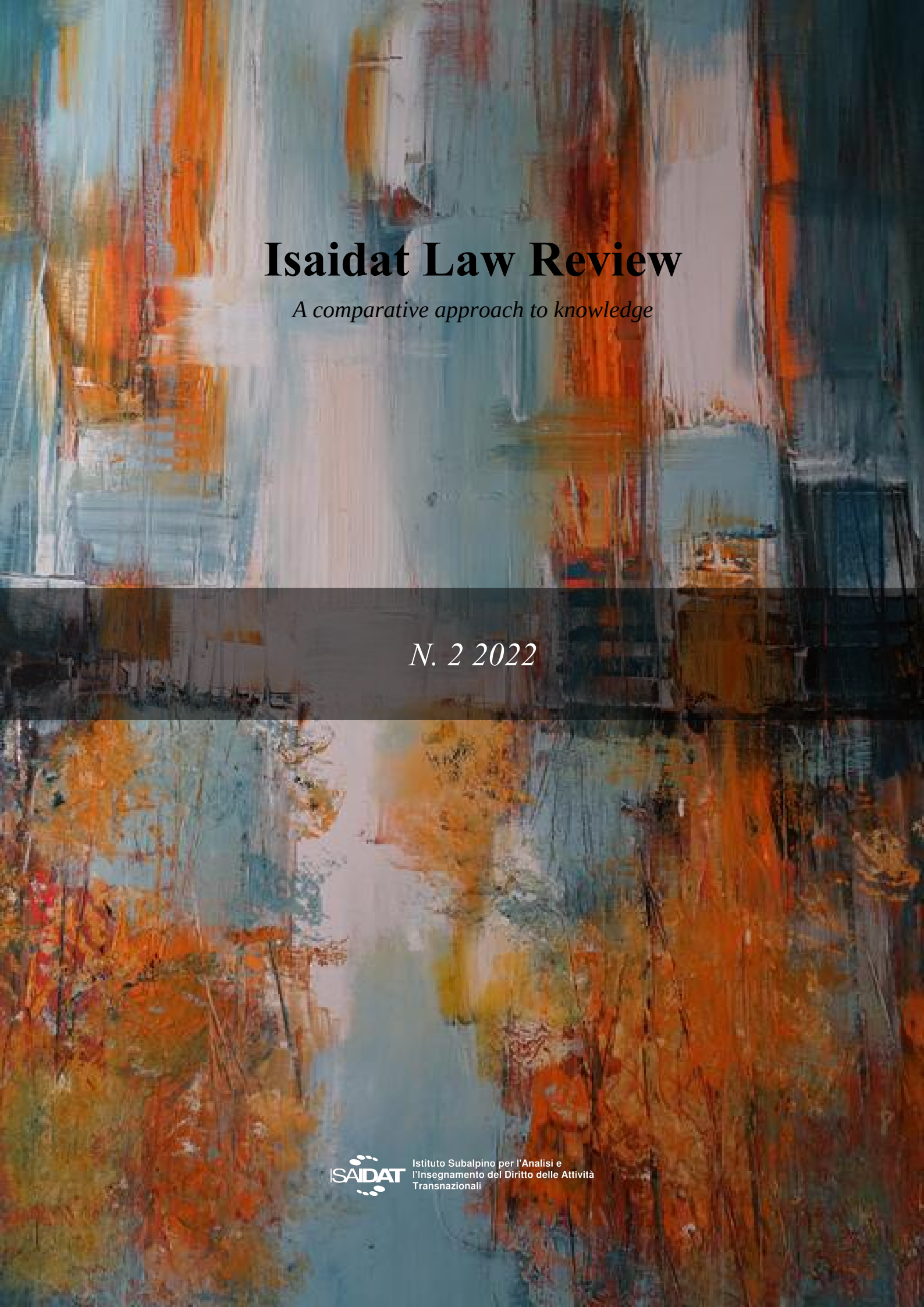

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Indice

Changes and Challenges in Private Law

The Multiple Creative Dimensions of Law

Some Issues of Legal Methodology

The Chinese Approach to Dispute Settlement under the BRI

Marta BONO [*]

In 2018 the Chinese Supreme People's Court has established two International Commercial Courts (CICC), which will act as "One Stop" platform and will have jurisdiction over commercial disputes related to the Belt and Road Initiative (BRI). Since such jurisdiction is not compulsory for BRI contracting parties, this paper aims at investigating how the CICC will fit in the International Dispute Resolution arena by analyzing first what are the types of disputes that may arise within the BRI and what are the options already in place for the parties to choose; it will thendescribe the characteristics of such International Commercial Courts and the "One-Stop" working mechanism, tracing the potential issues that may prevent non-Chinese parties from selecting the CICC. Finally, the paper suggests some adjustments for the Courts to be perceived as truly "international" and draws some conclusions on the role that the CICC may play in the future.

Nel 2018, la Corte Suprema cinese ha istituito due Corti Commerciali Internazionali (CICC), le quali fungeranno da piattaforma "One Stop" e avranno giurisdizione sulle dispute commerciali relative all'Iniziativa Belt and Road (BRI). In considerazione del fatto che tale giurisdizione non è vincolante per le parti coinvolte nel progetto, il paper vuole analizzare innanzitutto i tipi di dispute che possono sorgere all'interno della BRI e le opzioni già in atto tra cui le parti possono scegliere per risolvere le loro controversie. Successivamente, il paper descriverà le caratteristiche di tali Corti Commerciali Internazionali e il funzionamento del meccanismo "One Stop", individuando le possibili criticità che possano ostacolarne la scelta per le parti non cinesi. Infine, verranno esposte le conclusioni sul futuro ruolo delle Corti e come queste dovrebbero adeguarsi per essere percepite come autenticamente "internazionali".

1. THE PROJECT

The Belt and Road Initiative (hereinafter "BRI") is a very ambitious project launched by the Chinese President Xi Jinping in 2013, modeled on the heritage of the Ancient

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Silk Road, which brought great economic and commercial benefits to Asia, Continental Europe, and the Near East in the mid-15th century.

The BRI is the result of two different initiatives: the land-based Silk Road Economic Belt ("Belt"), which aims at joining Asia and Europe together and linking China with Central and West Asia, Southeast Asia, Russia, Europe, the Persian Gulf, and the Mediterranean Sea with railways, highways, and fiber-optic cables; and the 21st Century Maritime Silk Road ("Road"), a sea-based project that links China with the sea ports, coastal lines, and markets in the Pacific, Indian, and Atlantic oceans[1]. (Fig.1)

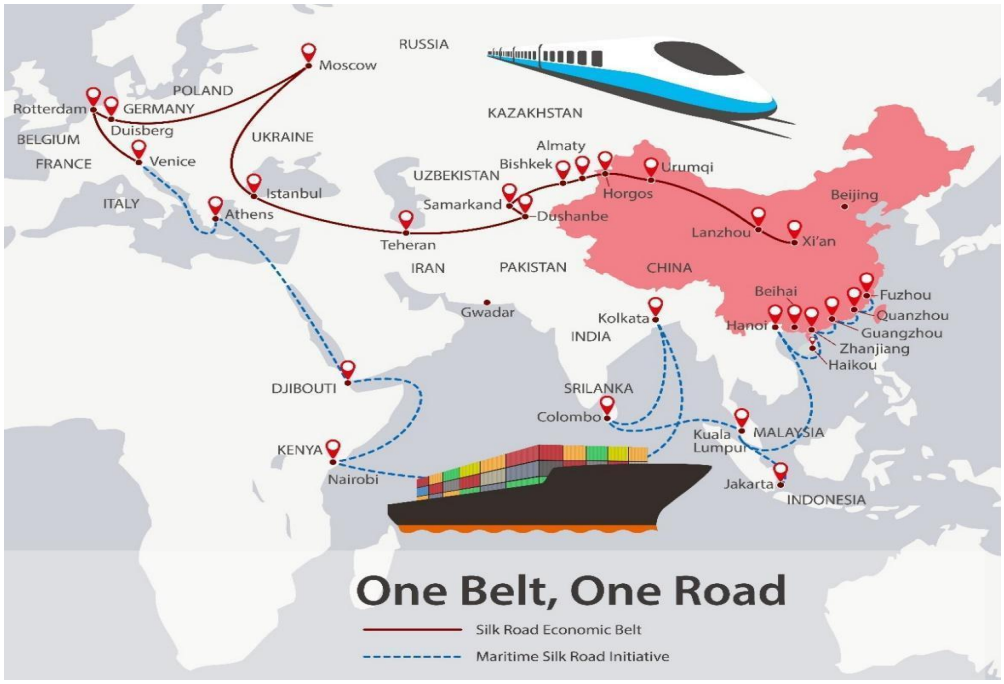

Figure 1.Source:http://www.china-arbitration.com/index/news/detail/id/2114.html.

The BRI encompasses the promotion of trade links, capital flows, infrastructure investment and policy coordination among the states involved,thereby becoming a substantial strategic endeavor and an extraordinary effort in terms of Chinese financial commitment[2].

At present, the BRI comprises more than 65 countries -most of these are either developing orleast-developed economies-making up to 65 percent of the world's population, and 30 percent of the global economy. In addition, merchandise trade occurring between

[1] J. WANG, *Dispute Settlement in the Belt and Road Initiative: Progress, Issues, and Future Research Agenda*, in*The Chinese Journal of Comparative Law,* VIII,1,2020,pp. 4-28.

[2] According to data on Chinese investments in the 138 countries participating in the Belt and Road Initiative, there were around US$47 billion worth of total BRI investments in 2020. This is almost US$78 billion less than the peak year of BRI investments in 2015, which represents a reduction of 54% from investments in 2019. On the topic see N. WANG*China's Investments in the Belt and Road Initiative (BRI) in 2020*, Green BRI Center, International Institute of Green Finance (IIGF), Beijing, 2021. See alsoJ. CRAWFORD, *China and the Development of an International Dispute Resolution Mechanism for the Belt andRoad Construction*, in W. SHAN, S. ZHANG, J. SU(eds),*China and International Dispute Resolution in the Context of the "Belt and Road Initiative"*, Cambridge, 2020, p. 12.

the economies in the BRI's many economic corridors form 40 per cent of global exports[3]. On the investment front, the market potential is remarkably more impressive. The law firm Baker McKenzie and the BRI consultancy firm Silk Road Associates modelled five scenarios of BRI investments for the 2020s, all indicating that the 2020s could be a golden Era for infrastructure investments in the BRI area[4],albeit the COVID-19 pandemic may have contributed to the BRI investments' weakest growth since the Chinese Initiativewas launched.

Considering that BRI is fundamentally an economic and political project, its legal aspects are presently not considered as a priority. This can be drawn from the BRI definition released by the Chinese authorities where no reference – even indirect – can be found to the legal implications of the BRI: "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"[5]. The BRI has no specific implementation or governance structure, and it seems that there is no need to create any[6]. There is no "Belt and Road" convention or agreement for the parties to adhere to in order to join in the Initiative, nor there is any specific legal framework indicating the overarching strategy and the norms applicable to the Initiative. Ultimately, the BRI simply expresses the external policy of China and – in line with the Chinese culture – it is flexible and even rhetoric, as the Memoranda of Understanding that China has signed with some states adhering to the BRI demonstrate[7]. In the implementation of the Initiative, China aims at taking full advantage of the existing bilateral and multilateral cooperation mechanisms, so that the BRI will take advantage from the existing international law frameworks of cooperation and economic integration rather than replacing them or adding a new one.

The utter size of the economic activities involved in the BRI would for sure generate the need for a reliable and predictable cross-border dispute settlement mechanism. The countries involved in the Initiative all have distinct legal systems, cultures, and traditions, which will unavoidably lead to the emergence of legal misunderstandings and, consequently, to potential controversies. The given situation may pose several risks and

[3] The BRI comprises six transregional economic corridors: the China- Mongolia- Russia corridor; the Eurasian Land Bridge; the China-Asia-Central Asia Occidental corridor; the economic corridor of China and Pakistan (China-Pakistan Economic corridor- CPEC); and finally, the corridor of Bangladesh-China-India-Myanmar.

[4] See Backer McKenzie, *BRI & Beyond Forecast, Five Divergent BRI Forecasts for the Decade Ahead*,2019, available athttps://www.bakermckenzie.com/en/insight/topics/bri-and-beyond (accessed on November 30, 2022)

[5] See section III of the "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road",National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorizationavailable at https://www.beltandroad.gov.hk/visionandactions.html(accessed on November 30, 2022).

[6] According to section VIIof the "Vision and Action Plan on jointly building Belt and Road": "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 and Road cooperation […] and align national development programs and regional cooperation plans". Available at http://www.beltandroadforum.org/english/n100/2017/0410/c22-45-5.html (accessed on November 30, 2022).

[7] J. CRAWFORD,*op.cit.*

challenges for investors, contractors, and other service providers, as performance of the contracts, to make an example, would be carried out in jurisdictions where litigating disputes, recognition and enforcement of court judgements or arbitral awards, may be complex. Another major issue is related to the fact that the BRI's participating nations all vary in their levels of development and several of them are also classified as "high risk" nations,like Syria or Afghanistan,not to mention that the Belt and Road will pass directly through zones that are the subject to serious territorial and sovereignty disputes, as Kashmir or Bhutan[8].This is a crucial factor that investors should carefully consider tomitigate the associated risks.An effective dispute resolution system could assist in easing the concerns that may otherwise jeopardize trade and investment in such unstable regions and promote the flow of investments throughout the BRI-adhering nations.

2. TYPES OF DISPUTES THAT MAY ARISE UNDER BRI

Describing the categories of disputes that may arise under the BRI is an important exercise that allows to understand how the newInternational Commercial Courts established by the Chinese government are going to fit in the international dispute resolution arena, and whether they will be able to offer a credible, satisfactory, and efficient option to the existing dispute resolution mechanisms.

The types of disputes that might arise under the BRI are extremely diverse, as various are the activities carried out within the BRI premise.The number of parties and their levels of sophistication will equally vary. Certainly, disputes will be cross-border, and will commonly involve at least a Chinese and anon-Chinese party.

Given this premise, three main categories of disputes can be identified: commercial disputes, investment disputes and international trade and investment disputes (or, if we look at the parties involved: state-to-state disputes, business to business disputes[9], and investor-state disputes).

Commercial disputes generally have a transactional nature and stem from a previous commercial contract; consequently, disputes arising out of these contracts are to be treated as ordinary commercial disputes by competent courts, resorting to rules of domestic law or international law (including both private international law and international economic law)[10]. In the BRI context, commercial disputes would mainly involve issues pertaining infrastructure construction (including railroads, ports, and industrial parks) and the related performance agreement[11], but also IP protection, competition law, Mergers and Acquisitions, sale of goods and servicesand so on. As for typical international commercial contracts, parties may include in their agreement a choice-of-forum clause that addresses upfront the dispute resolution procedures applicable to potential disputes arising among them[12]. Therefore, such disputes may potentially be submitted to

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[8] ID, *op.cit,* p. 14.

[9] Business to business in the context of BRI are most likely to involve Chinese state-owned enterprises.

[10] J. WANG, *op. cit.*

[11] ID, *op.cit.*

[12] However, certain types of conflicts, such as real estate or tax issues, may be subject to mandatory local laws as well as the mandatory jurisdiction of host country courts. Offshore disputes between the parties involved in BRI projects may also be subject to the jurisdiction of the courts in the parties' home countries. Disputes between Chinese parties to BRI financing arrangements, or between Chinese construction companies jointly building a road or a port, for example, will likely be heard by Chinese courts. See P. M. NORTON,*China's Belt and Road Initiative: Challenges for Arbitration in Asia,* in*U. PA. Asian L. Rev*., XIII, 2, 2018.

resolution in a broad range of judicial or arbitral *fora*. In the BRI case, this is particularly important as parties may wish to avoid their disputes to be resolved in potentially less favorable local courts, and\or being unable to enforce an award or a judgement once obtained[13].

As for the infrastructure, logistics or other projects related to the Maritime Silk Road, parties may consensually agree to refer their dispute to maritime arbitration, which is a recognized branch of dispute resolution in international trade and commerce,devoted exclusively to sea related cases[14].

Investment disputes would generally occur between a foreign investor and the host State, for this reason they are commonly referred to as investor-State disputes. Such disputes are usually addressed according to the dispute resolution procedures agreed upon in the relevant investment treaty. It is common practice to refer such disputes to the investor-State dispute settlement (hereinafter "ISDS") mechanism under various international investment agreements, including bilateral investment treaties (BITs), multilateral investment treaties (MITs), and free-trade agreements (FTAs)[15].

Bilateral and multilateral treaties are the most common types of agreements concluded between China and other BRI nations. Most of the bilateral investment treaties'contracting States are signatories to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States, also known as the "Washington Convention for the enforcement of arbitration awards", which allows for the easy circulation of the awards among the member countries.

Finally, international trade and investmentdisputes have been traditionally resolved through the Dispute Settlement Body within the World Trade Organization (hereinafter "WTO")[16], provided that such disputes involved an obligation under WTO agreements or free trade agreements. However,it is worth stressing that only the members of the WTO have standing within its dispute resolution mechanism. This means thatenterprises

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[13] Holman Fenwick Willian LLP., *The Belt and Road Initiative: Dispute Resolution along the Belt and Road,*2018,available at https://www.hfw.com/The-Belt-and-Road-Initiative-Dispute-Resolution-along-The-Belt-And-Road (accessed on November 30, 2022).

[14] Maritime affairs may arise fromdiverse activities concerning the matters of the sea: the financing, building, sale and acquisition of ships, the deployment of ships, the carriage of goods by sea, the insurance of ships, cargo and other marine adventures and the other contractual relationships arising from the use of ships.Historically, the leading organizations in the field have been situated in London and New York (respectively, the London Maritime Arbitrators Association, and the Society of Maritime Arbitrators). However, with the movement of trade flows from the European and North American regions to the Asia-Pacific region, maritime arbitration organizations have particularly developed also in China (especially in Beijing and Shanghai) and Singapore. The most commonly known are the China Maritime Arbitration Commission and the Singapore Chamber of Maritime Arbitration.

[15] See J. WANG, *op. cit*. See also D. FERGUSON,J. MCKENZIE, F. NG,*A Practical Guide to Chinese Investor Protections along the Belt and Road*, King & Wood Mallesons, 2018, available at https://www.kwm.com/global/en/insights/latest-thinking/a-practical-guide-to-chinese-investor-protections-along-the-belt-and-road.-html(accessed on November 30, 2022).

[16] Under the 1994 Marrakesh Agreement, in the event of a trade dispute between WTO members, the complaining member can request the establishment of a panel consisting of three individuals who will decide on the dispute. The panel is thus in charge of examining the consistency of the alleged violation with the WTO agreements and issues a report that the parties to the dispute will need to comply with after the adoption by the Dispute Settlement Body. If one of the parties to the dispute does not accept the report of the panel, it can appeal it before the Appellate Body. Each appeal is heard by a three-member chamber, which can uphold, modify, or reverse the panel's legal findings and conclusions. See Backer Mackenzie, *Deadlock at the WTO Appellate Body: No Consensual Way Out in Sight*, 2019, available at https://www.internationaltradecomplianceupdate.com/2019/12/12/wto-deadlock-at-the-wto-appellate-body-no-consensual-way-out-in-sight/ (accessed on November 30, 2022).

and individuals of a member country cannot directly bring a complaint against another member country; they could only persuade their government to make a complaint. This would entail that companies would have to call on their home governments to intervene diplomatically in foreign countries, thus paving the way for a state-to-state conflict, which especially under the BRI, should be duly avoided. In fact, when dealing with BRI-related disputes, one should keep in mind the commercial and economic dimension of the project avoiding any politicization of such disputes and the related method of dispute resolution, as this could otherwise jeopardize the bilateral diplomatic relations between the countries involved.

Besides, to date, the WTO Appellate Body is still in a state of impasse[17]. Therefore, it is expected that the WTO members will either agree to renounce to the second instance before the Appellate Body, or temporarily defer the disputes to alternative appeal proceedings, such as arbitration[18]. Within the BRI context, the WTO deadlock could lead to the establishment of a separate dispute settlement mechanism entirely dedicated to the resolution of State-to-State disputes.These inter-State disputes would refer mainly to the disagreements arising out of the large projects invested in by China in the host BRI country. So far, in State-to-State cases[19]China and the concerned BRI country have not opted for legal solutions. Instead, behind-the-door diplomacy has been relied upon predominately by these governments to address their disputes[20].

To sum up, depending on the nature of the dispute and the parties involved, the mechanisms and applicable rules for its resolution may change (international commercial arbitration, WTO's Dispute Settlement mechanism, Investor-State Dispute Settlement). A dedicated means of dispute resolution specifically for the BRI should, in principle, take into consideration such different nuances and meet the needs of all the parties that may be involved, from Statesand State-owned enterprises to private companies.

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[17] For the past years, the US continuously raised several concerns regarding the functioning of the Appellate Body. The issues highlighted by the US would request a structural intervention of the WTO members in the functioning of the Appellate Body.See Backer Mackenzie,*op.cit.*

[18] ID, *op.cit*. It is worth noting that the international context has undergone a remarkable change compared to the golden age of "universal" global multilateralism. The WTO has lost its good fortune, due mainly to the processes of economic regionalization that have been taking place over the past decade. This has resulted in the proliferation of multiple arbitration and dispute settlement agreements purely based of the preferences of the contracting parties.

[19] For example,the dispute arose out of China-invested BRI projects and the East Coast Rail Link (ECRL), which is one of China's major investments in Malaysia, with the agreement signed in 2017 between China and Malaysia's Najib government. See N. CHOW-BING, *Malaysia-China Cooperation on the Belt and Road Initiative under the Pakatan Harapan Government: Changes, Constitutes, and Prospects*, in NIDS ASEAN Workshop 2019, "*China's BRI and ASEAN"*, Joint Research Series no 17, 2019.

[20] In recent years, Chinese lawyers and judges have developed a novel idea called "law diplomacy", which aims to infuse legal awareness and consciousness into China's diplomatic work, converting some diplomatic issues into legal issues, and handling foreign affairs with legal approaches, thus contributing to legitimize China's foreign policy. In the field of dispute resolution, law diplomacy should convey the disagreements into the strictly legal dimension, proving for a peaceful and rational dispute settlement to ultimately achieve the establishment of an harmonious world order. For more on Chinese law diplomacy see W. ZHANG, Z. GU,*China's Law Diplomacy: Theory and Practice*, in*Global Review*, 2013, pp. 48–50.

3. THE CHINESE APPROACH TOINTERNATIONAL DISPUTE RESOLUTION

China has never been totally committed to international dispute resolution mechanisms, especially when it comes to international adjudication. Indeed, it has been observed that the Chinese approach to international dispute resolution is conducted on a pragmatic "case-by-case" basis[21]. However, it is also true that China has been particularly reluctant to international adjudication where the maintenance of its sovereignty was a crucial issue. On the contrary, the Chinese attitude towards international means of dispute settlement changes when it comes to international trade and investment. Indeed, China fully subscribes to the jurisdictional authority of the WTO's Dispute Settlement Body, and its compliance record with the WTO's decisions has been defined "respectable"[22]. With reference to investment law, China now welcomes the possibility to refer disputes to international means of dispute settlement such as the ISDS system in investor-State treaties, and recently also in State-to-State treaties[23].

The Chinese approach to international dispute resolution has evolved overtime to adjust to the new needs of Chinese traders and investors. During the first generation of China's investment agreements (from 1982 to the early 1990s) the dispute settlement clauses were not frequently provided, and where an inter-state dispute settlement clause was in place, the jurisdiction of the arbitral tribunal was generally limited to issues of expropriation[24]. This preclusive attitude towards international arbitration and other neutral *fora* arose from the fact that, in the first generation of agreements, China used to be the recipient of foreign direct investments[25]. Therefore, as the number of Chinese investments abroad was relatively small, China preferred to maintain its own authority over foreign initiatives.

With the second generation of agreements, (the period that goes from the early 1990s to the beginning of the twenty-first century) Chinese policy turned into "Going Abroad". Both China's counterparties and the dispute resolution mechanisms available to investors under these agreements expanded commensurately, increasingly providing the access to international arbitration under the auspices of ISDS, albeit with conditions[26]. For the Chinese investors, "Going Abroad" meant to assume greater risks, especially when investing in countries where the judiciary and its neutrality was more in doubt. Considering this, the appearance of more investor-friendly resolution clauses is

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[21] See J. WANG,*op.cit*. See also H. MOYNIHAN, *China's Evolving Approach to International Dispute Settlement*, International Law Programme of the Chatham House, 2017, available at https://www.chathamhouse.org/sites/default/files/publications/research/2017-03-29-chinas-evolving-approach-international-dispute-settlement-moynihan-final.pdf(accessed on November 30, 2022).

[22] See J. BACCHUS, S. LESTER, H. ZHU, *Disciplining China's Trade Practices at the WTO: How WTO Complaints Can Help Make China More Market-Oriented*, Cato Institute, 2018, Policy Analysis No.865, pp 6-7.

[23] See e.g., The Free Trade Agreement between the People's Republic of China and the Swiss Confederation (China-Switzerland FTA) signed on July 6, 2013.

[24] This does not mean that there were no Treaties at all providing for dispute settlement in international *fora* such as the ISDS. See e.g.,Art. 13(6) of the Agreement Between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the People's Republic of China on the Reciprocal Promotion and Protection of Investments, China-Sri Lanka, signed on March 13, 1986. See also, Z. MOLLENGARDEN, *"One-Stop" Dispute Resolution on the Belt and Road: Toward an International Commercial Court with Chinese Characteristics*, in*Pacific Basin Law Journal*,XXXVI, 1, 2019.

[25] ID, *op.cit.*

[26] China signed the ICSID Convention on February 9, 1990. The treaty entered into force in February 1993.

perfectly understandable[27]. Nevertheless, China continues to have a protective attitude towards its Chinese parties.As a matter of fact, the recourse tothe China International Economic and Trade Arbitration Commission(CIETAC), which is the oldest and largest arbitral dispute resolution body in China and to which the Chinese government pays special attention, is generally favored over other arbitration bodies as it allows for a greater protection of Chinese investments abroad[28].

It is with the third generation of investment agreements that China starts to adopt policies in line with the international standards, bringing us to the present situation. Especially within the BRI, it is China's long-term interest to encourage its own investors to refer claims to the ISDS system under bilateral investments treaties, especially because places where it may look to be safe to invest at present, may turn out to be at risk in the long run[29]. This calls for the need to refer the present disputes to reliable and consistent means of international dispute settlement.

4. THE CHINESE APPROACH TO DISPUTE RESOLUTION UNDER THE BRI

The Chinese approach to dispute resolution under the BRI is rather peculiar. It has changed over time, and still may change in the future. For this reason, before entering the detailed description of the current situation, it is necessary to get a glimpse on the evolution of the Chinese approach to dispute resolution from the inception of the Belt and Road project to the present situation, which sees the establishment of new commercial courts that may act, at the same time, as an arbitral court, a tribunal or even as a mediation institution. The procedure adopted by these courts has been defined specifically as "Arb-med". The meaning of such a definition, its implications and advantages will be analyzed just below, along with the concerns that have arisen or may arise with respect to impartiality and due process.

At the very launching of the project, the Chinese government and its designers did not focus much on the "disputes" side. As a matter of fact, from the Chinese perspective, the BRI was and had to be considered as a cooperation project, led by the principle of "gongshangongjian, gongxiang" (extensive consultation, joint contribution, and shared benefits)[30]. In this spirit, "[all BRI countries] should have settled disputes through dialogue, resolved differences through discussion, enhanced cooperation and mutual trust, and reduced mutual misgiving"[31].

[27] Z. MOLLENGARDEN, *op.cit.*

[28] Indeed, commentators have raised concerns about CIETAC's independence and impartiality, pointing out issues of party autonomy and due process as well.Such issues find a first and essential explanation on the fact that CIETAC Arbitration Rules are modelled upon the People's Republic of China Arbitration Rules, which suffer from some limitations and respond to national interests. It should be stressed out here that mainland CIETAC and its sub-commissionsobserve different rules compared to Hong Kong CIETAC, which rules are modelled upon the UNCITRAL Model Law, thus being more in line with international standards.For more on the topic seeR. THIRGOOD,*A Critique of Foreign Arbitration in China*,in *Journal of International Arbitration*, XVII, 3, 2000, pp. 89-101. On the Chinese investments' protection seeH. CHEN,*China's Innovative ISDS Mechanisms and Their Implications*, in*AJIL Unbound*, CXII, 2018, pp. 207-211.

[29] See J.CHAISSE, J. KIRKWOOD,*Chinese Puzzle: Anatomy of the (Invisible) Belt and Road Investment Treaty*,in *J. Intl. Economic L.,*XXIII,1, 2020, pp. 245–269.

[30] See 'Working Together to Deliver a Brighter Future for Belt and Road Cooperation', speech by Xi Jinping at the Opening Ceremony of the second Belt and Road forum for International Cooperation.

[31] BRI Progress, Contributions and Prospects 2019, available at https://govt.chinadaily.com.cn/s/201904/23/WS5cbe871b498e079e6801ec1b/the-bri-progress-contributions-and-prospects_2.html (accessed

In 2018 the situation changed. The Government understood that dispute settlement might form a critical part in the BRI's projects and transactions, and therefore it officially began to coordinate efforts to establish the means of dispute settlement for the BRI, without abandoning, at the same time, the principle of "gongshanggongjian, gongxiang", which was to inspire in any case the relationships between the BRI states.

It is worth mentioning that already in June 2015, the Supreme People's Court of China (hereinafter "SPC") promulgated 16 articles on "Judicial Opinions", which outlined the measures to be taken by the judiciary in support of the BRI[32]. Following the general trend of favoring a solution based on a combination of mediation and arbitration, the SPC 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 to "promote the improvement of the joint working mechanisms for commercial mediation, arbitration mediation, people's mediation, administrative mediation, industrial mediation, and judicial mediation". However, rather than being practical measures, the 16 points were more in the form of declarations, presumably issued by the SPC to demonstrate that the judiciary was in line with the policies adopted by the Chinese government[33]. Nevertheless, the 2015 Judicial Opinions had a positive impact on the Chinese traditional approach to reciprocity in the recognition and enforcement of foreign judgements[34]. Indeed, they encouraged Chinese courts to adopt the principle of "presumptive reciprocity"[35], which is understood as the recognition of reciprocity with another country if that country has not yet refused to recognize and to enforce a judgment issued by a Chinese court. This was a favorable sign indicating that Chinese courts were willing to adopt a more liberal approach to the recognition and enforcement of foreign judgements, insofar as the BRI was concerned.

As already mentioned, the official coordination began in 2018, when the Central Commission on Comprehensively Deepening Reform, chaired by President Xi Jinping, adopted a decision to establish dispute resolution mechanisms for the BRI[36]. The decision sets out several guiding principles for building China's own dispute settlement bodies for the BRI:

a. The principle of "extensive consultation, joint efforts, shared benefits" (gongshanggongjiangongxiang) which has always been a cardinal principle for the whole Ini-

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on November 30, 2022).

[32] 关于人民法院为"一带一路"建设提供司法服务和保障的若干意见 [Several Opinions on the Provision of Judicial Services and Safeguard for Building the Belt and Road by the People's Courts] Supreme People's Court, 2015, available at http://gongbao.court.gov.cn/Details/b10a1d30141bc4a4c7886b00d759c3.html. (Accessed on November 30, 2022)

[33] J. WANG, *op.cit.*

[34] See *infra* par. 2.

[35] Art. 6 of the 2015 BRI Opinions declares that the judiciary will take up two measures to realize mutual recognition and enforcement of judgements. First, the judiciary will work with other authorities in China to sign bilateral or multilateral treaties on judicial assistance to promote mutual recognition and enforcement between countries in the BRI area. Second, courts in China are encouraged to actively initiate the 'formation of reciprocity relationships' with other BRI countries by 'rendering judicial assistance to parties from other BRI countriesfirst'.

[36] 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' [The General Office of the Communist Party Central Committee and the General Office of the State Council Issued the 'Opinions Concerning the Establishment of International Dispute Settlement Mechanism and Institutions for the Belt and Road'] (Chinese Communist Party and the State Council, 27 June 2018)

tiative and that now entails openness and inclusiveness by involving experts specialized in international law as well as domestic laws of their respective jurisdictions, accounting for the differences among legal cultures and traditions within the BRI countries (in short, BRI dispute settlement attempted in this way, to be an international*forum*)[37].

b. The principle of fairness, efficiency, and convenience, which establishes the BRI dispute settlement mechanisms and institutions to be based on the good experiences of the existing international dispute settlement mechanisms and the wide acceptance by the international society[38].

c. The principle of party autonomy, a fundamental principle, which allows the parties to choose the methods of dispute settlement and the applicable laws (either their domestic laws or foreign laws familiar to them) and encourages the application of international treaties and customs.

d. The principle of diversity in dispute resolution which develops and improves upon a wide range of methods including litigation, arbitration, and mediation, and encourages the integration of these methods[39].

The following paragraph will show how these principles have been implemented by the Supreme People's Court in the design of the new International Commercial Courts for the resolution of the disputes under the BRI.

5. AN INTERNATIONAL COMMERCIAL COURT WITH CHINESE CHARACTERISTICS

Following the Chinese Communist Party decision, in June 2018, the SPC issued the "Provisions on Several Issues regarding the Establishment of International Commercial Courts"[40] (hereinafter "Provisions"), setting up the rules and the procedures upon which to establish the China International Commercial Courts (hereinafter "CICC")[41]. Under these rules, the CICC is the result of two courts: one seated in Xi'an addressing commercial disputes from projects on the Silk Road Economic Belt, and one seated in Shenzhen addressing disputes from the 21st Century Maritime Silk Road. Courts' judges are selected from senior judges familiar with international laws and norms, and proficient in English and Chinese[42]. The CICC will be composed exclusively of Chinese judges, and parties may only be represented by Chinese qualified attorneys. The CICC judgements are final and subject to no appeal. However, the losing party may apply to the SPC headquarters for a retrial of the case.

The Provisions also laid down a new International Commercial Expert Committeeconsisting of international commercial law experts selected not only from China but also from abroad[43], whose aim is to support the CICC in the interpretation of foreign

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[37] J. WANG, *op.cit.*

[38] ID, *op. cit.*

[39] ID, *op. cit*.

[40] 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] Supreme People's Court, Fa Shi [2018] 11, 27 June 2018,available at http://cicc.court.gov.cn/html/1/219/208/210/817.html (accessed on November 30, 2022).

[41] The press has labelled the new court as the "Belt and Road Court" (BRC), which expression is also rather used in the literature to make reference to the CICC.

[42] Art. 4 of the Provisions.

laws, and whose members will serve as mediators in international commercial disputes[44]. The role of the Committee is therefore purely advisory, as the decision remains in the hands of the Courts' judges.

For what concerns the type of disputes that are eligible to be resolved through the new International Commercial Courts, Art. 2 of the Provisions states that the CICC have jurisdiction over:

1. international commercial cases with the subject matter worth more than RMB 300 million, where the parties have agreed in writing to choose the International Commercial Court for adjudication in accordance with Art. 34 of the Chinese Civil Procedure Law (2017)[45];
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 of "nationwide significant impact";
4. applications for arbitration preservation measures under Art. 14 of the Provisions and applications to revoke or enforce an award from an international commercial arbitration;
5. any other international commercial case the SPC deems the CICC should have jurisdiction over[46].

It is worth specifying that, according to Art. 3 of the Provisions, "international commercial cases" are defined as such if: a. at least one party has a non-Chinese nationality, has no nationality, is a foreign enterprise or organization; b. at least one party habitually resides outside of the People's Republic of China; c. the subject matter is outside of the People's Republic of China; or d. the legal fact of creation, amendment or extinguishment of the commercial relationship occurred outside the People's Republic of China. Therefore, if a case fails what has been called the "three-element-test"[47] in defining a "foreign element" (that is the connection with a foreign jurisdiction of either parties, subject matter, or factual circumstances) the Court will not have jurisdiction over the case[48].

Considering the aforementioned provisions, it is already possible to draw some crucial considerations. Firstly, the jurisdiction of the CICC does not cover all the types of

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[43] Understandably, responding to the Government guidance about giving the new court an "international" dimension.

[44] Art. 12 of the Provisions.

[45] Art. 34 of the Chinese Civil Procedure Law, as revised in 2017 provides that: "The parties to a contractual dispute or any other property dispute may agree in writing to be subject to the jurisdiction of the people's court at the place having connection with the dispute, such as where the defendant is domiciled, where the contract is performed, where the contract is signed, where the plaintiff is domiciled or where the subject matter is located, etc., provided that such agreement does not violate the provisions of the Law regarding court-level jurisdictions and exclusive jurisdictions".

[46] Art. 2 of the Provisions.

[47] See J.CHAISSE, X. QIAN, *Conservative Innovation: The ambiguities of the China International Commercial Court,* in *AJIL Unbound*, CXV, 2021,pp. 17–21.

[48] Following two judicial interpretation documents issued by the SPC in 2012 and 2015 (SPC Interpretation No 24 of 2012 and SPC Interpretation No. 5 of 2015) the meaning of "foreign" has been expanded to those civil or commercial relationships that have a substantial connection with a foreign jurisdiction, even if they do not technically satisfy the three-element test. See Z. GUO, M. YIP,*Comparing the International Commercial Courts of China with the Singapore International Commercial Court*, in *INT'L & COMP. L.Q.*, LXVIII, 4, 2019, pp. 903 - 942. See also, J. WANG, *op.cit.*

disputes that may arise under the BRI project[49]. In fact, it is limited to commercial casesand does not extendto investor-state disputes or inter-state trade disputes. This is probably due to an interpretation of the reservation declaration issued by China when accessing the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the "New York Convention")in 1986. Indeed, in the "Notice of the Supreme People's Court on Implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Acceded to by China", the Supreme People's Court states at point 2 that:"In accordance with the commercial reservation declaration made by China upon its accession to this Convention, China will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered commercial under the national law of the People's Republic of China […] *except disputes between foreign investors and the host government"* (emphasis added)[50].Therefore, in the current scenario, the parties to an investor-state dispute will likely address the disputes to other international *fora*, such as the International Centre for Settlement of Investment Disputes.

Secondly, all those disputes that are not directly connected with China cannot be heard by the CICC[51]; the same occurs for all the international commercial disputes whose subject matter is below the threshold traced by Art. 2 of RMB 300 million. As a matter of practice, it is not easy to establish jurisdiction on this ground, considering that there is not always a clear correlation between the total value of a contract and the amount in dispute[52]. One cannot predict the "size" of the dispute when drafting a dispute resolution clause. For these reasons, it has been noted that such an approach leaves limited room for consensual jurisdiction and poses several difficulties for lawyers willing to select the CICC as dispute resolution *forum*. As pointed out by Huanzhi, a "safe" way to select the CICC would be to adopt a "non-exclusive" choice of court clause stipulating that disputes over 300 million RMB will be submitted to the CICC, and other disputes would be submitted to an arbitral tribunal orother Chinese courts[53]. However, because of the practical challenges this option continues to create, parties may decide not to use the CICC at all.

With the restriction on consensual jurisdiction, the CICC might only facilitate the resolution of cases which are already under the Chinese jurisdiction. In this way, jurisdiction would essentially be allocated "internally",within the Chinese court system itself[54].

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[49] See *infra*, par. 2.

[50] See Notice of the Supreme People's Court on Implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Accessed by China [Effective], Point II.
最高人民法院关于执行我国加入的《承认及执行外国仲裁裁决公约》的通知 [现行有效]

[51] Here Art. 34 mentioned in the Provision comes into play. Art. 34 enumerates several locations which parties can choose via a written jurisdictional agreement to enable the court of such locations to exercise jurisdiction over their disputes. It specifically provides that, for a consensual venue to be valid, such venue must have actual connection with the dispute. Thus, for the CICC would be difficult to satisfy the demands of parties seeking a neutral *forum* for BRI-related disputes.

[52] J. WANG, *op.cit*.

[53] See H. LI, *China's International Commercial Court: A Strong Competitor to Arbitration?* ,in *Kluwer Arbitration Blog*, 2018, available at http://arbitrationblog.kluwerarbitration.com/2018/09/30/chinas-international-commercial-court-a-strong-competitor-to-arbitration/ (accessed on November 30, 2022).

[54] ID, *op.cit.*

Furthermore, the establishment of the CICC does not deal with the issue of enforcement of judgements in foreign jurisdictions, which, especially in the framework of the BRI, is a key consideration. Indeed China, which is the major actor within the BRI, recognizes court judgments made by the courts of only a few countries, on the principle of reciprocity. Certainly, this might be a serious problem for the parties, notably when there are no reciprocal agreements between China and the other BRI country[55]. In contrast, nearly all the countries on the BRI, including China, have adhered to the New York Convention, except for Yemen and Timor-Leste[56]. Obtaining an award from an arbitral tribunal in a Convention state would thus minimize the risk that local law may hinder the enforcement procedure, as the grounds for refusing the enforcement of an award under the New York Convention are very limited[57]. In light of what just said, for resolving disputes involving commercial disputes along the BRI, parties will likely include a carefully drafted arbitration clause in the contract, providing for a place of arbitration in a jurisdiction which is party to the New York Convention or, in case the parties opt for litigation, designate a court in a jurisdiction with at least a reciprocal enforcement arrangement of court judgements with China.

Presumably, the most innovative feature of the CICC, which gives it a very Chinese shape, is contained in Art. 11 of the Provisions, which allows for a multiple dispute resolution mechanism where "mediation, arbitration, and litigation are efficiently linked"[58]. By these means, the CICC will act as a "One-Stop" international commercial dispute resolution mechanism.

Pursuant to Art. 11, international commercial disputes submitted to the CICC may be mediated and arbitrated through a single and combined set of procedures, which is generally defined as "Arb-med"[59]. In practical terms, this means that when the parties de-

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[55] A development that is likely to reassure parties in the future is the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (also known as the "2019 Hague Convention"), which was adopted by the delegates of the 22nd Diplomatic Session of the Hague Conference on Private International Law (HCCH) on July 2, 2019, and which has been signed by China as well. However, it will take time for China and the other signatory states to join and implement the Convention officially.

[56] The list of countries adhering to the New York Convention is accessible at https://www.newyorkconvention.org/countries (accessed on November 30, 2022).

[57] See Art. V of the New York Convention 1958.

[58] According to Art. 11of the Provisions,"The CICC will act as a dispute resolution platform through which "mediation, arbitration, and litigation are efficiently linked".

[59] In legal scholarship, these terms refer to the order in which the arbitration and mediation stages take place. Therefore, "Med-arb" and "Arb-med" are not to be used interchangeably. In "Med-arb," the parties attempt to mediate from the outset of their dispute, and then enter arbitration proceedings for unsuccessful mediation or to address unresolved issues or matters. By contrast, in "Arb-med" and "Arb-med-arb", the combined procedure begins as an arbitration and in the course of such arbitration, the parties decide to have the arbitrator settle the subject matter through mediation based on the applicable arbitration rules or *lex arbitri*. Here, the mediation stage starts, and the arbitrator attempts to settle the dispute as a mediator. The second arbitration stage arises afterwards for two reasons: 1. Mediation is successfully ended, and a full settlement has been reached. Therefore, the arbitration resumes to translate the successful agreement into a "consent award". The point of giving the settlement in the form of an award, is to benefit from the provisions on the recognition and enforcement of foreign awards under the New York Convention, which allows for the easy circulation of the awards. 2. Mediation was only partially successful and consequently, arbitration is resumed to settle the remaining matters. In both cases, the arbitrator ceases to act in his capacity as a mediator and resumes the role of arbitrator for the last stage. For more on the subject see L. NOTTAGE, R. GARNETT, *The Top 20 Things to Change in or around Australia's International Arbitration Act*, in *International Arbitration Australia,*Sydney Law School Research Paper No. 09/19; U. of Melbourne Legal Studies Research Paper No. 405, 2013; T.H. CHENG, A. KOHTIO,*Some Limits To Apply Chinese Med-Arb Internationally*, in*N.Y. Disp. Res.,* II, 1,2009;B. WOLSKI, *Arb-med-arb (and MSAs). A Whole Which Is Less than, Not Greater than, the*

cide to submit their case to the CICC, at the commencement of the proceedings, they will be asked whether they wish to arbitrate, mediate, or litigate the dispute. If the parties agree to arbitrate, they may, at any time, decide to stop with arbitration and attempt to resolve their dispute through mediation, andreverse, in case they start with mediation.

This kind of hybridization may look an ambitious experiment on behalf of the Chinese Supreme Court. However, in China, "Arb-med" procedures are widely used for the resolution of commercial disputes, as they better respond to the Confucian imperative to promote social harmony through means of dispute settlement that are less adversarial and more amicable[60]. In this context, the use of mediation is even more encouraged than arbitration or litigation[61].

Under the BRI, the "Arb-med" procedures are not conducted in the exact same manner as in Chinese courts. Indeed, the Chinese Supreme Court had to adjust this mechanism to serve the cross-border users within the BRI initiative. That is because in the traditional Chinese "Arb-med", when the combined procedure begins as an arbitration ("Arb"), but in the course of such arbitration, the parties decide to settle the subject matter through mediation, on the basis of the applicable arbitration rules or *lex arbitri*, the mediation stage starts ("med"), and the same arbitrator "switches hats" and tries to resolve the dispute as a mediator.

Concerns arise as whether the arbitrator, who acts also as a mediator,can remain impartial throughout the different proceedings, given the very different attitudes and approaches required for each dispute resolution method[62].

Due process concerns are related to the very human difficulty of partitioning information obtained in the two stages to ensure impartiality. This is especially the case when the adjudicator resumes the role of arbitrator after the mediation stage, as the confidential information obtained during mediation might, knowingly or not, be used in the subsequent arbitration stage. The issue is that such information would not normally be

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Sum of Its Parts, in*Contemp. Asia Arb. J.*,VI, 2, 2013, pp. 249-274; J. ROSSOF,*Hybrid Efficiency in Arbitration: Waiving Potential Conflicts for Dual Role Arbitrators in Med-Arb and Arb-Med Proceedings*, in *J. Int'l arb.,* XXVI, 1, 2009,pp. 89-100; W. GU, *Hybrid Dispute Resolution Beyond the Belt and Road: Toward a New Design of Chinese ArbMed(-Arb) and Its Global Implications*, in*Wash. L. Rev.,* XXIX, 1,2019, pp.117-172.

[60] Confucianism favors less contentious means for resolving disputes with an emphasis on mediation, and views more contentious means such as litigation and arbitration to be less conducive to the maintenance of social harmony as predefined and constructed by the relationship between the individual and the community. On the topic see W. GU, *Arbitration in China: The regulation of Arbitration agreements and Practical Issues,* Hong Kong, 2012.

[61] ID, *op.cit*. It is also true that promoting mediation as a preferable method of dispute settlement also serves the needs of the Party-state to reduce public conflicts -which may hinder its legitimacy- and promote a better governability of the civil society. Therefore, it may be possible to conclude that mediation in the Chinese context is designed to meet at the same time the Confucian culture and State governance objectives of dispute resolution.

[62] Indeed, one of the principal criticisms of "Arb-med" regards the conflict of interests between the roles of arbitrator and mediator embodied by the same person. The arbitrator's role is to decide on the merits of the dispute by interpreting and applying the relevant laws to the case, and issuing, at the end, an award which is legally binding on the parties, just what a judge would do in court. For this purpose, the arbitrator must adopt a "judicial temperament", being completely impartial and to have general legal competence. On the other hand, the mediator is more interested in making the parties reach an agreement on their own, which agreement is not necessarily the result of the strict application of a law. A good mediator then, should have a sensitive attitude to understand the needs of the parties and to mediate their opposing conditions. In doing this, he will get more involved in the inter party relationship, having a more personal approach. Furthermore, since mediation may involve discussions into personal and emotional issues between the respective parties and the mediator, this latter one may become more sympathetic towards a particular party. See ID, *op.cit*.

communicated to the arbitrator when arbitration is conducted separately. Unlike arbitration, mediation allows *ex parte* communication. In this latter case, information given by a party to the adjudicator is not known to the other party, who has no opportunity to defend against such confidential information[63]. In addition,arbitration rules in China do not contain any provision specifying the possible use of information collected during the mediation stage. At most, the rules provide for some safeguards that prohibit parties from relying on any statements expressed during the mediation stage by the other party or the tribunal to support their case[64].

In order to mitigate the aforementioned issues, which may hinder the use of the CICC by foreign parties who are not familiar with the "Arb-med" proceedings, the new single platform does not provide for mediation and arbitration to be conducted by the same person or institution, as in the traditional Chinese-styled "Arb-med". Rather, following Art. 11 of the Provisions[65], the CICC will integrate arbitration and mediation using separate institutions. The five arbitration institutions designated by the CICC are all leading Chinese arbitral institutions: China International Economic and Trade Arbitration Commission, Shenzhen Court of International Arbitration, Beijing Arbitration Commission, Shanghai International Arbitration Centre, and China Maritime Arbitration Centre[66]. The same occurs for the mediation institutions identified by the Court, namely the China Council for the Promotion of International Trade, and the Shanghai Commercial Mediation Center. Certainly, the overall innovation shows an attempt on behalf of the CICC to appear more "international", capable of responding to the needs and expectations of international parties who may be very skeptical towards a procedure where due process could be at stake. Nonetheless, the choice of selecting exclusively Chinese mediation and arbitration institutions may still cause neutrality concerns for non-Chinese parties.

A further motive that concurred to the restyling of the Chinese "Arb-med", other than the necessity to attract foreign parties, is the pressure of the new Chinese Courts to compete with two of the most popular seats of arbitration in the world: Hong Kong and Singapore[67].

Both arbitral seats use the combination of "Arb-med" procedures, but they also provide procedural safeguards through regulations addressing exclusively procedural irregularities.

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[63] Still because mediation is not an adjudicative method of dispute resolution, and it is very much influenced and shaped by the local culture. See ID, *op.cit*.

[64] See, e.g., the 2015 Beijing Arbitration Centre's Rules, Art. 42.

[65] See *infra*par. *5*.

[66] These institutions are considered as the most experienced, capable, and credible Chinese arbitration institutions handling cross-border arbitration cases. Likewise, the CICC has designated two of the most competent institutional mediation providers in China to work with its "one-stop" hybrid dispute resolution platform. If all the Chinese legislative requirements on mediation are satisfied, mediation settlement agreements reached at the two designated Chinese mediation centers can be converted into CICC judicial settlement agreements, or even judgments issued by the CICC. See the "*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*", 2018, available at https://cicc.court.gov.cn/html/1/219/208/210/1144.html (accessed on November 30, 2022).

[67] Singapore's AMA Protocol has particularly influenced the CICC's recent "One-Stop" Multi-tier Dispute Resolution Platform. Indeed, Under the AMA Protocol, arbitration and mediation are conducted independently by two institutions, the Singapore International Arbitration Centre and the Singapore International Mediation Centre, each one appointing respectively its arbitrators and mediators. The institutional partitioning provides parties a chance of amicable settlement without the risk of being subject to the same person assuming the conflicting roles of mediator and arbitrator.

Hong Kong, in particular, is a very attractive seat for several reasons, including its proximity to many countries along the Belt and Road, its internationally recognized independence[68], neutrality, and its use of international best practices. On its part, the CICC seems to enjoy almost none of the above mentioned qualities (apart from the geographic advantage). Moreover, both the Hong Kong International Arbitration Centre (hereinafter "HKIAC") as well as the Singapore International Arbitration Centre, have specific BRI-related arbitration clauses that the parties may readily incorporate to their contract, and administered arbitration rules to deal specifically with BRI disputes. On the contrary, the CICC does not provide for any standard arbitration clause to be used by international parties, making the choice of the Chinese court more difficult, over and above its jurisdiction limitations. In addition, HKIAC has an extensive experience in dealing with arbitrations involving parties and counties along the BRI[69].

Considering what has been just described, if the CICC want to be successful and have a leading role in dispute resolution under BRI, it will be necessary to do far more than adjusting the "Arb-med" proceedings. "Arb-med"should be regulated in a way that truly reconciles local practices with international expectations under the BRI dispute resolution context, providing not only for the separation of the institutions that administer arbitration or the mediation (which is already in place) but also for the separation of arbitration and mediation procedures (presently procedural sets are combined) clearly specifying the possible use of information collected during the two phases[70], and use best practices in the same way other International Commercial Courts (such as the Singapore International Commercial Court) have already done. This latter point turns out to be particularly important considering that Chinese-styled "Arb-med" awards may not be recognized nor enforced elsewhere due to the Chinese's failure to comply with internationally recognized due process standards, like those set out in the New York Convention[71].

6. CONCLUSIONS

The Chinese approach to dispute resolution in the BRI context, as well as to the resolution of international disputes in general, has changed and has adapted overtime. Within the BRI, dispute resolution has been initially overlooked,and it was not until the Chinese International Commercial Courts were established that it received due attention. The Chinese behavior in this sense may be better understood by taking into account the Chinese general ambivalent approach to the rule of law: China will use the law as well as legalized means of dispute resolution when it believes that doing so will protect its interests and help it gaining legitimacy in the international community[72].

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[68] According to the World Bank, in 2016, Hong Kong achieved a score points of 6.32 out of 7 on Judiciary Independence, where 1 is not independent and 7 is very independent. See *The World Bank Annual Report*, Washington, DC, 2016.

[69] Since the introduction of the 2013 HKIAC Administered Arbitration Rules, the HKIAC has handled 362 cases involving a party from a BRI jurisdiction, and one third of the cases handled by the HKIAC in 2017 involved a Mainland Chinese party and a party from a BRI jurisdiction. These data are provided by the HKIAC official website and are available at https://www.hkiac.org/Belt-and-Road/why-hkiac-belt-and-road-disputes(accessed on November 30, 2022).

[70] See W. GU,*op.cit*.

[71] ID, *op.cit*. See also Art. V of the New York Convention.

[72] See J. WANG, *op.cit.*

The establishment of the CICC can certainly be viewed as an interesting project in which the Courts' designers attempted to reconcile Chinese traditional approaches to dispute resolution with international standards and expectations. However,if the Courts are to be truly effective and take the lead in resolving BRI-related disputes, further actions will be necessary,especially in the improvement of matters such as due process and recognition and enforcement of judgements and awards.

The CICC could learn more from the Hong Kong and Singapore experiences and make any necessary adjustment to build up a solid reputation. To accomplish the said objective, it would also be necessary to improve the neutrality and impartiality of the Chinese court system, review the national arbitration laws, provide for the separation of "Arb-med" procedures, and make the Chinese courts more supportive and less intrusive towards arbitration. All the said adjustments are essential for the Court to be chosen by the parties who are not Chinese nationals. The Court indeed, poses itself within a very competitive market, where other arbitral or mediation institutions, such as the HKIAC, have already proved their capacity to better respond to the needs and expectations of international parties, evenin BRI-related cases.

All the above makes sense only assuming that the CICC aspire to be appealing to all potential participants in the BRI. However, given the jurisdiction limitations and the manner in which other Chinese courts may "internally" allocate jurisdiction;the Courts' exclusive reliance on Chinese arbitral and mediation institutions, Chinese judges and attorneys as well as the many other procedural rules with keen Chinese characteristics, the CICC look more as an extension of the Chinese Court system, rather than authentic international commercial courts, mainly put in place to safeguard Chinese parties' interests within the BRI and to be used as a means to affirm Chinese policies.

Along these lines, it is surprising that the Courts' designers did not consider including investor-State disputes into the CICC jurisdiction, as the investments will be primarily made by the Chinese parties and enterprises in other BRI countries. Left alone the reservation declaration mentioned above, this may be due to the fact that such a choice would have raised consensus issues, as the BRI host countries may not have been willing to accept the jurisdiction of the CICC over potential investment disputes, preferring instead a more (and truly) neutral and international *forum* as the ISDS.

The analysis conducted so far has revealed conflicting aspects on the true role of the new Chinese International Commercial Courts, leaving us with a few question marks on the factual positioning of the Courts within the BRI.This is compounded by the fact that,apart from the official documents and statements,the Chinese Courts have not received enough cases to build a jurisprudence that could be used to have a more in-depth knowledge on the Courts' nature and their role within the BRI. Only time and the Courts' practice will give us answers.