¹ *Id.* at 103.

²⁵² *See id.* at 113 (containing detailed comments on China's results).

Much of the criticism of the Chinese legal system is based on the understanding that China does not adhere to the Rule of Law. While the Rule of Law concept is disputed in all its facets, it stands at the core of all Western legal systems. Over the last two decades an intense debate has emerged in China as to whether and which role the Rule of Law concept can play in the Chinese context.²⁵³ Many Chinese commentators see the Western Rule of Law concept rather critically.²⁵⁴ In this regard it must also be acknowledged that for the last 30 years China has adopted an extremely successful development model. This development model has often been called “authoritarian” and entails that in China law has a very different role as compared with Western societies. Law supports and flanks political decisions. However, it does not have absolute authority.²⁵⁵

China’s development model is not compatible with Western values, including the Rule of Law concept. However, in 1981, 88.3% of the Chinese population lived in extreme poverty.²⁵⁶ In 2013 the percentage had dropped to 1.9%.²⁵⁷ This means that China has lifted 850 million people out of extreme poverty.²⁵⁸ This number puts not only the criticism of the Chinese model into perspective, it is also the reason why many developing countries, including many BRI states, admire the Chinese model and wish to copy it.

(6) BRI Deal Structuring

Basic structuring options for cross-border investment deals were set out above.²⁵⁹ As mentioned in this context, the traditional structure of BRI

²⁵³ Cf. Albert H.Y. Chen, *China’s Long March towards Rule of Law or China’s Turn against Law?*, 4 CHINESE J. COMP. L. 1, 27–35 (2016); Lance L.P. Gore, *The Political Limits to Judicial Reform in China*, 2 CHINESE J. COMP. L. 213 (2014); Lu Wang & Jingyu Wang, *Comparative Law Scholarship in China in 2015*, 4 CHINESE J. COMP. L. 327, 332–34 (2016); Lu Wang, *Comparative Law Scholarship in China 2014*, 3 CHINESE J. COMP. L. 390, 394–95 (2015).

²⁵⁴ For non-Chinese criticism, see TEEMU RUSKOLA, *LEGAL ORIENTALISM: CHINA, THE UNITED STATES, AND MODERN LAW* (2013); Chen, *supra* note 254, at 2–11; Teemu Ruskola, *Legal Orientalism*, 101 MICHIGAN L. R. 179 (2002).

²⁵⁵ Björn Ahl, Staatliche, *Eingriffe in den chinesischen Immobilienmarkt – Fragen der Rechtmäßigkeit und des Rechtsschutzes* [State Interventions in the Chinese Real Estate Market – Questions of Legality and Legal Protection], 45 VERFASSUNG UND RECHT IN ÜBERSEE (Constitution and Law Overseas) 412 (2012) (showing how the municipal government of Beijing took steps to get the exploding prices in Beijing’s real estate market under control which were not at all in line with the governing law, but which were very effective).

²⁵⁶ Cf. World Bank Group, *China Systematic Country Diagnostic*, WORLD BANK (2017), <http://documents.worldbank.org/curated/en/147231519162198351/pdf/China-SCD-publishing-version-final-for-submission-02142018.pdf>. See also *Poverty*, WORLD BANK, <https://www.worldbank.org/en/topic/poverty/overview> (last updated Oct. 2, 2019)(defining extreme poverty as a daily buying power of USD 1.90 or below).

²⁵⁷ Cf. World Bank Group, *supra* note 257.

²⁵⁸ *Id.*

²⁵⁹ *Supra* Section IV.D.ii.b (3).

investment projects may not be in the best interest of the respective host states, which are consequently considering alternative options. Take the example of Pakistan: “[I]slamabad is exploring funding options for CPEC projects that depart from the traditional BRI lending model – whereby host nations take on Chinese debt to finance construction of infrastructure One option . . . according to Pakistani officials, is the build-operate-transfer (BOT) model”²⁶⁰

It has to be repeated, however, that the most favorable structuring options from the point of view of non-Chinese BRI states are not necessarily in line with the Chinese BRI interests. Non-Chinese BRI states must acknowledge the potentially contradicting interests in order to be able to position themselves and to develop their own viable BRI strategy.

B. NON-STATE ENTITIES

(1) Local Participation

Non-state business entities from non-Chinese BRI states are often not taking up main roles in BRI investment projects. In contrast, Chinese infrastructure investment projects in developing BRI countries are often almost entirely carried out by Chinese SOEs.²⁶¹ It is not surprising that this has led to criticism:

Beijing must recognise that to the extent that its investments are conditioned on the use of Chinese workers or firms and crowd out local inputs, they will be difficult to sustain, particularly in democracies. Opening up space within belt and road investments for local and international private sector participation will improve their prospects for success.²⁶²

Again, however, it should be acknowledged that an increased local involvement does not only depend on the bargaining power of the various stakeholders but is also an issue of efficiency and practicality.²⁶³

²⁶⁰ Reuters, *Pakistan's China-backed railway revamp faces resistance due to debt concerns within Imran Khan's new government*, SOUTH CHINA MORNING POST (Sept. 30, 2018, 5:00 PM), <https://www.scmp.com/news/asia/south-asia/article/2166369/pakistans-china-backed-railway-revamp-faces-resistance-due-debt>.

²⁶¹ Cf. Janne Suokas, *Chinese State Enterprises Undertake Over 3,100 Belt and Road Projects*, GBTIMES (Oct. 31, 2018, 1:58 PM), <https://gbtimes.com/chinese-state-enterprises-undertake-over-3100-belt-and-road-projects>.

²⁶² Schwemlein, *supra* note 8.

²⁶³ *Supra* Section IV.D.ii.b(3).

(2) Governing Law

The possibility of Chinese legal dominance in the BRI context was outlined above.²⁶⁴ Apart from the level of law-making, this topic also has to be considered for contractual arrangements between Chinese and non-Chinese BRI parties. With their growing economic power Chinese parties have become increasingly self-confident in the past twenty years. Anecdotal evidence has it that Chinese parties have often used their strong bargaining power to impose the applicability of Chinese law, the jurisdiction of Chinese courts and arbitration bodies, and even Chinese language as the authentic contract language on their foreign counterparts.²⁶⁵ Chinese initiatives to make Chinese dispute settlements “BRI-ready” support these efforts.²⁶⁶

Whether non-Chinese parties can successfully insist when negotiating with Chinese parties, for example, on the applicability of a neutral law, a neutral jurisdiction and—in line with common international practice—the use of English as contract language is of course again a matter of bargaining power.²⁶⁷ It is interesting to note, in this regard, that as far as the governing law is concerned, harmonization and unification²⁶⁸ may carry specific benefits for non-Chinese parties when entering into agreements with Chinese parties. For example, when non-Chinese parties from CISG contracting states enter into contracts with Chinese parties, in most cases the CISG would apply.²⁶⁹ Both parties would therefore be able to rely on a tried and tested neutral contract law system and bargaining power²⁷⁰ would not be an issue in relation to topics covered by the CISG.

(iv) Non-BRI Responses

A. INTERNATIONAL ORGANIZATIONS

(1) General Responses

The growing significance of BRI²⁷¹ has of course also been noted by international organizations which have started to react in formal and informal

²⁶⁴ *Supra* Section IV.D.iii.a(5).

²⁶⁵ Yoshihisa Nomi, *The CISG from the Asian Perspective*, SING. INT'L ARBITRATION CTR. (Sept. 22–23, 2005), <http://cisgw3.law.pace.edu/cisg/biblio/nomi.html> (explaining in Part III.3 the “Change of power structure in world trading”).

²⁶⁶ *Supra* Section IV.D.ii.a(7).

²⁶⁷ *Cf. supra* Section IV.D.iii.a(3).

²⁶⁸ *Supra* Section IV.D.ii.a(9).

²⁶⁹ United Nations Convention on Contracts for the International Sale of Goods art. 1 (1)(a), U.N. Doc. A/CONF.97–18, 1498 U.N.T.S. 3.

²⁷⁰ *Cf. supra* Section IV.D.iii.a(3).

²⁷¹ *Supra* Part II.

ways, e.g. by setting up special task forces or groups to monitor and respond to BRI developments.²⁷² China and other BRI countries themselves are, of course, part of these endeavors.

(2) Models, Guidelines, and Other Legal Instruments

International organizations, such as those under the UN, play an important role in developing models, guidelines, and other legal instruments to support legislative activities at the domestic and the international level, or the structuring and contractual design of cross-border business transactions. For example, the United Nations created the following: the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects of 2001,²⁷³ UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects of 2003,²⁷⁴ UNIDO Guidelines for Infrastructure Development through Build-Operate-Transfer (BOT) Projects of 1996,²⁷⁵ and UNEP Finance Initiative/UN Global Compact Principles for Responsible Investment of 2006.²⁷⁶

On first sight, it appears that these and other instruments developed by international organizations could play a very important role in BRI investment projects. They have been developed by international experts, they take into account and thus balance the interests of all stakeholders, and they incorporate different legal traditions. In other words, they are global and state-of-the-art tools. However, it must be questioned if these instruments are really in line with the special needs of BRI investment projects. The reasons are as follows:

First, the structure of a particular deal determines the usability of legal instruments as described in the previous paragraph. For example, if the BOT structure²⁷⁷ is not adopted in the BRI context, then guidelines for the use of the BOT model are, of course, not helpful. Second, models, guidelines, and other legal instruments developed by international organizations are designed for commercial cross-border business transactions, i.e. those which are entered

²⁷² See, e.g., *UN Agencies Belt and Road Initiative Involvement*, <http://wedocs.unep.org/bitstream/handle/20.500.11822/26318/UN%20Agencies%20BRI%20Involvement%2002%20%2801%20Oct%202018%29.pdf> (last visited Apr. 6, 2020).

²⁷³ U.N. Comm'n Int'l Trade Law, UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, U.N. Doc. A/CN.9/SER.B/4 (2001).

²⁷⁴ U.N. Comm'n Int'l Trade Law, UNCITRAL Legislative Provisions on Privately Financed Infrastructure Projects, U.N. Doc. A/58/513 (2003).

²⁷⁵ U.N. Indus. Dev. Org., Guidelines for Infrastructure Development Through Build-Operate-Transfer (BOT) Projects, U.N. Sales No. UNIDO.95.6.E (1996).

²⁷⁶ *Integrate the Principles for Responsible Investment*, U.N. GLOBAL COMPACT, <https://www.unglobalcompact.org/take-action/action/responsible-investment> (last visited Apr. 6, 2020).

²⁷⁷ *Supra* Section IVD.ii.b(3).

into with the goal to generate profits. As outlined above,²⁷⁸ commercial goals are not necessarily the driving force behind BRI investments. Third, there is one much bigger issue. If BRI is, as it has been suggested, an attempt to revamp the world order under China's leadership and subject to China's terms and conditions, then these instruments may not be acceptable for China simply because they belong to the old order and are dominated by the West. Such an approach would, of course, be most unfortunate as it ignores the qualitative advantages of the said instruments.

B. STATES

(1) Addressing BRI Goals

China's declared and perceived BRI goals were discussed in an earlier section.²⁷⁹ Nobody doubts that BRI has already contributed to a significant increase of China's geopolitical influence. Governments of non-BRI states have to assess what the expansion of the Chinese sphere of influence means and if consequences need to be drawn (e.g., in relation to international treaties with China, other BRI countries and non-BRI countries – the example of the North American Free Trade Agreement is discussed at the end of this section).

The interests of different non-BRI states are not necessarily identical. For example, in the EU, countries like Greece have benefitted and are benefitting from Chinese investments²⁸⁰ and potentially do not have much of an interest in challenging China. As a result, coordinated responses to BRI have faced challenges. Nevertheless, in February 2018, the European Commission announced its own Europe Asia Connectivity Plan which is awaiting implementation.²⁸¹ Maros Sefcovic, European Commission vice-president, commented in April 2019:

²⁷⁸ *Supra* Section II.C.

²⁷⁹ *Id.*

²⁸⁰ Cf. Nikolia Apostolu, *China's economic lifeline for Greece tangles political relations with EU*, WASH. TIMES (Mar. 5, 2018), <https://www.washingtontimes.com/news/2018/mar/5/chinas-investment-greece-tangles-europe-relations>; Stuart Lau, *Greece's ancient civilisation was once a lure for China's leaders. Now it could prove their nemesis*, SOUTH CHINA MORNING POST (Apr. 7, 2019, 10:00 PM), <https://www.scmp.com/news/china/diplomacy/article/3005031/greeces-ancient-civilisation-was-once-lure-chinas-leaders-now>.

²⁸¹ Keegan Elmer, *Is the EU trying to derail China's European ambitions with its new connectivity plan for Asia?*, SOUTH CHINA MORNING POST (May 8, 2018, 8:00 AM), <https://www.scmp.com/news/china/diplomacy-defence/article/2145059/eu-trying-derail-chinas-european-ambitions-its-new>; Keegan Elmer, *EU presents (nearly) united front against China's 'unfair' Belt and Road Initiative*, SOUTH CHINA MORNING POST (Apr. 20, 2018, 8:00 AM), <https://www.scmp.com/news/china/diplomacy-defence/article/2142698/eu-presents-nearly-united-front-against-chinas-unfair>; cf. Mathieu Duchatel, *Will China listen to EU on infrastructure plan's perceived pitfalls in free trade and competition?*, SOUTH CHINA MORNING POST (Apr. 22, 2018, 6:09 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2142723/will-china-listen-eu-infrastructure-plans-perceived>; Owen Churchill, *US, Canada and EU to offer 'robust alternative'*

For us, connectivity is a little bit wider than the concept covered by the belt and road We focus on sustainable financing, avoid debt traps and always do our due diligence. We are also very careful about environmental assessments and the impact [of projects] on the public. This is something that makes the European approach to infrastructure very attractive.²⁸²

In early 2018, Australia's foreign minister Julie Bishop reported that Australia, the USA, Japan, and India are planning some kind of infrastructure development concept for the Asia Pacific region.²⁸³ There is no doubt that the U.S. felt outflanked by the belt and road scheme and has since set to work to

to state-led development finance, as belt and road increases reach, SOUTH CHINA MORNING POST (Apr. 12, 2019, 5:19 AM), <https://www.scmp.com/news/world/united-states-canada/article/3005798/us-canada-and-eu-offer-robust-alternative-state-led>; Dodwell, *supra* note 28 ("And if the US, or Europe, respond by creating infrastructure investment programmes of their own, then the natural response of China, and of us all, should be to celebrate. . . . Every possible new source of investment in infrastructure is to be welcomed.").

²⁸² Keegan Elmer, *EU's connectivity plan 'more sustainable' than Beijing's belt and road*, *European official says*, SOUTH CHINA MORNING POST (Apr. 27, 2019, 5:00 AM), <https://www.scmp.com/news/china/diplomacy/article/3007878/eus-connectivity-plan-more-sustainable-beijings-belt-and-road> (quoting European Commission Vice-President Maros Sefcovic).

²⁸³ Tom Holland, *What could be worse than Belt and Road? A copy of Belt and Road*, SOUTH CHINA MORNING POST (Feb. 26, 2018, 9:30 AM), <https://www.scmp.com/week-asia/business/article/2134525/what-could-be-worse-belt-and-road-copy-belt-and-road-too-much>; Reuters, *Australia, US, India and Japan in talks to establish 'alternative' to China's Belt and Road (just don't call it a rival)*, SOUTH CHINA MORNING POST (Feb. 19, 2018, 11:02 AM), <https://www.scmp.com/news/asia/diplomacy/article/2133773/australia-us-india-and-japan-talks-establish-alternative-chinas> (quoting Shi Yinhong, an international relations professor from Beijing's Renmin University: "It is questionable if they are able to come up with a joint project that can compete with China's Belt and Road Initiative in terms of global influence."); Jaipragas, *supra* note 86; Bhavan Jaipragas, *Mike Pence to unveil rival to 'dangerous' Belt and Road Initiative at Apec summit*, SOUTH CHINA MORNING POST (Nov. 15, 2018, 1:01 PM), <https://www.scmp.com/week-asia/geopolitics/article/2173326/mike-pence-unveil-rival-dangerous-belt-and-road-initiative> ("Australia last week announced a US\$1.4 billion infrastructure financing facility for the Pacific, offering grants and long-term loans for investments in telecommunication, energy, transport and water infrastructure."); *see also* Wenshan Jia, *China's 'Belt and Road Initiative' is good for the world, despite what Western critics say*, SOUTH CHINA MORNING POST (Mar. 9, 2018, 11:03 AM), <https://www.scmp.com/comment/insight-opinion/article/2136325/chinas-belt-and-road-initiative-good-world-despite-what>; Lo et al., *supra* note 17; Associated Press, *Australia backs Pacific security pact as Chinese aid grows*, GULF NEWS (July 6, 2018, 3:25 PM), <https://gulfnews.com/world/oceania/australia-backs-pacific-security-pact-as-chinese-aid-grows-1.2247348> (reporting on Australia's and New Zealand's efforts "to seal a new security agreement with their Pacific island neighbours as China increases its influence in the region."); Agence France-Presse, *China plans Pacific Island summit as New Zealand warns Beijing is trying to fill power vacuum*, SOUTH CHINA MORNING POST (July 10, 2018, 2:10 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2154592/china-plans-pacific-island-summit-new-zealand-warns>; Laura Zhou, *China's growing role in South Pacific nations cannot be stopped, says vice-minister Zheng Zeguang*, SOUTH CHINA MORNING POST (Nov. 13, 2018, 8:33 PM), <https://www.scmp.com/news/china/diplomacy/article/2173025/chinas-growing-role-south-pacific-nations-cannot-be-stopped>; *see* Stewart, *supra* note 21 (regarding how the Trans-Pacific Partnership (TPP) will counter BRI); Gan & Delaney, *supra* note 244.

counter it by beefing up its overseas project lending capability and by joining Japan and Australia in a Trilateral Partnership as a rival form of intercontinental infrastructure initiative.²⁸⁴

Furthermore, Donald Trump's so-called "trade war" on China has taken its (indirect) toll on BRI by affecting China's financial capabilities. "Reserves are further threatened by the possibility of a serious interruption of exports to the US Nervousness in Beijing about the balance of payment would cap funds for the BRI."²⁸⁵ Finally, in an even more aggressive legal move the USA has, for the first time, used poison pill tactics when (re-)negotiating the North American Free Trade Agreement (NAFTA) with Canada and Mexico in 2018.

Chapter 32 of the new deal, which overhauls NAFTA, addresses the ability of members to enter into a free-trade agreement with a country that has a "non-market economy." While many countries are considered to have non-market economies, the most notable member of the list is China. The USCMA text stipulates that three months before the U.S., Canada, or Mexico begins trade negotiations with a nonmarket economy, the other two countries must be notified. The USMCA also contains a poison pill that could stop Canada or Mexico from entering into a deal with China. "Entry by any Party into a free trade agreement with a non-market country, shall allow the other Parties to terminate this Agreement on six-month notice and replace this Agreement with an agreement as between them (bilateral agreement)," the text says. In practice, this could mean the U.S. could tear up the USMCA if Canada or Mexico makes a deal with China that it does not like.²⁸⁶

(2) Competition of Laws and Legal Systems

As discussed above, the possibility that China's increased global power may also lead to a greater role for Chinese law and possibly even some kind of legal dominance in the BRI region.²⁸⁷ Chinese law's rise has also been recognized in non-BRI countries and there are strong voices among them advocating for a firmer stance against the increasing influence of Chinese law and Chinese dispute settlement bodies. From the viewpoint of English law, it has been remarked that

²⁸⁴ Rowley, *supra* note 17; cf. Josephine Ma & Zhenhua Lu, *The United States must go beyond 'baby steps' in infrastructure as China builds strong bonds in Asia, says former US ambassador*, SOUTH CHINA MORNING POST (Mar. 17, 2019, 7:27 PM), <https://www.scmp.com/news/china/diplomacy/article/3002060/united-states-must-go-beyond-baby-steps-infrastructure-china>.

²⁸⁵ Zhou, *supra* note 193 (quoting a report by the Washington-based American Enterprise Institute).

²⁸⁶ Bob Bryan, *An under-the-radar provision in the US-Mexico-Canada trade deal looks like a direct shot at China*, BUS. INSIDER (Oct. 2, 2018, 8:41 AM), <https://www.businessinsider.de/trump-us-mexico-canada-nafta-trade-deal-china-2018-10>.

²⁸⁷ *Supra* Section IV.D.iii.a(5).

[S]ince English law is marketing itself as a go-to authority in any contract disputes that crop up between China and its belt and road partners, even as Beijing works on developing its own legal framework to rule on such matters “in-house”. . . . The UK, ever watchful for business opportunities, has been pushing hard for English law to govern contracts between Chinese companies and entities from other Asian countries, and for London arbitration to have jurisdiction.²⁸⁸

The question is, of course, if and how non-BRI countries can promote their own law and legal systems in the BRI area when China is the general BRI mastermind. Chinese investment projects in BRI states give China access to governments and other decision-makers and this will also facilitate the promotion of Chinese law.

C. NON-STATE ENTITIES

The increased economic activities within the BRI area offer business opportunities for enterprises from non-BRI countries. It is important, however, that these opportunities are not automatic, and they are not intended as BRI aims to assist China and Chinese parties.

Existing BRI options for business parties from non-BRI states require legal support, and the legal industry and other advisors are ready to move. International dispute resolution bodies are getting prepared to be able to compete with the International Commercial Tribunals in Xi'an and Shenzhen for BRI cases. For example, the ICC *Court of Arbitration* announced the establishment of a commission on March 5, 2018, to study BRI dispute settlement and to expand the ICC dispute settlement options for BRI cases.²⁸⁹

IV. SUMMARY AND FINAL REMARKS

Over the last decade, China emerged as a global mega-power which is now playing an increased international role. This leads to significant changes almost everywhere, including at the levels of international and national law. BRI, with all its new opportunities, challenges, and risks is an outstanding example in this regard, and demonstrates what all this means for the world.

The rapid development of BRI is facilitated by China's political system, which allows for quick top-down decisions based on a strategy which can give

²⁸⁸ Groffman, *supra* note 123, at 17.

²⁸⁹ Mingchao Fan et al., *Belt and Road: Supporting the Resolution of Disputes*, KLUWER ARB. BLOG (Apr. 16, 2018), <http://arbitrationblog.kluwerarbitration.com/2018/04/16/belt-road-supporting-resolution-disputes/>; cf., e.g., Janne Suokas, *ICC court plans to arbitrate in Belt and Road disputes*, GBTIMES (Mar. 6, 2018, 7:08 PM), <https://gbtimes.com/icc-court-plans-to-arbitrate-in-belt-and-road-disputes/>; *Belt and Road Dispute Resolution*, INT'L CHAMBER COMMERCE, <https://iccwbo.org/dispute-resolution-services/belt-road-dispute-resolution> (last visited Apr. 6, 2020).

state interests absolute priority. BRI has already led to a significant increase of China's geopolitical strength. It has arguably set the scene for China's dominance in the BRI markets, and it has fostered a closer relationship between the Chinese people and the people of other BRI countries. However, BRI has also created, and continues to create, challenges for China. First of all, BRI creates reputational risks. Increasing criticism from other BRI countries and also from the rest of the world have created the impression that BRI projects are, as a matter of principle, suspicious and should be rejected. China needs to take this criticism seriously and respond in a balanced and responsible manner in order to avoid jeopardizing its own international options.

Second, the current BRI model requires significant funding from China. Many BRI investment projects will not become economically viable in the foreseeable future. With the Chinese economy running out of steam,²⁹⁰ significant risks for the success of BRI are emerging which may even lead to legitimization problems for the current Chinese leadership.²⁹¹

Third, BRI is not a legal initiative in the first place. However, a sound legal basis is important to ensure a transparent, and thus effective, implementation for the benefit of the Chinese state and the various other Chinese stakeholders. The establishment of such a legal basis requires action at the international law level, at the level of domestic law, and at lower levels, such as at the level of contractual relationships between Chinese parties and their BRI counterparts. Legal action of this kind must be goal-oriented to avoid randomness. It is therefore prudent that the BRI goals are (re-)defined meticulously and communicated to all concerned parties last but not least for the sake of creating a basis of trust, to avoid the said reputational risks, and thus to reduce the potential for misunderstandings and even failure.²⁹²

BRI creates opportunities as well as risks not only for China, but also for the non-Chinese BRI states and related parties. Investments, in particular, in infrastructure and other sectors are, on the one hand, urgently needed in many BRI states. On the other hand, the price to be paid in the form of political and economic dependence may be high, sometimes even too high. A clear understanding of China's BRI goals, as well as one's own position towards BRI in general and in relation to particular BRI projects, is mandatory to achieve win-win situations. Advantages and disadvantages, including the economic and legal feasibility of BRI investments, must be assessed carefully. Extensive due diligence exercises as well as unbiased and transparent decision-making, which are supported by sound governance systems, are key to success in this regard.

²⁹⁰ *Supra* Sections II.E & II.F.

²⁹¹ *Supra* Section II.C.

²⁹² *Supra* Section IV.D.ii.a(1).

International organizations, non-BRI countries, and other entities located outside the BRI area have in recent years become increasingly concerned about China's outbound activities, including BRI. In fact, it appears that the non-BRI rest of the world regards BRI (only) as a geopolitical, economic, and even military threat rather than an opportunity.²⁹³ The increase of China's international capabilities and influence challenges the traditional power balance and, in particular, the position of the established international players. It is rather natural that this will lead to frictions. Attempts to counter China's global ambitions include legal action at different levels.²⁹⁴ The question is if confrontation is the best way forward and if non-BRI parties, particularly countries in the West, stand any realistic chance to succeed.

In a rare interview, the head of the German Federal Intelligence Service (*Bundesnachrichtendienst*) recently explained—without direct reference to China—that while sticking to their traditional values, the democratic societies of the West will find it very difficult to counter the advancement of authoritarian systems which are not subject to the restrictions imposed by Western value systems. In contrast, those authoritarian systems can take advantage of the liberal approach found elsewhere.²⁹⁵ China's political system allows for top-down decision-making which is much faster than the balanced multi-stakeholder, and sometimes cumbersome, democratic processes in Western societies, including the limits set by the Rule of Law which may even prevent decisions altogether.

The difficulties of Western countries to block Chinese attempts to acquire domestic companies in core industries are a perfect example in this regard.²⁹⁶ Restricting the access of Chinese investors to domestic markets,²⁹⁷ or erecting tariff walls to block the entry of Chinese goods,²⁹⁸ is contradicting the notions of openness and equal treatment and thus contradicts the underlying values of Western societies. In contrast, allowing unlimited foreign access to domestic

²⁹³ Cf. *supra* Sections II.C & II.F.

²⁹⁴ *Id.*

²⁹⁵ Von Reinhard Müller, *Eingequetscht von Giganten [Squeezed by Giants]*, FRANKFURTER ALLGEMEINE (Jan. 19, 2019), <https://www.faz.net/aktuell/politik/inland/bnd-praesident-sieht-liberale-demokratien-von-autoritaeren-systemen-bedroht-15993931.html>.

²⁹⁶ See, e.g., Gisela Grieger, *EU framework for FDI screening*, EUR. PARL. (April 2019), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS_BRI\(2018\)614667_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS_BRI(2018)614667_EN.pdf).

²⁹⁷ Cf. Frank Tang, *Beijing 'closely watching' Donald Trump's plan to restrict Chinese investments*, SOUTH CHINA MORNING POST (June 27, 2018, 9:34 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2152790/beijing-closely-watching-donald-trumps-plan-restrict>.

²⁹⁸ David Dodwell, *Why Donald Trump is missing the mark by focusing on goods instead of services*, SOUTH CHINA MORNING POST (Aug. 25, 2018, 4:01 AM), <https://www.scmp.com/comment/insight-opinion/hong-kong/article/2161130/why-trump-missing-mark-focusing-goods-instead> (“As for Trump's simple agenda, the trade expert consensus is that his strategy is wildly off-target.”).

markets may significantly weaken related systems to the extent that eventually such core values are put at risk.²⁹⁹

Does all this mean that China should be fought on all fronts? Is confrontation the only proper way forward? Does this mean that all available legal and non-legal tools must be used to bar China from further advancing her sphere of influence? The answer is most certainly no! In a globalized world, problems are hardly ever contained at a local, national, or even regional level, but must be addressed everywhere. Therefore, whatever the future will bring, challenges have to be addressed with, and not against, China.³⁰⁰

In this regard, it is also important to acknowledge the advantages of China's new global power. BRI is again a very good example. While the West could not be bothered with building infrastructure (e.g. in Pakistan), China does so and therefore help to develop a future perspective for this troubled country and hopefully contributes to the political stability in the region. The West will benefit from this as well. It therefore seems prudent for Western countries to consider what kind of contribution can be made, and if China's BRI efforts should be joined, thus establishing themselves as reliable partners in the BRI region. It has consequently been suggested that "Asia's economies need all the improved infrastructure they can get. Rather than attack China, other rich economies should be complementing its efforts, and educating it away from some obvious mistakes it has made so far."³⁰¹

Furthermore, China's increasing geopolitical power should not prevent constructive, and also self-confident, dealings with China. In particular, BRI countries need to understand their own needs and abilities and position themselves in relation to Chinese inbound activities accordingly.³⁰² And, non-BRI countries either have to accept that China is taking the BRI lead or they have to find ways to join BRI or they have to offer alternatives.

The answer to the belt and road needs to be a sensible one. Railing against the system when you are not offering anything else is pointless. China clearly is taking advantage of some poor countries. But in the absence of other options, it cannot be surprising they welcome China. . . . If you want to marshal a more effective response, you need to answer the need on the ground to which it is responding. Until you do that, you are merely shouting against the storm.³⁰³

²⁹⁹ Müller, *supra* note 296.

³⁰⁰ Dodwell, *supra* note 55.

³⁰¹ Cf. *id.*

³⁰² *Supra* Section IV.D.iii.a(2).

³⁰³ Pantucci, *supra* note 21.

While the West is at least 10 years behind China in terms of designing an effective global foreign policy strategy,³⁰⁴ American president Donald Trump's America First policy creates additional problems for the development of BRI responses as coordinated action by the West now has become increasingly difficult. On the other hand, as just mentioned, China's rise may also be an opportunity. China and the EU have partly overlapping interests when dealing with the Trump Administration.³⁰⁵ And, this must be understood on both sides of the Atlantic.

The EU is ready to cooperate with China on many fronts, especially on promoting multilateralism, which is being challenged by US President Donald Trump's trade protectionism and erratic diplomacy. But European leaders also noted that the "strategic" cooperation between the bloc and China was unbalanced because of the latter's market-distorting practices, and needed to be recalibrated.³⁰⁶

Finally, China's new power should not prevent any society from fighting for and protecting its own values with full confidence. While it must be acknowledged how difficult China's situation has been over the past three decades and while it must be respected what China has achieved since the beginning of the reform process in 1978, the Western value system has its own remarkable success story. It is last but not least a matter of proper communication to show if and how Western values, including the Rule of Law,³⁰⁷ can address many of the challenges that have arisen in China and in the BRI context.

³⁰⁴ Von Holger Steltzner, *Chinas Weg zur Weltherrschaft [China's Road to World Dominance]*, FRANKFURTER ALLGEMEINE (Oct. 17, 2018, 12:43 AM), <http://www.faz.net/aktuell/wirtschaft/chinas-weg-zur-weltherrschaft-15377498.html>; Ruth Berschens et al., *Mit einer neuen Strategie will sich die EU gegen die Großmacht China behaupten [EU Wants to Counter the Superpower China with a New Strategy]*, HANDELSBLATT (Feb 25, 2019, 6:59 PM), <https://www.handelsblatt.com/politik/international/industriepolitik-mit-einer-neuen-strategie-will-sich-die-eu-gegen-die-grossmacht-china-behaupten/24035544.html>.

³⁰⁵ Cf. Jun Mai & Wendy Wu, *China, EU plan working group to revamp WTO and counter US unilateralism*, SOUTH CHINA MORNING POST (June 25, 2018, 6:16 PM), <https://www.scmp.com/news/china/diplomacy-defence/article/2152384/china-eu-agree-oppose-protectionism-key-sticking-points>.

³⁰⁶ Scimia, *supra* note 39.

³⁰⁷ Cf. Lutz-Christian Wolff, *China's Outbound Investments and the Rule of Law*, in CHINESE FDI IN THE EU AND THE US: SIMPLE RULES FOR TURBULENT TIMES 101–11 (Tim Wenniges & Walter Lohman eds., 2019); Jaipragas, *Malaysia Revived China Deals to Boost Road Forum Spirits*, *supra* note 41 (quoting Malaysian Foreign Minister Saifuddin Abdullah "The lesson learned is that things must be done in a certain way. Transactions must be done by the rule of law. You have to be transparent about it.").

ANNEX: 139 BELT AND ROAD COUNTRIES (INCLUDING CHINA)³⁰⁸

Symbols used:

#: Original 65 BRI states.³⁰⁹

*: 15 countries that became B&R states in August 2018.³¹⁰

(a): AIIB membership.³¹¹

(b): Bilateral investment treaty with China - (bis) if the BIT has an investor-state dispute settlement clause, (b') if not in force; (b'') if terminated.³¹²

(c): CISG Contracting State.³¹³

(d): Double taxation treaty with China.³¹⁴

(f): Framework agreement with China.

(h): Member of the *Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents*.³¹⁵

(j): Judicial assistance treaty, (j') extradition treaty, and (j'') treaty on the transfer of sentenced persons with China.

(m): Memorandum of Arrangement with China.

(o): Joint statement/Joint declaration/Joint press communique/Joint press (news) release.

(u): Joint Memorandum of Understanding (MOU) on Belt and Road Cooperation/ MOU on "Jointly Promoting the Belt and Road Initiative"/ MOU on the joint promotion of cooperation within the "Silk Road Economic Belt" and the "21st Century Silk Road Initiative"/ MOU on "One Belt One Road" cooperation with China.

³⁰⁸ Prepared by Jenny Chan on the basis of the *Belt and Road Portal*, *supra* note 36 (follow hyperlinks "Countries," "International Cooperation," "Profiles") (May 2019).

³⁰⁹ Wolff 2016, *supra* note 3, at 30–31 (in Table 1.3.1).

³¹⁰ According to *Belt and Road Portal*, *supra* note 36 (follow hyperlinks "Countries," "International Cooperation," "Profiles") (as of March 2019).

³¹¹ *Members and Prospective Members of the Bank*, ASIAN INFRASTRUCTURE INV. BANK, <https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html> (last visited Apr. 3, 2020).

³¹² *International Investment Agreements Navigator*, U.N. CONFERENCE ON TRADE AND DEVELOP., INV. POL'Y HUB, <https://investmentpolicy.unctad.org/international-investment-agreements> (last visited Apr. 3, 2020).

³¹³ *Overview of the status of UNCITRAL Conventions and Model Laws*, UNCITRAL, <https://www.uncitral.org/pdf/english/TAC/Status/Overview-Status-Table.pdf> (last visited Apr. 3, 2020).

³¹⁴ 税收政策 [Tax Policy], 国家税务总局 [STATE TAXATION ADMINISTRATION], <http://www.chinatax.gov.cn/n810341/n810770/index.html> (last visited Apr. 3, 2020).

³¹⁵ *Status Table*, HAGUE CONF. PRIV. INT'L L., <https://www.hcch.net/en/instruments/conventions/status-table/?cid=29> (last visited Mar. 30, 2020).

China# (a)(c)(h)	Ecuador (b ³¹⁶)(d)(f) ³¹⁶ (c)(h)	Madagascar* (bis)(u) ³¹⁷ (c)	Serbia# (bis)(d)(u) ³¹⁸ (c)(h)
Afghanistan# (o) ³¹⁹ (a)(j ³²⁰)	Egypt# (bis)(d)(j) ³²¹ (u) ³²² (c)(h)	Malaysia# (bis)(d)(j) ³²³ (a)(h))	Seychelles (b ³²⁴)(d)(u) ³²⁴
Albania# (bis)(d)(c)(h)	El Salvador	Maldives# (o) ³²⁵ (a)	Sierra Leone (b ³²⁶)(u) ³²⁶

³¹⁶ *Belt and Road Portal*, *supra* note 36; cf. Mo Jingxi, *Xi Welcomes Ecuador to Help Build Belt, Road*, BELT AND ROAD PORTAL (Dec. 13, 2018, 11:41 AM), <http://eng.yidaiyilu.gov.cn/qwyw/rdxw/74589.htm>.

³¹⁷ *Belt and Road Portal*, *supra* note 36; Xinhua News Agency, *China welcomes Madagascar to join B&R construction*, BELT AND ROAD PORTAL (Mar. 28, 2017, 10:58 AM), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/10185.htm>.

³¹⁸ Steer Davies Gleave et al., *Research for TRAN Committee: The new Silk Route – opportunities and challenges for EU Transport, Policy Department for Structural and Cohesion Policies* (Jan. 2018), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/585907/IPOLE_STU\(2018\)585907_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/585907/IPOLE_STU(2018)585907_EN.pdf); *Id.* at Annex 2 at 105.

³¹⁹ *Belt and Road Portal*, *supra* note 36; Ministry of Foreign Affairs of PRC, *Joint Statement between the People's Republic of China and the Islamic Republic of Afghanistan*, BELT AND ROAD PORTAL (May 19, 2016, 14:29), <https://eng.yidaiyilu.gov.cn/zchj/sbwj/1425.htm>.

³²⁰ 中华人民共和国和阿富汗伊斯兰共和国引渡条约（中文本）[Extradition Treaty Between the People's Republic of China and Afghanistan], Afg.-China, treaty on Sept. 27, 2013, available at http://www.moj.gov.cn/Department/content/2018-12/25/360_182814.html.

³²¹ 中华人民共和国和阿拉伯埃及共和国关于民事、商事和刑事司法协助的协定 [Agreement Between the People's Republic of China and Egypt on Mutual Legal Assistance in Civil, Commercial and Criminal Matters], China-Egypt, Apr. 21, 1994, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182541.html.

³²² Xinhua, *China, Egypt Sign MoU on Boosting Cooperation under Belt and Road Initiative*, CHINA DAILY (Jan. 21, 2016, 19:12), http://www.chinadaily.com.cn/world/2016xivisitmiddleeast/2016-01/21/content_23189266.htm.

³²³ 中华人民共和国政府和马来西亚政府关于刑事司法协助的条约 [Treaty Between the People's Republic of China and Malaysia on Mutual Legal Assistance in Criminal Justice], China-Malay., Dec. 25, 2018, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182682.html.

³²⁴ Betyemie Bonnelame, *Seychelles and China sign agreements as president of island nation continues visit*, SEYCHELLES NEWS AGENCY (Sept. 3, 2018, 1:26 PM), <http://www.seychellesnewsagency.com/articles/9678/Seychelles+and+China+sign+agreements+as+president+of+island+nation+continues+visit>.

³²⁵ Cf. Xinhua News Agency, *Joint Press Communique between the People's Republic of China and the Republic of Maldives*, BELT AND ROAD PORTAL (Dec 11, 2017, 10:42 AM), <https://eng.yidaiyilu.gov.cn/zchj/sbwj/39198.htm>.

³²⁶ *China and Sierra Leone Sign New Bilateral Agreements*, SLPP TODAY (Aug 30, 2018), <https://www.slpptoday.com/china-and-sierra-leone-sign-new-bilateral-agreements>.

Algeria (bis)(d)(j) ³²⁷ (j) ³²⁸ (u) ³²⁹	Equatorial Guinea (b)	Mali ³³⁰ (b)(u)	Singapore# (bis)(d)(o) ³³¹ (j) ³³² (u) ³³³ (a) (c)(h)
Angola (j) ³³⁴	Estonia# (bis)(d)(j) ³³⁵ (c)(h)	Malta (bis)(d)(j) ³³⁶ (u) ³³⁷ (h)	Slovakia# (bis)(d)(u) ³³⁸ (c)(h)
Antigua and Barbuda*	Ethiopia*	Mauritania	Slovenia# (bis)(d)(c)(h)

³²⁷ 中华人民共和国和阿尔及利亚民主人民共和国关于民事和商事司法协助的条约 [Treaty Between the People's Republic of China and Algeria on Mutual Legal Assistance in Civil and Commercial Matters], Alg.-China, Jan. 10, 2010, available at http://www.moj.gov.cn/Department/content/2018-12/25/358_182396.html; 中华人民共和国和阿尔及利亚民主人民共和国关于刑事司法协助的条约 [Treaty Between the People's Republic of China and Algeria on Mutual Legal Assistance in Criminal Justice], Alg.-China, Nov. 6, 2006, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182578.html.

³²⁸ 中华人民共和国和阿尔及利亚民主人民共和国引渡条约 [Extradition Treaty Between the People's Republic of China and Algeria], Alg.-China, Nov. 6, 2006, available at http://www.moj.gov.cn/Department/content/2018-12/25/360_182791.html.

³²⁹ *Algeria inks MoU on adherence to China's "Belt and Road" initiative*, ALGERIA PRESS SERVICE (Sept. 4, 2018, 5:02 PM), <http://www.aps.dz/en/economy/25756-algeria-inks-mou-on-adherence-to-china-s-belt-and-road-initiative>.

³³⁰ *China, Mali sign MOU on Belt and Road Cooperation*, BELT AND ROAD NEWS (July 29, 2019) <https://www.beltandroad.news/2019/07/29/china-mali-sign-mou-on-belt-road-cooperation>.

³³¹ *Belt and Road Portal*, supra note 36; Xinhua News Agency, *Joint Statement between Chinese, Singaporean Governments*, BELT AND ROAD PORTAL (Nov. 15, 2018, 11:39 AM), <https://eng.yidaiyilu.gov.cn/zchj/sbwj/71762.htm>.

³³² 中华人民共和国和新加坡共和国关于民事和商事司法协助的条约 [Treaty Between the People's Republic of China and Singapore on Mutual Legal Assistance in Civil and Commercial Matters], China-Sing., Apr. 28, 1997, available at http://www.moj.gov.cn/Department/content/2018-12/25/358_182368.html.

³³³ Anna Maria Romero, *Singapore and China Sign MOU for Partnership on Belt and Road Initiative*, INDEPENDENT (Apr. 10, 2018), <http://theindependent.sg/singapore-and-china-sign-mou-for-partnership-on-belt-and-road-initiative>.

³³⁴ 中华人民共和国和安哥拉共和国引渡条约 [Extradition Treaty Between the People's Republic of China and the Republic of Angola], Angl.-China, June 20, 2006, available at http://www.npc.gov.cn/wxzl/gongbao/2007-05/30/content_5366922.htm.

³³⁵ 中华人民共和国和爱沙尼亚共和国关于刑事司法协助的条约 [Treaty Between the People's Republic of China and the Republic of Estonia on Criminal Legal Assistance], Est.-China, June 12, 2002, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182756.html.

³³⁶ 中华人民共和国和马耳他关于刑事司法协助的条约 [Treaty Between the People's Republic of China and Malta on Criminal Legal Assistance], China-Malta, Feb. 22, 2009, available at <http://history.mofcom.gov.cn/?datum=中华人民共和国和马耳他关于刑事司法协助的条约>.

³³⁷ Times of Malta, *China, Malta sign MOU within Belt and Road Initiative*, BELT AND ROAD PORTAL (Nov. 8, 2018, 10:01 AM), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/71038.htm>.

³³⁸ Gleave et al., supra note 319, at 102.

(u) ³³⁹	(bis)(d)(j) ³⁴⁰ (j') ³⁴¹ (u)) ³⁴²		
Armenia# (bis)(d)(j) ³⁴³ (c)(h)	Fiji (u) ³⁴⁴	Micronesia	Somalia (u) ³⁴⁵
Austria* (bis)(d)(c)(h)	Gabon (b)(d)(c)	Moldova# (b)(d)(c)(h)	South Africa* (bis)(d)(j) ³⁴⁶ (j') ³⁴⁷ (u) ³⁴⁸ (h)
Azerbaijan#	Gambia	Mongolia#	South Sudan

³³⁹ Caribbean News Now, *China, Antigua and Barbuda sign MOU to Co-construct Belt and Road*, BELT AND ROAD PORTAL (June 6, 2018, 9:57 AM), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/57191.htm>.

³⁴⁰ 中华人民共和国和埃塞俄比亚联邦民主共和国关于民事和商事司法协助的条约 [Treaty Between the People's Republic of China and the Federal Democratic Republic of Ethiopia on Civil and Commercial Mutual Legal Assistance], China-Eth., May. 4, 2014, *available at* http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-11/04/content_2031582.htm.

³⁴¹ 中华人民共和国和埃塞俄比亚联邦民主共和国引渡条约 [Extradition Treaty Between the People's Republic of China and the Federal Democratic Republic of Ethiopia], China-Eth., May 4, 2014, *available at* http://www.moj.gov.cn/Department/content/2018-12/25/360_182497.html.

³⁴² Hu Rongqi, *Ethiopia Inks Belt, Road agreement*, CHINA DAILY (Sept. 4, 2018, 9:18 AM), <http://www.chinadaily.com.cn/a/201809/04/WS5b8ddd5da310add14f389699.html>.

³⁴³ 中华人民共和国和亚美尼亚共和国关于刑事司法协助的条约 [Treaty Between the People's Republic of China and the Republic of Armenia on Criminal Legal Assistance], Arm.-China, Mar. 25, 2015, *available at* http://www.moj.gov.cn/Department/content/2018-12/25/359_182757.html.

³⁴⁴ Xinhua News Agency, *China, Fiji ink MoU on Belt and Road Initiative cooperation*, BELT AND ROAD PORTAL (Nov. 13, 2018, 9:56 AM), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/71470.htm>.

³⁴⁵ Aadan Fowsi, *Somalia, China Sign New Agreement in Beijing*, CAASIMADA ONLINE (Aug. 31, 2018), <https://www.caasimada.net/somalia-china-sign-new-agreement-in-beijing/>.

³⁴⁶ 中华人民共和国和南非共和国关于刑事司法协助的条约 [Treaty Between the People's Republic of China and the Republic of South Africa on Criminal Legal Assistance], China-S.Afr., Jan. 20, 2003, *available at* https://www.fmprc.gov.cn/web/ziliao_674904/tytj_674911/tyfg_674913/t422655.shtml.

³⁴⁷ 中华人民共和国和南非共和国引渡条约 [Extradition Treaty Between the People's Republic of China and the Republic of South Africa], China-S. Afr., Dec. 10, 2001, *available at* http://www.moj.gov.cn/government_public/content/2018-12/24/360_182462.html.

³⁴⁸ Kenny Chiu, *South Africa and China: co-building the Belt and Road*, CHINA BUS. L. J. (Oct. 11, 2018), <https://www.vantageasia.com/south-africa-and-china-co-building-the-belt-and-road/>.

(bis)(d)(j') ³⁴⁹ (u) 350(a) (h)		(bis)(d)(j) ³⁵¹ (j') 352(j'') ³⁵³ (a) (c)	
Bahrain# (bis)(d)(u) ³⁵⁴ (a)(c)	Georgia# (bis)(d)(a)(c)(h)	Montenegro# (d)(u) ³⁵⁵ (c)(h)	Sri Lanka# (bis)(d)(j) ³⁵⁶ (a)(h)
Bangladesh# (b)(d)(a)	Ghana (bis)(u) ³⁵⁷	Morocco* (bis)(d)(j) ³⁵⁸ (u) 359(h)	Sudan (b)(d)
Barbados (bis)(d)(u) ³⁶⁰	Greece	Mozambique (b)	Suriname

³⁴⁹ 中华人民共和国和阿塞拜疆共和国引渡条约 [Extradition Treaty Between the People's Republic of China and the Republic of Azerbaijan], Azber.-China, Mar. 17, 2005, available at http://www.moj.gov.cn/Department/content/2018-12/25/360_182661.html.

³⁵⁰ Seymour Mammadov, *Azerbaijan important link in new Silk Road*, BELT AND ROAD PORTAL (Oct. 22, 2018, 10:34 AM), <https://eng.yidaiyilu.gov.cn/ghsl/wksl/69359.htm>.

³⁵¹ 中华人民共和国和蒙古人民共和国关于民事和刑事司法协助的条约 [Treaty Between the People's Republic of China and the Mongolian People's Republic on Civil and Criminal Judicial Assistance], China-Mong., Aug. 31, 1989, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182372.html.

³⁵² 中华人民共和国和蒙古国引渡条约 [Extradition Treaty Between the People's Republic of China and Mongolia], China-Mong., Aug. 19, 1997, available at <https://baike.baidu.com/item/中华人民共和国和蒙古国引渡条约/6716381>.

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Belarus# (bis)(d)(j) ³⁶³ (j)) ³⁶⁴ (c)(h)	Grenada (u) ³⁶⁵	Myanmar# (bis)(o) ³⁶⁶ (a)	Syria# (bis)(d)(c)
Bhutan#	Guinea (b')(c)	Namibia (b')(j) ³⁶⁷ (j') ³⁶⁸	Tajikistan# (b)(d)(j) ³⁶⁹ (j') ³⁷⁰ (j'') ³⁷¹ (a)
Bolivia*	Guyana	Nepal#	Tanzania

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(bis)(u) ³⁷²	(bis)(u) ^{373(c)}	(d)(a)	(bis)
Bosnia and Herzegovina #	Hungary# (bis)(d)(j) ^{377(u)} ^{378(c)(h)}	New Zealand* (bis)(d)(m) ^{379(j)} ³⁸⁰ (a) (c)(h)	Thailand# (bis)(d)(j) ^{381(j')} ^{382(j'')} ³⁸³ (o) ^{384(a)}

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(bis)(d)(j) ³⁷⁴ (j)) ³⁷⁵ (u) ³⁷⁶ (c)(h)			
Brunei# (b')(d)(o) ³⁸⁵ (a)	Indonesia# (b'')(d)(o) ³⁸⁶ (j) ³⁸⁷ (j) ³⁸⁸ (a)	Nigeria (bis)(d)(u) ³⁸⁹	Timor-Leste# (o) ³⁹⁰ (a)
Bulgaria#	Iran#	Niue	Togo

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Burundi	Iraq# (c)	Oman# (bis)(d)(u) ³⁹⁷ (a)	Tonga (u) ³⁹⁸ (o) ³⁹⁹
Cambodia# (bis)(d)(j') ⁴⁰⁰ (a)	Israel# (bis)(d)(a)(c)(h)	Pakistan#	Trinidad and Tobago*

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Cameroon (b)(u) ⁴⁰⁵	Italy (bis)(d)(j) ⁴⁰⁶ (j') ⁴⁰⁷ (u) ⁴⁰⁸ (c)(h)	Palestine#	Tunisia* (bis)(d)(j) ⁴⁰⁹ (j') ⁴¹⁰ (u) ⁴¹¹ (h)
Cape Verde	Jamaica (bis)(d)(u) ⁴¹²	Panama*	Turkey#

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Chad (b')	Jordan# (b')(a)(h)	Papua New Guinea* (bis)(d)(o) ⁴¹⁶	Turkmenistan# (b)(d)
Chile (bis)(d)(u) ⁴¹⁷ (c)(h)	Kazakhstan# (bis)(d)(o) ⁴¹⁸ (j) ⁴¹⁹ (j') ⁴²⁰ (j'') ⁴²¹ (a)(h)	Peru (bis)(c)(h)(u) ⁴²²	Uganda (b')(d)
Congo (bis)(d)(c)	Kenya (b')(d)(u) ⁴²³	Philippines#	Ukraine#

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		(bis)(d)(j) ⁴²⁴ (j') ⁴²⁵ (o) ⁴²⁶ (a) (h)	(b)(d)(j) ⁴²⁷ (j') ⁴²⁸ (j'') ⁴²⁹ (c)(h)
Cook Islands	Kuwait# (bis)(d)(j) ⁴³⁰	Poland# (bis)(d)(j) ⁴³¹ (u) ⁴³² (c)(h)	United Arab Emirates# (bis)(d)(j) ⁴³³ (j') ⁴³⁴ (f) ⁴³⁵ (a)

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⁴³² Gleave et al., *supra* note 319, at 101.

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⁴³⁴ 中华人民共和国和阿拉伯联合酋长国引渡条约 [Extradition Treaty Between the People's Republic of China and the United Arab Emirates], China-U.A.E., May 13, 2002, *available at* http://www.moj.gov.cn/Department/content/2018-12/25/360_182411.html.

⁴³⁵ *Belt and Road Portal*, *supra* note 36; *see also* *Framework Agreement on Strengthening Cooperation on Production Capacity and Investment Between the National Development and*

Costa Rica (b')(u) ⁴³⁶	Kyrgyzstan# (bis)(d)(j) ⁴³⁷ (j') ⁴³⁸ (j'') ⁴³⁹ (a) (c)	Portugal (bis)(d)(j) ⁴⁴⁰ (j') ⁴⁴¹ (j'') ⁴⁴² (u) ⁴⁴³ (h)	Uruguay (bis)(h)
Cote d'Ivoire (u) ⁴⁴⁴	Laos#	Qatar# (bis)(d)(a)	Uzbekistan#

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⁴⁴¹ 中华人民共和国和葡萄牙共和国引渡条约 [Extradition Treaty Between the People's Republic of China and the Portuguese Republic], China-Port., Dec. 24, 2018, available at http://www.moj.gov.cn/Department/content/2018-12/24/360_182371.html.

⁴⁴² 中华人民共和国和葡萄牙共和国关于移管被判刑人的条约 [Treaty Between the People's Republic of China and the Portuguese Republic on the Transfer of Sentenced Persons], China-Port., Dec. 24, 2018, available at http://www.moj.gov.cn/Department/content/2018-12/24/361_182328.html.

⁴⁴³ *Belt And Road Portal*, supra note 36; see also Xinhua News Agency, *China, Portugal pledge to jointly push forward construction of Belt and Road*, BELT AND ROAD PORTAL (Dec. 6, 2018, 10:43 AM), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/73774.htm>.

⁴⁴⁴ *Belt and Road Portal*, supra note 36; see also Xinhua News Agency, *Chinese state councilor meets Cote d'Ivoire FM*, BELT AND ROAD PORTAL (Aug. 29, 2018, 11:42 AM), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/64204.htm>.

	(bis)(d)(j) ⁴⁴⁵ (j') ⁴⁴⁶ (a)		(b ³)(d)(j) ⁴⁴⁷ (j') ⁴⁴⁸ (a)(c)
Croatia# (bis)(d)(u) ⁴⁴⁹ (c)(h)	Latvia# (bis)(d)(j) ⁴⁵⁰ (u) ⁴⁵¹ (c)(h)	Republic of Korea* (bis)(d)(j) ⁴⁵² (j') ⁴⁵³ (j') ⁴⁵⁴ (a)(c)(h)	Vanuatu (b ³)(u) ⁴⁵⁵ (a)
Cuba (bis)(d)(c)(j) ⁴⁵⁶	Lebanon#	Romania#	Venezuela

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⁴⁴⁶ 中华人民共和国和老挝人民民主共和国引渡条约 [Extradition Treaty Between The People's Republic of China and Laos], China-Laos, Feb. 4, 2002, available at http://www.moj.gov.cn/Department/content/2018-12/25/360_182267.html.

⁴⁴⁷ 中华人民共和国和乌兹别克斯坦共和国关于民事和刑事司法协助的条约 [Treaty Between the People's Republic of China and Uzbekistan on Mutual Legal Assistance in Civil and Criminal Matters], China-Uzb., Dec. 11, 1997, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182435.html.

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⁴⁴⁹ Gleave et al., *supra* note 319, at 97.

⁴⁵⁰ 中华人民共和国和拉脱维亚共和国关于刑事司法协助的条约 [Treaty Between the People's Republic of China and Latvia on Mutual Legal Assistance in Criminal Matters], China-Lat., Apr. 15, 2004, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182292.html.

⁴⁵¹ Gleave et al, *supra* note 319, at 100

⁴⁵² 中华人民共和国和大韩民国关于民事和商事司法协助的条约 [Treaty Between the People's Republic of China and Korea on Mutual Legal Assistance in Civil and Commercial Matters], China-Kor., July 7, 2003, available at http://www.moj.gov.cn/Department/content/2018-12/25/358_182489.html; 中华人民共和国和大韩民国关于刑事司法协助的条约 [Treaty Between the People's Republic of China and Korea on Mutual Legal Assistance in Criminal Justice], China-Kor., Nov. 12, 1998, available at http://www.moj.gov.cn/Department/content/2018-12/25/359_182775.html.

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	(bis)(u) ^{457(c)}	(bis)(d)(j) ^{458(j')} ^{459(u)} ^{460(c)(h)}	(d)(j) ^{461(h)}
Cyprus (a)(bis)(d)(j) ^{462(c)(h)} (o) ⁴⁶³	Liberia (c)(u) ⁴⁶⁴	Russia# (bis)(d)(j) ^{465(j')} ^{466(j'')} ^{467(a)} (c)(h)	Viet Nam# (bis)(d)(j) ^{468(a)} (c)(h)
Czech Republic# (bis)(d)(u) ^{469(c)(h)}	Libya*	Rwanda	Yemen# (b)

⁴⁵⁷ *Minister of Economy Concludes China Visit, Signs 'Silk Road' MoU*, NAT'L NEWS AGENCY (Sept. 11, 2017, 1:38 PM), <http://nna-leb.gov.lb/en/show-news/83233/nna-leb.gov.lb/en>.

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⁴⁶³ *China, Cyprus Sign Belt and Road Cooperation Document*, CGTN (Apr. 25, 2019), <https://news.cgtn.com/news/3d3d674d78596a4d34457a6333566d54/index.html>.

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⁴⁶⁹ Gleave et al, *supra* note 319, at 97.

	(b')(u) ⁴⁷⁰	(u) ⁴⁷¹	
Djibouti (b')	Lithuania# (bis)(d)(j) ^{472(j)} ' ^{473(c)(h)}	Samoa (u) ⁴⁷⁴	Zambia (b')(d)(c)(h)
Dominica	Luxembourg (bis) ^{475(d)(u)} ^{476(c)(h)}	Saudi Arabia# (bis)(d)(a)(h)	Zimbabwe (bis)(d)
Dominican Republic (c)	Macedonia# (bis)(d)(c)(h)	Senegal* (u) ⁴⁷⁷	

⁴⁷⁰ Wang Wenwen, *China to Aid Libyan Reconstruction via Belt and Road*, GLOBAL TIMES (July 17, 2018, 10:23 PM), <http://www.globaltimes.cn/content/1111258.shtml>.

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⁴⁷² 中华人民共和国和立陶宛共和国关于民事和刑事司法协助的条约 [Treaty Between the Peoples Republic of China and Lithuania on Mutual Legal Assistance in Civil and Criminal Matters], China-Lith., Mar. 20, 2000, *available at* http://www.moj.gov.cn/Department/content/2018-12/25/359_182380.html.

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⁴⁷⁵ As a party to the Belgium-Luxembourg Economic Union.

⁴⁷⁶ *Belt and Road Portal*, *supra* note 36; *see also* *China, Luxembourg Sign MOU Within Belt and Road Initiative*, BELT AND ROAD PORTAL (Mar. 29, 2019, 10:34 AM), <https://eng.yidaiyilu.gov.cn/lqwyw/rdxw/84212.htm>.

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