

Kluwer Arbitration Blog

Paris Arbitration Week Recap: Belt and Road Initiative – Recent Evolutions, Western Reactions, and Dispute Resolution

John Sabet (Sciences Po) · Saturday, April 23rd, 2022

Ever since the Chinese government officially adopted it in 2013, the [Belt and Road Initiative](#) (BRI) has evolved restlessly. Yet, ten years later, its exact delineations are still somewhat blurry: the global infrastructure project encapsulates all at once a vision, a strategy and a policy.

One certainty, however, remains constant. The BRI is and will remain a highly ambitious and influential undertaking. With estimated investments of [USD 900 billion](#), the BRI's implications range across economic, geopolitical and legal dimensions.

On the last day of the 2022 Paris Arbitration Week, as they strived to address these dimensions altogether rather than focus on arbitration *in vacuo*, Pinsent Masons and Africarb offered participants and attendees a highly enlightening discussion on the BRI's past and future developments. The panel included [Greg Jones](#) (Pinsent Masons), [Florian Quintard](#) (Pinsent Masons), [Kanyi Lui](#) (Pinsent Masons), [John Picarel](#) (Pinsent Masons), [Ismail Selim](#) (CRCICA), [Sybille Dubois-Fontaine](#) (Comité France-Chine), [Hazel Tang](#) (ICC) and [Cheng-Yee Khong](#) (Omni Bridgeway).

Current State-of-play and Latest Developments

The BRI, formerly known as “One Belt One Road”, is indeed an extremely ambitious project. It is, to start with, thematically ambitious. Infrastructure represents the BRI's most [iconic](#) component. The “Belt” being an overland route spanning from Xian to Venice and the “Road” being a maritime route connecting Fuzhou to Venice. In addition, the BRI also comprises vivid initiatives on trade, investments, financial services and academia.

It is also geographically ambitious: 146 countries accounting for 2/3 of world population as well as 32 international organizations have signed in.¹⁾ Central Asian, South-East Asian, African and even Latin American countries have done so.²⁾ Hence, the BRI involves many more countries than those directly hosting the Belt and Road A quality that certainly contributes to the perceived absence of clear delineations described above.

As a result, BRI transactions and projects are extremely varied. They can range from simple one-

off transactions to complex large-scale projects. According to panelists, most of these are cross-border, involving at least a Chinese partner and a non-Chinese partner.

General History and Evolution

Although it officially begun in 2013, the BRI can be seen as having started long beforehand. Arguably, its roots trace back China's 1999 [Going Out Policy](#), if not before. Hence, contemplating the BRI's evolution since then provides further insight into Chinese policy evolution.

Reportedly, while China has been investing intensively in new infrastructure all throughout this period, a new phase of the BRI may have begun, with a special focus on the integration of financial systems.

Delving deeper into this rising aspect of the BRI, Mr Lui classified Chinese outward investment along three main categories.

First, comes foreign aid. Issued by the Chinese Ministry of Economy, typically, it is intergovernmental, bears no interest, includes technical assistance, and can be forgiven. Second, the panel referred to concessional loans. These loans are issued by the Chinese Central Bank, are also intergovernmental, bear low interest rates, and cover much larger scale and scope than foreign aid. The panel noted that this category represents a large part of [Chinese FDI toward Latin America and Africa](#). Lastly, commercial loans. Issued by Chinese banks, typically, they are akin to regular commercial loans. Notwithstanding, had time allowed, it would have been worthwhile to examine this last category in much further detail.

In the near future, these three silos are set to greatly contribute to financial integration – and thus presumably local development – across and within the Belt and Road.

Main Reactions from the West

In light of the above, which reactions are observed in Western countries? According to the panelists, it took the West a long time to understand what China wanted to do with the BRI, and a certain level of uncertainty still remains to this day.

In the first place, the panel suggested that Western critiques may perceive the BRI as an addition of bilateral agreements rather than a truly multilateral initiative. Moreover, the panel outlined the following 3 main Western initiatives, each of which may be seen as reacting – in some part at least – to the BRI. To begin with, the panel referenced the [Blue Dot Network](#), a US-Japan-Australia program set to promote projects that meet specific standards including inclusivity and sustainability. The panel then hinted that the World Bank³⁾ and multilateral central banks were starting to launch programs as well – alas without elaborating any further. Finally, panelists discussed the European Union's [Global Gateway](#), an ambitious program with high level of investments across infrastructure, research and sustainability. Curiously, these initiatives do not seem to have received nearly as wide a coverage as the BRI.

Implications for Dispute Resolution: Mediation

Moving to dispute resolution, the panel shared agreed observation: BRI projects foster the surge of non-arbitral processes. Indeed, while Western parties tend to resort to adjudicative and contentious processes, Chinese parties appear to prefer processes that are more consultative and preserve long-term relationships. For a deeper account of investor-State mediation's cultural dimension, see this [prior post](#).

In the panel's experience, when BRI parties cannot solve the whole dispute through mediation, they still aim to solve at least the most important aspects through mediation and revert to arbitration for smaller remaining issues. As a result, mediation processes in the context of BRI projects display high success rates. It is not uncommon to see parties contract a new partnership after having resolved a previous dispute through mediation.

What's more, in parallel to the BRI, other institutional developments – such as that of the [Singapore Convention on Mediation](#), the [Singapore Infrastructure Dispute-Management Protocol](#) or the [China International Commercial Court](#) – are also reinforcing a more general trend toward mediation.

Implications for Dispute Resolution: Dispute Boards

Along with mediation, the BRI stimulates a rise in interest in dispute boards. The panel generally agreed that BRI projects, as well as World Bank projects, increasingly include dispute boards from the outset.

As it is well known, dispute boards can issue recommendations or decisions, depending on the will of the parties. In the latter case, the decisions are binding, at least until an arbitral tribunal eventually reviews it. In this sense, the dispute board is in-between mediation and arbitration: unlike mediation, the solution is provided by a third party. However, this solution is not exactly binding-and-final as an arbitral award would be.

While dispute boards offer several advantages such as technical opinions and lower costs, in the context of the BRI their main benefit consists in dispute prevention, when halting an infrastructure project can quickly skyrocket expenditures and considerably harm parties' long-term relationship.

Implications for Dispute Resolution: Arbitration

Turning to arbitration, the panel first observed that Chinese companies and lawyers now pay much more attention to dispute resolution provisions. Not only is the BRI relying on mediation and dispute boards as discussed above, but the Chinese State itself is showing deeper interest in investor-State arbitration. Indeed, Mr Quintard depicted the government's approach to investor-State arbitration through the following 3 generations of BITs.

In the early 1980s, the 1st generation of Chinese BITs showcased firm reluctance toward investor-State as they only included State-to-State arbitration. It follows that starting in the mid-80s, the 2nd

generation of Chinese BITs allowed for foreign investors to bring claims against the State, however only for “disputes regarding the amount of compensation resulting from expropriation”, a formulation upon which some tribunals accepted jurisdiction over both merits and quantum while others restricted themselves to quantum only. Interestingly, in recent years, a 3rd generation of Chinese BITs set to grant companies full access to investor-State arbitration may be emerging, given China’s new status as an FDI exporting country.

In light of the above, panelists took a moment to present their own institutional initiatives, namely with regard to the [ICC Belt and Road Commission](#), the [Singapore International Arbitration Center](#), the [Hong Kong International Arbitration Center](#) and the [Cairo Regional Center for International Commercial Arbitration](#). They agreed that the recent [mutual assistance arrangement](#) between Mainland China and Hong Kong – according to which parties to a Hong Kong-seated arbitration can now apply to the Mainland courts for interim measures – may well be a game-changer for foreign companies. This led the panel to reflect on means to secure assets from defendants, whether in China or abroad.

Nevertheless, for now Singapore and London continue to benefit from the lion share of BRI cases. This is, however, an element to keep under close scrutiny in the coming years – along with the BRI’s aforementioned implications on the settlement of international commercial and investment disputes.

Conclusion

The definite repercussions of the BRI among and beyond participating countries remain to be unraveled. Yet one outcome is already salient: the BRI is shifting dispute resolution practices toward consultative processes. Namely, the BRI relies significantly on mediation and dispute boards. However, the legal dimension of the BRI will greatly depend on how its economic, geopolitical and cultural dimensions continue to unfold. With other pieces of the puzzle still moving, legal practitioners are in a position to guide, rather than trail, future developments.

To make sure you do not miss out on regular updates from the [Kluwer Arbitration Blog](#), please [subscribe here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how [Kluwer Arbitration](#) can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



References

?1 The BRI's [official website](#) states that 'the initiative has won support from 100 countries and international organizations'. Regrettably, the seminar did not expand on what 'signing in' to the BRI specifically entails. According to [external sources](#), countries and organizations can join the BRI by signing a bilateral Memorandum of Understanding (MoU) with China.

?2 See note 1.

?3 See the World Bank's major [report](#) on the BRI

This entry was posted on Saturday, April 23rd, 2022 at 8:37 am and is filed under [ADR Clauses](#), [Africa](#), [Belt Road Initiative](#), [China](#), [Dispute boards](#), [Mediation](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.