
China and the Development of an International Dispute Resolution Mechanism for the Belt and Road Construction

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Sometime in the 1970s, archaeologists unearthed a tomb in Turfan (China), an important trading centre along the ancient Silk Road. The tomb was some 1,300 years old, dating to a time when trade along the ancient Silk Road was in full swing. In the tomb lay the remains of an Iranian merchant, entombed in accordance with Zoroastrian beliefs, and in a garment made from pieces of paper.¹

The papers, pieced together, revealed the record of a case that the deceased's brother had brought before a Chinese court. He had testified that his brother had died in the desert while on a business trip with his 'two camels, four cattle and . . . [one] donkey'. Prior to his death, the deceased had loaned '275 bolts of silk' to his Chinese business partner. Following his death, his brother petitioned the court for relief in the form of the return of the silk to him. The court ruled in his favour, ordering that 'as his brother's survivor, the Iranian was entitled to the silk'.²

From this simple tale we can draw lessons about the dangers of the desert along the Silk Road; the modest size of the merchant convoys that travelled along it (evidently not all of these were large caravans); and the partnership that it fostered between the Chinese and migrants from distant places and different cultures. We are reminded of the technological advancements that exchanges along the Silk Road brought. At the

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¹ Hansen, *The Silk Road: A New History* (2012) 3.

² *Ibid.*

time of this entombment, paper was an extremely valuable commodity and the secret of its manufacture was known only to the Chinese.³ The secret would, however, soon be carried along the Silk Road to change, and record, the history of the world.⁴ Moreover, the Zoroastrian style of the Iranian's entombment suggests the religious tolerance that was apparently typical of the cities along the Road.⁵

But the story also offers a glimpse into justice at the time. As early as the seventh century CE, disputes could be settled through organised, third-party dispute resolution mechanisms. Moreover, Chinese courts were open to hearing complaints raised by foreign merchants. And the law appears to have been applied without parochialism in a dispute between a foreign and a local merchant. An investment and a trader were protected by operation of the law.

The ancient Silk Road is being reinvented today as the Belt and Road Initiative (BRI). It is a substantial strategic scheme, potentially involving more than sixty countries. Most of these are either developing or least-developed economies. The Initiative spans the promotion of trade links, capital flows, infrastructure investment and policy coordination among participant states. It is unparalleled in terms of China's financial commitment.⁶

An initiative of this size and potential reach presents a legal protection and enforcement challenge much different to that which exists on the domestic plane, even in a country as large and dynamic as China. Nevertheless, as we contemplate the design of an effective dispute resolution mechanism, even in the much changed setting of modern-day China and the vastly different embodiment of the Road idea, the story revealed by the Iranian tomb in Turfan may help to identify what we are looking for: a dispute resolution mechanism that is accessible to all

³ The Silk Road Foundation, 'The History of Paper', www.silk-road.com/artl/papermaking.shtml (accessed 30 August 2019).

⁴ Hansen, 6.

⁵ Grenet, *Comparative Studies of South Asia, Africa and the Middle East* (2007) 27, 463–78; Foltz, *Religions of the Silk Road: Premodern Patterns of Globalization* (2016) 4, 20, 63, 126, 157.

⁶ European Parliament, 'One Belt, One Road (OBOR): China's Regional Integration Initiative' (July 2016) 1, 5–6, [www.europarl.europa.eu/RegData/etudes/BRIE/2016/586608/EPRS_BRI\(2016\)586608_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586608/EPRS_BRI(2016)586608_EN.pdf) (accessed 30 August 2019). China is reported to have budgeted \$1 trillion for infrastructure projects: The Economist, 'The New Silk Road' (12 September 2015), www.economist.com/news/special-report/21663326-chinas-latest-wave-globalisers-will-enrich-their-countryand-world-new-silk-road (accessed 30 August 2019); Public Broadcasting Service, 'China Is Spending Nearly \$1 Trillion to Rebuild the Silk Road' (2 March 2016), www.pbs.org/newshour/making-sense/china-is-spending-nearly-1-trillion-to-rebuild-the-silk-road/ (accessed 30 August 2019).

participants all the way down to the individual merchant; a mechanism that is impartial, and one that ensures effective legal protection.

Of course, the BRI is primarily an economic and political project. Its legal aspect is underdeveloped. But good ideas are not necessarily achieved by means of the law, and a lawyer, not least an international lawyer, might have no specific role to play. Or that role might be a straightforward one of legal maintenance, from appropriation to audit, one might say, leaving the real work to the entrepreneurs. The legal articulation so far officially offered is all modern boilerplate, thoroughly conventional. A classic example from Chinese authorities: ‘The Belt and Road Initiative is a way for win-win cooperation that promotes common development and prosperity and a road towards peace and friendship by enhancing mutual understanding and trust, and strengthening all-round exchanges . . . It promotes practical cooperation in all fields, and works to build a community of shared interests, destiny and responsibility featuring mutual political trust, economic integration and cultural inclusiveness.’⁷ This is all praiseworthy, no doubt – but there is very little legal substance here, even in terms of modalities.

1.1 How Can International Law Be Harnessed to Promote This Initiative?

But I am asked to speak as a lawyer. As such, I am predisposed to think of law as functional, a way of doing, not just of speaking. One thing is likely: with increased economic integration comes a potential increase in trade and investment disputes. Moreover, within the cadre of the BRI, these disputes are set to occur in and between developing and least-developed states. The relative instability of these states extends to their domestic legal systems, which can be incomplete and changeable. Additionally, by including states such as Syria and Afghanistan in its ambit, the Project has assumed an element of risk, even high risk.⁸ An effective dispute resolution mechanism could help to offset the fears that may otherwise

⁷ National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People’s Republic of China, with State Council authorization, ‘Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road’ (28 March 2015) section III (emphasis added), http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html (accessed 30 August 2019).

⁸ See also Shengli Jiang, ‘Establishment of an International Trade Dispute Settlement Mechanism under the Belt and Road Initiative’ in Yun Zhao (ed.), *International Governance and the Rule of Law in China under the Belt and Road Initiative* (Cambridge University Press 2018) 305.

turn trade and investment away from such volatile places. With predictable legal protections underwriting their participation in the scheme, trade and investment might more readily be encouraged to flow the full length of the Belt and Road.

Another concern is that several of the routes China has identified for the Belt and Road will pass directly through zones that are the subject of serious territorial and sovereignty disputes. One proposed route is set to pass through Kashmir. A second crosses through China's disputed border with Bhutan, a state with which China has had no formal diplomatic relations for over two decades.⁹ And it is difficult to escape the fact that the maritime belt starts in the South China Sea. It is inevitable that China will face issues in these regions.

1.2 How Does Chinese Strategy Envision Dispute Resolution within the BRI?

This question is made interesting due to the Initiative's unprecedented project design. In March 2015, the National Development and Reform Commission, the Ministry of Foreign Affairs and the Ministry of Commerce jointly released the Initiative's blueprint.¹⁰ This is a broadly phrased document. It makes it clear that the project has no specific implementation or governance structure. Moreover, no-one seems to see the need to create one. A key passage in the document reads as follows:

The development of the Belt and Road should mainly be conducted through policy communication and objectives coordination. It is a pluralistic and open process of cooperation which can be highly flexible, and *does not seek conformity*. China will join other countries along the Belt and Road to substantiate and improve the content and mode of the Belt

⁹ Andrea Matles Savada, 'China', in *Bhutan: A Country Study*. Washington: GPO for the Library of Congress (1991), <http://countrystudies.us/bhutan/51.htm> (accessed 30 August 2019); Hong Kong Trade Development Council, 'Bhutan: Market Profile', <http://china-trade-research.hktdc.com/business-news/article/One-Belt-One-Road/Bhutan-Market-Profile/obor/en/1/1X3CGF6L/1X0A3OW4.htm> (accessed 30 August 2019).

¹⁰ National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization (March 2015), http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html (accessed 30 August 2019). This document will be referred to as the 'Action Plan'.

and Road cooperation . . . and align national development programs and regional cooperation plans.¹¹

This approach departs sharply from the model of existing, treaty-based integration projects, such as the EU or NAFTA.¹² We are accustomed to seeing a clear legal framework in place – setting out the overarching strategy and applicable norms, as well as identifying the participating states and the geographical scope of the project – and to seeing it before the implementation phase begins. The BRI does not offer these old comforts. There is no ‘Belt and Road’ convention for the parties to adhere to in order to join in the Initiative, nor is the number of countries or the nature of their participation in it fixed by any specific agreement.

But making this kind of comparison is not useful, because the BRI is not law, nor is it multilateral. It is simply the external policy of a single state. As such, there is no reason why it should not be malleable and even abstruse. The Memoranda of Understanding that China has signed with some Belt and Road states¹³ do not significantly alter this picture, given that they are couched in explicitly aspirational language.¹⁴

Does this mean that international law is irrelevant to the project? Not necessarily. As China outlines in its *Action Plan*, it aims to ‘take full advantage of the existing bilateral and multilateral cooperation mechanisms’ in the implementation of its scheme.¹⁵ In short, the Belt and Road will operate through, rather than aiming to replace, existing international law frameworks of cooperation and economic integration.

There are a number of these in place. For example, China has concluded bilateral investment treaties (BITs) with 86 of the 137 states that it has identified as potential partners in the BRI.¹⁶ A number of regional

¹¹ *Action Plan*, section VIII (emphasis added).

¹² See Jaemin Lee, ‘The Belt and Road Initiative under Existing Trade Agreements’, in Yun Zhao (ed.), *International Governance and the Rule of Law in China under the Belt and Road Initiative* (Cambridge: Cambridge University Press 2018) 62–63.

¹³ For example, Poland, Serbia, Czech, Bulgaria and Slovakia. See Xinhuanet ‘China, CEE Countries Sign Memo to Promote Belt and Road Initiative’ (27 November 2015), www.chinadaily.com.cn/2015-11/27/content_22522636.htm (accessed 30 August 2019).

¹⁴ For example, the Memorandum of Understanding on Cooperation Concerning the Eurasia Initiative and the Silk Road Economic Belt and the 21st Century Maritime Silk Road Between Ministry of Strategy and Finance of Korea and National Development and Reform Commission of China (24 October 2016).

¹⁵ *Action Plan*, section V.

¹⁶ This number is based on a study of the BITs listed at <http://investmentpolicyhub.unctad.org/IIA/CountryBits/42>, cross-referenced with the states listed as forming part of the ‘Belt and Road Initiative’ at <http://beltandroad.hktdc.com/en/country-profiles/country-profiles.aspx>. See also Wei Shen, ‘The Belt and Road Initiative, Expropriation

and preferential trade agreements are in place: the China–ASEAN Free Trade Agreement (CAFTA), Asia–Pacific Economic Cooperation, the Free Trade Agreement of the Asia Pacific, the EU–China Trade and Cooperation Agreement and the China–Pakistan FTA. China is also a member of the WTO, along with 111 of the Belt and Road states.¹⁷ Remarkably, the only participants that are not members are Palestine, Iran and Bhutan,¹⁸ and Bhutan and Iran have both formally triggered the accession process.¹⁹ China is a party to both ICSID and the New York Convention, along with 105 and 106 of its envisioned partner states respectively. China also joins forty-seven of the Belt and Road states in membership of the Permanent Court of Arbitration.

Moreover, the *Action Plan* outlines China’s aim to sign new ‘cooperation MOUs or plans’, to develop ‘bilateral cooperation pilot projects’ and to establish ‘bilateral joint working mechanisms’.²⁰ To this end, China has actively promoted the upgrading of CAFTA²¹ and is in negotiation to conclude the China and the Gulf Cooperation Council,²² a BIT with the EU²³ and a Regional Comprehensive Economic Partnership (which proposes to establish free trade between Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, Vietnam, Australia, China, India, Japan, South Korea and New Zealand).²⁴

and Investor Protection under BITs’, in Yun Zhao (ed.), *International Governance and the Rule of Law in China under the Belt and Road Initiative* (Cambridge University Press 2018) 135–36.

¹⁷ WTO, ‘Members and Observers’ (2016), www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (accessed 30 August 2019).

¹⁸ *Ibid.*

¹⁹ On Bhutan: WTO, ‘Accessions: Bhutan’ (2016), www.wto.org/english/thewto_e/acc_e/a1_bhoutan_e.htm (accessed 30 August 2019). On Iran: WTO, ‘Accessions: Iran’ (2016), www.wto.org/english/thewto_e/acc_e/a1_iran_e.htm (accessed 30 August 2019).

²⁰ *Action Plan*, section V.

²¹ The State Council Information Office of the People’s Republic of China, ‘China, ASEAN seals deal to upgrade bilateral FTA’ (23 November 2015), www.scio.gov.cn/32618/Document/1456293/1456293.htm (accessed 30 August 2019).

²² China FTA Network, ‘China-GCC FTA’ (12 May 2016), <http://fta.mofcom.gov.cn/topic/engcc.shtml> (accessed 30 August 2019).

²³ European Parliament ‘EU and China Comprehensive Agreement on Investment (EU–China CAI)’, www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/a-balanced-and-progressive-trade-policy-to-harness-globalisation/file/eu-china-investment-agreement (accessed 30 August 2019).

²⁴ China FTA Network, ‘China-RCEP’ (22 August 2016), <http://fta.mofcom.gov.cn/list/rcepen/enrcepenews/1/encateinfo.html> (accessed 30 August 2019).

The web of legal ties means that there will be few Belt and Road states in which transnational trade and investment would enjoy no legal protection. Only a handful of states have not concluded BITs with China: these being Afghanistan, Bhutan, the Maldives, Montenegro, Nepal and Timor-Leste (note also that BITs signed between China and Jordan in 2001,²⁵ and China and Brunei in 2000,²⁶ have yet to come into force).²⁷ Palestine has BITs in place with only four other Belt and Road states, not including China,²⁸ and two of these – that with Jordan and Turkey – are not yet in force.²⁹ But Palestine has acceded to the Hague Convention for the Pacific Settlement of International Disputes, and has established FTAs with the European Union and the Arab League.³⁰ Bhutan has not concluded BITs with any states³¹ and is not yet a member of the WTO. It is, however, a member of SAFTA and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation.³²

Thus, a number of dispute resolution mechanisms are already in place. Each BIT has a built-in investor–state dispute settlement mechanism, for example, and Chinese claimants (including SOEs) have commenced a number of investor–state arbitrations – though as yet only three have

- ²⁵ Investment Policy Hub, 'Jordan', <https://investmentpolicy.unctad.org/country-navigator/109/jordan> (accessed 30 August 2019).
- ²⁶ Investment Policy Hub, 'Brunei Darussalam', <https://investmentpolicy.unctad.org/country-navigator/32/brunei-darussalam> (accessed 30 August 2019).
- ²⁷ Ministry of Commerce, Chinese People's Republic, 'Bilateral Investment Treaty' (31 March 2016), <http://english.mofcom.gov.cn/article/bilateralchanges/201603/20160301287079.shtml> (accessed 30 August 2019).
- ²⁸ Investment Policy Hub, 'Egypt – State of Palestine BIT (1998)' <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1384/egypt-state-of-palestine-bit-1998> (accessed 30 August 2019). Investment Policy Hub, 'State of Palestine – Russian Federation BIT (2016)' <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3786/state-of-palestine-russian-federation-bit-2016> (accessed 30 August 2019).
- ²⁹ Investment Policy Hub, 'Jordan – State of Palestine BIT (2012)' <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2174/jordan-state-of-palestine-bit-2012> (accessed 30 August 2019). Investment Policy Hub, 'Turkey – State of Palestine BIT (2018)' <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3832/turkey-state-of-palestine-bit-2018> (accessed 30 August 2019).
- ³⁰ Permanent Court of Arbitration, 'New PCA Member State: Palestine' (15 March 2016), <https://pca-cpa.org/en/news/new-pca-member-state-palestine/> (accessed 30 August 2019); Investment Policy Hub, 'State of Palestine', <https://investmentpolicy.unctad.org/country-navigator/161/state-of-palestine> (accessed 30 August 2019).
- ³¹ Investment Policy Hub, 'Bhutan: BITs', <https://investmentpolicy.unctad.org/country-navigator/25/bhutan> (accessed 30 August 2019).
- ³² Investment Policy Hub, 'Bhutan: TIPs', <https://investmentpolicy.unctad.org/country-navigator/25/bhutan> (accessed 30 August 2019).

been commenced against it.³³ China is already an active participant in WTO dispute settlement processes: it has brought 20 cases, acted as respondent in 43 and participated as a third party in 173.³⁴ But the *Action Plan* does not identify any vision for dispute resolution beyond these existing mechanisms.

1.3 What Are the Possibilities for a ‘Belt and Road’ Dispute Resolution Mechanism?

A combination of mediation and arbitration appears to be the popular choice here.³⁵ The Supreme People’s Court of the People’s Republic of China has ventured an opinion (in July 2015) indicating as much. It instructed the courts below it to ‘give support to the resolution of disputes by the Chinese and foreign parties through mediation, arbitration, and other non-litigation forms’ and ‘promote the improvement of the joint working mechanism for commercial mediation, arbitration mediation, people’s mediation, administrative mediation, industrial mediation, and judicial mediation’.³⁶

I understand that the International Academy of the Belt and Road in its *Blue Book on the Dispute Resolution Mechanism for the Belt and Road* advocated the creation of a uniform dispute resolution mechanism adopting the approach of mediation followed by arbitration.³⁷

³³ *Hela Schwarz GmbH v. People’s Republic of China*, ICSID Case No ARB/17/19; *Ekran Berhad v. People’s Republic of China* (ICSID Case No ARB/11/15); *Ansung Housing Co, Ltd. v. People’s Republic of China* (ICSID Case No ARB/14/25). For cases brought by Chinese investors, see, for example: *Tza Yap Shum v. Republic of Peru* (ICSID Case No ARB/07/6); *Ping An Life Insurance Company of China v. Kingdom of Belgium* (ICSID Case No ARB/12/29); *Sanum Investments Limited (Investor/Claimant) v. Laos* (PCA Case No 2013-13); *Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen* (ICSID Case No ARB/14/30).

³⁴ World Trade Organisation, ‘Disputes by Country/Territory’ (2016), www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (accessed 30 August 2019).

³⁵ See also Sienho Yee, ‘Dispute Settlement on the Belt Road: Ideas on System, Spirit and Style’ (2018) 17 CJIL 907.

³⁶ Chinese Supreme People’s Court, ‘Several Opinions on Providing Judicial Services and Guarantee for the Building of One Belt One Road by People’s Courts (No. 9 [2015] of the Supreme People’s Court)’ (16 June 2016) para 11 (unofficial translation).

³⁷ Xinhua Finance Agency, ‘Blue Book the Dispute Resolution Mechanism for B&R Was Issued’ (12 October 2016), http://en.xfafinance.com/html/13th_Five-year_Plan/Development_Policy/2016/267617.shtml (accessed 30 August 2019); Yuen, Script of Presentation at the 5th Asia Pacific ADR Conference (12 October 2016) para 15, www.doj.gov.hk/eng/public/pdf/2016/sj20161012e2.pdf (accessed 30 August 2019).

Arbitration is also the model of dispute resolution which the Asian Infrastructure Investment Bank's Articles of Agreement have been drafted to include.³⁸

The China International Economic and Trade Arbitration Commission (CIETAC) launched its Investment Arbitration Rules in December 2017, which are the first set of investment arbitration rules promulgated by the Chinese arbitral institution.³⁹ This step will likely pave the way for the CIETAC and its rules to be adopted more widely in future investment agreements or instruments involving Chinese parties.⁴⁰

On 23 January 2018, China's Central Leading Group for Comprehensively Deepening Reforms released plans for the establishment of a Belt and Road dispute settlement mechanism.⁴¹ On 1 July 2018, China's Supreme People's Court followed up this announcement with issuing the 'Provisions on Several Issues Regarding the Establishment of the International Commercial Court'.⁴²

The Provisions include nineteen articles that provide a skeleton for the Belt and Road dispute settlement mechanism.⁴³ According to the Provisions, the Belt and Road dispute settlement mechanism will comprise two international commercial courts (collectively known as the China International Commercial Court (CICC)): one in Xi'an addressing commercial disputes from projects on the Silk Road Economic Belt, and one in Shenzhen addressing disputes from the 21st Century Maritime Silk Road.⁴⁴

³⁸ Asian Infrastructure Investment Bank, Articles of Agreement, Article 55, www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_french_bank_articles_of_agreement.pdf (accessed 30 August 2019).

³⁹ Jue Jun Lu, 'Dispute Resolution Along the Belt and Road: What Does the Future Hold?' (2 August 2018), <http://arbitrationblog.practicallaw.com/dispute-resolution-along-the-belt-and-road-what-does-the-future-hold/> (accessed 30 August 2019).

⁴⁰ Ibid.

⁴¹ Guo Liqin, *China Will Set Up a New International Commercial Court in Beijing, Xi'an and Shenzhen*, Yicai (24 January 2018), <https://perma.cc/7C2U-43UG> (accessed 30 August 2019).

⁴² Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, <http://cicc.court.gov.cn/html/1/219/199/201/817.html> (accessed 30 August 2019).

⁴³ Zachary Mollengarden, "'One-Stop" Dispute Resolution on the Belt and Road: Toward an International Commercial Court with Chinese Characteristics' (2019) 36(1) *Pacific Basin Law Journal* 65, 101.

⁴⁴ Mollengarden (n 38) 74.

The CICC will be a ‘permanent adjudication organ’ of the Chinese Supreme Peoples’ Court.⁴⁵ According to Article 11 of the Provisions, the CICC will be a ‘one-stop’ mechanism, acting as a ‘dispute resolution platform’ through which ‘mediation, arbitration, and litigation are efficiently linked’. How this one-stop dispute resolution mechanism will work in practice remains to be seen.

The CICC will be comprised exclusively of Chinese nationals,⁴⁶ and parties may only be represented by Chinese qualified attorneys.⁴⁷ The judges of the CICC, however, will be supported by an International Commercial Expert Committee, the members of which will serve as mediators in international commercial disputes⁴⁸ and assist with the interpretation of foreign law.⁴⁹

As a member of the International Court of Justice, I would be remiss if I did not note that arbitration is not the only possibility. The Chinese Supreme People’s Court in its July 2015 opinion acknowledged ‘the advantages of various dispute resolution methods in resolving disputes and conflicts involved in the construction of the “Belt and Road” and ‘diversified demands of the Chinese and foreign parties for the resolution of disputes’.⁵⁰ A unified system does not have to identify a single mechanism for all types of disputes – as Part XV of UNCLOS shows. For example, it would be possible for ‘mixed’ (state–private actor) disputes to be referred to one mechanism, while interstate disputes were referred to another. The International Court is an option that I would encourage policymakers to consider as a possible forum for the latter.

The International Court offers various advantages. It is outside the Belt and Road states and thus offers geographic neutrality; the diversity and size of the bench is aimed at political and ideological neutrality. Although the Court has general jurisdiction, it has a proven track record in the

⁴⁵ Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court, <http://cicc.court.gov.cn/html/1/219/199/201/817.html> (accessed 30 August 2019), Article 1.

⁴⁶ Jue Jun Lu, ‘Dispute Resolution Along the Belt and Road: What Does the Future Hold?’ (2 August 2018), <http://arbitrationblog.practicallaw.com/dispute-resolution-along-the-belt-and-road-what-does-the-future-hold/> (accessed 30 August 2019).

⁴⁷ Mollengarden (n 38) 101.

⁴⁸ Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court, Article 12.

⁴⁹ *Ibid.*, Article 8.4.

⁵⁰ Chinese Supreme People’s Court, ‘Several Opinions on Providing Judicial Services and Guarantee for the Building of One Belt One Road by People’s Courts (No. 9 [2015] of the Supreme People’s Court)’ (16 June 2016) para 11 (unofficial translation).

settlement of certain types of disputes that are of particular relevance to the BRI, such as territorial disputes (including as they relate to maritime delimitation). The Court's position at the informal apex of the international judicial system gives it unique authority, borne out by scholarly studies revealing rather high levels of compliance with its decisions.⁵¹ In cases of non-compliance, aggrieved states may refer their cases to the Security Council, 'which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment',⁵² giving their cause a heightened profile irrespective of the Council's ability or inclination to respond effectively.

The working methods of the Court also provide certain advantages to litigant states. Chief among these is the amount of time and energy that is given to each case. Each dispute is heard by a full bench. That is, at least fifteen (plus ad hoc judges, if any) judicial minds are brought to bear on every case. Moreover, the judges must vote separately on each aspect of the Court's decision. The process is both inclusive and painstaking.

Over the years, the Court has shown itself responsive to criticism by adjusting a number of its working methods. Answering concerns of slowness, for example, it has shortened the time-limits for written proceedings; undertaken several cases at once; and shortened the length of time allowed for deliberations. The timescale for processing new cases is now comparable to those of an arbitral tribunal.

It is worth recalling also that China is already a party to the Statute of the Court, along with every one of its potential Belt and Road partners, aside from Palestine.⁵³ Furthermore, there is always a Chinese judge on the Court.

1.4 Is A 'Belt and Road' Dispute Resolution Mechanism Desirable?

In assessing our response to this question, we would need to think carefully about the advantages and disadvantages – specific to the BRI – attendant on adding a new layer of jurisdiction to an already complicated web of international arrangements. Proliferation of dispute

⁵¹ Paulson (2004) 98 *AJIL* 434; Schulte, *Compliance with Decisions of the International Court of Justice* (2005); Llamzon (2007) 5 *EJIL* 815.

⁵² UN Charter, Article 94(2)(g).

⁵³ United Nations, 'Member States', www.un.org/en/member-states/ (accessed 30 August 2019).

resolution mechanisms has sparked some anxiety and created difficult problems of delineation, not least under Part XV of UNCLOS.

To be sure, globalisation has deeply affected the content and modes of enforcement of international law. It is creating strong pressures for regulation and enforcement mechanisms in some fields, encouraging the emergence of branch-specific mechanisms. Apart from UNCLOS, we have witnessed the emergence of international criminal tribunals, human rights courts, GATT panels and various modes of arbitration.

The proliferation of institutions designed to administer specific substantive fields of international law has brought some benefits. A problem arising within a specific area of law can be dealt with by a tribunal that is dedicated to problem-solving of that specific kind. Regional mechanisms are able to offer a level of geopolitical sensitivity that can be lacking from less focussed tribunals. This can have a real impact on the tribunal's interpretation of the respective rights of the parties, particularly in cases that call for an assessment of the equities.

But the type of dispute settlement mechanism that is appropriate will depend on the particular facts, the parties involved and their preferences. In my experience, states like to be able to draw on the fullest range of possibilities when choosing a dispute resolution mechanism for a particular dispute.

Complicating the picture in the Belt and Road context is the fact that its envisioned partners belong to an array of regional organizations – the European Union, the Arab League, the African Union and the Association of Southeast Asian Nations, for example. States' ability to commit to a Belt and Road dispute resolution mechanism might be affected by these other affiliations.

1.5 Conclusion

There is to my mind no clear winner in this assessment. The types of disputes that might arise in the context of the BRI are notably diverse, and this quite apart from the amorphous subject matter covered by its objectives. Perhaps the answer is that no *single* mechanism is possible.

A Chinese proverb on the virtues of third party dispute resolution comes to mind: 'Settling a dispute through the law is like losing a cow for the sake of a cat.' There is a perception that judicial dispute settlement can be time-consuming, costly and unpredictable. This no doubt cuts across the Chinese interest in encouraging the settlement of differences through negotiation or mediation before turning to tribunals.