

**CONNECTIVITY AND DECOUPLING:
BELT AND ROAD DISPUTE RESOLUTION IN A FRACTURED TRADE ENVIRONMENT**

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Abstract

A core theme of China's Belt and Road Initiative ["BRI"] is connectivity, which extends to BRI-related dispute resolution. But BRI-related advances in dispute resolution connectivity will be occurring in an international trade environment that is becoming increasingly fractured; the extent to which a fractured trade environment might impede BRI-related opportunities for dispute resolution connectivity merits close consideration. A range of initiatives in Asia lower the risk of states "detaching" themselves from China. Particularly with respect to dispute resolution, China has participated in the conclusion of a Regional Comprehensive Economic Partnership agreement, the launch of the China International Commercial Court ["CICC"] and the International Commercial Dispute Prevention and Settlement Organization, as well as the development of a number of instruments that improve the enforceability of dispute resolution outcomes in a range of settings, including a few dozen bilateral treaties on judicial assistance as well as a set of multilateral instruments covering mediated settlement agreements ["the Singapore Convention on Mediation"], choice of court agreements ["the Hague Choice of Court Convention"], and court judgments ["the Hague Judgments Convention"]. But a low risk of separation from China does not entail a low risk of criticism of China. Malaysia's recent suspension, and subsequent resumption, of a few major BRI projects provides one clear example. In the particular context of dispute resolution, many responses to the launch of the CICC by China's Supreme People's Court have been critical or, at a minimum, skeptical. Rather than leading to separation, criticism instead can be a form of engagement. International engagement with the BRI and the Asian Infrastructure Investment Bank has been strong notwithstanding significant criticism of both initiatives. An increasingly fractured trade environment likely will not impede China's advancement of dispute resolution connectivity, particularly given the active rulemaking and institution building occurring on China's side of the divide.

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I. INTRODUCTION

China's Belt and Road Initiative ["**BRI**"]¹ will continue to give rise to a large number of international commercial disputes² across many jurisdictions,³ which creates the opportunity to develop a Belt and Road dispute resolution regime.⁴ Indeed, three key components of such a regime are now in place: the launch of the China International Commercial Court ["**CICC**"] in 2018,⁵ the launch of the International Commercial Dispute Prevention and Settlement Organization ["**ICDPASO**"] in 2020,⁶ and the entry into force of the Singapore Convention on Mediation in 2020.⁷

¹ "China proposed [BRI] in 2013 to improve connectivity and cooperation on a transcontinental scale. The scope of the initiative is still being deliberated, but it involves two main components, each underpinned by significant infrastructure investments: the Silk Road Economic Belt ["**the Belt**"] and the New Maritime Silk Road ["**the Road**"]." WORLD BANK GRP., BELT AND ROAD ECONOMICS: OPPORTUNITIES AND RISKS OF TRANSPORT CORRIDORS, p. 3. For discussion of the BRI as "China's most significant strategic move for engagement in an extra-regional arrangement" since its accession to the World Trade Organization, see Heng Wang, *China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability*, 22 J. INT'L ECON. L. 29, 30 (2019).

² See e.g., Cao Yin, *China's Top Court Vows Better Legal Service for BRI-Related Cases*, CHINA DAILY (Feb. 25, 2019) ("Statistics previously released by the top court showed Chinese courts at all levels concluded about 200,000 foreign-related disputes between 2013-2017, with the BRI-related cases a main component"); *Building the Judicial Guarantee of International Commercial Court Belt and Road Construction An Exclusive Interview with Gao Xiaoli, Vice President of the Fourth Civil Division, The Supreme People's Court, PRC*, CHINA INT'L COMM. CT. (Mar. 19, 2018), <http://cicc.court.gov.cn/html/1/219/208/209/774.html>, p 6 ["The construction of 'Belt and Road' is mainly about economic cooperation, which inevitably leads to disputes in the field of trade and investment"].

³ See Justice Steven Chong, *Dispute Settlement in the Belt and Road Initiative: Lessons from the Singapore Experience*, 8 CHINESE J. OF COMP. L. 30, 31 (2020) ["One of the core realities of dispute resolution along the Belt and Road is the sheer diversity of the jurisdictions lying along it"].

⁴ See e.g., *Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions*, CHINA INT'L COMM. CT. (June 27, 2018) [referring to the "establishment of the Belt and Road international commercial dispute resolution mechanism and institutions"], <http://cicc.court.gov.cn/html/1/219/208/210/819.html>; Judge Gao, *supra* note 2, at 7 [the development of "a fair, efficient, and convenient 'One Belt and One Road' dispute resolution mechanism" would require "all countries along the route to work together to discuss cooperation, build and share, and advance international rule of law"]. For discussion of "China's officially coordinated effort to develop dispute settlement mechanisms for the BRI," see Jiangyu Wang, *Dispute Settlement in the Belt and Road Initiative: Progress, Issues, and Future Research Agenda*, 8 CHINESE J. OF COMP. L. 4, 11 (2020).

⁵ See Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, CHINA INT'L COMM. CT. (June 25, 2018), <http://cicc.court.gov.cn/html/1/219/199/201/817.html>.

⁶ See Guiguo Wang & Rajesh Sharma, *The International Commercial Dispute Prevention and Settlement Organization: A Global Laboratory of Dispute Resolution with an Asian Flavor*, 115 AJIL UNBOUND 22 (2021) ["The ICDPASO was coordinated by the China Council for the Promotion of International Trade and the China Chamber of International Commerce, together with industrial and commercial organizations and legal service agencies from over thirty countries and regions including the European Union, Italy, Singapore, Russia, Belgium, Mexico, Malaysia, Poland, Bulgaria, and Myanmar"].

⁷ Singapore Convention on Mediation, *Singapore Convention on Mediation Enters into Force* (Sept. 20, 2020), <https://www.singaporeconvention.org/media/media-release/2020-09-12-singapore-convention-on-mediation-enters-into-force>.

A core BRI goal is connectivity. A 2015 statement jointly issued by China's National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce provides:

The Belt and Road Initiative aims to promote the connectivity of Asian, European and African continents and their adjacent seas, establish and strengthen partnerships among the countries along the Belt and Road, set up all-dimensional, multi-tiered and composite connectivity networks, and realize diversified, independent, balanced and sustainable development in these countries.⁸

The BRI includes both “*physical* infrastructure” and “*legal* infrastructure.”⁹ Stated in terms of connectivity, infrastructure connectivity includes not only “‘hard’ infrastructure such as roads, railways, ports, oil pipelines and telecommunication networks” but also “soft infrastructure,” such as “cooperation mechanisms, operation systems and management models,” as well as, more broadly, “a shared understanding and recognition of essential legal principles and rules.”¹⁰ The BRI promotes “soft connectivity” by attaching “great importance to connectivity-related standards and regulations” and contributing to “strengthening the global governance system.”¹¹ The soft connectivity advanced by BRI legal infrastructure extends to dispute resolution.¹²

A Belt and Road dispute resolution regime could be expected to advance BRI soft connectivity in many ways. The CICC, for example, can have opportunities to interact with a number of recently developed international commercial courts in Asia, the Middle East, and Europe.¹³ Chinese arbitral

⁸ National Development 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* (March 2015), http://en.drc.gov.cn/2015-10/13/content_22174539.htm. See also Joint Communique of the Leaders' Roundtable of the 2nd Belt and Road Forum for International Cooperation (Apr. 27, 2019), http://www.xinhuanet.com/english/2019-04/27/c_138016073.htm, ¶ 7 [“We start from the conviction that connectivity contributes to boosting growth, economic and social development, trade in goods and services, as well as investment and creating employment opportunities and better communication and exchanges among peoples”].

⁹ Chief Justice Sundaresh Menon, *The Settlement of International Commercial Disputes: Alternative Dispute Resolution, Commercial Courts, and the Convergence of Commercial Laws*, NATIONAL JUDGES COLLEGE (BEIJING) (Aug. 29, 2019), p. 10 (emphasis in original).

¹⁰ Liao Fan, *Understanding the BRI through “Five Connectivities”*, CGTN (Apr. 20, 2019). See also Heng Wang, *supra* note 1, at 36 [characterizing the BRI as including “software” (mechanisms and agreements) and “hardware” (economic corridors with BRI states)].

¹¹ Ning Jizhe, Vice Chairman, National Development and Reform Commission (Oct. 2019), in HARMONIZING INVESTMENT AND FINANCING STANDARDS TOWARDS SUSTAINABLE DEVELOPMENT ALONG THE BELT AND ROAD, CHINA DEVELOPMENT BANK AND UNITED NATIONS DEVELOPMENT PROGRAMME (2019), <http://www.un.org.cn/uploads/20191108/bbb5cee285b9e35d7de574f4e9e4f6df.pdf>, p. 2.

¹² See Chief Justice Menon National Judges College, *supra* note 9 [with respect to legal infrastructure supporting BRI physical infrastructure, “the economic networks of the BRI must rest upon an effective transnational system for commercial dispute resolution”].

¹³ See e.g., Chief Justice Sundaresh Menon, *International Commercial Courts: Towards a Transnational System of Dispute Resolution*, OPENING LECTURE FOR THE DIFC COURTS LECTURE SERIES (2015), p. 32 [“A network of international commercial courts helmed by a community of renowned international commercial judges can emerge as a very significant platform for the development of a body of consistent jurisprudence”].

institutions can begin to administer investment treaty cases.¹⁴ Chinese arbitral institutions can coordinate with foreign arbitral institutions.¹⁵ Foreign arbitral institutions can operate in mainland China.¹⁶ Foreign nationals can participate as mediators, arbitrators, and advisors in mainland China.¹⁷ Foreign and Chinese institutions can coordinate on dispute prevention and dispute resolution as members of ICDPASO.¹⁸ China can advance the international enforceability of a range of dispute resolution outcomes through bilateral¹⁹ and multilateral²⁰ rulemaking and implementation.

Notably, however, such BRI-related advances in dispute resolution connectivity will be occurring in an international trade environment that is becoming increasingly fractured. There has been much

¹⁴ As discussed below, the Shenzhen Court of International Arbitration [“SCIA”], the China International Economic and Trade Arbitration Commission [“CIETAC”], and the Beijing Arbitration Commission [“BAC”] each have developed rules on administering investment treaty cases.

¹⁵ The SCIA, for example, has entered into a cooperation agreement with the International Centre for Settlement of Investment Disputes [“ICSID”]. *See SCIA Concludes Cooperation Agreement with ICSID in Washington, D.C.*, SHENZHEN CT. INT’L ARB. (June 27, 2018), <http://www.sccietac.org/web/news/detail/1745.html>.

¹⁶ *See Beijing to Open Foreign Arbitral Institutions*, HERBERT SMITH FREEHILLS (Sept. 14, 2020) [“On 7 September 2020, the State Council of China published a policy paper on opening up the services sector in Beijing . . . The paper announces that foreign arbitral institutions will be allowed to set up ‘business organisations in designated area(s) in Beijing’, to ‘provide arbitration services in relation to civil and commercial disputes arising in the areas of international commerce and investments’”], <https://hsfnotes.com/arbitration/2020/09/14/beijing-to-open-to-foreign-arbitral-institutions/>; *China’s Lin-gang Free Trade Zone in Shanghai Opens to Foreign Arbitration Institutions from 2020*, HERBERT SMITH FREEHILLS (November 12, 2019) [“a foreign arbitration institution can administer in areas including international commerce, maritime, and investment”], <https://hsfnotes.com/arbitration/2019/11/12/chinas-lin-gang-free-trade-zone-in-shanghai-opens-to-foreign-arbitration-institutions-from-2020/>.

¹⁷ Foreign nationals can provide mediation and advisory services as members of the CICC’s International Commercial Expert Committee, as discussed below. Foreign nationals also can serve as arbitrators in international disputes administered not only by foreign, but also Chinese, arbitral institutions. *See Arthur Ma et al.*, *Commercial Arbitration, China*, GLOBAL ARB. REV., (May 20, 2021) [“Article 67 of the PRC Arbitration Law provides that an arbitration institution may appoint non-nationals with special knowledge in the fields of law, economy, and trade, science and technology and other relevant professions to act as arbitrator. Major arbitration institutions, such as CIETAC, BAC and SHIAC, all have foreigners on their panel of arbitrators”], <https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/china>.

¹⁸ *See Wang & Sharma, supra* note 6, at 23 [ICDPASO “provides procedures that cater to the needs of different disputants with diverse dispute resolution preferences including good offices, mediation, and arbitration with an option for appeal”].

¹⁹ *See Song Jianli, Recognition and Enforcement of Foreign Judgments in China: Challenges and Developments*, CHINA INT’L COMM. CT., <http://cicc.court.gov.cn/html/1/219/199/203/1048.html> [“A number of bilateral treaties on judicial assistance between China and other countries have been signed involving recognition and enforcement of foreign judgments in civil and commercial matters. As of October, 2017, China has signed about 39 treaties with other countries involving such civil and commercial matters, and 36 of these treaties provide for recognition and enforcement of judgments and arbitral awards”].

²⁰ As discussed below, China has participated in multilateral initiatives aimed at advancing the enforceability of foreign arbitral awards [becoming a Party to the New York Convention in 1987], mediated settlement agreements [signing the Singapore Convention on Mediation in 2019], choice of court agreements [signing the Hague Choice of Court Convention in 2005], and domestic judgments [actively participating in the development of the Hague Judgments Convention].

discussion about the risk of the world's two largest economies "decoupling," in the sense of a sharp reduction in economic interdependence.²¹ Support within the U.S. government for at least some degree of U.S.-China decoupling has remained consistently strong across the Trump and Biden administrations.²² China, for its part, has emphasized the importance of self-sufficiency as part of its "dual circulation" strategy.²³ The extent to which such a fractured trade environment might impede BRI-related opportunities for dispute resolution connectivity merits close consideration. The United States can be expected to continue raising concerns regarding China's rulemaking and institution

²¹ See e.g., Jonathan D. Pollack & Jeffrey A. Bader, *Looking Before We Leap: Weighing the Risks of US-China Disengagement*, Policy Brief, BROOKINGS (July 2019), p 5 ["Pessimists believe China's advances will result in the weakening of American power, and that China could ultimately supplant America's post-war dominance of global politics, economics, and military power. They contend that this threat must be stifled by detaching China from the major developed economies and by greatly heightening a looming military rivalry with China"]; Edward Luce, *The New Era of US-China Decoupling*, FINANCIAL TIMES (Dec. 20, 2018) ["China's technology strategy is . . . shifting from foreign acquisition to import substitution. Global supply chains are starting to fragment. China is accelerating the 'indigenisation' of microchips, aviation technology and robotics"].

²² The Trump administration applied a range of decoupling measures, including national security reviews, export controls, tariffs, sanctions and forced sales. See Chad P. Bown & Melina Kolb, *Trump's Trade War Timeline: An Up-to-Date Guide*, PETERSON INSTITUTE FOR INT'L ECONOMICS (Feb. 8, 2021), <https://www.piie.com/blogs/trade-investment-policy-watch/trump-trade-war-china-date-guide>. To a significant extent, those decoupling measures have remained in place under the Biden administration. See e.g., Saleha Mohsin & Jennifer Jacobs, *Biden Team Likely to Proceed with Trump China Investment Ban*, BLOOMBERG (May 7, 2021) ["The Biden administration is likely to maintain pressure on China by preserving limits on U.S. investments in certain Chinese companies imposed under former President Donald Trump"]; Demetri Sevastopulo, *Biden's 100 Days: Hawkish Approach to China Stokes Beijing Frictions*, FINANCIAL TIMES (Apr. 30, 2021) ["Biden has shown no sign of lifting tariffs that Trump levied on Chinese exports. His team is reviewing Trump-era moves on technology but most measures have not been reversed. He has also placed Chinese firms on an export blacklist, a tool often used by Trump"]; Matt Spetalnick & Michael Martina, *Many Key China Issues Still "Under Review" at Biden's First 100 Days*, REUTERS (Apr. 30, 2021) ["U.S. Trade Representative Katherine Tai said in a recent interview that the United States was not ready to lift [duties on Chinese goods], in part because of the leverage it gives American negotiators"]; Eric Martin, *Biden Pick Sees "No Reason" to Lift Huawei Curbs*, BLOOMBERG (Feb. 4, 2021) ("President Joe Biden's nominee for Commerce Secretary, Gina Raimondo, said she knows of 'no reason' why Huawei Technologies Co. and other Chinese companies shouldn't remain on a restricted trade list").

²³ See e.g., Jude Blanchette, *Dual Circulation and China's New Hedged Integration Strategy*, CENTER FOR STRATEGIC AND INT'L STUDIES (Aug. 24, 2020) [the dual circulation strategy "envisions a new balance away from global integration (the first circulation) and toward increased domestic reliance [the second circulation] . . . [t]his new worldview sees the continued decoupling of global supply chains as an enduring trend, and so Beijing now seeks [to balance] internationalization and self-sufficiency (自力更生) that marks China's own version of 'hedged integration'."].

building generally,²⁴ and in a BRI context specifically.²⁵ But as observed by Robert Zoellick, who previously served as Deputy Secretary of State and as president of the World Bank: “The U.S. can complain about China, but should also offer its own attractive ideas.”²⁶ Similarly, the Foreign Minister of Singapore, Dr. Vivian Balakrishnan, on a 2019 visit to Washington DC, emphasized that it was in the interest of the United States to “actively contribute” to the shaping of global norms.²⁷

As discussed below, in recent years the United States has provided some leadership in rulemaking and institution building, and the Biden administration has reversed some of the Trump administration’s retreat from global engagement. The Biden administration also has started to explore the development of potential alternatives to BRI.²⁸ But U.S. leadership in developing attractive alternatives to China’s initiatives remains at an early stage. To the extent the United States fails to develop such alternatives, the likelihood of states detaching themselves from China is reduced.

Detaching from China becomes even less likely when a range of recent Asia-based regional and multilateral initiatives are considered. Those initiatives include, in addition to BRI, the establishment of multilateral development banks in Beijing [“**the AIIB**”] and Shanghai the New Development Bank [“**NDB**”], the conclusion of the Regional Comprehensive Economic Partnership [“**RCEP**”] agreement, and the conclusion of the Singapore Convention on Mediation. But a low risk of

²⁴ During the Obama administration, for example, attempts by U.S. officials to discourage allies from joining – or, at a minimum, raise doubts concerning – the Asian Infrastructure Investment Bank (“AIIB”) were widely reported. See e.g., Matthias Sobolewski & Jason Lange, *U.S. Urges Allies to Think Twice Before Joining China-led Bank*, REUTERS (March 17, 2015) (“Washington insists it has not actively discouraged countries from joining the new bank, but it has questioned whether the [AIIB] will have sufficient standards of governance and environmental and social safeguards”); Jane Perlez, *U.S. Opposing China’s Answer to the World Bank*, N.Y. TIMES (October 9, 2014) [“in quiet conversations with China’s potential partners, American officials have lobbied against the development bank with unexpected determination and engaged in a vigorous campaign to persuade important allies to shun the project”].

²⁵ See e.g., David Brunnstrom, *U.S. Says Will not Send High-level Officials to China’s Silk Road Summit*, REUTERS (Apr. 3, 2019) [“We will not send high-level officials from the United States,” U.S. State Department spokesman Robert Palladino said . . . We will continue to raise concerns about opaque financing practices, poor governance, and disregard for internationally accepted norms and standards, which undermine many of the standards and principles that we rely upon to promote sustainable, inclusive development, and to maintain stability and a rules-based order’]. As discussed below, the United States continues to raise BRI-related concerns under the Biden administration.

²⁶ Robert Zoellick, *A Better Way to Deal with Beijing*, WALL ST. J. (May 14, 2019).

²⁷ Edited Transcript of Minister for Foreign Affairs Dr. Vivian Balakrishnan’s Remarks on “Seeking Opportunities Amidst Disruption – A View from Singapore” at the Center for Strategic and International Studies [“CSIS”], 15 May 2019, MINISTRY OF FOREIGN AFFAIRS SINGAPORE (May 16, 2019), https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2019/05/20190516_FMV-Washington---CSIS-Speech.

²⁸ See The Editorial Board, *Creating Alternatives to China’s Belt and Road*, FINANCIAL TIMES (Apr. 24, 2021) [“As part of his plan to create an alliance of democracies to counter China’s growing power, US president Joe Biden has proposed to the UK’s Boris Johnson setting up an infrastructure effort to rival the Belt and Road plan”].

separation from China does not entail a low risk of criticism of China. Malaysia's recent suspension,²⁹ and subsequent resumption,³⁰ of a few major BRI projects provides one clear example of such criticism. In the particular context of international dispute resolution, many responses to the launch of the CICC have been critical³¹ or, at a minimum, skeptical.³² Rather than leading to separation, criticism instead can be a form of engagement. As discussed below, a fractured trade environment does not pose a significant threat to China's ability to advance dispute resolution connectivity given, in particular, the active rulemaking and institution building occurring on China's side of the divide.

Analyzing China's opportunities for advancing BRI dispute resolution connectivity first requires an understanding of the core elements of a Belt and Road dispute settlement regime, which are discussed below.

II. A BELT AND ROAD DISPUTE SETTLEMENT REGIME

Much of what might ultimately comprise a Belt and Road dispute settlement regime has been in place for some time, particularly with respect to commercial arbitration and investment treaty arbitration. But with respect to litigation, mediation and "one-stop" commercial dispute resolution services, BRI already has played a significant role in beginning to shape a new landscape. Each category of dispute resolution is discussed below.

A. Commercial Arbitration

Arbitral institutions in Hong Kong, Singapore, Seoul, Kuala Lumpur, Beijing, Shanghai and Shenzhen are well-positioned to administer claims submitted to international commercial arbitration pursuant to dispute settlement provisions in BRI-related contracts. Indeed, those institutions welcome

²⁹ See Stefania Palma, *Malaysia Suspends \$22bn China-backed Projects*, FINANCIAL TIMES (July 5, 2018) ["The suspension of the three projects is the starkest manifestation yet of Prime Minister Mahathir Mohamad's call to diminish Chinese influence in Malaysia"].

³⁰ See e.g., Joseph Sipalan, *China, Malaysia Restart Massive 'Belt and Road' Project after Hiccups*, REUTERS (July 25, 2019) ["China and Malaysia resumed construction on a massive 'Belt and Road' train project in northern Malaysia on Thursday, after a year-long suspension and following a rare agreement to cut its cost by nearly a third to about \$11 billion"].

³¹ See e.g., Jonathan E. Hillman & Matthew P. Goodman, *China's Belt and Road Court to Challenge Current US-led Order*, FINANCIAL TIMES (July 25, 2018) ["Beijing casts itself as lender and builder to all along the Belt and Road. But if its courts succeed, it could also become judge and jury"]; Jacob Mardell, *Dispute Settlement on China's Terms: Beijing's New Belt and Road Courts*, MERICS BLOG (Feb. 14, 2018) ["Belt and Road detractors will view the establishment of the new dispute settlement mechanism as further proof that the initiative's primary purpose is to increase Beijing's oversight and to further the Communist Party's ownership of the BRI narrative"].

³² See e.g., Julien Chaisse & Xu Qian, *Conservative Innovation: The Ambiguities of the China International Commercial Court*, 115 AJIL UNBOUND 17, 21 (2021) ("the extent to which [the CICC] will be able to meet the specific demands stemming from the BRI remains doubtful"); Chaguan, *A Belt-and-Road Court Dreams of Rivalling the West's Tribunals*, THE ECONOMIST (June 6, 2019) ["the new court has an uncertain future, clouded by doubts about how many firms will agree to use it"].

the opportunity to play a key role in resolving BRI-related disputes. Some leading arbitration institutions have established particular bodies that focus on BRI-related disputes;³³ more generally, Asia-based arbitration institutions often highlight the significance of BRI-related disputes.³⁴

With respect to international commercial arbitration, the BRI can rely on the existing, and mature, set of rules and institutions that are in place to resolve international commercial disputes arising from contracts; indeed, as noted above, those institutions will enthusiastically provide such support. Notably, however, and as discussed below, both the CICC and the ICDPASO are developing “one-stop” dispute resolution mechanisms, which will create new opportunities for interactions between foreign arbitral institutions and China-based institutions. In addition, and as discussed below, the combination of the BRI and the entry into force of the Singapore Convention on Mediation will significantly elevate the profile of mediation among the suite of services offered by arbitral institutions.

B. Investment Treaty Arbitration

For investment treaty claims, the BRI similarly can rely on the existing, and mature, set of rules and institutions that are in place, specifically as provided in investor-State dispute settlement mechanisms available under China’s extensive investment treaty network.³⁵ Much of that network, however, needs updating; many of China’s investment treaties with BRI states were concluded in the 1990’s.³⁶ As a BRI dispute settlement regime develops, the issue of how to update China’s existing investment treaty network will be a key question to consider; on that issue, a number of different strategies would be available.³⁷

³³ See HKIAC Belt and Road Advisory Committee, HONG KONG INT’L ARB. CTR., <https://www.hkiac.org/Belt-and-Road/belt-and-road-advisory-committee>; Belt and Road Commission, INT’L CHAMBER OF COMMERCE, <https://iccwbo.org/dispute-resolution-services/belt-road-dispute-resolution/belt-and-road-commission/>.

³⁴ See e.g., *Driving Forces Behind Belt and Road Initiative*, ASIAN INT’L ARB. CENTRE (Aug. 13, 2019) [“this industry dialogue . . . considers the role of arbitration to resolve disputes arising in the BRI”], <https://www.aiac.world/events/365/Driving-Forces-Behind-Belt-&-Road-Initiative>; *Running Belt and Road Arbitrations: Behind the Scenes with SIAC*, SINGAPORE INT’L ARB. CENTRE (Sept. 16, 2018) [“This session will provide a ‘behind the scenes’ look at how the SCIA Rules assist parties with the resolution of Belt & Road disputes”], <https://www.siac.org.sg/component/registrationpro/event/281/Running-Belt-and-Road-Arbitrations--Behind-the-Scenes-with-SIAC?Itemid=552>.

³⁵ See Investment Policy Hub, International Investment Agreements Navigator, China, UNCTAD, <https://investmentpolicy.unctad.org/international-investment-agreements/countries/42/china>.

³⁶ See Matthew Hodgson and Adam Bryan, *Bumps in the Road: Identifying Gaps in China’s Belt and Road Treaty Network*, TRANSNAT’L DISPUTE MANAGEMENT 3 (2017).

³⁷ See e.g., Jie Huang, *Procedural Models to Upgrade BITs: China’s Experience*, 31 LEIDEN J. INT’L L. 93 (2018) [discussing “Coexistence,” “Replacement,” “Amendment,” and “Joint Interpretation” models for upgrading investment treaties].

The BRI also could encourage another development with respect to China's investment treaty practice: the potential availability of Chinese arbitral institutions to administer, and apply their own arbitration rules, to investment treaty cases. The SCIA, CIETAC and the BAC have each issued a set of investment arbitration rules.³⁸ As China updates its investment treaty network with BRI states, there will be opportunities to include flexible language allowing disputing parties to agree to the applicability of arbitration rules developed by Chinese arbitral institutions.³⁹ Updated investment treaties also could place particular emphasis on mediation,⁴⁰ consistent with, as discussed below, the central importance of mediation within an overall BRI dispute settlement regime.

C. Litigation

In connection with the litigation of BRI-related disputes, China's Supreme People's Court ["SPC"] established the CICC in 2018.⁴¹ The SPC identified a number of motivations driving the establishment of the CICC, including not only the need to "provide services and protection for the 'Belt and Road' construction," but also, more broadly, the need to "try international commercial cases fairly and timely in accordance with the law, protect the lawful rights and interest of the Chinese and foreign parties equally, [and] create a stable, fair, transparent, and convenient rule of law international business environment."⁴²

The CICC has at times been referred to as "China's Belt and Road Court,"⁴³ and there is some support for that characterization. As noted above, the SPC identified the need to support "'Belt and Road' construction" when establishing the CICC; in addition, the BRI is expressly mentioned in the "Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute

³⁸ See Beijing Arbitration Commission/Beijing International Arbitration Center Rules for International Investment Arbitration, BEIJING ARB. COMMISSION (Oct. 1, 2019), https://www.bjac.org.cn/page/data_dl/touzi_en.pdf; *Facilitating the Belt and Road: CIETAC Launches Investment Arbitration Rules*, HERBERT SMITH FREEHILLS (Dec. 4, 2017), <https://www.herbertsmithfreehills.com/latest-thinking/facilitating-the-belt-and-road-cietac-launches-investment-arbitration-rules>; *SCIA Updates its Rules to hear Investor-State Arbitrations*, HERBERT SMITH FREEHILLS (Nov. 4, 2016), <https://hsfnotes.com/arbitration/2016/11/04/scia-updates-its-rules-to-hear-investor-state-arbitrations/>.

³⁹ See e.g., Comprehensive and Progressive Agreement for Trans-Pacific Partnership ["CPTPP"] art 9.19(4) ("The claimant may submit a claim referred to in ¶ 1 under one of the following alternatives . . . if the claimant and respondent agree, [the claim may be submitted under] any other arbitral institution or any other arbitration rules").

⁴⁰ See e.g., CPTPP art. 9.18(1) ["In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures, such as good offices, conciliation, or mediation"].

⁴¹ See Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, CHINA INT'L COMM. CT. (June 25, 2018), <http://cicc.court.gov.cn/html/1/219/199/201/1574.html>.

⁴² *Id.*

⁴³ Hillman & Goodman, *supra* note 31.

Resolution Mechanisms and Institutions.”⁴⁴ Indeed, the CICC is composed of tribunals located in Shenzhen and Xi’an, which reflects the geography of the Belt and Road Initiative: the Xi’an tribunal faces west, toward the Silk Road Economic “Belt”, while the Shenzhen tribunal faces south, toward the 21st Century Maritime Silk “Road”.⁴⁵ But the CICC’s jurisdiction is not tied to the Belt and Road Initiative. Rather, the CICC’s jurisdiction is tied to several categories of “international commercial cases,”⁴⁶ which might, or might not, relate to BRI projects. Thus, over time, it is possible that the CICC will become less associated with the BRI and more associated with a set of international commercial courts that recently have begun operations in Asia, the Middle East, and Europe, including courts in Singapore, Dubai, and the Netherlands.⁴⁷

The potential for interaction between international commercial courts has been noted by Judge Gao Xiaoli, Deputy Chief Judge of the SPC’s Fourth Civil Division, which oversees the operations of the CICC’s Shenzhen and Xi’an tribunals.⁴⁸ Judge Gao highlighted, in the context of the CICC, the importance of “internationality” and “influence” for international commercial courts.⁴⁹ Consistent with those remarks, Chief Justice Sundaresh Menon of the Supreme Court of Singapore has highlighted, with respect to the Singapore International Commercial Court [“**SICC**”], that the SICC will be a forum that allows “the jurisprudence and best practices of the Singapore courts” to be “shared with the world.”⁵⁰ Justice Steven Chong of the Supreme Court of Singapore similarly has observed that the SICC can serve as an “ambassador for the Singapore Judiciary.”⁵¹

⁴⁴ Opinion Establishing BRI Dispute Resolution Mechanism and Institutions, *supra* note 4.

⁴⁵ See Freshfields Bruckhaus Deringer, *China Establishes International Commercial Courts to Handle Belt and Road Initiative Disputes*, OXFORD BUSINESS LAW BLOG (Aug. 17, 2018) [“It is envisioned that the CICC in Xian, Shaanxi Province will focus on disputes arising from projects on land as Xian is the starting point of the ancient Silk Road. The CICC in Shenzhen, which is in the Guangdong-Hong Kong-Macau Greater Bay Area, will focus on disputes arising from infrastructural developments along the coastline of the maritime routes”], <https://www.law.ox.ac.uk/business-law-blog/blog/2018/08/china-establishes-international-commercial-courts-handle-belt-and>.

⁴⁶ See SPC Provisions on Establishment of the CICC, *supra* note 41, art. 2.

⁴⁷ For discussion on the global rise of international commercial courts, see Pamela K. Bookman, *The Adjudication Business*, 45 YALE J. INT’L L. 227 (2020); Janet Walker, *Specialised International Courts: Keeping Arbitration on Top of its Game*, 85 ARBITRATION 2 (2019); Chief Justice Menon, DIFC Courts Lecture, *supra* note 13.

⁴⁸ See Opinion Establishing BRI Dispute Resolution Mechanism and Institutions, *supra* note 4.

⁴⁹ Judge Gao, *supra* note 2, p. 8.

⁵⁰ Chief Justice Menon, DIFC Courts Lecture, *supra* note 13, at 19.

⁵¹ Justice Chong, *supra* note 3 at 36.

With respect to the CICC, the potential for international influence currently is limited by Chinese nationality requirements applicable to CICC judges⁵² and the counsel⁵³ appearing before them, as well as Chinese language requirements applicable to CICC proceedings.⁵⁴ The CICC's International Commercial Expert Committee – which currently is composed of both Chinese and foreign nationals – can provide some degree of internationality, although Expert Committee members have limited authority under current rules.⁵⁵ The SPC made appointments to the International Commercial Expert Committee in 2018 [32 appointments]⁵⁶ and 2020 [24 appointments].⁵⁷

China-based scholars and judges have highlighted the need for the CICC to develop a more international orientation.⁵⁸ Notably, Judge Long Fei, who serves as Deputy Director in the CICC's Coordination and Guidance Office,⁵⁹ has observed that “the SPC will set up a think-tank of legal experts from BRI countries.”⁶⁰ Consistent with such a development, the SPC's second set of International Commercial Expert Committee appointments reflects significant participation by

⁵² See Wei Sun, *International Commercial Court in China: Innovations, Misunderstandings and Clarifications*, KLUWER ARB. BLOG (July 4, 2018) [“According to Article 9 of the PRC Law on Judges, judges of Chinese courts must be Chinese nationals, so it is impossible for foreign nationals to be judges of the Courts”].

⁵³ See Li Huanzhi, *China's International Commercial Court: A Strong Competitor to Arbitration?*, KLUWER ARB. BLOG (Sept. 30, 2018) [“only Chinese-admitted lawyers can act as legal representatives according to the Chinese Civil Procedure Law, even when the applicable law is foreign law”].

⁵⁴ See Sun, *supra* note 52 [“Article 262 of the Civil Procedure Law in China provides that trials of cases involving foreign elements must be in ‘language commonly used in the PRC’, meaning Chinese, including languages native to the 55 recognized ethnic minorities in China. Article 6 of the Law on the Organization of Courts also includes a similar requirement”].

⁵⁵ See Working Rules of the International Commercial Expert Committee of the Supreme People's Court, CHINA INT'L COMM. CT. (Nov. 21, 2018), Art. 3 <http://cicc.court.gov.cn/html/1/219/208/210/1146.html> [authorizing Expert Committee members to preside over mediations, provide advisory opinions on issues of international or foreign law, advise on the development of the CICC, advise on the formulation of SPC “judicial interpretations and judicial policies,” and work on other matters “entrusted by” the CICC].

⁵⁶ See *The Supreme People's Court Established the International Commercial Expert Committee*, CHINA INT'L COMM. CT. (Aug. 26, 2018), <http://cicc.court.gov.cn/html/1/219/208/209/981.html>.

⁵⁷ See *The Decision on the Appointment of the Second Group of Members for the International Commercial Expert Committee of the Supreme People's Court*, CHINA INT'L COMM. CT. (Dec. 8, 2020), <http://cicc.court.gov.cn/html/1/219/208/210/1876.html>.

⁵⁸ See e.g., Sheng Zhang, *China's International Commercial Court: Background, Obstacles and the Road Ahead*, 11 J. INT'L DISPUTE SETTLEMENT 150, 164 (2020) [internationalization of the CICC “insufficient”]; Judge Xiangzhuang Sun, *A Chinese Approach to International Commercial Dispute Resolution: The China International Commercial Court*, 8 CHINESE J. COMPARATIVE L. 45, 50 (2020) [proposing an expansion of the International Commercial Expert Committee in terms of both membership and authority]; Judge Long Fei, *Innovation and Development of the China International Commercial Court*, 8 CHINESE J. COMPARATIVE L. 40, 44 (2020) [recommending an expansion of the “scale” of the International Commercial Expert Committee and a strengthening of “international judicial exchange and cooperation”]; Chaisse & Qian, *supra* note 32, at 21 [“the CICC faces the challenge of not being able to attract leading international experts and not using sufficiently flexible rules of representation for foreign lawyers”].

⁵⁹ See Judge Long Fei, *supra* note 58, at 40.

⁶⁰ *Id.* at 44.

nationals of BRI states, with representation from Algeria, Egypt, Kazakhstan, Nigeria, Pakistan and Uganda.⁶¹ In terms of potential for internationality and influence, the CICC’s “one-stop” international commercial dispute resolution mechanism⁶² is noteworthy. That “one-stop” model, as characterized in the Working Rules of the CICC’s International Commercial Expert Committee, is a “diversified dispute resolution mechanism that efficiently links mediation, arbitration, and litigation.”⁶³

Such integrated dispute resolution services reflect one version of the “multi-door courthouse” originally conceived by Harvard Professor Frank Sander, in which disputing parties are presented with a set of dispute resolution options, normally including some form of litigation, arbitration, and mediation services.⁶⁴ Matthew Erie has characterized the CICC’s “one-stop” model as “perhaps” the “fullest expression” of Professor Sanders’ multi-door courthouse.⁶⁵ The CICC’s form of multi-door courthouse could influence the development of integrated dispute resolution services in other jurisdictions. The enhanced status of mediation under the CICC’s one-stop mechanism⁶⁶ increases the mechanism’s potential for international influence. The respective roles of mediation and one-stop dispute resolution services within a Belt and Road dispute settlement regime are discussed below.

D. Mediation

Mediation has been a key element in China’s overall BRI dispute resolution strategy. In 2019, the China Council for the Promotion of International Trade and the Singapore International Mediation Centre signed a Memorandum of Understanding “to set up an international panel of mediators, to better handle disputes that may arise” from BRI projects; the panel “will comprise skilled and experienced dispute resolution professionals from China, Singapore and other countries involved in the BRI.”⁶⁷ China – together with many other BRI states – signed the Singapore Convention on

⁶¹ See Decision on Second Group of Expert Committee Appointments, *supra* note 57.

⁶² SPC Provisions on Establishment of the CICC, *supra* note 41, art 11.

⁶³ Expert Committee Working Rules, *supra* note 55, art 1. The SPC has characterized such linkage of mediation, arbitration, and litigation services as a “one-stop’ international commercial dispute resolution mechanism.” SPC Provisions on Establishment of the CICC, *supra* note 41, art. 11.

⁶⁴ See Matthew Erie, *The China International Commercial Court: Prospects for Dispute Resolution for the “Belt and Road Initiative*, 22 ASIL INSIGHTS 11 (Aug. 31, 2018).

⁶⁵ *Id.*

⁶⁶ See e.g., SPC Provisions on Establishment of the CICC, *supra* note 41, art. 12 [“The International Commercial Court may, within seven days after accepting a case and with the consent of the parties, entrust the member of the International Commercial Expert Committee or the international commercial mediation institution to mediate the dispute”].

⁶⁷ *Singapore, China to set up International Panel of Mediators for Belt and Road Projects*, MAXWELL CHAMBERS (Jan. 25, 2019), <https://www.maxwellchambers.com/2019/01/25/singapore-china-to-set-up-international-panel-of-mediators-for-belt-and-road-projects/>.

Mediation on the day the instrument opened for signature.⁶⁸ As noted above, members of the CICC's Expert Committee are authorized to serve as mediators in CICC cases.⁶⁹ The International Chamber of Commerce has issued the following guidance regarding mediation of BRI disputes: "As Belt and Road disputes typically have at least one Chinese party, we recommend that mediation always be considered for Belt and Road disputes."⁷⁰ Peter Corne and Matthew Erie predict that mediation ultimately will be "at the very center of BRI dispute resolution strategy."⁷¹

The Singapore Convention on Mediation can support the role of mediation in resolving BRI-related disputes by advancing not only the enforceability, but also the stature, of mediation among dispute resolution options.⁷² Regarding enforceability, Parties to the Singapore Convention will have an international obligation to enforce agreements resulting from mediations that resolve international commercial disputes.⁷³ The combination of BRI and the entry into force of the Singapore Convention on Mediation almost certainly will elevate the profile of mediation among the suite of services offered by arbitral institutions.⁷⁴ The central role of mediation in the respective one-stop dispute resolution mechanisms of the CICC and the ICDPASO – which are discussed below – likely will further elevate the status of mediation as a form of commercial dispute resolution.

⁶⁸ See United Nations Treaty Collection, United Nations Convention on International Settlement Agreements Resulting from Mediation, Status, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXII-4&chapter=22&clang=_en

⁶⁹ *Supra* note 55

⁷⁰ International Chamber of Commerce Guidance Notes on Resolving Belt and Road Disputes using Mediation and Arbitration, p. 2 <https://iccwbo.org/content/uploads/sites/3/2019/02/icc-guidance-notes-belt-and-road-disputes-pdf.pdf>.

⁷¹ Peter H. Corne & Matthew Erie, *China's Mediation Revolution? Opportunities and Challenges of the Singapore Mediation Convention*, OPINIO JURIS (Aug. 28, 2019).

⁷² See e.g., Bruce Love, *New UN Singapore Convention Drives Shift to Mediation of Trade Disputes*, FINANCIAL TIMES (Aug. 5, 2019) ["regardless of how many mediated settlements actually need to be enforced under the new convention, its real value will probably lie in reinforcing the credibility of mediation"] [quoting Jan O'Neill].

⁷³ See Mediation, *46 Countries Sign the New Singapore Convention on Mediated Settlements*, HERBERT SMITH FREEHILLS (Aug. 7, 2019) <https://hsfnotes.com/adr/2019/08/07/46-countries-sign-the-new-singapore-convention-on-mediated-settlements/> [analyzing criteria that a settlement agreement must meet to give rise to an international enforcement obligation under the Singapore Convention on Mediation: a settlement agreement that is (i) "international", (ii) results from mediation, (iii) does not fall within an excluded category of settlement agreement, and (iv) cannot be refused enforcement on one of the listed grounds in the Convention].

⁷⁴ See e.g., Mediation, SHENZHEN CT. INT'L ARB. [SCIA's Mediation Center "aims to encourage the parties to conduct mediation before or outside the arbitration proceedings and help them resolve various domestic and foreign commercial disputes in combination with arbitration in a harmonious, efficient, cost-effective and fast way"], <http://scia.com.cn/index.php/En/index/serviceinfo2/sid/50.html>; ICC Guidance Notes on Resolving Belt and Road Disputes Using Mediation and Arbitration, INT'L CHAMBER OF COMMERCE ["Although a stand-alone procedure, mediation can be combined with other dispute resolution procedures as part of a tiered dispute resolution process"], <https://iccwbo.org/content/uploads/sites/3/2019/02/icc-guidance-notes-belt-and-road-disputes-pdf.pdf>; Mediation, ASIAN INT'L ARB. CENTRE ["A fusion of mediation and arbitration called Mediation-Arbitration ("Med-Arb") is also available with Med-Arb allowing parties to initiate mediation before resorting to arbitration"], <https://www.aiac.world/Mediation-Mediation>.

E. One-Stop Commercial Dispute Resolution Services

Both the CICC and the ICDPASO are in the process of developing “one-stop” commercial dispute resolution mechanisms.⁷⁵ The two dispute resolution mechanisms are discussed below.

i. *CICC*

In 2018, the SPC selected the first group of arbitration institutions and mediation institutions to be included in the CICC’s one-stop mechanism.⁷⁶ In its notice, the SPC provided some details regarding the operation of the one-stop mechanism. For cases brought before the CICC, the disputing parties may pursue mediation by selecting a mediation institution that has been included in the one-stop mechanism to “conduct mediation by agreement.”⁷⁷ If the disputing parties reach an agreement through mediation, the CICC “may issue a conciliation statement in accordance with the law” or, if the parties request a judgment, the CICC “may make a judgment based on the mediation agreement and serve it to the parties.”⁷⁸ With respect to arbitration, disputing parties may apply to the CICC “for preservation of evidence, assets or acts” and may, after an award is issued, apply to the CICC “for setting aside or enforcing the arbitral award.” Notably, however, CICC support for arbitration extends only to cases administered by arbitral institutions that have been included in the one-stop mechanism.⁷⁹

For the first set of arbitration and mediation institutions chosen for inclusion in the CICC’s one-stop mechanism, the SPC selected only Chinese institutions.⁸⁰ To gain international recognition and influence, the CICC’s one-stop mechanism would eventually need to include participation by foreign institutions. As a first step, the three foreign commercial arbitration institutions that currently operate

⁷⁵ See SPC Provisions on Establishment of the CICC, *supra* note 41, art. 11 [characterizing the CICC’s linkage of mediation, arbitration and litigation services as a “one-stop” international commercial dispute resolution mechanism”]; Wang & Sharma, *supra* note 6, at 22 (“The ICDPASO aims to be a global legal hub providing “one-stop” dispute resolution services”].

⁷⁶ See *Notice of the General Office 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*, CHINA INT’L COMM. CT. (Dec. 5, 2018), <http://cicc.court.gov.cn/html/1/219/208/210/1144.html>, [selecting CIETAC, the Shanghai International Economic and Trade Arbitration Commission, the SCIA, the BAC, the China Maritime Arbitration Commission, the Mediation Center of China Council for the Promotion of International Trade and the Shanghai Commercial Mediation Center].

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* [outlining CICC support “[i]n respect of international commercial cases accepted by an arbitration institution that is included in the [one-stop] Mechanism”].

⁸⁰ *Supra* note 76.

in the Shanghai FTZ – the HKIAC, ICC, and SIAC⁸¹ – could be actively considered for inclusion in the one-stop mechanism. Notably, with respect to the potential inclusion of foreign institutions in the CICC’s one-stop mechanism, the President of Shanghai University of Political Science and Law, Liu Xiaohong, recently observed that the CICC is “working on the inclusion of well-known commercial arbitration and mediation institutions from China and abroad” in the one-stop dispute resolution platform.⁸² Consistent with President Liu’s remarks, Judge Xiangzhuang Sun, who currently serves on the CICC, has supported the inclusion of the “world’s major arbitration and mediation institutions” in the CICC’s one-stop dispute resolution platform.⁸³ The inclusion of such institutions in the CICC’s one-stop mechanism would, again, be of central importance for the CICC’s international profile.

ii. ICDPASO

Although the ICDPASO and CICC are both China-based institutions that are developing one-stop dispute resolution mechanisms, the organizations differ in many important respects. The CICC is a “permanent adjudication organ”⁸⁴ of the SPC, while the ICDPASO is a non-governmental organization⁸⁵ that has been jointly established by the China Council for the Promotion of International Trade, the China Chamber of International Commerce, and “industrial and commercial organizations and legal service agencies from over 30 countries and regions[.]”⁸⁶ In addition,

⁸¹ See Arbitration Notes, *Beijing to Open Foreign Arbitral Institutions*, HERBERT SMITH FREEHILLS (Sept. 14, 2020) [“HKIAC, SIAC and ICC have opened representative offices in Shanghai . . . In August 2019, a further State Council policy paper [extended permitted business activities to include conducting] ‘arbitration business in relation to civil and commercial disputes arising in the areas of international commerce, maritime affairs, investment, etc.’ . . . It has been reported that several foreign arbitral institutions are in the process of setting up branches in the extended free trade zone under the August 2019 policy paper, although it remains to be seen which types of ‘arbitration businesses’ those branches will be permitted to conduct”], <https://hsfnotes.com/arbitration/2020/09/14/beijing-to-open-to-foreign-arbitral-institutions/>.

⁸² President Liu Xiaohong, *China’s Practice of Developing an International Commercial Dispute Resolution Mechanism*, CHINA INT’L COMM. CT. (Dec. 23, 2020), <http://cicc.court.gov.cn/html/1/219/199/203/2043.html>.

⁸³ Judge Sun, *supra* note 58, at 51-52.

⁸⁴ SPC Provisions on Establishment of the CICC, *supra* note 41, art. 1.

⁸⁵ See Bernard Dewit, *International Commercial Dispute Prevention and Settlement Organization (ICDPASO)*, QUEEN MARY UNIVERSITY OF LONDON (November 12, 2020), <https://www.qmul.ac.uk/euplant/blog/items/international-commercial-dispute-prevention-and-settlement-organization-icdpaso.html>.

⁸⁶ List of Deliverables of the Second Belt and Road Forum for International Cooperation (April 27, 2019), ¶ 11, <http://www.beltandroadforum.org/english/n100/2019/0427/c36-1312.html>. For a list of participating organizations, see *The First General Assembly of International Commercial Dispute Prevention and Settlement Organization (ICDPASO) Was Successfully Held*, INT’L COMM. DISP. PREVENTION AND SETTLEMENT ORG. (Sept. 29, 2020), <http://en.icdpaso.org/content/2162>.

ICDPASO intends to provide not only commercial arbitration and mediation services but also dispute prevention⁸⁷ and investor-State dispute resolution⁸⁸ services, which are not offered by the CICC.

Like the CICC, the ICDPASO reflects the BRI-related development of “diversified dispute resolution” mechanisms, which aim to “integrate litigation, arbitration, and mediation proceedings to meet parties’ need from both China and abroad.”⁸⁹ The Charter of the ICDPASO sets out several areas of work that can advance dispute resolution connectivity, including participation in “international events related to the deliberation, adoption and modification of international rules under the auspices of relevant international institutions and organizations” as well as establishing “a mechanism for regular communication, promote experience sharing and business cooperation among commercial organizations, dispute settlement institutes, academic institutions and think tanks around the world[.]”⁹⁰ Both the CICC and the ICDPASO will seek to advance the internationality and influence of international dispute resolution services in China. The sharply different design of the two institutions reflects a larger trend, occurring globally, of experimentation with “institutional design in an effort to become world-recognized forums for international commercial dispute resolution.”⁹¹ The particular BRI emphasis on connectivity adds a distinctive element to the international dispute resolution experimentation underway in China.

III. OPPORTUNITIES FOR BRI DISPUTE RESOLUTION CONNECTIVITY

As discussed above, the central BRI goal of connectivity extends not only to the “hard” connectivity of physical infrastructure but also to the “soft” connectivity of legal infrastructure. As stated by Chief Justice Menon, “an effective transnational system for commercial dispute resolution” must form part of the legal infrastructure that is required to support “the economic networks of the BRI.”⁹² Liao Fan’s observation that soft connectivity can be advanced through the development of a “shared

⁸⁷ See Service, Dispute Prevention, INT’L COMM. DISP. PREVENTION AND SETTLEMENT ORG., <http://en.icdpaso.org/category/54>.

⁸⁸ See Wang & Sharma, *supra* note 6, at 23 (the CICC “has no jurisdiction over a dispute between a private investor (Chinese or foreign) and a foreign state or a foreign investor and the Chinese government because such disputes are not between equal parties . . . In contrast, the ICDPASO is intended to be an effective forum for commercial and investment disputes”).

⁸⁹ Opinion Establishing BRI Dispute Resolution Mechanism and Institutions, *supra* note 4. See also Jian Zhang, *International Commercial Dispute Prevention and Settlement Organization: A Quick Overview*, CHINA JUSTICE OBSERVER (Oct. 15, 2020) (ICDPASO’s “diversified dispute settlement mechanism” features “a synergistic use of litigation, mediation, and arbitration”), <https://www.chinajusticeobserver.com/a/thing-about-international-commercial-dispute-prevention-and-settlement-organization>.

⁹⁰ The Charter of the International Commercial Dispute Prevention and Settlement Organization, art.6(3) and art. 6(7), INT’L COMM. DISP. PREVENTION AND SETTLEMENT ORG, <http://en.icdpaso.org/category/76>.

⁹¹ Pamela K. Bookman & Matthew S. Erie, *Experimenting with International Commercial Dispute Resolution*, Symposium on Global Labs of International Commercial Dispute Resolution, 115 AJIL UNBOUND 5, 7 (2021).

⁹² Chief Justice Menon National Judges College, *supra* note 9, at 10.

understanding and recognition of essential legal principles and rules”⁹³ applies to legal infrastructure generally and to international dispute resolution in particular.

For China-based institutions, BRI-related international dispute resolution will create many opportunities to advance soft connectivity. As discussed above, such opportunities will include: for the CICC, potential interactions with international commercial courts in Asia, the Middle East and Europe; the expansion of rulemaking and services by Chinese arbitration institutions to include investor-State arbitration; the expansion of services by foreign arbitration institutions and foreign nationals in mainland China; coordination between Chinese and foreign arbitration institutions; coordination between Chinese and foreign institutions on dispute prevention and resolution through the work of the ICDPASO; and bilateral and multilateral rulemaking on the international enforceability of a variety of dispute resolution outcomes.⁹⁴

Regarding potential CICC interactions with other international commercial courts, the launch of the Standing International Forum of Commercial Courts [“SIFoCC”] is noteworthy. As stated by Chief Justice Menon in a recent address in Beijing: “The SIFoCC draws together courts from almost 30 different countries to share best practices in the belief that courts working together can make a stronger contribution to the rule of law than they can working alone.”⁹⁵ Consistent with such an emphasis on “cross-court dialogue and collaboration,”⁹⁶ a recent SPC Opinion addressing the CICC mentions opportunities for cooperation with international commercial courts outside of China.⁹⁷ The SIFoCC held its second meeting in New York in 2018;⁹⁸ the meeting included representation from 35 jurisdictions, “with 13 jurisdictions represented by their Chief Justice.”⁹⁹ Representatives from the SPC as well as the Hong Kong judiciary attended the meeting.¹⁰⁰

⁹³ Liao Fan, *Understanding the BRI through “Five Connectivities”*, CGTN (Apr. 20, 2019). See also Heng Wang, *supra* note 1 at 36 [characterizing the BRI as including “software” (mechanisms and agreements) and “hardware” (economic corridors with BRI states)].

⁹⁴ See Introduction, *supra*.

⁹⁵ Chief Justice Menon National Judges College, *supra* note 9, at 20-21.

⁹⁶ *Id.* at 20.

⁹⁷ See Susan Finder, *Supreme People’s Court Updates its Belt & Road Policies*, SUPREME PEOPLE’S COURT MONITOR (January 28, 2020) (discussing SPC Opinion on Providing Services and Guarantees for the Belt & Road, 关于人民法院进一步为“一带一路”建设提供司法服务和保障的意见, <http://www.court.gov.cn/fabu-xiangqing-212931.html>)

⁹⁸ The SIFoCC held a third meeting virtually in 2021. See *The 3rd SIFoCC Meeting – Now Available to Watch Online*, STANDING INT’L FORUM OF COMM. CTS. (Mar. 24, 2021), <https://sifocc.org/2021/03/24/the-3rd-sifocc-meeting-now-available-to-watch-online/>.

⁹⁹ *Report of the Second SIFoCC Meeting – New York 2018 (Feb. 5, 2019)*, STANDING INT’L FORUM OF COMM. CTS, p. 3, <https://sifocc.org/2019/02/05/report-of-the-second-sifocc-meeting-new-york-2018/>.

¹⁰⁰ *Id.* at 6-7.

Chief Justice Menon’s remarks on international collaboration also included discussion of the Asian Business Law Institute [“**ABLI**”], which was founded in Singapore in 2016.¹⁰¹ As stated by Chief Justice Menon, “the goal of the ABLI is to provide ‘practical guidance in the field of Asian legal development’ and ‘the convergence of Asian business laws.’”¹⁰² Three SPC judges serve on the ABLI’s Board of Governors,¹⁰³ two of whom also serve on the CICC: Judge Gao Xiaoli and Judge Shen Hongyu.¹⁰⁴ The ABLI can provide additional opportunities for the SPC – and, in particular, the CICC – to develop greater levels of internationality and influence.

Notwithstanding the above opportunities for advancing BRI dispute resolution connectivity, those opportunities will be arising in an increasingly fractured international trade environment. The extent to which that fractured trade environment might impede opportunities for BRI dispute resolution connectivity is discussed below

IV. CONNECTIVITY IN A FRACTURED TRADE ENVIRONMENT

Over the past few years, the potential decoupling of the world’s two largest economies has received considerable attention.¹⁰⁵ As observed by Edward Luce:

[T]he normal rules of globalisation are breaking down . . . This is creating two effects. The first is economic disengagement. After years of rapid growth, China’s investment in the US is dropping rapidly . . . US barriers to Chinese entry are getting higher by the day. China’s technology strategy is thus shifting from foreign acquisition to import substitution . . . The second is that other countries are being forced into an unwelcome choice. In a win-lose world, you are either with America or you are with China.¹⁰⁶

If countries ultimately do face such an “unwelcome choice,” one central factor to be considered would be the level of international engagement demonstrated, respectively, by the United States and China. On a recent visit to Washington D.C., the Foreign Minister of Singapore, Dr. Vivian Balakrishnan, stated the following:

As the centre of gravity, of economic balance, shifts, I would argue that the best way for the United States to safeguard its own enlightened long-term self-interest is to keep its seat at the table, and to actively contribute to the shaping of norms that govern the global commons.¹⁰⁷

¹⁰¹ Chief Justice Menon National Judges College, *supra* note 9, at 23.

¹⁰² *Id.* (quoting Introduction, ASIAN BUS. L. INSTITUTE <https://abli.asia/Introduction>).

¹⁰³ *See* Board of Governors, ASIAN BUS. L. INSTITUTE <https://abli.asia/ABOUT-US/BoardofGovernors>.

¹⁰⁴ *See* Judges, CHINA INT’L COMM. CT. <http://cicc.court.gov.cn/html/1/219/193/196/index.html>.

¹⁰⁵ *Supra* note 21.

¹⁰⁶ Luce, *supra* note 21.

¹⁰⁷ Balakrishnan, *supra* note 27.

The United States recently has demonstrated some leadership in the shaping of global norms when creating the U.S. International Development Finance Corporation [“DFC”],¹⁰⁸ concluding the United States-Mexico-Canada Agreement [“USMCA”],¹⁰⁹ developing a “Vision and Principles for a Free and Open Indo-Pacific,”¹¹⁰ and announcing, with Australia and Japan, a Trilateral Partnership for Infrastructure Investment in the Indo-Pacific.¹¹¹ The Biden administration also has reversed some of the Trump administration’s retreat from global engagement. Such actions have included rejoining the Paris Climate Agreement,¹¹² rejoining the World Health Organization,¹¹³ and, following the blocking of several World Trade Organization [“WTO”] appointments by the Trump administration,¹¹⁴ ultimately supporting the appointment of a new WTO Director General.¹¹⁵ With respect to BRI in particular, the Biden administration has started to explore the development of potential alternatives.¹¹⁶

¹⁰⁸ In 2018, the United States created the DFC to update and expand the operations of the Overseas Private Investment Corporation. See Mercy A. Kuo, *The US International Development Finance Corporation and China*, THE DIPLOMAT (Oct. 25, 2018).

¹⁰⁹ See Free Trade Agreements, United States-Mexico-Canada Agreement, OFFICE OF THE U.S. TRADE REP., <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>.

¹¹⁰ See The Department of Defense Indo-Pacific Strategy Report, Preparedness, Partnerships, and Promoting a Networked Region (June 1, 2019), <https://media.defense.gov/2019/Jul/01/2002152311/-1/-1/1/DEPARTMENT-OF-DEFENSE-INDO-PACIFIC-STRATEGY-REPORT-2019.PDF>, p 3 [“In 2017, President Trump announced our nation’s vision for a free and open Indo-Pacific at the APEC Summit in Vietnam”].

¹¹¹ See Joint Statement of the Governments of the United States of America, Australia, and Japan (Nov. 17, 2018), PRIME MINISTER OF AUSTRALIA (Nov. 17, 2018), <https://au.usembassy.gov/joint-statement-of-the-governments-of-the-united-states-of-america-australia-and-japan/>.

¹¹² See Press Statement, Antony J. Blinken, Secretary of State, *The United States Officially Rejoins the Paris Agreement*, U.S. DEPT. OF STATE (Feb. 19, 2021), <https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/>.

¹¹³ See Lindsay Maizland, *Biden’s First Foreign Policy Move: Reentering International Agreements*, COUNCIL ON FOREIGN RELATIONS, (Jan. 21, 2021) (“Biden rejoined the World Health Organization (WHO) . . . the United States will also join COVAX, a WHO-led initiative to distribute two billion COVID-19 vaccine doses around the world by the end of the year”), <https://www.cfr.org/in-brief/bidens-first-foreign-policy-move-reentering-international-agreements>.

¹¹⁴ See Larry Elliott, *US Blocking Selection of Ngozi Okonjo-Iweala to be Next Head of WTO*, THE GUARDIAN (Oct. 28, 2020) [“The US is blocking the appointment of Ngozi Okonjo-Iweala as the next head of the World Trade Organization despite the former finance minister of Nigeria winning the overwhelming backing of the WTO’s 164 members”]; Tetyana Payosova, Gary Clyde Hufbauer & Jeffrey J. Schott, *The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures*, PETERSON INSTITUTE FOR INT’L ECONOMICS POLICY BRIEF 18-5 (March 2018) (“For the past few years, US officials have blocked appointments of Appellate Body members to force WTO members to negotiate new rules that address US concerns and limit the scope for judicial overreach”).

¹¹⁵ See *Office of the United States Trade Representative Statement on the Director General of the World Trade Organization*, OFFICE OF THE U.S. TRADE REP. (Feb. 5, 2021), [“The Biden-Harris Administration is pleased to express its strong support for the candidacy of Dr. Ngozi Okonjo-Iweala as the next Director General of the WTO”], <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/february/office-united-states-trade-representative-statement-director-general-world-trade-organization>.

¹¹⁶ See The Editorial Board, *Creating Alternatives to China’s Belt and Road*, FINANCIAL TIMES (Apr. 24, 2021) [“As part of his plan to create an alliance of democracies to counter China’s growing power, US president Joe Biden has proposed to the UK’s Boris Johnson setting up an infrastructure effort to rival the Belt and Road plan”].

But the development of attractive BRI alternatives by the United States remains at an early stage, and during the Trump administration China engaged in – and, today, continues to engage in – exceptionally active rulemaking and institution building in Asia. Examples of such rulemaking and institution building include: (i) the advancement of multilateral development banks in Beijing [“**the AIIB**”¹¹⁷] and Shanghai [“**the NDB**”¹¹⁸], (ii) the conclusion of BRI cooperation agreements with more than 135 countries;¹¹⁹ (iii) the establishment of CICC tribunals in Shenzhen and Xi’an;¹²⁰ (iv) the establishment of the ICDPASO in Beijing;¹²¹ (v) the conclusion of the RCEP agreement, which establishes “the world’s largest trading bloc”¹²² as well as a Secretariat;¹²³ (vi) participation in many bilateral and multilateral initiatives aimed at advancing the enforceability of outcomes in a variety of dispute resolution settings, including the New York Convention [arbitral awards],¹²⁴ Singapore

The Council on Foreign Relations recently developed a set of recommendations on “alternatives to BRI,” including the finding that “the World Bank and its related institutions remain the best alternative to BRI.” Jennifer Hillman & David Sacks, *China’s Belt and Road: Implications for the United States*, COUNCIL ON FOREIGN RELATIONS (March 2021), <https://www.cfr.org/report/chinas-belt-and-road-implications-for-the-united-states/recommendations>.

¹¹⁷ As of May 2021, the AIIB has 103 approved members. See Introduction, ASIAN INFRASTRUCTURE INVESTMENT BANK, <https://www.aiib.org/en/about-aiib/index.html>. Notably, the AIIB could be well-positioned to significantly advance BRI-related dispute resolution connectivity. In its 2019 Yearbook, the AIIB examined “the role of international organizations in promoting effective dispute resolution, both as dispute participants and by providing dispute resolution platforms and expertise.” Peter Quayle and Xuan Gao, Introduction, in *INT’L ORGANIZATIONS AND THE PROMOTION OF EFFECTIVE DISPUTE RESOLUTION*, AIIB YEARBOOK OF INT’L L. 2019 1 (Peter Quayle & Xuan Gao, eds., 2019). In particular, the AIIB Yearbook considered whether the AIIB was “well placed” to serve as a “modern ICSID for the Belt and Road.”

¹¹⁸ The New Development Bank was jointly founded by the BRICS countries (Brazil, Russia, India, China, and South Africa). See New Development Bank, Organization, Members, <https://www.ndb.int/about-us/organisation/members/>.

¹¹⁹ Jack Nolan & Wendy Leutert, *Signing Up or Standing Aside: Disaggregating Participation in China’s Belt and Road Initiative*, BROOKINGS (Nov. 5, 2020) [“As of January 2020, 138 countries have signed on to the BRI, ranging from Italy to Saudi Arabia to Cambodia”], <https://www.brookings.edu/articles/signing-up-or-standing-aside-disaggregating-participation-in-chinas-belt-and-road-initiative/>. A recent Council on Foreign Relations report includes 139 countries within BRI. See Hillman & Sacks, *supra* note 116, Introduction.

¹²⁰ *Supra* note 45.

¹²¹ *Supra* note 45.

¹²² *RCEP: Asia-Pacific Countries Form World’s Largest Trading Bloc*, BBC NEWS (Nov. 16, 2020) [RCEP “is made up of 10 Southeast Asian countries, as well as South Korea, China, Japan, Australia and New Zealand . . . Members of RCEP make up nearly a third of the world’s population and account for 29% of global gross domestic product”].

¹²³ See *RCEP: A First Look at the Texts*, ASIAN TRADE CENTRE (Nov. 16, 2020), <http://asiantradecentre.org/talkingtrade/rcep-a-first-look-at-the-texts>.

¹²⁴ China became a Party to the New York Convention in 1987. See New York Arbitration Convention, Contracting States, <http://www.newyorkconvention.org/countries>. In 2018, UNCITRAL and the SCIA hosted in Shenzhen the “world’s first commemorative event for the 60th anniversary of the New York Convention.” *Shenzhen Sent Out “China’s Voice in International Rules,”* SHENZHEN CT. INT’L ARB. (May 21, 2018), <http://www.sccietac.org/web/news/detail/1740.html>. Also in 2018, the SPC, UNCITRAL, CIETAC and the China Council for the Promotion of International Trade co-hosted the 2018 China Arbitration Summit, held in

Convention on Mediation [mediated settlement agreements],¹²⁵ the Hague Choice of Court Convention [“**choice of court agreements**”],¹²⁶ the Hague Judgments Convention [“**court judgments**”],¹²⁷ and a number of bilateral judicial assistance treaties.¹²⁸

Such rulemaking and institution building, however, has not escaped criticism, particularly from the United States. U.S. criticism of the BRI has been frequent and consistent.¹²⁹ The Biden administration has continued raising such criticisms, as reflected in recent remarks by U.S. Secretary of State Antony J. Blinken.¹³⁰ During the Obama administration, similar governance concerns raised by U.S. officials in response to the launch of the AIIB were widely reported.¹³¹

Such criticism has not, however, led to countries “detaching” themselves from China. China has entered into BRI cooperation agreements with more than 135 countries.¹³² Regarding BRI investment in the 2020’s, the law firm Baker McKenzie and BRI consultancy firm Silk Road Associates recently

Beijing, to “celebrate the 60th Anniversary of the New York Convention.” 2018 China Arbitration Summit, http://cietacen.chinaarbitrationweek.org/arbitration-summit2018/Summit_en.html.

¹²⁵China signed the Singapore Convention on Mediation in 2019. *See Singapore Convention Enters into Force, Annex A, List of Countries that Signed and Ratified the Singapore Convention on Mediation*, SINGAPORE CONVENTION ON MEDIATION (Sept. 12, 2020), <https://www.singaporeconvention.org/media/AnnexACountriesSCM.pdf>.

¹²⁶ *See China Signs the 2005 Choice of Court Convention*, HAGUE CONF. ON PRIVATE INT’L LAW (Sept. 12, 2017), <https://www.hcch.net/en/news-archive/details/?varevent=569>.

¹²⁷ *See The 2019 HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters has been Adopted*, CHINA INT’L COMM. CT. (July 3, 2019), <http://cicc.court.gov.cn/html/1/219/208/209/1303.html> [“During the conference, the Chinese delegation constructively participated in negotiations, firmly supported multilateralism, actively played the role as a bridge and built consensus among all the parties, and took the initiative to lead the rule-making”].

¹²⁸ *See* Song, *supra* note 19.

¹²⁹ *See e.g.*, Brunnstrom, *supra* note 25 (United States declines to send high-level officials to Silk Road Summit); U.S. National Security Council, Twitter (Mar. 9, 2019) [“Italy is a major global economy and a great investment destination. Endorsing BRI lends legitimacy to China’s predatory approach to investment and will bring no benefits to the Italian people”], <https://twitter.com/WHNSC/status/1104402719568203776>; Nectar Gan and Robert Delaney, *United States under Donald Trump is Veering Away from China’s Belt and Road*, SOUTH CHINA MORNING POST (Apr. 25, 2019) [“In a globalized world, there are many belts and many roads . . . And no one nation should put itself into a position of dictating ‘one belt, one road’”] (quoting then-U.S. Defense Secretary James Mattis).

¹³⁰ *See* Press Releases, *Secretary Antony J. Blinken Virtual Roundtable with Kenyan and Nigerian Journalists*, U.S. DEPT. OF STATE (Apr. 27, 2021) [“In some instances, other countries that make investments in fact load a lot of debt on the countries getting the so-called investment, and that debt becomes a trap and a huge burden, and the country either has to pay it back by taking resources away from other parts of its budget that benefit people or it can’t pay it back and then the country that’s made the debt, issued the debt, suddenly owns whatever it was investing in . . . we’ve seen other countries come in with big projects but they bring in their own workers instead of relying on local workers who should get the benefits of working on these projects. Sometimes the standards when it comes to protecting the rights of workers working on these projects are insufficient or the environmental standards are not respected”], <https://www.state.gov/secretary-antony-j-blinken-virtual-roundtable-with-kenyan-and-nigerian-journalists/>;

¹³¹ *Supra* note 24.

¹³² *Supra* note 119.

modelled five scenarios, which ranged from US\$560 billion to US\$1.32 trillion.¹³³ In 2019, the AIIB “welcomed nine new proposed members,” increasing AIIB membership to 102 shareholders representing “79 percent of the global population.”¹³⁴ RCEP “will create a free trade zone covering about 30% of the world’s gross domestic product, trade and population.”¹³⁵

Rather than leading to separation, criticism instead can be a form of engagement. A fractured trade environment does not pose a significant threat to China’s ability to advance dispute resolution connectivity given, in particular, the active rulemaking and institution building occurring on China’s side of the divide.

V. CONCLUSION

The central BRI goal of connectivity extends not only to the “hard” connectivity of physical infrastructure but also to the “soft” connectivity of legal infrastructure. The advancement of soft connectivity through development of shared understandings on core principles and rules applies to legal infrastructure generally and to international dispute resolution in particular.

For China-based institutions, BRI-related international dispute resolution can create many opportunities to advance soft connectivity. Such opportunities include: for the CICC, potential interactions with international commercial courts in Asia, the Middle East and Europe; the expansion of rulemaking and services by Chinese arbitration institutions to include investor-State arbitration; the expansion of services by foreign arbitral institutions and foreign nationals in mainland China; coordination between Chinese and foreign arbitral institutions; coordination between Chinese and foreign institutions on dispute prevention and resolution through the work of the ICDPASO; and bilateral and multilateral rulemaking on the international enforceability of a variety of dispute resolution outcomes. But such BRI-related advances in dispute resolution connectivity will be occurring in an increasingly fractured international trade environment, with attention focused on a potential U.S.-China decoupling. That fractured trade environment follows years of U.S. practice toward China, across three administrations, in which U.S. officials consistently have raised governance concerns in connection with China-led initiatives.

¹³³ Jiangyu Wang, *supra* note 4, at 6-7.

¹³⁴ *From Our President*, 2019 AIIB Annual Report and Financials, ASIAN INFRASTRUCTURE INVESTMENT BANK (2020), https://www.aiib.org/en/news-events/annual-report/2019/_common/pdf/2019-aiib-annual-report-and-financials.pdf.

¹³⁵ Kate Whiting, *An Expert Explains: What is RCEP, the World’s Biggest Trade Deal?*, WORLD ECONOMIC FORUM (May 18, 2021), <https://www.weforum.org/agenda/2021/05/rcep-world-biggest-trade-deal/>.

The increasingly fractured trade environment has not, however, led to countries “detaching” themselves from China. China has entered into BRI cooperation agreements with more than 135 countries; AIIB membership represents nearly 80% of the global population; the RCEP free trade area will cover about 30% of the world’s trade and population. The risk of separation from China may be low, but the risk of criticism of China is not. Malaysia’s recent suspension, and subsequent resumption, of a few major BRI projects provides one clear example of such criticism. In the particular context of international dispute resolution, many responses to the launch of the CICC have been critical or, at a minimum, skeptical. Rather than leading to separation, such criticism instead can operate as a form of engagement. International engagement with the BRI and the AIIB has been strong notwithstanding significant criticism of both initiatives. An increasingly fractured trade environment likely will not impede China’s advancement of dispute resolution connectivity, particularly given the active rulemaking and institution building occurring on China’s side of the divide.