



INTERNATIONAL LEGAL ISSUES OF THE BELT AND ROAD INITIATIVE

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Belt and Road Initiative (BRI)

- BRI was proclaimed by President Xi in October 23, 2013.
- Silk Road Economic Belt and 21st century Maritime Silk Road.
- BRI includes not only infrastructure but also a set of instruments for policy coordination across Asia and beyond, financial integration, trade liberalisation, as well as people-to-people connectivity.
- With 75 economic and trade cooperation zones established along the Belt and Road route, China's trade with participating countries has reached 30 trillion yuan (US\$ 4.4 trillion) and its investment in them has exceeded US\$ 70 billion. The investment has generated more than 200,000 jobs.

One belt, one road

China is pushing to revive its ancient overland and maritime silk routes to Europe. The route connects many land and sea ports over three continents.



ST GRAPHICS ADAPTED FROM REUTERS

TOPICS

- Opportunities and Challenges of the BRI
- Legal Convergence in the BRI
- Dispute Resolution in the BRI
- Cultivating Legal Talents
- Conclusion

OPPORTUNITIES AND CHALLENGES

Opportunities:

- Trade & Investment Facilitation: China has signed bilateral and multilateral agreements with 131 countries and 31 international organisations since 2013.
- Infrastructure Connectivity: railways, roads, shipping, aviation, pipelines, and integrated space information networks.
- Legal Cooperation: international commercial courts; a “one-stop” diversified resolution mechanism; improving the business environment, etc.



OPPORTUNITIES AND CHALLENGES

Challenges:

- Comprehending the Supporting BRI Policies
- How to minimise the risks brought by overseas investment & trade restrictions?
- Different Legislation/Jurisdictions in the BRI countries/regions:
legal gap

- Each country has its own legal system. Out of all 65 BRI countries, about 41 are civil law countries — including Russia, Turkey, Iraq, Kuwait, Croatia, the Czech Republic, and China — about 11 are common law countries — such as Singapore, India, Nepal, Israel, Sri Lanka, Pakistan, and Philippines — about four are Islamic law countries, and about nine are mixed or hybrid law countries.
- Some countries are familiar with international dispute resolution mechanisms, such as international commercial / investment arbitration, while to others these notions are completely strange.

LEGAL CONVERGENCE IN THE BRI

Significance of Legal Convergence:

- The Objective of BRI: creating a cohesive economic area by building both common hard and soft infrastructures in the BRI community with predictable rules and enforceable legislation.
- Different Cultures, Jurisdictions & Legal development: legal convergence for a common legal structure for both dispute resolution and enforcing agreements within BRI is important.



THE ROLE OF INTERNATIONAL LEGAL MECHANISM IN THE BRI LEGAL CONVERSION

- **Bilateral Investment Treaties (BITs)**
- **Bilateral/Regional Free Trade Agreements (FTAs)**

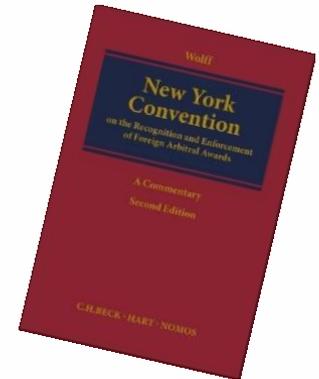


DISPUTE SETTLEMENT IN THE BRI

Practice to the Harmonisation of BRI Dispute Settlement

Arbitration

- The New York Convention:
over 90% of the BRI members are signatories.
- HKIAC:
extensive experience in resolving BRI disputes.



香港國際仲裁中心
Hong Kong International
Arbitration Centre

- On June 16, 2015, China's Supreme People's Court issued an Opinion on the People's Courts Providing Judicial Services and Safeguards for the Construction of the Belt and Road (FaFa [2015] No.9, the SPC's BRI Opinion), which explicitly encourages the use of international arbitration in resolving BRI disputes, and requires the People's Courts to efficiently recognise and enforce BRI awards, and to improve the mutual recognition and enforcement of arbitral awards with BRI countries that are not member states of the New York Convention.

DISPUTE SETTLEMENT IN THE BRI



最高人民法院国际商事法庭
China International Commercial Court

Litigation

- China International Commercial Courts (CICC): Shenzhen (the sea routes) and Xi'an (new Continental Silk Roads) on 29 June 2018



The First International Commercial Court



The Second International Commercial Court

International Commercial Expert Committee
composed of Chinese and foreign experts well versed in international law and have an excellent grasp of their own country's law, who have rich practical experience and excellent international reputation

The judgments and rulings made by the CICC are binding on the parties and with legal effect

SPC designates Senior Judges that have rich adjudication experience, familiar with international treaties, international conventions and practices of international trade and investment, who could work proficiently in both Chinese and English

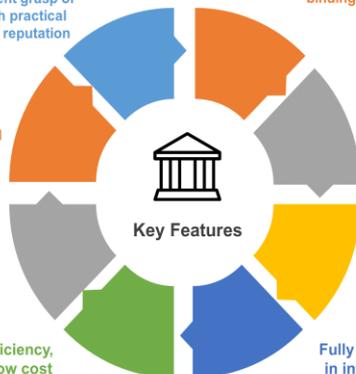
Promote connectivity of litigation, mediation, and arbitration, form a convenient, expeditious, low-cost "one stop" dispute resolution platform

Handle international commercial disputes of equal parties

Advance international judicial assistance work, promote efficient and smooth mechanism of international judicial assistance

Aim at fairness, efficiency, convenience and low cost

Fully utilize information technology in international dispute resolution



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

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;

First instance international commercial cases that have a nationwide significant impact

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;

Other international commercial cases that the Supreme People's Court considers appropriate to be tried by the International Commercial Court



DISPUTE SETTLEMENT IN THE BRI

The Features of CICC

Rules

- *Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court*
- *Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)*
- *Working Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation)*
- *Notice of the Supreme People's Court on Inclusion of the First Group of International Commercial Arbitration and Mediation Institutions in the "One-stop" Diversified International Commercial Dispute Resolution Mechanism*



DISPUTE SETTLEMENT IN THE BRI

Jurisdiction (5 categories)



1. First-instance international commercial cases, (1) in which the parties have chosen the jurisdiction of the SPC, and with an amount in dispute of at least RMB 300 millions; (2) or over which the high courts have jurisdiction but consider should be transferred to the SPC, and the SPC approves of the transfer; (3) or which have a nationwide significant impact.
2. Cases involving applications for interim measures in aid of arbitration for setting aside or enforcement of international commercial arbitral awards;
3. Any other international commercial cases that the SPC considers appropriate to be tried by the CICC

International Commercial Cases

- Foreign elements:
 - One or both parties are foreign nationals;
 - One or both parties are residents outside of China;
 - The object in dispute is outside the territory of China; or
 - The legal facts that create, change or terminate the commercial relationship have taken place outside the territory of China.
- Inter-State investment/trade disputes and investor-State investment disputes are not within the CICC jurisdiction.

DISPUTE SETTLEMENT IN THE BRI

Working Language/Background

1. Judges proficient in English
2. International Commercial Expert Committee (August 2018)



DISPUTE SETTLEMENT IN THE BRI



One-stop Dispute Resolution Mechanism

- Integration of litigation, mediation and arbitration
- Pending issues, such as enforcement of judgments, relationship between judges and committee; language
- Online Dispute Resolution

International Lawyers and law firms (legal industry)

The BRI also offers ample room for lawyers and law firms to generate new work and capitalise on new opportunities.

In recent years, China's Ministry of Justice has taken steps to further liberalise the legal services industry, particularly with significant achievements in the free trade zones.

CULTIVATING LEGAL TALENTS

- University Alliance of The Silk Road (UASR): 2015 cooperative education platform to further regional development
- The New Silk Road Law Schools Alliance



Connection: Guangdong-Hong Kong-Macao Bay Area (大灣區)

- The construction of Guangdong-Hong Kong-Macao Bay Area should serve the overall planning of the BRI.
- It will contribute to the theoretical and practical innovation path for how to solve international commercial disputes between different legal system, as well as provide an international commercial dispute settlement mechanism for the countries along the Belt and Road.
 - Conflicts of law
 - Difference between arbitration rules, dispute resolution mechanism
 - Cooperation mechanism
 - Legal professionals

BRI Community so far

- AIIB to support infrastructure building in the Asia-Pacific region
- Bilateral and regional cooperative agreements between China and BRI countries in trade and investment
- Development on dispute resolution
- University alliances in cultivating legal talents (including lawyers)

CONCLUSION

- The Significance of Legal Convergence: to keep up the momentum for continuous efforts towards a harmonised culture and legal environment within the community till 2049, the planned completion year of the BRI
 - Strengthening the role of BITs and FTAs in the rule-making process of the BRI community
 - Enhancing and improving current multi-jurisdictional dispute resolution system
 - Cultivating more legal talents specialised in multi-jurisdiction legal services

Thank you