Belt and Road Initiative

China • Cambodia • Caribbean Countries • Djibouti
Egypt • Greece • Kenya • Luxembourg • Malaysia
Pakistan • Philippines • Portugal
Russian Federation and Central Asian Countries
South America • Sweden • Switzerland
United Kingdom

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Comparative Summary

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I. Introduction

This report covers the legal and policy frameworks that govern the Belt and Road Initiative (BRI) (formerly known as “One Belt One Road”) in select jurisdictions and regions around the globe, namely, China, Cambodia, Djibouti, Egypt, Greece, Kenya, Luxembourg, Malaysia, Pakistan, the Philippines, Portugal, the Russian Federation, Sweden, Switzerland, the United Kingdom (UK), and certain Central Asian, Caribbean, and South American countries. The BRI is a transcontinental investment strategy and program with the aim of promoting economic connectivity and integration in more than 100 countries in Asia, Europe, and Africa through a large set of rail, road, and sea infrastructure projects, energy pipelines, special economic zones, and other areas of cooperation meant to expand China’s economic and political influence. In 2015, the Chinese government issued an official outline of the principles, framework, priorities of cooperation, and cooperation mechanisms of the Silk Road Economic Belt and the 21st-Century Maritime Silk Road (which together now are referred to as the BRI).

The report looks at the nature and types of agreements made by these countries, the debt implication of some of the major projects, the extent of involvement of local companies and the amount of job creation, and whether projects have any military or strategic purpose in addition to commercial uses.

II. Legal and Policy Framework

According to the official BRI portal, China has signed 206 BRI cooperation documents with 140 countries and 32 international organizations. Most of the agreements signed with China take the form of “bilateral cooperation agreements” or Memoranda of Understanding (MoUs). BRI-related MoUs can concern government-to-government agreements involving the Chinese government and the host country government, state entities (including state-owned corporations), or regional organizations.

The international legal framework for the participation of host countries in the BRI can be difficult to review, as the text of most agreements and their precise contents and terms are not publicly available. According to one expert, despite some differences in design, the basic structures of these MoUs are similar.¹ These agreements can have paragraphs where parties affirm common objectives and guiding principles of cooperation, areas of cooperation (policy coordination, facilities connectivity, unimpeded trade, financial integration, and people-to-people bonds),

¹ Cooperation Agreements and MoUs Under the Belt and Road Initiative, Belt & Road Initiative (Nov. 28, 2018), https://perma.cc/Y2W5-AMKG.
modes and mechanisms of cooperation, methods for resolving differences, and applicable law.\(^2\) Cooperation in the agreements can cover a wide range of areas, such as transportation infrastructure development, energy projects, trade and investment promotion, and financial cooperation.

Reports indicate that none of these MoUs is legally binding. For example, the MoU with Italy includes the following paragraph on applicable law:

> This Memorandum of Understanding does not constitute an international agreement which may lead to rights and obligations under international law. No provision of this Memorandum is to be understood and performed as a legal or financial obligation or commitment of the Parties. This Memorandum of Understanding will be interpreted in accordance with the legislations of the Parties and as well as applicable international law and, as for the Italian Party, with the obligations arising from its membership of the European Union.\(^3\)

However, according to one expert on the BRI, these agreements allow the parties to “formulate interpretations of certain parts of the agreements” and such interpretations may influence future diplomatic negotiations on more specific areas.\(^4\)

Due to a lack of public access to most MoUs, reliance must be made on government statements, secondary sources, and media reports for details on most of these agreements. The survey of the Russian Federation and Central Asian countries describes the lack of transparency in BRI-related high-level meetings that result in sets of new agreements in various sectors, while the public is informed only of the titles of the agreements.

The level of involvement and number of investment projects can vary widely between jurisdictions and regions. Some countries might not have published a confirmation of signing an MoU or might deny having signed one. Not all BRI members host BRI projects—some countries sign an MoU to “merely formally endorse BRI as a concept and pledge to cooperate with China to promote the initiative.” As noted in the report on South American countries, whether a country is officially involved can be unclear at times. China, however, uses a pragmatic approach to allow nations that have not officially joined BRI for mainly political reasons to benefit from China’s investments in the region.

Several jurisdictions in Europe surveyed for this report, such as Switzerland and Luxembourg, have limited involvement in the BRI. Switzerland has taken a cautious approach with no major flagship projects and a single BRI MoU focused on financial and economic matters to deepen the “innovative strategic partnership” between Switzerland and China and expand areas of collaboration in trade, investment, and finance for projects in third countries. Luxembourg also does not have any investment infrastructure projects but has signed an MoU on financial services,  


\(^3\) Id. para. VI, Applicable Law.

\(^4\) Belt & Road Initiative, supra note 1.
by which it seeks to cement its status as an international financial center—in particular for green finance. In South American countries, concerns and criticism of the BRI involving inefficient legal frameworks, regulatory risks, lack of transparency, Chinese geopolitical interests, and domestic political issues, are commonly cited as obstacles to BRI projects in the region.

The UK has not signed an MoU to participate in the BRI, and it does not have any projects in its territory due to concerns over debt sustainability and China’s compliance with international procurement standards. However, it is involved in the BRI by encouraging UK companies to finance these projects, and it is working to ensure that its economic and strategic interests are not left behind.

China has expressed a desire to create a “Polar Silk Road” transportation route into and through the Polar Region, including the Nordic countries of Finland, Norway, and Sweden, but no initiatives have been implemented in these countries. Sweden, despite being a large recipient of China’s direct investment, is not a part of the BRI, and its government has been reluctant to endorse the initiative or the Polar Silk Road. The Swedish Defense Research Agency has said that Chinese foreign direct investment can have negative consequences for the security of the country.

Other countries have numerous bilateral agreements and other arrangements. Pakistan is heavily involved in the BRI’s flagship project, called the China-Pakistan Economic Corridor (CPEC), and signed 51 agreements, MoUs, and financing contracts with China at CPEC’s official launch in 2015. Malaysia signed various MoUs and agreements related to a number of infrastructure projects involving Chinese funding and companies between 2013 and 2017, including eight government-to-government MoUs signed in 2015 and 14 MoUs signed in November 2016.

Agreements and contracts can also involve state governments and Chinese businesses, business-to-business agreements, and other arrangements. Secrecy and a lack of details surrounding financing and project implementation contracts has also characterized many if not most BRI projects. In Kenya and the Philippines, loan agreements for certain projects have nondisclosure clauses, which state that the borrower must keep all the terms and conditions of an agreement strictly confidential. Loan agreements in both countries also include clauses waiving sovereign immunity and mandating arbitration of disputes before the China International Economic and Trade Arbitration Commission in Beijing.

III. Problems Surrounding Terms and Conditions of Debt Loans

According to a Green Belt and Road Initiative Center analysis, from 2004 to 2019, China’s overseas loans (including in BRI countries and non-BRI countries) grew by almost 12 times, from US$59 billion to US$696 billion. Many of the BRI projects are financed by loans from Chinese financial institutions, such as the China Development Bank and Exim Bank of China. Among these loans, many are lent to, or guaranteed by, BRI country governments.

Debt problems and risks have been associated with many BRI projects in a number of host countries such as Djibouti, Kenya, Pakistan, and Malaysia. Kenya, for example, has 43 loans worth US$9.2 billion, and interest payments to Chinese lenders constituted 87% of the money it used to service its debts in 2019. It is also struggling to generate enough revenue from one of its flagship projects, the standard gauge railway (SGR), to service its debt. Djibouti’s risk of external
debts distress and overall risk of debt distress is also high, with China holding at least 70% of Djibouti’s debt. Pakistan’s ratio of Chinese debt is lower (27.4%), but CPEC energy power projects may increase Pakistan’s debt burden because of sovereign guarantees, and these projects are currently facing a circular debt problem. However, for countries like Cambodia, although foreign debt has increased, and 44% of such debt was owed to China in 2020, many BRI projects are financed through private corporate investments rather than government-to-government loans, which may reduce the risk of a debt-trap. In Central Asia, the poorest countries of the region, Kyrgyzstan and Tajikistan, are also vulnerable to debt shocks, as they borrow under unfavorable conditions to finance their respective BRI-related infrastructure projects.

Some commentators argue that China is involved in “debt trap” diplomacy, where it is purposefully burdening countries with “unsustainable levels of debt in order to gain control of strategic infrastructure or political influence when borrowing countries can’t repay their loans.” One often-cited example of this practice is the Hambontota port in Sri Lanka. Concerns also rose when Kenya was said to have waived its sovereign immunity in a loan agreement, potentially exposing key public assets to seizure by China in the event of a default. However, some observers note that although it is unlikely that China will seize the Mombasa port in the event that Kenya fails to meet its debt obligations, the possibility does give China leverage over Kenyan political decisions. Similarly, in Egypt, there is concern that the country may fail to repay its loans for major infrastructure projects because of the government’s substantial debts, and that this may result in less Chinese investment in the future.

However, although debt appears to be a significant problem associated with BRI projects in a number of host countries, this narrative has been disputed by some commentators as being overly simplistic. With respect to Malaysia, for example, commentators have argued that problems with BRI-linked projects, including their cost and financing, have arisen due to the influence of domestic interests, politics, and corruption, and that the country is not facing debt distress as a result of the deals.

Many observers are concerned that Djibouti has taken on more debt than it can handle, but some dispute that it has fallen into a “debt trap.” They argue that a number of factors may mitigate against that eventuality, including positive economic prospects, significant reputational cost to China if that happens, and the Djiboutian government’s long experience in leveraging its strategic position to protect its interests. Some observers also note China’s willingness to renegotiate, waive, or restructure loans in some cases. For example, some or all of the above factors may have contributed to China’s willingness to renegotiate with Djibouti regarding its debt in respect to the Addis Ababa–Djibouti Railway. Pakistan also is negotiating with China in order to restructure the terms of energy projects, seeking to cut interest rates on current power sector-related loans and a 10-12 year extension on the debt repayment period.

Other commentators note that, with the focus on debt, not enough attention is drawn toward some of the mutual economic benefits that BRI projects brings to China and the host country. For example, the potential benefits that China seeks from the BRI and that African countries involved

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in the program, including Kenya with the Mombasa-Nairobi SGR, stand to gain from it are not necessarily mutually exclusive. Proponents in Pakistan’s government also criticize the narrow focus on commercial loans when CPEC projects have also been financed through a variety of other structures, such as joint ventures/public-private partnerships, equity financing, grants, and no interest/concessional loans.

In 2019, in response to criticism, China recognized the need to do things differently, a shift that is being described as BRI 2.0. During the second Belt and Road Forum (Second BRF), leaders issued a joint communiqué that stated the BRI would strive to “build high-quality, reliable, resilient and sustainable infrastructure” and recognized a need for more “diversified and sustainable financial supports for projects” from national and international financial institutions.6 President Xi Jinping’s remarks during the forum also emphasized that China would make BRI more financially sustainable. As a result, China’s Ministry of Finance formulated the Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative.7 The aim of the framework is to promote sustainable economic and social development of BRI countries while ensuring debt sustainability. It is a nonmandatory policy tool to conduct debt sustainability analysis and manage debt risks to support lending decisions.

IV. Local Companies/Local Job Creation

In some host countries, all major BRI projects appear to be dominated by Chinese companies and state-owned enterprises, sometimes in joint ventures or partnerships with local businesses and other third parties. In Central Asia, for example, BRI projects are predominantly built by Chinese investors and companies, and such projects are disproportionately backed by Chinese state financiers. There has been considerable criticism over corruption and the lack of transparency, due diligence, and competitive bidding/fair procurement practices involved in BRI projects across host countries. For example, in Kenya, the China Road and Bridge Corporation was awarded the contract to build the SGR without open tendering, in disregard of the 2010 Constitution and 2005 Public Procurement and Disposal Act. Similarly, in Pakistan, there were reported irregularities violating procurement rules in the award for highways and motorways projects. In Malaysia, some of the projects and deals have generated controversy and have formed part of the corruption allegations against Najib Razak, the former prime minister who initiated them. A new prime minister sought to renegotiate or terminate some of the significant projects between 2018 and 2020, arguing that they imposed too great a burden on the country, and the former prime minister was subsequently convicted of corruption offenses in 2020. Concerns about potential violations of procurement processes, concessions in respect to local content, and fair labor practices have also been raised in a number of Caribbean countries.

As part of the BRI 2.0, China is putting greater emphasis on transparency and abiding by international rules on bidding and procurement. The joint communiqué of the Second BRF highlighted “the importance of open, transparent and non-discriminatory public procurement

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procedures” and “zero tolerance in anti-corruption.” The 2019 BRI Progress report, which was released just before the forum, stated that China is willing to join all other countries in improving legal systems and mechanisms to fight corruption, improve business environments, and punish commercial bribery.

Local job creation has been another area of controversy in BRI projects in a number of host countries. In Pakistan, CPEC is expected to add over 700,000 jobs to the Pakistani labor market from 2015 to 2030. Some commentators reported estimates exceeding 2.3 million jobs by 2030. However, it appears that a large portion of the jobs generated by these projects employ unskilled laborers while most skilled opportunities go to Chinese workers. Similarly, in Egypt, although Chinese companies are hiring local Egyptian workers, there is a concern that local employees are underrepresented in the companies’ managerial positions. This may deny the workers the opportunity to gain important knowledge and skills.

V. Military or Strategic Purposes of Projects

Commentators have written about the potential and actual use of certain BRI-linked ports and other maritime assets for strategic and military purposes, but this is usually downplayed or rejected by the host country and China. A report by the BRI Leadership Group, China’s government coordination body, stresses that the BRI is not a geopolitical or military alliance, but “an initiative for peaceful development and economic cooperation.”

Cambodia and China are suspected of having signed a secret agreement granting China exclusive rights over a certain part of the Ream Naval Base, although both governments deny this. Similarly, the Gwadar seaport in Pakistan is often highlighted as an example of a potential or likely site for a Chinese overseas naval base. However, according to available reports, it is not currently being used as a People’s Liberation Army military base, and both governments have downplayed any military use for the port. Some experts note, however, that the port may still serve China’s broader strategic and other policy objectives. In Greece, COSCO Shipping, a state-owned enterprise, has a majority stake in and operates the Piraeus Port Authority, making the Port of Piraeus the first major seaport in the European Union that is wholly managed by a Chinese company, raising strategic concerns among US and European allies. In Portugal, its maritime assets, the Port of Sines and the archipelago of the Azores, have attracted investment and strategic interest from China. In March 2019, President el-Sisi affirmed Egypt’s support of the BRI, and he called for enhanced defense cooperation in August 2020. A Chinese company, Hutchison Ports, has signed a long-term agreement with the Egyptian navy for the development and operation of a new container terminal inside the Abu Qir Naval Base on the Mediterranean Sea. In addition, Djibouti hosts China’s only foreign military base, a naval facility adjacent to the Doraleh Multipurpose Port from which it can participate in anti-piracy operations and generally safeguard its access to the strategic maritime route along the coast of the Horn of Africa.
China
China

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SUMMARY

China has officially stated that the Belt and Road Initiative (BRI) “focuses on Asia, Europe and Africa, but is open to all partners,” and that the BRI is not a geopolitical or military alliance, but “an initiative for peaceful development and economic cooperation.” China has so far signed 206 BRI cooperation documents with 140 countries and 32 international organizations, according to the official BRI portal.

China does not appear to have enacted any laws or regulations governing the implementation of BRI projects. The country’s highest court has issued judicial policy documents to support the BRI. The overseeing body of the BRI in China is the BRI Leading Group, and the Office of the Leading Group that manages its day-to-day work is located in the National Development and Reform Commission. Various other ministries and commissions under the State Council are also involved in the formulation and implementation of the BRI. Provinces in China have all set up their own BRI leading groups and issued their BRI implementation plans to complement the national BRI blueprint.

Since 2017, China and 28 other countries have endorsed the Guiding Principles on Financing the Development of the Belt and Road. In 2019, recognizing “the importance of striking a balance between meeting financing demands, sustainable development and debt sustainability,” the Ministry of Finance formulated the BRI Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative, a non-mandatory policy tool to conduct debt sustainability analysis and manage debt risks to support lending decisions.

I. Introduction

A. Stated Aims

In 2015, the Chinese government issued an official outline of the principles, framework, priorities, and cooperation mechanisms of the Silk Road Economic Belt and the 21st-Century Maritime Silk Road (together now referred to as the Belt and Road Initiative (BRI)). It states that the BRI aims to promote the connectivity of Asian, European, and African continents and their adjacent seas and establish and strengthen partnerships among the countries along the BRI, as well as to:

set up all-dimensional, multi-tiered and composite connectivity networks, and realize diversified, independent, balanced and sustainable development in these countries. The

connectivity projects of the Initiative will help align and coordinate the development strategies of the countries along the Belt and Road, tap market potential in this region, promote investment and consumption, create demands and job opportunities, enhance people-to-people and cultural exchanges, and mutual learning among the peoples of the relevant countries, and enable them to understand, trust and respect each other and live in harmony, peace and prosperity.2

In 2019, the Office of the Leading Group on Promoting the Implementation of Belt and Road Initiatives (BRI Leading Group) issued a report on the progress, contributions, and prospects of the BRI (hereinafter “2019 BRI Progress Report”), which states that the BRI “focuses on Asia, Europe and Africa, but is open to all partners.”3 The report also stresses that the BRI is not a geopolitical or military alliance, but “an initiative for peaceful development and economic cooperation.” According to this report, from 2013 to 2018, China’s direct investment in the BRI countries surpassed US$90 billion, “realizing a turnover of US$400 billion in foreign contracted projects in these countries.”4

B. Countries Involved

As of June 2021, 140 countries and 32 international organizations had signed 206 BRI cooperation documents with China, according to the country list provided by China’s official BRI portal.5 The BRI has now extended its reach to all continents:

- 40 countries are in Sub-Saharan Africa,
- 34 countries are in Europe and Central Asia,
- 24 countries are in East Asia and the Pacific,
- 17 countries are in Middle East and North Africa,
- 19 countries are in Latin America and Caribbean, and
- 6 countries are in South East Asia.6

Most of the “cooperation documents” are in the form of memoranda of understanding (MOU). The BRI portal carries press releases announcing the MOUs, while only a limited number of full-text MOUs are available, such as those signed with New Zealand, Poland, and Hungary.7 Some countries on the list may have not published a confirmation of signing a full MOU or denied having signed one, as noted by the Green Belt and Road Initiative Center (GBRIC) of the Central

2 Id.
4 Id.
6 Christoph Nedopil, Countries of the Belt and Road Initiative, Green BRI Center, Central University for Finance and Economics (2021), https://perma.cc/W9EP-27GM.
7 List of Countries Having Signed Cooperation Documents with China to Jointly Build “Belt and Road,” supra note 5.
University for Finance and Economics in Beijing. Furthermore, a Council on Foreign Relations article points out that not all BRI members host BRI projects. According to the article,

[s]ome countries merely formally endorse BRI as a concept and pledge to cooperate with China to promote the initiative. In Italy’s nonbinding MoU with China, for example, the two countries pledged to “work together within the Belt and Road Initiative (BRI) to translate mutual complementary strengths into advantages for practical cooperation and sustainable growth.”

II. Legal and Policy Framework

A. BRI Policies of the Supreme People’s Court

China does not appear to have enacted any laws or regulations governing the implementation of BRI projects. Rather, in 2015, the Supreme People’s Court (SPC, China’s highest court) issued a judicial policy document to support the BRI. The document, titled the Opinion on Providing Services and Guarantees for the Belt and Road (SPC Opinion), has been updated once in 2019.

The SPC Opinion covers a wide range of BRI-related legal issues, including cross-border criminal, civil and commercial, and maritime law, free trade zone-related judicial issues, and judicial review of arbitration. In terms of financial law, the 2019 SPC Opinion states that the SPC will “serve the opening up of the financial sector according to law” and “further regulate and unify the application of foreign-related financial laws.” Specifically, the court will study the following legal issues:

- the special construction loans for the Belt and Road,
- the Silk Road Fund,
- various special investment funds,
- Silk Road-themed bonds, and
- multilateral financing and development cooperation and export credit insurance.

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8 Id.
11 Susan Finder, Supreme People’s Court and “One Belt One Road,” Supreme People’s Court Monitor (July 14, 2015), https://perma.cc/77KZ-E4YE.
13 Id.
The SPC will also support multilateral financial institutions and financial institutions in various countries to participate in investment and financing of the BRI, according to the 2019 SPC Opinion.14

B. Institutional Framework

The overseeing body of the BRI in China is the BRI Leading Group, and the Office of the Leading Group that manages its day-to-day work is located in the National Development and Reform Commission (NDRC).15 In addition to the NDRC, various ministries and commissions under the State Council are involved in the formulation and implementation of the BRI policies, such as the Ministry of Commerce, Ministry of Foreign Affairs, Ministry of Finance (MOF), and Ministry of Ecology and Environment.16 At the local level, provinces in China have all set up their own BRI leading groups and issued BRI implementation plans to complement the national BRI blueprint.17

Furthermore, the Banking and Insurance Regulatory Commission is responsible for approving overseas investments by Chinese banks and oversees China’s insurance industry. The People’s Bank of China, China’s central bank, establishes monetary policy and manages foreign exchange reserves.18 Many financial institutions have also been employed or have emerged to contribute to the goals of the BRI, such as:

• Chinese financial institutions, such as the Silk Road Fund, China Development Bank, and the Exim Bank of China;
• Multilateral financial institutions, such as the Asian Infrastructure and Investment Bank and the New Development Bank; and
• Commercial banks, such as the Industrial and Commercial Bank of China, China Construction Bank, and the Agricultural Bank of China.19

III. Responses to Criticisms

A. BRI 2.0 in the Making?

Researchers at the S. Rajaratnam School of International Studies of Singapore’s Nanyang Technological University noted that, at the second Belt and Road Forum China (2d BRF) hosted in April 2019, “China acknowledged the criticisms labelled against the BRI and pledged to reform it a number of ways. If these pledges are implemented, and cooperation with development

14 Id.
16 See Belt and Road Initiative (BRI) Policy Database, GBRIC, https://perma.cc/PC3Y-CTJC.
18 Belt and Road Initiative Quick Info, GBRIC, https://perma.cc/N93V-YHAK.
19 Id.
partners and stake-holding countries increases, we could see ‘BRI 2.0’ emerging which could lead to a win-win situation for all.”  

At the forum, China’s President Xi Jinping “attached importance to BRI adopting multilateral rules and international best practices pertaining to project development, operation, procurement and tendering and bidding.” He also emphasized that China would make the BRI more financially and environmentally sustainable, including releasing the BRI Debt Sustainability Framework and launching green infrastructure projects, making green investment, and providing green financing. 

The joint communiqué of the leaders’ roundtable of the 2nd BRF expressed that BRI will strive to “build high-quality, reliable, resilient and sustainable infrastructure” and need for more “diversified and sustainable financial supports for projects” from national and international financial institutions. The joint communiqué also highlighted “the importance of open, transparent and non-discriminatory public procurement procedures” and “zero tolerance in anti corruption.”

The 2019 BRI Progress Report, which was released right ahead of the forum, lays out the prospects of the BRI in the future, which “will become a road of peace, prosperity, opening up, green development, innovation, connected civilizations, and clean government.” Regarding “clean government,” the 2019 BRI Progress report states that China is willing to join all other countries in improving the legal systems and mechanisms to fight corruption, improving the business environment, and punishing commercial bribery. According to the report:

“[c]lean government is the moral principle and the legal red line that we should never cross in Belt and Road cooperation. All participating countries should work together to foster a modern business environment which is corruption-free and efficient, strengthen supervision and management and control risk in Belt and Road projects, and create a public resource market which is procedure-based and transparent. During the tendering, construction, and operational management of a project, we should abide by related laws and regulations, eliminate power rent-seeking, and establish sound market order.”

B. BRI Financing and Debt Governance

According to a GBRIC analysis, from 2004 to 2019, China’s overseas loans (including BRI countries and non-BRI countries) grew by almost 12 times from US$59 billion to US$696 billion. Many of the BRI projects are financed by loans from Chinese financial institutions, such as the

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21 Id.

22 Id.


24 2019 BRI Progress Report, supra note 3.

25 Id.
China Development Bank and the Exim Bank of China. Among these loans, many are lent to, or guaranteed by, BRI country governments. The analysis recommends that Chinese policymakers, among other things, improve debt governance by setting standards for overseas official lending by strengthening debt transparency and develop coherent norms for major official Chinese lenders domestically, while at the international level embracing multilateral mechanisms for lending such as the Asian Infrastructure Investment Bank.

1. Multilateral Financing

In 2017, China’s MOF and its counterparts in 26 other countries, including Argentina, Russia, Indonesia, and the UK, endorsed the Guiding Principles on Financing the Development of the Belt and Road (Financing Principles). Singapore and Saudi Arabia subsequently endorsed the Financing Principles. The Financing Principles calls upon the governments, financial institutions, and companies from participating countries to work together to build a long-term, stable, sustainable financing system that is well-placed to manage risks.

According to the 2019 BRI Progress Report, under the Financing Principles, countries participating in the BRI support channeling financial resources to serve the real economy of countries and regions involved, with priority given to such areas as infrastructure connectivity, trade and investment, and industrial cooperation. The report goes on to provide examples of China’s multilateral financial cooperation:

The People’s Bank of China has rolled out joint financing programs with the International Finance Corporation under the World Bank Group, Inter-American Development Bank, African Development Bank, European Bank for Reconstruction and Development, and other multilateral development institutions. By the end of 2018, these institutions had invested in more than 100 programs in over 70 countries and regions. Established in November 2017, the China-CEEC Bank Consortium includes 14 financial institutions from China, Hungary, the Czech Republic, Slovakia, Croatia, and nine other Central and Eastern European countries. In July 2018, the China-Arab States Bank Consortium was founded, followed by the China-Africa Financial Cooperation Consortium established in September; each was the first multilateral financial cooperation mechanism between China and the respective area.

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27 Id.

28 MOF, Guiding Principles on Financing the Development of the Belt and Road, Belt and Road Portal (May 16, 2017), https://perma.cc/U6ZU-FESP.


31 2019 BRI Progress Report, supra note 3.

32 Id.
2. BRI Debt Sustainability Framework

In 2019, recognizing “the importance of striking a balance between meeting financing demands, sustainable development and debt sustainability,” the MOF formulated the BRI Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative.³³

With the aim of promoting sustainable economic and social development of BRI countries while ensuring debt sustainability, the Framework is a non-mandatory policy tool to conduct debt sustainability analysis and manage debt risks to support lending decisions. It was formulated based on the IMF/World Bank Debt Sustainability Framework for Low Income Countries, as well as the national conditions and development stages of BRI countries.³⁴

The authors of a Center for Global Development article commented that the Debt Sustainability Framework follows a shift of Chinese policy makers “from denying any problems with BRI lending to acknowledging the debt risks of large-scale lending and pointing to the need for more disciplined lending.” According to this article,

> [t]he good news is that the new DSF [debt sustainability framework] is virtually identical to the World Bank-IMF DSF, which governs lending operations for the multilateral institutions and, to some degree, many bilateral lenders. It would seem then that China’s effort marks a significant step forward in guarding against debt problems associated with BRI.

> The bad news is that, content aside, key questions remain about the role of a Belt and Road DSF in relation to the multilateral framework. Depending on how the new DSF is used, it could ultimately represent a step backward when it comes to achieving debt sustainability in low income countries.³⁵

C. Government Statements

In a press conference on February 23, 2021, China’s foreign ministry spokesperson Wang Wenbin responded to a question concerning the debt issue in Africa, saying that there was no African country that had debt difficulties due to its cooperation with China. According to him,

> [w]e never press countries having difficulties on debt repayment, not to mention asking them to sign any imparity clauses. In the meantime, China attaches high importance to debt suspension and alleviation in Africa. We are following the consensus reached by Chinese and African leaders and the G20 DSSI and actively responding to Africa’s concerns. We have signed debt relief agreements or reached debt relief consensus with 16

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³⁴ Id.

African countries. Under the FOCAC framework, China also waived interest-free loans due to mature by the end of 2020 for 15 African countries.36

In response to the question of whether China has military intentions by constructing the Hambantota Port in Sri Lanka, China’s foreign ministry spokesperson Lu Kang said:

The construction of the Hambantota Port represents the aspiration of the successive Sri Lankan governments and its people. China encourages the relevant Chinese enterprises to conduct cooperation on this project with Sri Lanka in accordance with the business principles and on the basis of equality and mutual benefit. The Chinese financial institutions, in light of the needs of the Sri Lankan side, provided support for it to bridge the financing gap. With the advancement of the project, China adjusted the assets allocation despite some difficulties according to the wish of the Sri Lankan side. These moves are all conducive to our commercial cooperation.37

IV. Public Criticisms

A researcher at the UK think-tank Chatham House pointed out that public opinion in China is “a headwind to overseas lending . . . as policymakers and the public have realised China needs to invest more in its health services, which had been tested by the coronavirus pandemic.”38

The Brookings Institution published an article in 2015 analyzing the domestic controversy over China’s foreign aid in Africa, which includes debt forgiveness for least-developed countries. The article notes that most of the domestic criticism originates from the question of whether China, as a developing country itself, should provide such large foreign aid packages or prioritize the welfare of its own people.39


Africa
Djibouti
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SUMMARY

Djibouti is a small coastal country on the Horn of Africa, with a strategic position on one of the world’s busiest shipping lanes. Chinese President Xi Jinping and Djiboutian President Ismail Omar Guelleh signed “bilateral cooperation documents” under the framework of the Belt and Road Initiative (BRI) on September 2, 2018, but Chinese BRI development in Djibouti predates the signing of those documents by at least five years. The legal framework for Djibouti’s participation in the BRI is difficult to assess, as it rests on agreements that are not publicly available. The policy framework, on the other hand, seems easier to understand. China sees Djibouti as a crucial part of its Maritime Silk Road due to its geographic location. Meanwhile, Djibouti sees Chinese investment as providing the opportunity to further enhance its position as a commercial transportation hub and become the “Singapore of Africa.”

The flagship projects of the BRI in Djibouti include the Doraleh Multipurpose Port, the Djibouti International Free Trade Zone, and the Addis Ababa-Djibouti Railway. The Doraleh Multipurpose Port was inaugurated in 2017 and is the Exim Bank of China financed a large deep-water port representing an investment of between US$580 million and US$590 million, of which 85%. The Djibouti International Free Trade Zone, the first phase of which was inaugurated in 2018, is expected to be the largest of its kind in Africa once completed. It is being built by China Merchants Group and is run jointly by the Djibouti Ports and Free Zones Authority and a subsidiary of China Merchants Group. The first phase represented an investment of US$370 million, of which a loan from the China Development Bank financed US$250 million. The Addis Ababa-Djibouti Railway was inaugurated in 2017. It replaces a long-defunct rail line from the 1890s. It is the first rail line in Africa to be entirely electric, and it reduces the travel time between Addis Ababa and the City of Djibouti to about half a day instead of three days by road. The Djiboutian section of the railroad cost US$525 million, almost entirely financed by Chinese loans.

Many observers are concerned that Djibouti has taken on more debt than it can handle, and that it may have gotten into a “debt trap” with China. Djibouti’s public and publicly guaranteed debt is indeed significant, rising to about 71% of Gross Domestic Product in 2018. The World Bank and the International Monetary Fund describe Djibouti’s risk of debt distress as high, and China holds an overwhelming share of that debt. These risks could be mitigated by positive economic prospects, however. Furthermore, some observers believe that China may not be eager for a debt-for-equity swap, as that would come at significant reputational cost and may create the kind of uncertainty and instability that it would prefer to avoid. Additionally, the Djiboutian government has long experience in leveraging its strategic position to protect its interests. Some or all of these factors may have contributed to China’s willingness to renegotiate the debt on the Addis Ababa–Djibouti Railway. The BRI investment in Djibouti has also been criticized for not bringing many benefits to the local population, and some observers have noted that China’s enthusiasm for large infrastructure projects in Djibouti may be cooling, as some are taking longer than expected to pay off. Nonetheless, the relationship between
the two countries is likely to remain strong, as Djibouti is an important part of China’s BRI, and no other country appears able or willing to invest as much as China in Djibouti.

I. Introduction

Djibouti is a small country on the coast of the Horn of Africa, on the western shore of the Bab-el-Mandeb Strait, which separates the Gulf of Aden and the Red Sea. It is bordered by Eritrea, Ethiopia, and Somalia. Djibouti is one of the smallest countries in Africa and has few natural resources and little industry, but its strength lies in its strategic geographic location along some of the world’s busiest shipping lanes. It has a modern deep-water port that handles 95% of Ethiopia’s trade and services transshipments to Europe, the Middle East, and Asia. A former French colony, Djibouti has longstanding ties to France, which maintains a military presence there, as do the United States, Japan, Italy, Germany, and Spain. China also has a military base there—its first overseas base, established in 2017.

On September 2, 2018, Chinese President Xi Jinping and Djiboutian President Ismail Omar Guelleh met ahead of the Beijing Summit of the Forum on China-Africa Cooperation, and signed “bilateral cooperation documents” under the framework of the Belt and Road Initiative (BRI). The precise contents of these documents do not appear to be publicly available, but the website of the Djiboutian president’s office states that the leaders signed four agreements: a memorandum of understanding (MOU) officially incorporating Djibouti in the New Silk Road, an agreement by China to donate 100 million Yuan (about US$15.5 million) to support the development of large projects in Djibouti, an agreement regarding the fight against food insecurity, and an agreement to cooperate in the construction of housing and the fight against unemployment. The latter provides for the establishment of a professional training center and the building of 500 homes by China.

While the signing of these agreements marks the official entry of Djibouti as a participant in the BRI, significant Chinese activity in the country in preceding years can only be considered as part of the BRI. Chinese engagement in Djibouti began to accelerate in 2013, when China Merchants Group, which is owned by the Chinese State, acquired a 23.5% ownership stake in Djibouti’s 1


2. Id.

3. Id.


national port authority, the Djibouti Ports and Free Zones Authority (DPFZA). That same year, China Merchants Port Holdings Co. Limited, a subsidiary of China Merchants Group, acquired a stake in a new corporation called Ports of Djibouti S.A., which owns the port of Djibouti and the Doraleh Multipurpose Port.

On January 18, 2016, China and Djibouti signed four agreements on trade, finance, and economic development. The first agreement was about the creation of a huge free-trade zone in Djibouti, while the second and third agreements had to do with reinforcing Djibouti’s role as a transshipment and redistribution platform and the creation of a clearinghouse for Djiboutian economic actors. The latter would allow them to settle transactions without needing to convert their currency into US dollars. Finally, the fourth agreement set the framework for strategic cooperation to make Djibouti a regional banking and financial center, and it would allow Chinese banks to operate there. The Chinese news agency Xinhua explicitly linked these agreements, particularly the agreement regarding transshipment and redistribution and the agreement on banking and financial services, to the development of China’s New Silk Road.

II. Legal and Policy Framework

It is difficult to assess the legal framework for Djibouti’s participation in the BRI. As mentioned above, the relevant agreements are not publicly accessible. It is fair to assume that China’s BRI projects in Djibouti are primarily governed by contracts between the relevant Djiboutian authorities and entities such as China Merchants Group and Exim Bank of China. Aside from these, the government-to-government agreements as between Djibouti and China appear to be MOUs. These do not appear to be legally binding. However, as some commentators have pointed out, these agreements could be used by China as diplomatic tools to insist that agreements have been reached over certain areas.

The policy framework, however, seems easier to understand. From China’s point of view, Djibouti’s geographical situation at the entrance to the Red Sea, where approximately 10% of oil exports and 20% of commercial goods pass on their way to and from the Suez Canal, places it at

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10 Int’l Ctr. Trade & Sustainable Dev., supra note 9; *Djibouti/Chine: signature de quatre accords économiques*, supra note 9.
11 *Djibouti/Chine: signature de quatre accords économiques*, supra note 9.
12 Id.
13 Sebastian Ibold, *Cooperation Agreements and MoUs Under the Belt and Road Initiative*, Belt & Road Initiative (Nov. 18, 2018), https://perma.cc/58EV-GQLV.
a crucial point of its Maritime Silk Road. Furthermore, while it has a largely authoritarian regime whose president has been in power since 1999, Djibouti is nonetheless one of the region's few politically stable countries, making it an ideal access point for Chinese commercial interests into inland African countries such as Ethiopia. Djibouti’s importance to China is highlighted by the fact that the small nation now hosts China’s only foreign military base, a naval facility adjacent to the Doraleh Multipurpose Port from which it can participate in anti-piracy operations and generally safeguard its access to the strategic maritime route.

From Djibouti’s standpoint, extensive Chinese investment provides an opportunity to enhance its position as a commercial transportation hub. As at least one analyst has described it, “for Djibouti, meanwhile, the aim is clear: like Singapore, harness its unique geography astride a major commercial shipping route to become a global logistics, services, and trans-shipment hub in a world shifting towards Asia and the Indo-Pacific.” The Djiboutian government hopes that this, in turn, will greatly improve the country’s economic situation, as described in its “Vision 2035” strategic plan. Among other objectives, “Vision 2035” aims to triple per-capita income by the year 2035, as well as create over 200,000 new jobs in a country currently plagued by an unemployment rate of almost 50%.

III. Major “Flagship” Projects

A. Doraleh Multipurpose Port

The first flagship project was the construction of the Doraleh Multipurpose Port, begun in 2014 and officially inaugurated on May 24, 2017. The port is over eight fathoms deep and features a wharf about 4,000 feet long, 12 quay cranes for general cargo, 4 quay cranes of 50 tons each for containers, and an annual capacity of 8.2 million tons. The Doraleh Multipurpose Port was largely inspired by the Chinese port of Shenzhen, which President Ismaïl Omar Guelleh visited in 2012, and it was built in a record time of 30 months. According to at least two reports, it represented an investment of US$580 million, and the Exim Bank of China financed 85%. At


16 Siebt, supra note 15.

17 Vertin, supra note 8, at 9.

18 Id. at 9.


21 Darras, supra note 21; Doraleh MultiPurpose Port Phase I, Port de Djibouti, S.A., https://perma.cc/4AQI-FP8G.

22 Darras, supra note 21.

23 Id.; Vertin, supra note 8, at 10.
least one other report states that the Doraleh Multipurpose Port cost US$590 million, jointly financed by the DPFZA and China Merchants Group.\(^{25}\)

The year 2017 also saw the inauguration of two specialized port facilities built by China Merchants Group: the port of Tadjourah, which is dedicated to the exportation of potash from Ethiopia, and the port of Goubet, which is dedicated to the export of salt produced locally.\(^{26}\) The port of Tadjourah, which can accommodate traffic of up to 4 million tons per year, represents an investment of over US$78 million,\(^{27}\) while the port of Goubet, which can accommodate traffic of up to 5 million tons per year, represents an investment of over US$64 million.\(^{28}\)

### B. Djibouti International Free Trade Zone

One of the 2016 agreements between Djibouti and China is about the establishment of the Djibouti International Free Trade Zone (DIFTZ). It will encompass about 18.5 square miles, and it is intended to create an estimated 15,000 permanent jobs.\(^{29}\) The first phase of the DIFTZ was officially inaugurated in 2018, in the presence of the heads of state of Djibouti, Rwanda, Ethiopia, Sudan, and Somalia.\(^{30}\) Located adjacent to the Doraleh Multipurpose Port, this free trade zone is expected to be the largest of its kind in Africa once completed.\(^{31}\) It is being built by China Merchants Group, and it is run jointly by the DPFZA and China Merchants Holding Company, itself a subsidiary of the China Merchants Group.\(^{32}\) The first phase represented an investment of US$370 million, of which a loan from the China Development Bank financed US$250 million.\(^{33}\)

### C. Addis Ababa-Djibouti Railway

A key element of Djibouti’s transportation infrastructure development is the reconstruction of a railway between Djibouti and Addis Ababa, Ethiopia. Construction of this standard gauge rail line began in 2011, and the railway was inaugurated in 2017. It replaces a long-defunct French rail line built in the 1890s.\(^{34}\) It is the first rail line in Africa to be entirely electric, and it reduces travel time between the two cities to about half a day, compared to more than three days by

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\(^{27}\) *Port of Tadjourah*, Port de Djibouti, S.A., https://perma.cc/A3A6-7BTM.


\(^{29}\) *Djibouti/Chine: signature de quatre accords économiques*, supra note 9.

\(^{30}\) *Djibouti International Free Trade Zone*, Djibouti Ports & Free Zones Auth., https://perma.cc/R5RC-L2KQ.

\(^{31}\) Justina Crabtree, *While China Slaps Tariffs on the US, It’s also Championing Free Trade in Africa*, CNBC (July 6, 2018), https://perma.cc/J69U-GLBJ.

\(^{32}\) Id.; Darras, *Djibouti: à la conquête de la nouvelle route de la soie*, supra note 26.

\(^{33}\) Vertin, supra note 8, at 11.

road.\textsuperscript{35} While the railroad is meant to accommodate both freight and passenger service, freight service will have priority, as the line is primarily meant to improve access for the growing Ethiopian market.\textsuperscript{36} Only a relatively small portion of the line is in Djibouti: about 62 miles out of the total length of approximately 470 miles.\textsuperscript{37} However, it reinforces the small nation’s status as a regional transportation hub. Indeed, this railroad is also the first phase of a more long-term project to create a trans-African rail network that could link the continent’s eastern and western coasts, possibly linking Djibouti to Douala, in Cameroon.\textsuperscript{38}

This line cost US$525 million for the Djibouti section (compared to US$3.4 billion on the Ethiopian side), and was almost entirely financed by Chinese loans.\textsuperscript{39} At least one source gives a figure of US$514 million in Chinese loans for the railway,\textsuperscript{40} while another source gives a figure of US$490 million.\textsuperscript{41}

**D. Possible Future Projects**

Developers and port authority officials are promoting several other projects, which are estimated to be worth US$11 billion.\textsuperscript{42} One of these projects involves a complete transformation of Djibouti’s old port into a world-class waterfront development, including a modern business district, a convention center, a marina and cruise terminals, hotels, parks, and retail shopping.\textsuperscript{43} The bid for this project was won by China Merchants Group, which built the Shenzhen port complex and already holds a 23.5% stake in Djibouti’s port authority.\textsuperscript{44}

Another project is the building of an additional industrial park, port, and free trade complex at Damerjog, about 10 miles south of Djibouti city. Blueprints for that project include facilities for coal-fired power generation, petrochemicals, building materials, desalination, natural gas liquefaction, and oil export.\textsuperscript{45} This development would also include a rail link and an international quarter with hotels, residential buildings, schools, green spaces, and an office park.\textsuperscript{46} One of the Damerjog project’s central components is a US$4 billion pipeline that will link the port to a new Chinese-developed natural gas deposit in Ethiopia’s Ogaden region.\textsuperscript{47}

\begin{itemize}
\item \textsuperscript{35} \textit{Djibouti inaugure à son tour le train rapide qui relie Addis-Abeba}, supra note 34.
\item \textsuperscript{36} Id.
\item \textsuperscript{37} Id.; Vertin, supra note 8, at 11.
\item \textsuperscript{38} \textit{Djibouti inaugure à son tour le train rapide qui relie Addis-Abeba}, supra, note 34.
\item \textsuperscript{39} Cabestan, supra note 4, at 732.
\item \textsuperscript{40} Id.
\item \textsuperscript{41} Citi GPS, \textit{China’s Belt and Road at Five, A Progress Report} 36 (Dec. 2018), https://perma.cc/2VPC-Q3UR.
\item \textsuperscript{42} Vertin, supra note 8, at 11.
\item \textsuperscript{43} Id.
\item \textsuperscript{44} Id.
\item \textsuperscript{45} Id.
\item \textsuperscript{46} Id.
\item \textsuperscript{47} Id. at 12.
\end{itemize}
Both of these projects appear to be on hold, and it is unclear whether they will actually proceed. An analysis published by the Brookings Institution states that “in the short term, the risks of further debt accumulation means these two transformational projects are unlikely to get off the ground.” Additionally, other domestic constraints raise doubts as to the realization of such grand designs—including “prohibitively high utility costs, an arid climate, searing temperatures, and the lack of a domestic labor force.”

IV. Public Support/Criticisms; Assessment of Projects’ Impact

A. “Debt Trap” Fears

Many observers are concerned that Djibouti has taken on more debt than it can handle, and that it may have gotten itself into a “debt trap” with China. According to the International Monetary Fund (IMF), Djibouti’s public and publicly guaranteed debt rose from 34% of Gross Domestic Product (GDP) in 2013 to about 71% in 2018. A May 2020 World Bank–IMF sustainability analysis describes Djibouti’s risk of external debt distress and overall risk of debt distress as high. Moreover, China holds an overwhelming share of that debt: One news article states that China holds more than 70% of Djibouti’s debt. Another quotes Djibouti’s foreign affairs minister as admitting the country’s debt to China is equal to 71% of Djibouti’s GDP. Some observers believe this threatens the small country’s sovereignty and that Djibouti could suffer the same fate as Sri Lanka, which was forced to cede control of key infrastructure to Chinese companies because it was unable to repay its loans. Djibouti’s nationalization of the Doraleh Container Terminal (discussed in Section IV.B. below) has bolstered some of these fears.

Fears that Djibouti is caught in a debt trap could be mitigated by several factors, however. One is that Djibouti’s economic prospects are quite positive, even taking into account the impact of the COVID-19 pandemic. Recent World Bank estimates predict that “output growth is set to reach 5.5% in 2021 and average 6.2% over 2022 and 2023, as free zone re-exports, as well as economic activity in, and exports of, transportation, logistics, and telecommunication services to Ethiopia rebound.” While Djibouti is vulnerable to knock-on effects of a more protracted economic slump in Ethiopia, its “ongoing infrastructure projects, such as the construction of a ship repair yard, a new oil jetty at the Port of Damerjog and a new hospitality infrastructure are also expected to

48 Id.
49 Id. citing Styan, supra note 25.
52 Siebt, supra note 15.
53 Bearak, supra note 15.
54 Id.; Siebt, supra note 15; Vertin, supra note 8, at 13–14.
55 World Bank, supra note 1.
boost growth and job creation, barring protracted delays in these new projects.”

Some of the debt taken on by Djibouti appears to be sustained by this economic growth. For example, the revenue from the Doraleh Multipurpose Port has proven sufficient to service its own debt.

Furthermore, the Chinese government may not be as eager to engineer a debt-for-equity swap as some observers fear. The takeover of Sri Lanka’s Hambantota port came at significant reputational cost, which China may wish to avoid repeating. Moreover, “default in Djibouti could yield the kind of uncertainty and instability Beijing would prefer to avoid,” and “it might also complicate relations with Ethiopia, who as a regional and continental leader, would be hard pressed to countenance such a move in its backyard.”

Additionally, the Djiboutian government has long experience in leveraging its strategic location to its benefit, as illustrated by the fact that several nations have military bases there. Djibouti earns an estimated US$125 million a year in rents from the United States, China, France, Japan, and Italy combined. In addition to this income, Djibouti sees these bases as a guarantee of its sovereignty. Thus, “Djibouti’s power and influence is disproportionately greater than the state’s small size and ostensibly ‘dependent’ roles would suggest.”

Some or all of these factors may have contributed to China’s willingness to renegotiate loans with Djibouti. Indeed, both Djibouti and Ethiopia appear to have obtained a significant restructuring of the debt by which the Addis Ababa–Djibouti Railway was financed, with an extension of repayment periods from 10 to 30 years.

B. Doraleh Container Terminal

The idea that Djibouti may have gotten into a “debt trap” with Beijing has been fueled by the nationalization of the Doraleh Container Terminal, a move by which China Merchants Group ended up obtaining a minority stake in this important asset.

Located just east of the Doraleh Multipurpose Port, the Doraleh Container Terminal has been described as the “crown jewel” of the country’s port complex and is its greatest source of revenue. Contrary to the other projects mentioned here, China was not directly involved in its construction. It was designed, built, and operated by the United Arab Emirates conglomerate DP

56 Id.
57 Vertin, supra note 8, at 11.
58 Id. at 15.
59 Id.
61 Styan, supra note 25, at 193-94.
62 Id.
63 Id. at 205.
64 Vertin, supra note 8, at 11.
World under a 30-year concession agreement.\textsuperscript{65} It opened in 2009 and appears to have operated without any major problem until 2012, when Djiboutian officials began to complain that DP World was “deliberately under-developing the [Doraleh Container Terminal] so as to prevent Djibouti from ever achieving parity with, or surpassing, Jebel Ali Port, the company’s flagship operation in Dubai.”\textsuperscript{66} Additionally, Djiboutian officials accused DP World of undercutting Djibouti by simultaneously developing competing ports elsewhere in the Red Sea.\textsuperscript{67} Furthermore, the initial contract, which was allegedly obtained through bribes, “gave DP World extraordinary authority over Djibouti’s infrastructure development, reportedly including a provision that any further development of Djibouti’s ports required signoff from Dubai.”\textsuperscript{68} For several years, the Djiboutian government attempted to renegotiate the concession, but was unsuccessful.\textsuperscript{69} In 2018, citing “flagrant contraventions of state sovereignty” and the unwillingness of DP World to settle the issues amicably, it unilaterally terminated the concession contract and nationalized the Doraleh Container Terminal.\textsuperscript{70} DP World has sought judicial remedies and obtained favorable rulings from the London Court for International Arbitration and the High Court of England and Wales, but these rulings have been ignored by Djibouti.\textsuperscript{71} The terminal is now controlled by the DPFZA, in which China Merchants Group owns a 23.5\% stake. This fact has led to reports that China was taking over the Doraleh Container Terminal, and DP World has sued China Merchants Group for allegedly inducing the breach of contract.\textsuperscript{72} In remarks delivered at the Heritage Foundation in December 2018, US National Security Advisor John Bolton claimed “soon, Djibouti may hand over control of the Doraleh Container Terminal, a strategically-located shipping port on the Red Sea, to Chinese state-owned enterprises.”\textsuperscript{73}

However, some sources view these allegations with skepticism, and the Djiboutian government has repeatedly insisted that it had no interest in turning the container terminal over to China.\textsuperscript{74} Management of the container terminal appears to be Djiboutian, only a handful of the approximately 700 employees are Chinese nationals, and on-site technology appears to be primarily of European and American manufacture.\textsuperscript{75} Furthermore, at least one analysis

\textsuperscript{65} Id. at 14.

\textsuperscript{66} Id.

\textsuperscript{67} Id. at 28, endnote 106.

\textsuperscript{68} Id. at 14.

\textsuperscript{69} Id.

\textsuperscript{70} Id.; \textit{Djibouti Seizes Control of Dubai-Run Doraleh Port}, Al Jazeera (Feb. 24, 2018), \url{https://perma.cc/NS7W-65MC}.

\textsuperscript{71} \textit{Doraleh Container Terminal Battle Continues}, Port Strategy (July 31, 2019), \url{https://perma.cc/U5H8-7KQS}.

\textsuperscript{72} Vertin, supra note 8, at 14; Costas Paris, \textit{China Tightens Grip on East African Port}, Wall Street J. (Feb. 21, 2019), \url{https://perma.cc/69VP-3HAT}.


\textsuperscript{74} Vertin, supra note 8, at 14.

\textsuperscript{75} Id. at 15.
expresses doubts as to whether a debt-for-equity swap would be in China’s interest under current circumstances:

First, the Hambantota episode in Sri Lanka invited a torrent of international scrutiny and helped promulgate the idea that China might begin seizing strategic assets the world over. The notion promptly gained traction in the West, was subsequently challenged by analysts and scholars, and today remains a topic of considerable debate. As such, the potential reputational costs of an outright debt-for-port swap likely outweigh the gains of assuming control, at least under current circumstances.

Second, default in Djibouti could yield the kind of uncertainty and instability Beijing would prefer to avoid. It might also complicate relations with Ethiopia, who as a regional and continental leader, would be hard pressed to countenance such a move in its backyard. In this, what’s good for Djibouti—a successful transition in Ethiopia leading to continued economic growth—is good for China. Beijing’s willingness to forgive or renegotiate major loans with both countries in recent years lends some credence to this argument.76

Nonetheless, the same analyst notes, “while a leveraged asset seizure is unlikely in peacetime, debt could be leveraged not for outright control but for preferential access or desirable advantages in other sensitive sectors. US strategists maintain, moreover, that Beijing’s debt-for-equity calculations could change in a conflict scenario.”77

C. Lack of Benefits to Local Population

Beyond questions of debt, BRI development in Djibouti has come under criticism for not bringing many benefits to the local population. For example, some observers have noted that the Doraleh Multipurpose Port seems “mainly outward-looking,” and has done little for local employment while Chinese companies have been its main beneficiaries.78 Meanwhile, it appears that China’s enthusiasm for large infrastructure endeavors in Djibouti is cooling, as some projects are taking longer than expected to pay off.79 Nonetheless, the relationship between Djibouti and China is likely to stay strong, as Djibouti remains an important part of China’s BRI, and no other country appears able or willing to invest as much in the small nation.80

76 Id.

77 Id.

78 Siebt, supra note 15.

79 Id.

80 Id.; Bearak, supra note 15.
SUMMARY

In January 2016, Egyptian President Abdel Fattah el-Sisi signed a memorandum of understanding (MOU) with China to promote the Belt and Road Initiative (BRI).

China’s BRI is in line with Egypt’s development goals. China’s Foreign Minister Wang Yi stated that China’s BRI and Egypt’s 2030 Vision have joint economic targets. Accordingly, the cooperation between China and Egypt covers different fields, including the production of renewable energy, electric cars, and transport. Egypt utilizes legal and policy frameworks to enhance the cooperation with China. The legal framework takes the form of laws and presidential and cabinet decrees. The policy framework encompasses the forging of partnerships with Chinese entities to carry out infrastructure projects in Egypt as well as signing MOUs.

Two of the main Egyptian flagship projects under BRI are the Suez Canal Economic Zone and the central business district of the new administrative capital. China is the largest investor in the development of Egypt’s Suez Canal Economic Zone. The Tianjin Economic-Technological Development Area, a Chinese corporation, carries out the work in the Economic Zone project. Additionally, the China State Construction Engineering Corporation carries out the construction projects in Egypt’s new administrative capital.

Egyptian infrastructure projects funded by Chinese investments have social, political, and economic impacts. These projects face some criticism. It is important to note that Chinese investments in Egyptian infrastructure projects were unable to curb the wave of anti-Chinese sentiment in Egypt in the wake of the COVID-19 pandemic.

Despite the ongoing cooperation between Egypt and China and the growing Chinese investments in Egypt over the past five years, the Egyptian government has imposed an anti-dumping duty on a number of imported Chinese products.

In addition to Egypt, China had signed a number of MOUs with other countries of the Middle East and North Africa region under the BRI.

I. Introduction

When China proposed the Belt and Road Initiative (BRI) in 2013, Egypt was one of the first countries to join. In January 2016, Egyptian President Abdel Fattah el-Sisi signed a memorandum
of understanding (MOU) with China to promote the Belt and Road Initiative (BRI). According to Professor Degang Sun, an international studies scholar at Fudan University in Shanghai, China, Egypt is the hub of China’s Middle Eastern political and economic policies. Additionally, Lucille Greer, a scholar of China and the Middle East at the Wilson Center in Washington, DC, argues that Egypt’s stability in comparison to other countries in the region has caused China to invest more in projects specific to Egypt.

In recent years, Egypt and China have enhanced their economic cooperation. China has used its close relationship with Egypt to advance the BRI, and Egypt has considered China a crucial partner in improving the Egyptian economy. In December 2014, China’s President Xi Jinping and President el-Sisi signed a joined statement on establishing a strategic partnership between their countries. The two presidents pledged that the partnership would include political, economic, military, cultural, and technological cooperation, along with cooperation on regional and international affairs.

Since then, President el-Sisi has visited China six times and signed at least 25 bilateral agreements. For instance, in September 2017, during his visit to China, President el-Sisi signed US$11.2 billion worth of investment projects that included an electric train connecting the planned new Egyptian administrative capital with Cairo. During a visit to Egypt in January 2016, President Xi signed US$15 billion worth of investment projects, including Chinese investment in the infrastructure of the new administrative capital.

During the first 11 months of 2020, China’s total exports to Egypt reached US$12.06 billion, registering an annual increase of 12.2%, according to the Chinese Embassy in Egypt. According to the Chinese Ministry of Commerce, from January to September 2020, China’s direct investment in Egypt totaled US$89.33 million, up 19.3% from the previous year. China’s total investment in Egypt has exceeded US$7.5 billion. In recent years, China’s government and financial institutions have provided more than US$7.5 billion in loans and credit to Egypt.

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II. Legal & Policy Framework

China’s Foreign Minister Wang Yi has stated that China’s BRI and Egypt’s 2030 Vision have joint economic targets. Accordingly, the cooperation between China and Egypt covers different fields, including the production of renewable energy, electric cars, and transport.7

Egypt utilizes legal and policy frameworks to enhance its cooperation with China. The legal framework takes the form of laws and presidential and cabinet decrees. The policy framework encompasses the forging of partnerships with Chinese entities to carry out infrastructure projects in Egypt, as well as signing MOUs.

A. Legal Framework

1. Investment Law No. 72 of 2017

Law No. 72 of 2017 grants an array of privileges to foreign companies investing and working in Egypt. One of those privileges is a foreign company’s ability to hire its own country’s citizens as part of the workforce of the investment project that it carries out in Egypt. The law stipulates that an investing foreign company has the right to employ foreign workers as up to 10% percent of its workforce. In the absence of sufficient qualified national labor, the percentage can be increased to 20%.8

2. Presidential Decrees

Egypt’s president has issued a number of decrees approving economic cooperation agreements with China, as well as Chinese loans and funding for different investment projects. For instance, Presidential Decree No. 21 of 2019 approves Chinese funding and development for a distance-learning program to be carried out in three stages.9 In addition, Presidential Decree No. 496 of 2018 approves a Chinese long-term loan of CNY4.6 billion (about US$716 million).10 Likewise, Presidential Decree No. 156 of 2016 approves an agreement signed in Beijing on June 29, 2015, concerning the establishment of the Asian Investment Bank in Egypt to invest in infrastructure.11

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3. **Ministerial Unit on China**

Egypt’s cabinet issued Decree No. 1659 of 2014 on September 16, 2014, establishing the Ministerial Unit on China. The main function of the unit is to monitor and enhance the bilateral relationships between Egypt and China in various fields. The unit meets at least once a month or whenever the need arises. The unit consists of the ministers of Industry, Trade and Small and Medium Enterprises; Petroleum and Mineral Resources; Electricity and Renewable Energy; Foreign Affairs; International Cooperation; Agriculture and Land Reclamation; Transport; and Investment; and the director of the Egyptian General Intelligence Services.\(^{12}\)

**B. Policy Framework**

This report does not cover every specific agreement between China and Egypt as part of the BRI, as there are many. However, it focuses on the most important MOUs signed between both countries and their joint infrastructure projects.

1. **Vaccine Cooperation and Manufacturing**

In December 2020, Egypt’s Ministry of Health and China’s Ambassador to Egypt Liao Liqiang signed an MOU to enhance cooperation in providing COVID-19 vaccine doses offered by the Chinese pharmaceutical company called “Sinopharm.”\(^{13}\) In April 2021, Chinese biopharmaceutical company Sinovac signed an agreement to manufacture Sinovac COVID-19 vaccines in Egypt.\(^{14}\)

2. **Renewable Energy**

In May 2018, Egypt’s Ministry of Military Production and the Chinese GCL Group signed an MOU for building a solar panel facility that would cost US$2 billion.\(^{15}\) Furthermore, China news agency (Xinhua) announced in March 2019 that China’s renewable energy company TBEA Sunoasis has finished the construction of three solar power stations in the governorate of Aswan, south of Cairo.\(^{16}\)

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\(^{13}\) Egypt’s Health Ministry, Chinese Amb. Sign MoU to Enhance Vaccine Cooperation, Egypt Today (Dec. 31, 2020), https://perma.cc/ZPP7-CKPE.


3. Production of Electric Cars

In June 2020, Egypt’s state-owned El Nasr Automotive Manufacturing Company and China’s Dongfeng Motor signed an agreement to produce electric cars for the first time in Egypt. According to the agreement, El Nasr Automotive is supposed to produce 25,000 electric cars per year.17

4. Building a High-Speed Rail Line

The Egyptian newspaper Al-Masry Al-Youm announced on September 5, 2020, that an Egyptian-Chinese consortium between the Chinese company Samcrete and the Arab Organization for Industrialization had won the bid to build a high-speed rail project, at a cost of US$9 billion. The rail line will run from the Red Sea town of Ain Sokhna through the new administrative capital to the Mediterranean town of El-Alamein, covering 543 kilometers and operating at speeds up to 250 kilometers per hour.18

5. Defense Cooperation

In March 2019, Xinhua announced that President el-Sisi affirmed Egypt’s support of the BRI. The news agency reported that el-Sisi also expressed his hope that both countries would be able to enhance cooperation further in the fields of counterterrorism, joint military drills, and armed forces buildup as well as the defense industry.19 In August 2019, an Egyptian Armed Forces spokesperson announced that Egyptian and Chinese naval forces launched joint military drills in the Mediterranean Sea. The naval exercise comes as a part of a plan to boost military cooperation between the countries.20 Finally, in August 2020, the Chinese company Hutchison Ports signed a long-term agreement with the Egyptian Navy for the development and operation of a new container terminal that will cost US$730 million. The terminal will be located inside the Abu Qir Naval Base on the Mediterranean Sea.21

III. Major “Flagship” Projects

A. Suez Canal Economic Zone

Based on a report issued by Global Construction Review in June 2015, Egypt announced that it would seek China’s funding for the development of the Suez Canal because the canal has already been incorporated into the route of China’s “Maritime Silk Road.”

According to a statement issued to Xinhua by the director of the Suez Canal Economic Zone (SCZone), by March 2017, China had become the SCZone’s largest investor in its development. The Tianjin Economic-Technological Development Area (TEDA), a Chinese corporation, has established the China-Egypt Suez Economic and Trade Cooperation Zone with the Egyptian government. The company has increased the number of its development projects and tenant factories in the Ain Sokhna district of the Suez Canal Corridor east of Cairo. Furthermore, TEDA is developing a 7.23 square kilometers industrial zone at Ain Sokhna. It has completed its first phase, attracting some 68 enterprises, including Jushi, a “fiberglass giant” from China.

In 2018, another Chinese company, called “Harbour Excavation” contributed to the development of the Suez Canal by constructing a container terminal in the Port of Damietta, north of the canal. In the same year, the company also began building a second terminal basin in the Sokhna Port south of Suez on the Red Sea.

In December 2019, the SCZone director held a meeting with a Chinese delegation at the TEDA Suez Economic and Trade Cooperation Zone to discuss Chinese investment in multiple projects, including the textile, petrochemical, and plastics industries. Those investment projects are supposed to take place in the Suez Canal Economic Zone and create 20,000 jobs.

By the end of 2020, the China–Egypt Suez Economic and Trade Cooperation Zone had attracted 96 enterprises and investment of more than US$1.25 billion. With sales revenue exceeding US$2.5 billion, the businesses in the zone have paid more than US$176 million in taxes and provided about 4,000 direct jobs and 36,000 employment opportunities in related industries. We were unable to find any information that would indicate that the SCZone is suffering any financial problems or debt issues.

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24 TIMEP Brief: China’s Role in Egypt’s Economy, TIMEP (Nov. 21, 2019), https://perma.cc/GFB8-K64S.


B. New Administrative Capital

Under the BRI, China State Construction Engineering Corporation (CSCEC) carries out the construction projects in Egypt’s new administrative capital. The new administrative capital is located 45 kilometers east of Cairo and is supposed to accommodate a population of 5 million people. Additionally, it is supposed to include all the buildings of the executive branch of the government as well as a new building for the legislative branch (parliament).

In October 2017, China State Construction Energy Corp (CSCEC) signed a US$3 billion deal to build a central business district in the new capital, including Africa’s tallest tower. In January 2020, the general manager of CSCEC, Chang Weicai, announced that the company would deliver all buildings in the central business district in 2022. CSCEC has hired Egyptian and Chinese workers to complete the project. As previously mentioned, the Egyptian investment law grants the right to CSCEC to hire Chinese workers for up to 10% of its workforce. That percentage increases to 20% if CSCEC cannot locate Egyptian workers with sufficient qualifications.

Chinese bank loans cover 50% to 70% of upfront costs of the construction of the new administrative capital. The total cost of the project will reach US$45 billion, and the interest rates on the loans are about 2% to 3%. Repayment of the loans began in late 2019 and early 2020, based on grace periods of 36 to 42 months. Egypt’s portion of the project costs are to be funded by selling land in the new capital to property developers. This arrangement drew criticism from a financial reporter, who stated “It is easy to imagine a worst case scenario for the government, where recession hits Egypt in 2019, property developers go bust in the new capital, relocation rates dwindle, and the government has trouble paying back China in 2020, and beyond.”

Based on a report issued in January 2020 by Al-Monitor, funding problems continue to plague the plans of the Egyptian government to construct the new administrative capital. Despite the US$3 billion deal offered by China to fund the construction of the central business district located in the new administrative capital, Al-Monitor reported, the insistence of Chinese banks on payment guarantees obstructed disbursement of the US$834 million first portion of the loan. The report stated that China has concerns about whether Egypt is capable of repaying the loan. Al-Monitor claims Egyptian Minister of Housing Assem el-Gazzar failed to reveal to Chinese banks the

financial sources through which this loan will be repaid, raising concerns because Egypt is already heavily indebted.33

IV. Assessment of Projects’ Impact; Public Support/Criticism

A. Projects’ Impact

1. Social Impact

According to a report by the Egyptian Independent, in January 2020, Chinese Consul General in Alexandria Zhao Liying announced that over 1,560 Chinese companies have provided more than 30,000 job opportunities in Egypt.34 Chinese companies operating in Egypt also donated a EGP1 million (about US$63,700) to the Egyptian Society for Integrated Development, a foundation in charge of preparing food boxes filled with staples and conducting other charitable activities. Bian Shiyuan, head of the Chinese Chamber of Commerce in Egypt, has stated that Chinese companies operating in Egypt are very pleased to take part in this kind of activity to show their commitment to Egyptian society.35

2. Political Impact

In a news article, Lisa Blaydes, a professor of political science at Stanford University, was quoted as saying “Chinese investments in Egyptian infrastructure have the potential to support the el-Sisi regime in a way that insulates the leadership from popular pressure.” Blaydes added that the newly constructed administrative capital reduces pressure on the need to upgrade Cairo’s crumbling infrastructure. It also protects the government from existing urban populations that have shown a willingness to engage in protests.36

According to the same article, Samuel Ramani, an international relations researcher at Oxford University, asserted that President el-Sisi views the Suez Canal Economic Zone, which is China’s largest investment in Egypt, as an even more significant legacy project than the construction of the new administrative capital. Ramani also said: “[The] strategic importance of this project is further augmented by Egypt’s desire to be a Mediterranean, African and Middle Eastern power and Chinese officials have pitched the Suez Canal investments in a manner that satisfies these objectives.”37

35 Mahmoud Fouly, Chinese Companies in Egypt Donate Food Boxes to Poor People During Ramadan, Xinhua (Apr. 25, 2021), https://perma.cc/9DUT-6H5Q.
37 Id.
3. Economic Impact

Economic expert Walid Gaballah, a member of the Egyptian Association for Political Economy, claims that the BRI is pumping huge investments into countries along the old Silk Road to create more jobs and achieve more economic growth. Gaballah has added that the BRI has consolidated Egypt’s partnership with Chinese companies in implementing mega projects such as the central business district in the new administrative capital, solar power stations, and a project to establish an integrated Chinese textile city in Sadat City. Such mega projects aim at boosting the Egyptian economy to unprecedented levels. For instance, Chinese investment in Sadat City will establish more than 500 factories and create 160,000 job opportunities for the local Egyptian population.\(^{38}\) In 2019, Ambassador Liqiang said in an interview with state media that Beijing’s investments in Egypt had reached nearly US$7 billion, representing a 90% increase over a period of five years.\(^{39}\)

B. Criticism

Chinese infrastructure projects in Egypt have faced criticism. According to an article by Mordechai Chaziza, a scholar specializing in China’s foreign and strategic relations, the mega infrastructure projects funded by China in Egypt have had limited results so far. This is due to Egypt’s economic weakness and governance problems, according to Chaziza. He also argues that this will lead Chinese companies investing in Egypt to devote fewer resources in the future.\(^{40}\)

In addition, Chaziza claims that China and Chinese companies will not recklessly throw resources into Egypt’s mega infrastructure projects if they think that Egypt will fail to repay their loans because of the Egyptian government’s substantial debts. Chaziza concludes his article by stating that the Chinese projects in Egypt are not growing rapidly despite the extensive cooperation between both countries and contrary to what many news stories imply.\(^{41}\)

The Tahrir Institute for Middle East Policy (TIMEP), a think tank located in Washington, DC, also criticizes the Egyptian mega projects funded by China. In a study published in November 2019, TIMEP argues that these mega projects pose a strain on Egypt’s macro economy. According to TIMEP, it is unclear whether the projects in which China has invested will advance Egypt’s long-term strategic economic interests. Additionally, TIMEP claims that although Chinese companies operating in Egypt hire Egyptian workers, there is a concern throughout Africa that local employees are underrepresented in the companies’ managerial positions. This may deny the workers the opportunity to gain important knowledge and impede skills transfer.\(^{42}\)

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\(^{38}\) Interview: BRI Boosts Chinese Investments in Egypt, Says Expert, Xinhua (Oct. 20, 2020), https://perma.cc/Y64N-SP4X.


\(^{41}\) Id. at 268.

\(^{42}\) TIMEP, supra note 24.
C. Anti-China Sentiment

Chinese investments in Egyptian infrastructure projects were unable to curb the wave of anti-Chinese sentiment in Egypt during the COVID-19 pandemic. Chinese and Asian expatriates have faced harassment by some Egyptians in the wake of the pandemic. For instance, a Chinese individual purposely was left stranded on Cairo’s Ring Road highway as individuals avoided helping him. Another Chinese individual sitting in the back seat of a car was forced out of the car because he was holding tissues against his nose and mouth. In a third incident, Henry Woo, an Asian expatriate, was walking through City Stars Mall when a group of Egyptians yelled “corona” at him.43

During anti-China sentiment in the wake of the pandemic, an Egyptian attorney announced that he would sue Chinese President Xi, asking China to pay US$10 trillion in damages caused by COVID-19 in Egypt,44 prompting Ambassador Liqiang to ridicule the lawsuit.45

China has tried to win the hearts of Egyptians by donating 300,000 doses of a Chinese COVID vaccine called “Sinopharm.” The Chinese ambassador to Egypt announced that the donation of the vaccines was due to the comprehensive strategic partnership and mutual assistance between the two countries.46

D. Anti-Dumping Policies Against Chinese Products

Despite the ongoing cooperation between Egypt and China and the growing Chinese investments in Egypt over the past five years, the Egyptian government has imposed an anti-dumping duty on a number of imported Chinese products. For instance, the minister of trade issued Ministerial Resolution No. 40 of 2018 to impose an anti-dumping duty of 11% on imports of tires for buses and trucks from Chinese company Prinx Chengshan (Shandong) Tire Company Ltd.47 Also, according to a news report issued in July 2020, the Egyptian Trade and Industry Ministry announced that will maintain the 55% to 74% anti-dumping duties on synthetic fiber blankets imported from China until August 2025.48 In addition, according to a news article published on the official website of the Arab Iron and Steel Union, the Ministry of Trade and Industry decided

44 Egyptian Lawyer to Sue China for $10 Trillion over Coronavirus Damages, Daily Sabah (Apr. 8, 2020), https://perma.cc/L8CA-5A77.
46 Mohammed Abu Zaid, Chinese Ambassador Says Vaccine Donation to Egypt “Reflection of Friendship”, Arab News (Feb. 8, 2021), https://perma.cc/6B45-AZGH.
48 Egypt to Keep Imposing Anti-Dumping Duties on Chinese Synthetic Fiber Blankets, Enterprise (July 5, 2020), https://perma.cc/SL8L-7LLJ.
to impose an anti-dumping duty of 20.14% at a rate of not less than $141 per ton on imports of iron alloys (ferrosilicon) from China for a period of five years, beginning April 1, 2021.49

V. Chinese Cooperation with Other Countries in MENA Region

In addition to Egypt, China had signed a number of MOUs with other countries in the MENA region to advance BRI projects. For example, China signed MOUs with North African countries, such as Algeria,50 Libya,51 Morocco,52 and Tunisia.53 China also signed MOUs with other Arab countries of the Middle East, including Bahrain,54 Lebanon,55 Oman,56 and the UAE.57

In North Africa, China is particularly involved in investments in Morocco and Algeria. In 2017, China announced an investment of US$11 billion in the construction of the “King Mohamed VI Tangier Tech City” in Morocco. The new city is projected to provide 100,000 new job opportunities. In February 2018, Morocco and China expressed a mutual interest in expanding economic partnerships following the sixth session of the Morocco-China Joint Committee for Economic Cooperation.58 Chinese companies have invested in construction in Morocco, including the Noor 2 and Noor 3 solar parks.59 The Noor Power Plant in Morocco is the world’s largest concentrated solar power plant complex.60

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49 Arab Iron & Steel Union, *Egypt Imposes Anti-Dumping Duties on Imports of Ferrosilicon Alloys from India, China and Russia* (Apr. 8, 2021), https://perma.cc/5VZG-7UJQ.

50 *Algeria Inks MoU on Adherence to China’s “Belt and Road” Initiative*, Algeria Press Serv. (Sept. 4, 2018), https://perma.cc/8PPM-DRCN.

51 Wang Wenwen, *China to Aid Libyan Reconstruction via Belt and Road*, Global Times (July 17, 2018), https://perma.cc/SVR3-NQFN.

52 *China, Morocco Sign MOU on Belt and Road*, Xinhua (Nov. 20, 2017), https://perma.cc/X3E2-F5QF.

53 *Tunisia Signs Agreement for New Silk Road*, Ansamed (July 12, 2018), https://perma.cc/XXS8-5MJU.

54 *Bahrain, China Ink MoU on Belt and Road Project*, Trade Arabia (July 10, 2018), https://perma.cc/K5XM-LWYY.


56 *China and Oman Sign the Memorandum of Understanding on Jointly Building the “Belt and Road”*, Ministry of Foreign Affairs, People’s Republic of China (May 15, 2018), https://perma.cc/7ABF-NPVE.


In Algeria, China became that country’s top trade partner, in 2013, surpassing France. Algeria is the top exporter of oil and petroleum to China.\textsuperscript{61} According to a study published by the Middle East Institute, political turmoil in Algeria has prevented China from investing in mega projects infrastructure. For example, in 2017, there were plans to construct a new deep-water port at El Hamdania in Cherchell, with US$900 million of the financing coming from a 20-year loan from the African Development Bank and the remainder from a consortium of Chinese banks. China Harbor Engineering was supposed to manage the port’s operations for the first 25 years. However, work on the project was suspended in April 2019 because of the Hirak protest movement that caused the resignation of Algeria’s President Abdelaziz Bouteflika. In July 2020, after a new government took over, it decided to reach out to China to resume work on the El Hamdania Port project.\textsuperscript{62}

In addition to Algeria and Morocco in North Africa, China has invested heavily in the Middle East country of Oman. China’s investment in the Sino-Oman industrial city and the Duqm Special Economic Zone has reached US$10.7 billion. After its completion, the Duqm Special Economic Zone will be the biggest special economic zone of the MENA region. According to Lu Ruquan, director of the Strategic Development Department of the China National Petroleum Corporation, Oman is China’s main energy corridor. According to news reports, Oman’s Duqm Port could help China bypass the Strait of Hormuz in case of a military conflict between the United States and Iran.\textsuperscript{63}

\textsuperscript{61} Giancarlo Elia Valori, \textit{The African Oil Markets of China and the Continuous Daily Needs for Crude Oil}, Mod. Dipl. (Nov. 11, 2020), https://perma.cc/X8UN-83FW.

\textsuperscript{62} John Calabrese, supra note 59.

Kenya

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SUMMARY

China is heavily investing in infrastructure programs of various African countries through the Belt and Road Initiative (BRI). Its institutions reportedly are financing 20% and constructing 75% of all infrastructure projects in the continent. Road and rail transport and shipping and port projects constitute over half of the BRI projects.

Kenya has been a major participant in the BRI, in large part because China considers it an access point to markets in East and Central Africa. Kenya has 43 loans (including those extended before the implementation of the BRI) worth US$9.2 billion, and interest payments to Chinese lenders constituted 87% of money it used to service its debts in 2019.

The standard gauge railway (SGR) project connecting Mombasa port to Nairobi-Naivasha-Kisumu and on to Malaba, at the Kenya-Uganda border, is one of the flagship projects of the BRI in Kenya. In 2014, Kenya and China signed a US$3.8 billion contract to develop the first leg of the SGR project connecting Mombasa to Nairobi (287 miles of SGR tracks). The Exim Bank of China provided the lion’s share of the financing for the project and China Road and Bridge Corporation (CRBC), a Chinese state-owned firm, was selected to build the line, which it completed in 2017.

The SGR project has benefited Kenya in many ways. It has cut travel time from Mombasa to Nairobi by more than half. The construction of the project created thousands of temporary local jobs. It has also improved trade and connectivity, boosted local enterprises, brought about benefits in regards to technology and skill transfer, and is expected to bolster tourism.

Nonetheless, the project has faced (and continues to face) a myriad of challenges. Chief among them is that the Exim Bank reportedly inserted a confidentiality clause into the loan agreement, which shielded its terms from public scrutiny until it was too late to stop or alter them. Another major challenge was the cost of the project. Kenya had a number of options (including rehabilitating an old line and refurbishing it with the same or different gauge), but it opted for the most expensive option of building a new line. Another challenge, related to the cost of the project, is the use of the Mombasa port, a key national asset, as collateral for the project and the waiving of sovereign immunity, exposing the port to a potential takeover by the Chinese. The fact that Kenya continues to struggle to generate enough revenue from the line to service its debt has exacerbated the problem, so much so that a recent parliamentary committee report called for renegotiation of the terms of the loan with China. Other challenges to the project include corruption; an arbitration clause in the loan agreement making the China International Economic and Trade Arbitration Commission (CIETAC) the final and binding arbiter of any and all disputes between the Exim Bank and Kenya; and ecosystem degradation, fragmentation and destruction.
Some of the challenges resulted from the absence of national laws to protect the national interest, and from the deliberate disregard of existing laws by those who negotiated the loan and construction agreements. When Kenya awarded CRBC the contract to build the SGR, it did so without open tendering, in disregard of the 2010 Constitution and the 2005 Public Procurement and Disposal Act. The Act permits the government to bypass its provisions if doing so is part of a negotiated grant or loan agreement, which the government claimed was the case here. In a 2020 decision, in response to a legal challenge brought in 2014, the Court of Appeal held that the engagement of CRBC was not an obligation arising out of a negotiated grant or loan agreement, and thus violated the Constitution and the Public Procurement and Disposal Act. In 2014, Kenya issued local content rules requiring foreign firms to subcontract or enter into joint ventures with local persons for at least 30% of the value of a contract they win. However, this law did not take effect until 2016. Although Kenya made a gentlemen’s agreement that CRBC would use local content for 40% of its needs for the SGR, with the exception of its cement needs, a number of factors made this difficult to achieve.

I. Introduction

In 2013 China announced its “One Belt, One Road” (OBAR), also known as “Belt and Road” (BRI) initiative, a plan to establish trade networks linking China to markets in Asia, Europe and Africa. The initiative encompasses two primary components: “the “Silk Road Economic Belt,” which is a network of land-based infrastructure projects spanning from central China through Central Asia to Europe, and the “Maritime Silk Road” (MSR), which is composed of a series of port and coastal infrastructure projects extending from South and Southeast Asia to East Africa and the Mediterranean.”

The popularity of the BRI in Africa is hard to overstate. It appears that all African countries, with the exception of Benin, Eritrea, Eswatini, Mali, and Sao Tome and Principe, have either signed a memorandum of understanding or expressed their support. By April 2019, China had signed BRI cooperation documents with 39 of the 53 African countries and the African Union. Kenya’s location is considered by China to be a key “maritime pivot point” for the initiative. According to one source, “Chinese policymakers viewed Kenya as a prime opportunity because of its

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1 Tatenda Kunaka, One Belt One Road Initiative: An African Perspective 6 (2018), https://perma.cc/7BWP-RXER.
strategic location as a ‘maritime pivot point’ offering access to the East and Central Africa and its ability to serve as a conduit for raw materials, including Sudanese and Ugandan oil.’’

China’s interests in Africa precede the BRI. One source notes that “[b]y the end of 2009, China had provided assistance to over 500 infrastructure projects in Africa. Between 2010 and 2012, the Chinese government had approved a total of $11.3 billion in concessional loan financing.” However, its footprint was relatively small. For instance, in a span of thirteen years in the pre-BRI era, China reportedly extended US$2.2 billion in credit to Kenya. Since 2014, China reportedly lent Kenya around US$7 billion.

The BRI in Africa heavily favors investment in infrastructure. At present, China is said to be the single largest financier of infrastructure projects in Africa, “financing 20% of all projects and constructing 75% of them.” Road and rail transport as well as shipping and ports projects constitute about 53%, followed by energy sector projects (17.6%), real estate development projects (about 14%) and mining sector projects (about 8%). According to the Global Development Policy Center data, loans made in transportation (US$46.6 billion), power (US$30 billion), and mining (US$18.4 billion) sectors constitute two-thirds of the US$153 billion that China has committed in Africa.

Need is the primary driver of this focus on infrastructure. One source notes that “huge infrastructure gaps remain stumbling blocks to growth, investment and economic diversification” in Africa. A 2018 Africa Development Bank (AfDB) report on the continent’s economic outlook noted the importance of investment in infrastructure, noting, Africa must industrialize to end poverty and generate employment for the 12 million young people who join its labor force every year.

One of the key factors retarding industrialization has been insufficient stock of productive infrastructure in power, water, and transport services that would allow firms to thrive in industries with strong comparative advantages.

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7 Osman, supra note 2, at 735.
8 Lew & Roughhead, supra note 6, at 47.
9 Id.
11 Id.
13 Irandu & Owilla, supra note 10, at 462.
AfDB estimates the continent’s infrastructure needs at US$130-170 billion per annum.15

Thus it comes as no surprise that the BRI converges with the African Union’s strategic framework for continental and regional integration known as Agenda 2063. Among the flagship programs Agenda 2063 identifies is an integrated high-speed train network “to connect all African capitals and commercial centres . . . thereby facilitating the movement of goods, factors services and people.” 16 In 2015, China and the AU signed a memorandum of understanding on China-Africa cooperation on infrastructure.17 According to the MOU, “China will be in the ‘Africa Vision 2063’ strategic framework, to strengthen cooperation with African countries in railway, highway, aviation and industrial areas of the region, and to promote the integration of African countries.”18 Other points of convergence between BRI and Agenda 2063 are in industrialization, financial integration, and development.19

The BRI also aligns with Kenya’s “Vision 2030,” a long-term development blueprint launched in 2008 that aims to transform the country into “a newly-industrialising, middle income country providing a high quality of life to all its citizens in a clean and secure environment.”20 In 2017, Kenya announced what is known as the “Big Four Agenda,” a plan that complements Vision 2030 and that includes four pillars: food security, affordable housing, universal health care, and manufacturing and job creation.21 Realization of these plans needs “significant resources and the modernization of the country’s infrastructure.”22 The BRI is one possible initiative for realizing these goals.

In May 2014, Chinese Premier Li Keqiang and Kenyan President Uhuru Kenyatta signed a US$3.8 billion contract to lay 287 miles of SGR connecting Mombasa to Nairobi.23 China financed 90% of the project, with Kenya shouldering the rest.24 The Export Import Bank of China (Exim Bank), which operates as a government development bank, provided US$3.2 billion in loans.25 The

15 Id.
18 Id.
22 Goulard, supra note 21.
23 Irandu & Owilla, supra note 10, at 466.
24 Osman, supra note 2, at 737.
25 Id.
Belt and Road Initiative: Kenya

Mombasa-Nairobi line was inaugurated in May 2017. Kenyan added a 75-mile leg to Naivasha, a town in Nakuru County, for an additional US$1.5 billion.

Kenya is heavily indebted to China. China reportedly committed US$9.2 billion to Kenya in 43 loans from 2001 through 2019. While the loans made before 2014 (around USD$1.8 billion) pre-dated the BRI, it is difficult to determine which loans made after 2014 are part of the BRI, given the lack of transparency surrounding the BRI deals. However, secondary sources indicate that projects such as the expansion of the Mombasa port (the larders port in East Africa), the deep-sea port and related infrastructure projects at Lamu, and the SGR project are part of the BRI. In 2019, interest payments to Chinese lenders constituted 87% of the money used to service Kenya’s debt.

Nonetheless, according to a 2020 joint World Bank-IMF debt sustainability analysis, Kenya’s debt remains sustainable and is projected to improve as the global economy rebounds from the slump caused by the Covid-19 pandemic. This report noted that Kenya’s gross public debt has increased from 50.2% of GDP in 2015 to 61.7% in 2019, largely due to large infrastructure projects, and the country’s risk of debt distress moved from moderate to high, primarily due to the economic slowdown resulting from the pandemic. The report also noted that the country’s public debt as a share of GDP is expected to increase to 69.9% by 2022, and then gradually decline.

A number of factors explain the rapid expansion of the BRI in Africa. Chief among them is the fact that China is often the only game in town. One source notes that “[a]lthough Kenya enjoys access to international capital markets, it has been unable to finance desired infrastructure projects before China stepped in.” This issue is probably more acute for countries like Kenya that have a difficult relationship with western donor and lender institutions due to their political standing. Another factor is the Chinese lenders’ flexibility to work with African countries, including in the types of resources they are willing to accept to secure loans. Another source notes that:


28 Global Development Policy Centre, supra note 12.

29 Id.

30 Lew and Roughead, supra note 6, at 46.

31 Id. at 49.


33 Id. at 2 & 8.

34 Id. at 8.

35 Lew and Roughead, supra note 6, at 49.
Part of the attractiveness of Chinese finance is that the loans are offered at subsidized and relatively low interest rates and with a maturity of 15 years or more. China Exim Bank is an export credit agency offering loans on a bilateral basis. It evaluates the level of concession taking into account the nature of the projects. The bank’s competitive edge is that it allows countries that do not have enough financial guarantees to use their natural resources as collateral for infrastructure development. This funding model, known as the ‘Angola model’ has come in for serious criticism because using resources as collateral tends to reinforce the ‘resource curse’ of recipient economies.36

African countries choose this route as a way of attracting finance, while lenders see it as a way to minimize their risk.37

Other reasons that contribute to the success of Chinese institutions in Africa reportedly include cost effectiveness, administrative efficiency, and speedy delivery.38

However, after the rapid initial expansion, the BRI appears to be facing some headwinds. China recently declined Kenya’s request for US$3.68 billion in loans and grants for the third phase of the SGR project (Naivasha-Kisumu, and on to Malaba), “a critical segment of the Northern Corridor project that is supposed to link the port of Mombasa with the Great Lakes Region’s landlocked states.”39 Similarly, the Exim Bank recently declined to finance a major solar project in Zimbabwe due to the country’s legacy debts.40

However, it is not just China getting cold feet. In 2019, Tanzania’s President John Magufuli cancelled a US$10 billion Bagamoyo Port project signed by his predecessor in 2013, citing that some of the terms of the agreement made with Merchant’s Holdings, a Chinese company contracted to develop the port and contiguous area, were particularly onerous and made the deal infeasible.41 One source described the points of disagreement as follows:

Despite this strong financial incentive, the Tanzanian government rejected five demands made by China Merchants claiming they were not beneficial to the country. Instead of a 99-year lease [of the port], the government is now willing to issue China Merchants only a 33-year lease. The government also denied the company the tax-free status it requested, making clear that it would be subject to all applicable taxes. Likewise, the government denied the company’s request to receive a special rate for water and electricity, insisting that it would be subject to the market rate like all other investors. The government also denied China Merchants the ability to open and operate other businesses

36 Irandu & Owilla, supra note 10, at 463-464.
38 Kunaka, supra note 1, at 9.
40 David Herbling & Dandan Li, China’s Built a Railroad to Nowhere in Kenya, Bloomberg (July 2019), https://perma.cc/QS8D-WQCO.
41 Bagamoyo Port Project Timeline and All You Need to Know, Construction Review Online (Apr. 15, 2021), https://perma.cc/33QT-4ECZ.
it deemed necessary within the port without government approval. Further, any such business, if approved, would remain subject to government oversight and regulation. Finally, the government stated that it would remain free to develop other ports to compete with Bagamoyo.42

In cancelling the deal, Magufuli is said to have remarked that “only a drunk person [would] accept the terms.”43

This report looks at the implementation of the BRI in Kenya with special focus on the first leg of the SGR project connecting Mombasa port to Nairobi.

II. Legal & Policy Framework

A. Bilateral Agreements

As noted above, the BRI kicked off in Kenya in May 2014 with the Chinese Premier Li Keqiang and Kenyan President Uhuru Kenyatta signing a US $3.8 billion contract to lay 287 miles of SGR connecting Mombasa to Nairobi. The countries have since signed a number of other agreements. Because the texts of such agreements generally have not been made public, this report heavily relies on secondary sources.

B. National Laws

Some key national Kenyan laws appear to be relevant to BRI agreements, particularly with regard to an obligation of the government to issue open bids for public contracts and make information relating to those contracts accessible to the public.

1. Constitution

The procurement of public goods and services clause, set forth in section 227 of the Kenyan Constitution, states that “[w]hen a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.”44 The Constitution mandates that Parliament put in place “a framework within which policies relating to procurement and asset disposal shall be implemented.”45

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43 Tejas Joshi, “*Only a Drunk Person would Accept These Terms*”, *Tanzania President Rejects China’s $10 Bln Loan*, HW English (Apr. 25, 2020), https://perma.cc/E3L8-DSP5.


45 Id.
The access to information clause provides that “[e]very citizen has the right of access to . . . information held by the state.”\[^{46}\] It further states that the “State shall publish and publicise any information affecting the nation.”\[^{47}\]

2. **Procurement Law**

The current law governing government procurement and asset disposal matters is the Public Procurement and Asset Disposal Act of 2015, which took effect in January 2016.\[^{48}\] Prior to that, including at the time the SGR deal was negotiated and signed, the applicable law was the Public Procurement and Disposal Act of 2005.\[^{49}\] The 2005 Act was at the center of the legal suit challenging the legality of the SGR deal (see part II(C) below).

The stated purpose of the 2005 Act included to “establish procedures for procurement,” “increase transparency and accountability in those procedures,” “increase public confidence in those procedures” and “facilitate the promotion of local industry and economic development.”\[^{50}\] It also required that government institutions use “open tendering” established under its provisions for each procurement.\[^{51}\] A clause on conflicts with international agreements stated that “[w]here any provision of this Act conflicts with any obligations of the Republic of Kenya arising from a treaty or other agreement to which Kenya is a party, this Act shall prevail except in instances of negotiated grants or loans.”\[^{52}\] A clause on conflicts with conditions on donated funds stated that “[i]f there is a conflict between this Act, the regulations or any directions of the Authority and a condition imposed by the donor of funds, the condition shall prevail with respect to a procurement that uses those funds and no others.”\[^{53}\] For discussion on the relevance of these provisions, see Part II(C) below.

The current version of the conflicts with international agreements clause states that “[s]ubject to the Constitution, where any provision of this Act conflicts with any obligations of the Republic of Kenya arising from a treaty, agreement or other convention ratified by Kenya and to which Kenya is party, the terms of the treaty or agreement shall prevail.”\[^{54}\]

3. **Access to Information Act**

Enacted in 2016, the Access to Information Act mandates that, subject to its provisions or other applicable law, “every citizen has the right of access to information held by . . . the state.”\[^{55}\]

\[^{46}\] Id. § 35 (1).

\[^{47}\] Id § 35 (3).

\[^{48}\] Public Procurement and Asset Disposal Act No. 33 of 2015 (Jan. 7, 2016), https://perma.cc/NFG3-8FTV.


\[^{50}\] Id., § 2

\[^{51}\] Id. § 29.

\[^{52}\] Id. § 6(1).

\[^{53}\] Id. § 7(1).

\[^{54}\] Public Procurement and Asset Disposal Act, 2015, § 6.

to a number of conditions, including if disclosure would harm national security or impede due process of the law, a public entity must:

- upon signing any contract, publish on its website or through other suitable media the following particulars in respect of the contract entered into—
  1. the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;
  2. the contract sum;
  3. the name of the service provider, contractor or individual to whom the contract has been granted; and
  4. the periods within which the contract shall be completed.⁵⁶

4. Local Content Law

In 2014, Kenya issued local content rules that reserve for Kenyans certain shares of activities in construction projects involving foreign firms and require foreign construction firms to train local workers. Under the regulations, any foreign firm that undertakes construction works in Kenya:

(i) shall subcontract or enter into a joint venture with a local person or local firm for not less than thirty percent of the value of the contract work for which temporary registration is sought;
(ii) shall transfer technical skills not available locally to a local person or firm in such manner as the Authority may determine from time to time.⁵⁷

The regulations reportedly took effect in August 1, 2016.⁵⁸ This, together with the fact that the National Construction Authority did not become operational until 2017, meant that the regulations did not apply to the SGR project.⁵⁹

C. The Court of Appeal Decision

In 2014, the Law Society of Kenya and human rights activists petitioned the High Court of Kenya at Nairobi challenging the constitutionality and legality of the construction of the SGR project.⁶⁰ The High Court summarized the petitioners’ case as follows:

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⁵⁶ Id. §§ 5 & 6.
In their Petition, they state that they are opposed to the SGR project owing to the manner in which it was procured and is being implemented. They are particularly aggrieved that the Government allegedly failed to exercise due diligence as it failed to independently carry out a feasibility study and design of the project before seeking contractors to implement it. They also claim that the Government erred in single-sourcing for the project and allowing the use of locomotives from [China Road and Bridge Corporation (CRBC),] which is not a manufacturer of the same. They also allege that there is a conflict of interest in the implementation of the project and lastly, that the Government failed to undertake due diligence in contracting [with the CRBC] which has been blacklisted by the World Bank and been declared ineligible to engage in any road and bridge construction funded by the World Bank.61

The petitioners sought a determination by the Court on a number of issues. These included whether the respondents “willfully or carelessly” failed to comply with the procurement of public goods and services clause in section 227 of the Constitution and the provisions of the Public Procurement and Disposal Act, and whether the characterization of the arrangement as a government-to-government contract rendered Kenyan constitutional and public procurement laws inapplicable.62 Among others, the petitioners asked the Court to declare the SGR project contract invalid and that the railway must be procured through a competitive bidding process.63

The High Court rejected the petition on procedural grounds, finding that the proof that the petitioners presented to support their case was inadmissible because it included internal documents that were not authorized for release and thus were obtained unlawfully.64 The court ordered that such documents be expunged from the record.65

The petitioners appealed to the Court of Appeal, which issued a decision in June 2020, three years after the completion of the Mombasa-Nairobi segment of the project. The court considered whether the matter was moot, given the SGR project was substantially complete.66 The court held that although the case had started before the implementation of the contract, given that by the time it reached the court the contract had been executed, it was impossible to “restrain the implementation of the impugned contract.”67 Other claims of relief, however, were not deemed moot.68

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61 Id. ¶ 2.
62 Id. ¶ 3.
63 Id. ¶ 4.
64 Id. ¶ 126.
65 Id.
67 Id. ¶ 68.
68 Id.
The court considered the issue of admissibility of illegally obtained evidence. On this issue, the court agreed with the holding of the High Court, stating that “[w]e do not have any basis for interfering with the decision of the High Court to expunge the documents in question.”

The Court of Appeal then turned to “whether the procurement violated Article 227 of the Constitution and statutory law and whether the procurement in this instance was exempt from the provisions of the Act by reason of Section 6(1)” of the 2005 Public Procurement and Disposal Act, and on this issue, the Court sided with the appellants. It rejected the government’s claim that it engaged CRBC as the contractor as a result of a requirement under a financing agreement, ruling that “the engagement of CRBC was not an obligation arising from ‘negotiated grant or loan’ agreement for purposes of Section 6 of the Act. This is because as indicated above, the contract with CRBC as the contractor was procured long before the financing agreement was entered into.”

The Court further held that:

108. We do not think that in enacting Section 6 of the Act, it was intended that the identification of a supplier of goods and services (in effect the procurement) would precede the loan agreement which would oust the procurement procedures under the Act. In this case, it is the procurement that dictated the terms of the loan that ousted the procurement procedures under the Act as opposed to the terms of the loan agreement dictating the procurement procedure or who the supplier of the goods and services would be. The situation is not at all ameliorated by the fact that the entity that undertook the feasibility study and spelt out the manner in which the project would be implemented dictated that it would be the implementor or executor of the project.

109. We conclude and hold, therefore, that in this instance, Section 6(1) of the Act did not oust the application of the Act from the procurement and [Kenya Railways Corporation], as the procuring entity, was therefore under an obligation to comply with the requirements of the Act in the procurement of the SGR project.

The Court thus set aside the High Court’s decision relating to whether the procurement of the SGR was exempt from the provisions of the 2005 Public Procurement and Disposal Act. It substituted it with an order that the “Kenya Railways Corporation, as the procuring entity, failed to comply with, and violated provisions of Article 227 (1) of the Constitution and Sections 6 (1) and 29 [choice of procurement procedure], of the Public Procurement and Disposal Act, 2005 in the procurement of the SGR project.”

III. Mombasa-Nairobi SGR Project

Kenya’s SGR program was split into three phases: Mombasa-Nairobi, Nairobi-Naivasha, , and Nairobi-Kismu-Malaba.
Phase one of the SGR, the Mombasa-Nairobi SGR development, is BRI’s flagship project in Kenya. In 2009, Kenya’s Ministry of Transport signed a memorandum of understanding (MOU) with the CRBC, a state-owned corporation, tasking CRBC to study the feasibility of a construction of a 310 mile electric railway system. The MOU also provided that if CRBC found the project feasible, it “would help identify the source of its financing.” In 2012, the Kenyan government decided that it would seek financing from China and that “the project would be undertaken under government to government terms.”

As noted above, in May 2014, Chinese Premier Li Keqiang and Kenyan President Uhuru Kenyatta signed a US $3.8 billion contract to lay the 287-mile SGR connecting Mombasa to Nairobi. China financed 90% of the project and Kenya covered the rest. China’s share of the financing (US$3.2 billion) for the project came from the Exim Bank. The Mombasa-Nairobi line was inaugurated in May 2017. Kenya added another 75-mile leg to Naivasha, a town in Nakuru County, for additional US$1.5 billion.

A. Controversy Surrounding Debt Terms and Conditions of Project

Although its long-term benefits are hard to quantify at present, the SGR project brought about a number of immediate positive developments for Kenya. Aside from the jobs produced during the construction phase of the SGR, the project created 2,285 jobs at the 33 stations and in the passenger and cargo rolling stock. It dramatically reduced the travel time between Mombasa and Nairobi from over 10 hours to less than five hours. Once the SGR is expanded and connected to similar rail lines in the region, it will likely improve the movement of goods and fuel regional integration.

Apart from these immediate and potential future benefits, the SGR project has also had various challenges. Some of these are highlighted below.

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76 Okiya Omtatah Okoiti & 2 others v Attorney General & 3 others, supra note 60, at ¶ 9.
77 Id.
78 Id. ¶ 10.
79 Irandu & Owilla, supra note 10, at 466.
80 Osman, supra note 2, at 737.
81 Id.
82 Miriri, supra note 26.
83 Mureithi, supra note 27.
1. Transparency

One of the major challenges to ensuring accountability around BRI projects is that they are often shrouded in secrecy.86 In fact, China typically keeps the terms of the BRI deals out of the public eye by requiring a confidentiality clause in such agreements. For instance, according to a 2019 article in the Daily Nation, a Kenyan newspaper, a clause in the SGR loan agreement (clause 17.7) states that “[t]he borrower (Kenya) shall keep all the terms and conditions hereunder or in connection with this agreement strictly confidential.”87 The same clause makes disclosure of the terms of the contract dependent on the consent of the lender, stating that "[w]ithout the prior written consent of the lender (China), the borrower shall not disclose any information hereunder or in connection with this agreement to any third party unless required by applicable law.”88 The Access to Information Act, enacted in 2016, did not exist in 2014 when China and Kenya entered into the SGR agreement.

2. Cost of Project

Some sources note that, in developing the SGR, Kenya chose the most expensive option among those available to it. A World Bank study looked at four possible alternatives to upgrading the railway network in the East African Community89:

1. rehabilitate the existing network to the original standard and gauge,
2. refurbish /upgrade the network to a higher standard, with the same gauge;
3. refurbish /upgrade the network to a higher standard, with a different gauge such as Standard Gauge on the same alignment, or
4. construct a new right of way.90

The study provided the axle load, speed, cost breakdowns and justifications for or against each alternative based on an assumption that freight traffic in the EAC community rail network will reach about 14.4 million tons by 2030:

88 Id.
89 The Community’s member states are Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda.
### Belt and Road Initiative: Kenya

<table>
<thead>
<tr>
<th>Project type</th>
<th>Axle load to be realized</th>
<th>Maximum Operating Speed</th>
<th>Maximum annual capacity</th>
<th>Project Cost</th>
<th>Justification for/against Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alt. # 1</td>
<td>15-18 tons/axles</td>
<td>49.7 miles/h</td>
<td>5.5 million tons</td>
<td>US$289,682/mile</td>
<td>Would struggle to meet demand by 2030</td>
</tr>
<tr>
<td>Alt. # 2</td>
<td>25 tons/axles</td>
<td>74.5 miles/h</td>
<td>60 million tons</td>
<td>US$788,578/mile</td>
<td>Justified if 6.2 million tons of freight is added to the network annually</td>
</tr>
<tr>
<td>Alt. # 3</td>
<td>25 tons/axles</td>
<td>80.7 miles/h</td>
<td>60 million tons</td>
<td>US$2.4 million/mile</td>
<td>Justified if 20.2 million tons of freight is added to the network annually</td>
</tr>
<tr>
<td>Alt. # 4</td>
<td>25 tons/axles</td>
<td>74.5 miles/h</td>
<td>60 million tons</td>
<td>US$5.2 million/mile</td>
<td>Justified if 55.2 million tons of freight is added to the network annually</td>
</tr>
</tbody>
</table>

Created by author from information provided in *The Economics of Rail Gauge in the East Africa Community*, The World Bank – Africa Transport Unit (Aug. 8, 2013).

Having opted for the most expensive alternative, Kenya is said to have paid about US$9 million per mile just for tracks and around US$11 million per mile including all other expenditures.91 Although initial feasibility studies were done for an electrified system, the Mombasa-Nairobi line currently run by diesel powered locomotives.92 In 2018, Kenya reportedly signed a contract with China Electric Power Equipment and Technology Company (CET) for the electrification of the Mombasa-Nairobi line, at an additional cost of US$239 million.93 A similar project in Tanzania (with one major exception in that the Tanzania system is electrified) built by a Turkish company that had won the contract in an open and competitive bid was said to have been built at a significantly lower cost.94

### 3. Corruption

Corruption remains a huge problem in Kenya. The 2020 Transparency International Corruption Perceptions Index report ranked Kenya 124 out of 180 countries, with a 31/100 score.95 Thus, it comes as no surprise that the SGR project would have corruption issues. Among the most high profile cases involved the arrest of the head of the country’s National Lands Commission (NLC) and the managing director of the Kenya Railways Corporation, as well as a number of other

94 Dezenski, supra note 75, at 14-15.
individuals on suspicion of graft relating to land allocation for the SGR project. The same year, Kenyan authorities arrested seven CRBC officials, three of whom were Chinese citizens, for attempting to bribe Kenyan officials who were investigating corruption relating to the SGR. In 2019, Kenya’s Ethics and Anti-Corruption Commission froze the compensation scheme for all land acquired for the SGR after it was discovered that officials at the NLC were demanding kickbacks as “facilitation fees” to fast-track payouts.

4. Take-or-Pay Clause and Debt Sustainability

Under the terms of the loan agreement, the Kenya Port Authority, the guarantor of the loan with the Mombasa port as collateral, had to enter into a long-term service purchase agreement and a “take or pay” deal with the Kenya Railways Corporation (KRC) to ensure that the SGR gets a guaranteed cargo to generate sufficient revenue to service the debt. According to the F.T. Kimani, Kenya’s Auditor General, “‘[t]he payment arrangement agreement substantively means that the [Kenya Port] Authority’s revenue would be used to pay the Government of Kenya’s debt to China Exim bank if the minimum volumes required for [rail] consignment are not met.’”

The cargo transported though the SGR was not nearly enough to meet the amount required under the terms of the loan agreement. The Mombasa-Nairobi SGR was built to accommodate 22 million tons annually. However, as the cargo throughput at Mombasa port increased, the throughput at the SGR did not. For instance, in 2019, the annual cargo throughput at the Mombasa port amounted to 34.4 million tons, an 11% increase from the previous year. Due to the Covid-19 global pandemic, the port’s throughput in 2020 was 34 million tons, lower than the 35.9 million tons projected, but way above the 22 million-ton limit of the SGR. Nonetheless, the SGR transported only 5.09 million tons in 2018, and only 3.25 million tons in the first nine months of...
In 2020, the SGR reportedly carried 4.4 million tons of cargo. This was reportedly due in part to the fact that trucking remained a cheaper option.

Also part of the challenge is the fact that Kenya does not operate the SGR. CRBC operates the SGR through its subsidiary, Africa Star Railway Operation Co. (AfriStar). (See Part III.B below.) The Kenyan government pays US$1 million per month to AfriStar to operate the line and is said to have racked up US$308 million in unpaid bills to the company. Afristar’s operational costs have consistently come in higher than the revenue it generates. A government report noted that the line registered a loss of over US$200 million over three years, a loss that, due to the manner in which the financing is structured, taxpayers have to cover. This has made it difficult for Kenya to cover the operational cost and service its debt.

Kenya sought to boost the amount of cargo transported through the SGR by requiring businesses to use the line. On March 15, 2019, the Kenya Port Authority (KPA) issued a directive “notifying the general public that from the date of the directive, shipping lines would not be allowed to endorse a Bill of lading to importers’ Container Freight Station (CFS) of choice.” On August 3, 2019, the KPA and the Kenya Revenue Authority issued another directive “stating that all imported cargo for delivery to Nairobi and the hinterland shall be conveyed by the Standard Gauge Railway (SGR) and cleared at the Inland Container Depot – Nairobi.” This led to a lawsuit challenging the legality and constitutionality of the directives before the Constitutional and Human Rights Division of the Kenya High Court at Mombasa and, on November 6, 2020, the Court found both directives unconstitutional and therefore void.

A recent Parliamentary report on the use of the SGR also found that forcing businesses to use the rail line is in violation of Kenya’s international obligations, stating:

> Forced railage is against the International Maritime Laws and World Trade Organization Treaties that allow cargo owners to choose the mode of transportation that is competitive in their view. The forced railage has not only increased cost of doing business because of

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105 *Kenya’s SGR Ferries 4.4. mln Cargo in 2020*, Xinhua (Feb. 17, 2021), https://perma.cc/M2B5-7TRL.


109 Id.


111 Id. ¶ 13.

112 Id. ¶¶ 14 & 235.
the high cost of transporting cargo but has also threatened Kenya’s position as the regional logistics hub.\textsuperscript{113}

This report also found that the 1.5\% tax that Kenya imposed on all goods imported into Kenya (also known as Railway Development Levy) in order to pay for its part of the financing of the SGR had increased the cost of doing business in Kenya and made the country less attractive to investors.\textsuperscript{114}

Significantly, the report recommended that Kenya renegotiate the SGR loan terms “due to prevailing economic distress occasioned by the global pandemic that has affected the World’s Economic growth.”\textsuperscript{115}

The report further recommended that the government renegotiate the terms of the SGR operation agreement to reduce the operation cost by at least 50\%.\textsuperscript{116} It appears that Kenya has opted to exercise a clause in the operation agreement that allows it to end the 10 year SGR operation agreement midway. (See Part III.B below.)

5. \textit{Sovereign Immunity Waiver}

Kenya is said to have waived its sovereign immunity in the loan agreement, potentially exposing key public assets to seizure by China in the event of a default. According to a 2018 report by Kenya’s auditor general, the “[Kenya Port Authority] assets are exposed since the Authority signed the agreement where it has been referred to as a borrower under clause 17.5 and any proceeding against its assets by the lender would not be protected by sovereign immunity since the government waived the immunity on the Kenya port assets by signing the agreement.”\textsuperscript{117} The loan agreement is said to include a clause stating that “[n]either the borrower (Kenya) nor any of its assets is entitled to any right of immunity on the grounds of sovereignty or otherwise from arbitration, suit, execution or any other legal process with respect to its obligations under this Agreement, as the case may be in any jurisdiction.”\textsuperscript{118}

One source noted that although it is unlikely that China will seize the Mombasa port in the event that Kenya fails to meet its debt obligations, “the possibility gives Beijing leverage over Kenyan political decisions.”\textsuperscript{119}

\textsuperscript{114} Taylor, supra note 104, at 19; Daily Nation, supra note 87.
\textsuperscript{115} National Assembly, 12\textsuperscript{th} Parliament (Fourth Session), Departmental Committee on Transport, supra note 113, at x, 22 & 42.
\textsuperscript{116} Id. at 42.
\textsuperscript{117} The Maritime Executive, supra note 100 (quoting auditor general report); see also Moses Odhiambo, China Could Seize Mombasa Port Over Sh364bn SGR Loan, Star (Mar. 15, 2021), https://perma.cc/8L8E-FLY3.
\textsuperscript{118} Daily Nation, supra note 87.
\textsuperscript{119} Lew and Roughhead supra note 6, at 47.
Both the Chinese and the Kenyan governments denied that Kenya used the Mombasa port as collateral for the SGR loan.\textsuperscript{120}

6. \textit{Arbitration Clause}

Adding a snag to the issues of debt default and the potential exposure of a strategic asset to possible seizure by the lender is an arbitration clause in the loan agreement. Specifically, the clause requires that any dispute between the lender and the borrower be subject to mandatory arbitration before the China International Economic and Trade Arbitration Commission (CIETAC), whose decision on any dispute is final and binding.\textsuperscript{121} According to the 2018 auditor general report, “[t]he agreement is biased since any non-performance or dispute with the China Exim bank (the lender) would be referred to arbitration in China, whose fairness in resolving the disagreement may not be guaranteed.”\textsuperscript{122}

B. \textbf{Level of Involvement of Local Companies/workforce}

Kenya awarded CRBC the two biggest parts of the SGR project: the project’s construction, and the purchase and installation of facilities, locomotives and rolling rock for the project.\textsuperscript{123} Reports also indicate that the Exim Bank conditioned its loan on Kenya awarding the contract for the operation of the SGR to CRBC, which obtained a noncompetitive 10-year contract to operate the SGR through its subsidiary, Afristar.\textsuperscript{124} Kenya recently announced that it will exercise an option under the contract that allows it to review and take over the operation of the SGR after 5 years.\textsuperscript{125} The Kenya Railway Corporation reportedly has begun the takeover and has assumed certain aspects of the operation, including ticketing, security, and fueling functions.\textsuperscript{126}

CRBC claims that it created a large number of local jobs. According to a report it issued in 2018, “the project department hired a total of 72,000 local employees, 26,000 of which were hired for the Phase I Project of Nairobi-Malaba SGR, which played a major role in stimulating local


\textsuperscript{121} Daily Nation, supra note 87.

\textsuperscript{122} The Maritime Executive, supra note 100.

\textsuperscript{123} Okiya Omtatah Okoiti & 2 others v Attorney General & 3 others, supra note 60, at ¶ 11.


\textsuperscript{125} \textit{Kenya to Take Over Chinese Operated Rail Line Five Years Early}, Global Construction Review (Mar. 15, 2021), https://perma.cc/ZE2S-TADB.

employment.” Another source noted that the SGR project created at least 60 jobs per .62 miles of railway built.

However, CRBC has been accused of failing to transfer skills to the local work force. A 2018 report found that Kenyans with better training than their Chinese counterparts were not afforded the opportunity to operate the trains that run in the SGR, and Chinese employees did all the work. The source further noted that Kenyan employees complained about how they were intentionally kept in the dark, for instance by requiring Chinese language skills for troubleshooting, in order to keep Chinese employees indispensable to the operation for as long as possible.

According to one source, although not included in the written loan agreement, the parties reportedly made a gentlemen’s agreement that CRBC would use local content for 40% of its needs. This included local suppliers (including cement, railway sleepers, pebbles, and sand) as well as local service providers (including slope protection, drainage work, transportation, telecommunication, and banking services). However, a combination of factors made this difficult to achieve. According to the same source:

In some instances, Kenyan suppliers have been able to extract increasing shares of the supply chain contracts. Organized pressure by Kenyan cement manufacturers directed to the President successfully resulted in the reversal of a previous agreement with Chinese stakeholders to import cement from China. All the cement used for the project was subsequently purchased from Kenyan cement industries. Some of the construction services (slope protection, drainage works, supplies, vehicle hire), as well as the telecom, banking, and other services to the contractors and their camps, were also sourced locally. However, CRBC has had to cope with frequent lack of capacity among local providers. The managing director of Kenya Rail reported in a meeting with representatives of Kenya’s private sector association that many local companies were unable to honor contracts to term and that many laborers “run away after a week or two,” forcing the CRBC to sign short-term trial contracts. Yet, Kenyan cement producers are still among the few local manufacturers supplying materials to the SGR. Steel parts like the rails, railway engines, construction machines, and many other products that cannot currently be produced in Kenya are shipped in from China.

The source further noted that there is hope the project will spur local employment growth beyond the construction phase:

130 Id.
132 Id. at 16.
133 Id. at 16.
Beyond the construction phase, further benefits are expected to come to local producers who can produce or supply brake blocks, lubricants, fuels, or those who can take advantage of advertising space on trains, ticket sales, catering, cleaning, waste disposal, warehousing, and local distribution of goods shipped in through the trains at the various stations.134

As noted above, the local content rules that Kenya issued in 2014 took effect in 2016, and were inapplicable to the SGR project.

The 2016 Public Procurement and Asset Disposal Act includes a provision mandating foreign firms to use local sources for materials. It states:

For the purpose of ensuring sustainable promotion of local industry, a procuring entity shall have in its tender documents a mandatory requirement as preliminary evaluation criteria for all foreign tenderers participating in international tenders to source at least forty percent of their supplies from citizen contractors prior to submitting a tender.135

However, this Act too, was inapplicable to the SGR project, and as discussed above in part III.C, the SGR loan agreement was found by the Court of Appeal to have contravened its predecessor statute, the 2005 Public Procurement and Disposal Act.

C. Strategic Purpose of Project

Much has been written about China’s motivations and benefits. Some describe the BRI projects in Africa as a cynical exercise in “debt trap diplomacy.”136 According to this narrative, “China provides infrastructure funding to developing economies under opaque loan terms, only to strategically leverage the recipient country’s indebtedness to China for economic, military, or political favor.”137 Another source describes what the country seeks to reap from the program as follows:

A successful BRI would allow China to more efficiently utilize excess savings and construction capacity, expand trade, consolidate economic and diplomatic relations with participating countries, and diversify China’s import of energy and other resources through economic corridors that circumvent routes that are controlled by the U.S. and its allies.138

134 Id.
135 Public Procurement and Assets Disposal Act § 157(9).
138 Dollar, supra note 86, at 1.
A different source similarly notes that Chinese engagement with Kenya in the SGR project is driven by two key motivations. First is Kenya’s strategic location, which serves as a gateway to Eastern and Central parts of Africa; the SGR “will open up a fast-growing and progressively-integrating region to Chinese and international trade and investment.” Second is the fact that the SGR “railway construction and operation contracts are major international business opportunities for (state-owned) Chinese companies affected by oversupply in the Chinese domestic market.”

While China foresees significant benefits from the BRI, African countries involved in the program, including Kenya, are also likely to gain from it as well. For instance, although other countries have negotiated their own agreements with China, Kenya’s SGR project is said to be the initial phase of what would be a regional railway network connecting Uganda, Rwanda and South Sudan. The potential benefits of the BRI to African nations, including in helping them attract international investment and achieve regional integration and inter-regional trade, is immeasurable. According to one source, “[t]here is need to develop transport infrastructure to open up Africa for international and inter regional trade. The continent’s transport infrastructure is poorly developed especially rail transport where colonial powers deliberately built railways of different gauges in their respective spheres of influence.”

One study described the benefits of the BRI to East African region as follows:

the BRI initiative could have a very significant positive impact on East Africa. For instance, reducing the export and imports trade margins by 10 percent as a result of the BRI could result in increases the GDP growth in East Africa ranging from 0.4 to 1.2 percentage points. It could also contribute to an increase in regional welfare of nearly $1 billion. The total exports of countries could also increase by $192 million by boosting intra-regional trade - another important objective against the backdrop of the recently signed African Continental Free Trade Area (AfCFTA).

As noted above, the SGR has brought about a number of immediate benefits to Kenya, such as improving travel time between Mombasa and Nairobi and creating jobs, both during its construction and in the aftermath. The long-term benefits are hard to quantify at this stage.

However, Kenya appears to be struggling to fund the expansion of the SGR. The economic success of the SGR in large part depends on its further expansion to connect the currently underutilized railway to similar lines in neighboring countries. The project was initially planned to connect “Mombasa to Malaba on the border with Uganda and continue onward to Kampala, Uganda’s capital city. It [was planned to] further run to Kigali in Rwanda with a branch line to Juba in South Sudan. Branch lines along the route [were planned to] extend to Kisumu, Kasese and

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139 Wissenbach & Wang, supra note 131, at 5.
140 Id.
141 Dezenski, supra note 75, at 13.
142 Irandu & Owilla, supra note 10, at 459.
Pakwach.” 144 As noted above, Kenya’s recent attempt to secure US$3.6 billion from China for the third phase of the SGR project failed.145 It appears that Kenya has now shifted its focus to upgrading the old meter gauge railway from Naivasha to Malaba, with an initial budget of around US$32.5 million.146

IV. Assessment of Project’s Impact

A study on the ecological impact of the SGR conducted along the phase 1 and Phase 2 of the SGR project found it had resulted in ecosystem degradation, fragmentation and destruction. The Study acknowledged the safety and wildlife protection measures taken by the project, stating:

The SGR is categorized as a National Class I railway and has a wide range of safety protection measures in the design and operation that include speed limits, installation of high guard fence, safety buffers and earth embankments to avoid crossing other infrastructures. Furthermore, bridges, underpasses, culverts and flyovers have been constructed in wildlife areas such as Tsavo and Nairobi National Parks and in high human density areas such as Athi River to facilitate free movement of wildlife and people. Within Nairobi National Park, an acoustic noise barrier has been installed to reduce noise disturbance to wildlife.147

The study found, despite these measures, that “[t]he construction of the SGR has led to major impacts on ecosystem, particularly degradation[,] fragmentation and to a less[er] extent ecosystem destruction. Landscape modification by the SGR construction has resulted in increased soil erosion, land degradation, flooding, sedimentation of water bodies, habitat destruction and impeding wildlife movements.”148

A study by the University of Nairobi on the socio-economic impact of the SGR on the port city of Mombasa found mixed results. The Study found the operationalization of the Mombasa-Nairobi SGR line had the helped decongested the city of Mombasa, reduced road traffic and green gas emissions, and was potentially a tourism boost.149 The report also identified various negative impacts as the result of the operationalization of the SGR. These are:

1. Road Truckers Collective Redundancies
2. Closure of Trucking Businesses
3. Impact on Warehousing Business

144 Railway Technology, supra note 74.
146 John Nduire, Upgrade of Naivasha-Malaba Railway to Begin Next Month, Construction Kenya (June 8, 2020), https://perma.cc/DYX5-KEMK.
148 Id. at 10.
Another source that looked at the first two years of the SGR operation found mixed results. According to the source, the SGR has been positive and beneficial both at national and local level with regard to issues relating to “trade and connectivity, impact on local economy, project ownership and identity, benefits to local enterprises and business development, local labor inclusion, technological and skills transfer, engagements with local community, and effect health and wellbeing.” The study also noted that the SGR’s financial condition could become a challenge if “debt levels become increasingly unmanageable.” The study flagged corruption and environmental sustainability as the two biggest areas of concern.

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150 Id. at 10.
151 Zhu et al., supra note 85, at 439-440.
152 Id. at 440.
153 Id.
Asia
SUMMARY Cambodia and China have always had a very strong diplomatic bilateral relation. Cambodia is one of China’s main Belt and Road Initiative (BRI) partners. Cambodia’s foreign debt has increased, and 44% of it was owed to China in 2020. Many of the BRI projects in Cambodia are financed by private companies rather than government-to-government loans. This may reduce the debt-trap risk. Reportedly, much forestland has been destroyed, and some residents have been forced from their homes without just compensation, in the development of BRI projects.

I. Introduction/Background

Cambodia is one of China’s main Belt and Road Initiative (BRI) partners in Southeast Asia. During Chinese President Xi Jinping’s visit to Cambodia in October 2016, the two countries signed 31 cooperation documents, including the Memorandum of Understanding (MOU) on the Preparation of a Cooperation Plan for Jointly Promoting the Belt and Road Initiative.

A. Cambodia-China Bilateral Relation

Cambodia and China have always had a very strong diplomatic bilateral relation, which can be traced back for 2,000 years. President Xi stressed that the two countries are “good neighbors, friends, partners, and brothers” during his visit to Cambodia in 2013, and that they are “good neighbors, real friends who are loyal to each other” during another visit in 2016. In 2020, Cambodian Prime Minister Hun Sen said that the two countries have forged “an unbreakable

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* With the assistance of Pichrotanak Bunthan, intern.


2 “‘一带一路’倡议助力柬埔寨国家发展规划——访柬埔寨首相洪森 [The “Belt and Road” Initiative Helps Cambodia’s National Development Plan-Interview with Cambodian Prime Minister Hun Sen], Embassy of The People’s Republic of China in the Kingdom of Cambodia (May 18, 2017), https://perma.cc/X47V-NEZE.


4 Xi Jinping Meets with Cambodian Prime Minister Hun Sen, Stressing China and Cambodia Are Good Neighbors, Friends, Partners and Brothers, Ministry of Foreign Affairs of the People’s Republic of China (FMPRC), (Apr. 7, 2013), https://perma.cc/VH28-YE9N.

friendship.” In 2019, Cambodia received 6.6 million tourists, with 2.4 million Chinese visitors making China its largest source of tourists. Cambodia has received a donation from China of COVID-19 vaccines, amounting to 1.7 million doses as of April 2021, more than any other country in the region. In addition, Cambodia has bought 4 million doses of the vaccines from China.

Amid the European Union’s threat to place trade sanctions on Cambodia, in 2019, China pledged nearly US$600 million in aid from 2019 to 2021 to the country and promised to import 400,000 tons of Cambodian rice. China has been the largest foreign investor in Cambodia. The Council for the Development of Cambodia states, “[o]f the cumulative FDI (Foreign Direct Investment) approved in the period of 1994-2019, the largest share was from China (21.81 percent).” In 2019, the Cambodian government recorded approved investments totaling US$9.40 billion, including US$2.75 billion by China, followed by US$912.55 million from Hong Kong and US$298.84 million by Japan.

By the end of 2020, Cambodia’s foreign debt was US$8.8 billion, 44% (US$3.6 billion) of which was owed to China. China has provided more than US$3 billion in concessional (soft) loans to Cambodia to build about 3,000 kilometers of roads and eight bridges.

B. Cambodia’s Embrace of BRI and Its Rationales

Cambodia has embraced the BRI since its inception in 2013 to ensure that Cambodia is at the center of the BRI plan in Southeast Asia. Cambodia appears to have three rationales for supporting the BRI.

1. Economic Rationale

Reaping economic benefits from the BRI projects is probably the most obvious rationale for Cambodia, like most countries engaged in the BRI, to embrace China’s initiative. By linking Asia to Africa and Europe, the BRI is connecting Cambodia to other BRI countries, amounting to about 4.4 billion people or 70% of the world population—a massive market for Cambodia.

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10 FDI Trend, Council for the Development of Cambodia (CDC), https://perma.cc/N69C-NTNC.
11 Id.
12 Chhengpor Aun, Chinese Embassy Denies Debt Trap for Cambodia, VOA Cambodia (Apr. 12, 2021), https://perma.cc/R7JX-FLVT.
14 Lak, supra note 3, at 148.
In addition, BRI projects make financial resources other than from the World Bank Group and the Asian Development Bank available to Cambodia. These financial resources include the Asian Infrastructure Investment Bank, the Silk Road Fund, and the New Development Bank. These resources are vital to developments in Cambodia, particularly its infrastructure. For example, Cambodia needs US$26 billion to build expressways by 2040.15

Lastly, the BRI fits well with other existing frameworks and strategies that Cambodia is following. “The BRI is properly complementary to the existing connectivity cooperation frameworks and strategies, such as the Master Plan of ASEAN Connectivity 2025 (MPAC – 2025), Initiative for ASEAN Integration (IAI) Work Plan III, the United Nations 2030 Agenda for Sustainable Development, and the Greater Mekong Subregion Infrastructure Connectivity 2015–2020 and its corridors.”16 Additionally, the BRI is consistent with Cambodia’s development plans, such as Cambodia’s National Strategic Development Plan (2014–2018) and Industrial Development Policy (2015–2025). These policies and plans note the significance of the infrastructure and connectivity development in Cambodia.17

2. Political Security Rationale

Supporting the BRI is possibly one of many of Cambodia’s policies to align itself politically with China in the hope of mutual political support. For example, Cambodia has been adhering to the One-China policy for decades.18 Additionally, Cambodia was accused of blocking ASEAN’s statement regarding the Permanent Court of Arbitration’s ruling against China in the South China Sea dispute, in which many ASEAN countries have rival claims.19 China’s political support has become increasingly crucial to Cambodia over the past years because Cambodia’s relationships with the United States and Europe became strained after Cambodia’s 2018 election.20

15 Id.
16 Id.
17 Id.
18 Id. at 151.
19 Manuel Mogato et al., ASEAN Deadlocked on South China Sea, Cambodia Blocks Statement, Reuters (July 25, 2016), https://perma.cc/4S27-CKGA.
3. Socio-Cultural Rationale

As BRI projects overall promote connectivity, the BRI may allow “Cambodia to link its historical, natural, and cultural heritage sites to the other [BRI] countries in order to promote Cambodia’s culture and tourist industrial development.”

C. China’s Strategic Geopolitical and Economic Goals in Cambodia

Concerning China’s foreign policy strategy towards Cambodia, it appears “geostrategic interest outweighs economic interest.” Cambodia is pivotal for China to project its power and influence in Southeast Asia.

II. Legal and Policy Framework

Due to the confidential/secret nature of these projects, any copy of the agreements on the projects are not located. In general, Chinese aids are provided to Cambodia’s government “without bidding transparency, financial auditing, and proper evaluation and public supervision of project operations and outcomes.”

III. Major “Flagship” Projects

While some researchers express concern that Cambodia will fall into a debt trap to China, other believe that its debts to China are manageable. In 2019, a Cambodian think tank director asserted “that Cambodia is still in the safe zone with regards to external debt management and that BRI provides more opportunities than risks to Cambodian economy and society.” Another BRI observer has stated “Cambodia’s decision to develop BRI projects through private companies rather than government-to-government loans may . . . reduce the debt-trap risk. At the same time, adopting large Chinese infrastructure investments may eventually constrain Cambodia’s strategic autonomy and lead to its economic dependence on China.”

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21 Lak, supra note 3, at 152.


23 Chheang, supra note 22.

24 Chen, supra note 22, at 378.


26 Hiep, supra note 1.
A. Dara Sakor Project

1. Project Overview

In 2008, long before the BRI was launched in 2013, Cambodia granted the Union Development Group (UDG) a 99-year lease for over 36,000 hectares (about 139 square miles) of land (about 20% of Cambodia’s coastline) in the Koh Kong province of Cambodia, including the Dara Sakor area. After the lease was granted, UDG began to develop the US$3.8 billion Dara Sakor Project, which was later rebranded as a BRI project. The project so far includes a luxury resort, a golf course, a casino, a US$45 million deep-sea port (which can handle 10,000-ton vessels), a US$350 million airport (with a 10,500-foot runway), and US$76 million for roads totaling 110 kilometers in length (about 68.35 miles). A 2017 Belt and Road yearbook published by an affiliate of China’s Ministry of Commerce describes the Dara Sakor Project as “the biggest project of the Belt and Road initiative so far.”

In September 2020, the Council for the Development of Cambodia (CDC) affirmed that, “based on documents filed with the CDC, UDG is not a Chinese state-owned entity but a foreign company registered at the Ministry of Commerce with 100 percent of shares held by Tianjin Union Investment Development Group Co Ltd.” It is a private-owned enterprise established in 1995 and registered in China. In addition, the China Development Bank had underwritten US$15 million in BRI bonds in 2017 to support UDG for a resort in Cambodia, without mentioning Dara Sakor by name.

However, the US Department of the Treasury’s Office of Foreign Assets Control (OFAC) designated UDG a Chinese state-owned entity and, under the Global Magnitsky authority, sanctioned it in September 2020. The OFAC also considered UDG-funded activities in Cambodia to “have disproportionately benefitted the PRC, at the expense of the Cambodian people” because “UDG-funded activities have forced Cambodians from their land and devastated the environment, hurting the livelihoods of local communities.”

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29 Goh & Thul, supra note 28.

30 Cambodia’s Investment Authority Affirms UDG Is Not China’s State-Owned Company, Khmer Times (Sept. 21, 2020), https://perma.cc/MXY8-3U3P.

31 Id.

32 Goh & Thul, supra note 28.


35 Id.
Belt and Road Initiative: Cambodia

2. **Level of Involvement of Local Companies/Workforce**

In 2015, a village official told a reporter “[n]ot many local people are working for the Chinese company [USG], because it doesn’t want to hire local people as it thinks they often stop working.”\(^{36}\) We were unable to locate further information regarding involvement in the Dara Sakor Project by local companies or the area’s workforce.

3. **Military or Strategic Purpose of Project**

There are widespread concerns that the Dara Sakor Project is being developed for China’s military or strategic purposes, in part because the project does not make economic sense.\(^{37}\) The Dara Sakor International Airport, which is “capable of taking some of the world’s biggest planes,”\(^{38}\) is being built in a province with a population of under 207,500.\(^{39}\) It was reported in May 2021 that construction of the airport is almost complete.\(^{40}\)

The Dara Sakor Project would be useful to China for two purposes: to “circumvent a possible blockage of the Malacca Strait,” and to enforce “practical jurisdiction over the South China Sea.”\(^{41}\) The Cambodian government has repeatedly rejected concerns that the Chinese military will use Dara Sakor. The Constitution of Cambodia prohibits hosting foreign military in Cambodian territory.\(^{42}\) Recently, Sinn Chanserey Vutha, undersecretary of state for the State Secretariat of Civil Aviation, said “Dara Sakor International Airport will primarily be for tourists, charters or special flights serving high-class travelers principally travelling on to Dara Sakor Resort.”\(^{43}\)

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\(^{38}\) Beech, supra note 28; Prak Chan Thul, “We Can’t Hide Anything” Say Cambodians at Alleged China Base, Reuters (July 26, 2019), https://perma.cc/6PD4-9FVT.

\(^{39}\) Koh Kong Travel Guides, Tourism of Cambodia, https://perma.cc/2TLN-E8QF.


\(^{41}\) Long, supra note 37.


\(^{43}\) Sok Chan, *Dara Sakor International Airport ‘to Open Mid-2021’*, Khmer Times (Mar. 3, 2021), https://perma.cc/TZA6-Y58T.
B. Lower Sesan II Hydropower Plant

1. Project Overview

Completed and inaugurated in December 2018, the 400-megawatt Lower Sesan II Hydropower Plant (“Sesan Project”) is Cambodia’s largest hydropower project. The Sesan Project cost around US$800 million and took four years to complete. 44

The project is a joint venture under the BRI framework, with Chinese company Hydrolancang International Energy having a 51% stake, Cambodian company Royal Group holding 39%, and Vietnamese company EVN International holding 10%. Hydrolancang International Energy is owned by China Huaneng Group Co., Ltd., which is owned by the Chinese government.46 The ownership of the dam may be transferred to the Cambodian government after 40 years of operation.47 Only 30% of the cost of the Sesan Project was funded by the joint venture’s capital, with the remaining 70% funded by “an undisclosed bank loan.”48

2. Level of Involvement of Local Companies/Workforce

According to the China Huaneng Group’s website:

Following the mode of “localized” management, the power station attracts and trains Cambodian employees to participate in operation and management, providing more job opportunities for local workers and further harmonizing the relationship between the company and local communities. . . .

The power station is invested, developed and operated by Huaneng Lower Se-San River II Hydropower Co., Ltd. in the mode of BOT (Build – Operate – Transfer). All main electromechanical equipments are imported from China, aiming to promote the “going out” combining Chinese technology, Chinese equipment and Chinese management by adopting Chinese standards, and enhance the influence of “Made in China” in Cambodia and Southeast Asia.49

44 Associated Press, Cambodia’s Biggest Hydropower Dam Now Producing Electricity, Bangkok Post (Dec. 17, 2018), https://perma.cc/9Y4P-PZAA.
45 The First Unit of Huaneng Lower Se-San River II Hydropower Station Started Power Generation, China Huaneng Group, https://perma.cc/E9D6-NW4V.
49 The First Unit of Huaneng Lower Se-San River II Hydropower Station Started Power Generation, supra note 45.
3. **Military or Strategic Purpose of Project**

We were unable to locate information on the military or strategic purpose of the project.

C. **Developments in Sihanoukville Province**

1. **Project Overview**

Sihanoukville has Cambodia’s only deep-water port that is a part of a vital trade route for the BRI. Sihanoukville Special Economic Zone (SSEZ) was established in 2008 and sprawls over 1,100 hectares (about 4.25 square miles). Taihu Cambodia International Economic Cooperation Investment Co. Ltd (China’s Hongdou Group) and the Cambodia International Investment Development Group Co Ltd jointly developed and operate it. According to an article, the project received performance-based subsidies from the China’s government and financing from the Jiangsu branch of the Export–Import Bank of China. Sinosure provided US$61 million in insurance for the project in its early stages. The Industrial and Commercial Bank of China has financed a power plant located within the zone. SSEZ includes a China-Cambodia tax-free economic zone that attracts many Chinese businesses. The majority of factories in the SSEZ are run by Chinese companies.

The Phnom Penh-Sihanoukville Expressway is also a BRI project. At 190 kilometers (118 miles), the expressway will be the longest roadway in Cambodia when operational in 2023. The estimated cost exceeds US$2 billion. The Phnom Penh-Sihanoukville Expressway is a public-private partnership project that is funded by the China Road and Bridge Corporation (CRBC) and the governments of Cambodia and China. “The expressway is being constructed under the build-operate-transfer (BOT) model. The maintenance and development costs will be collected from the users through toll booths on the road.” The Cambodian Ministry of Public Works and Transport selected CRBC for the construction of the expressway. “The Cambodian Government signed a risk concession agreement with CRBC in January 2018.”

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52 Sihanoukville Special Economic Zone, People’s Map of Global China (Mar. 31, 2021), https://perma.cc/W9M3-GNJV.


54 Phnom Penh-Sihanoukville Expressway, Road Traffic Tech., https://perma.cc/BD9Y-BQMM.

55 China Road and Bridge Corporation (CRBC) is a wholly owned subsidiary of China Communications Construction Company Limited (CCCC). “As a leading international contractor of CCCC Group, CRBC has been involved in and successfully completed a range of high-profile landmark projects all over the world.” About Us: Company Profile, CRBC, https://perma.cc/TA8G-QWLB.

56 Phnom Penh-Sihanoukville Expressway, supra note 54.

57 Id.

58 Id.
2. Level of Involvement of Local Companies/Workforce

A study of SSEZ construction workers found Chinese and Cambodian workers on site. The study showed differences in their wages:

a day of work for the Cambodian workforce ranged between US$8.00 and US$20, but in the vast majority of the cases fell between US$10.00 and US$15.00, with women earning a significantly lower amount (between US$8.00 and US$10.00 per day). . . . For a day of work, a Chinese worker received between US$50.00 and US$70.00.59

3. Military or Strategic Purpose of Project

There do not appear to be concerns that China’s military will make use of the SSEZ and the Phnom Penh-Sihanoukville Expressway when completed.

Cambodia’s Ream Naval Base, on the Gulf of Thailand, predates the BRI. It is suspected that Cambodia and China have signed a secret agreement concerning the base. Although the details are not clear due to the confidential nature of the agreement, based on an earlier draft of the agreement that was seen by US officials, the United States and its allies suspect it would allow “China to use the base for 30 years, with automatic renewals for every 10 years after that,” and “to post military personnel, store weapons and berth warships.”60

The military installation in question covers 190 acres and once included two facilities built with US funding and one pier. It was reported that Cambodia requested but later refused funding from the United States to improve the military facilities. However, recent satellite images show that an area in the military base in question has been “cleared in apparent preparation for construction work.”61 The images also indicate that the US-funded facilities have been demolished.62 Based on the earlier draft of the agreement, China may be building one additional pier for Cambodia and another one for Chinese use at the base, and Chinese personnel may carry weapons and control access to a specific part of the base.63

Both Chinese and Cambodian governments have denied this claim. Cambodian Prime Minister Hun Sen also denied this claim, stating that Cambodia’s constitution prohibits establishing a foreign military base within the country. China’s defense minister also denied that China is

61 Id.
63 Page et al., supra note 60.
building a military base in Cambodia. The Chinese Embassy in Phnom Penh issued a statement calling the claim that China has access to the Ream Naval Base as “nothing more than gauging a gentleman’s kindness with one’s own mean measure.”

IV. Public Support/Criticisms; Assessment of Projects’ Impact

A. Studies and Assessments of the Projects

1. Dara Sakor Project

The Dara Sakor Project has raised concerns regarding relocation, compensation, and land grabbing. The residents in many of the communities in the project’s path depended on fishing and farming. Nevertheless, they were relocated away from the coast. Additionally, according to a resident’s statement, the land that was prepared for relocation is poor and not suitable for cultivation. In addition, UDG offered little money in compensation, contrary to its own statement at the beginning of the project. The UDG employees reportedly burned villagers’ houses to remove the residents and clear out land necessary for UDG to build the Dara Sakor project.

2. Lower Sesan II Project

Numerous expert studies have shown that the Lower Sesan II Project “would cause a substantial drop in fish stocks, threaten over 50 fish species and alter the livelihoods and cultures of tens of thousands of people, mostly belonging to minority groups.” A group of 18 civil society organizations, including EarthRights International and International Rivers, called in 2014 for a halt to the project and a more accurate environmental impact assessment from the developers, citing many studies predicting various negative impacts of the project. For example, one study from 2012 considers the Lower Sesan II Project as one of the projects having the most significant impact on fish biomass in the Mekong, “with 9.3% drop in fish biomass basin-wide.”

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64 Id.
65 Chhengpor Aun, supra note 12.
67 Hitorin, supra note 36.
68 Id.
study also states that the Lower Sesan II Project would bring enormous negative impacts, including blocking fish migration and reducing the “basin’s sediment load by 6.0 to 8.0%.”

The communities living near the Sesan II Project also assert that the project “has caused major adverse impacts to their ancestral land, their livelihoods and traditional practices, whereas these impacts have not been properly addressed or compensated.”

3. Sihanoukville

A reporter concludes that the Sihanoukville development by BRI brought many Chinese wealth, but many local Cambodians “are being driven out by the skyrocketing cost of living” although some, especially those who own land, are benefiting from it. Another complaint by residents is that “even though Chinese investment brings wealth, it is mainly kept within their own community. Chinese residents and visitors buy from Chinese businesses and visit Chinese restaurants and hotels, ensuring the trickle-down effect is minimal.”

The increase in casino gambling in Sihanoukville has brought with it organized crime. Chinese investors risk being kidnapped. In addition, Cambodia’s immigration authority has found many Chinese are working in Sihanoukville without work permits. To curb the crimes, the Cambodian government banned online and arcade gambling beginning January 1, 2020. The immigration office announced that 400,000 Chinese left by the end of 2019 because of the ban. According to an article, a labor ministry official told local media outlets “[a]lmost 30 casinos in Sihanoukville have closed or suspended employment of all staff except security guards, and another 33 have temporarily suspended staff.” Many Chinese workers were left behind in Sihanoukville without pay by their former employers, and Cambodians also lost jobs.

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74 Ellis-Petersen, supra note 53.
75 Id.
76 Sheith Khidhir, China Crime Plaguing Cambodia?, ASEAN Post (Oct. 9, 2019), https://perma.cc/BRQ2-97UV.
79 Khun Vanda, Nearly 8,000 Cambodian Staff Lose Jobs Following Online Gambling Ban: Officials, VOD (Dec. 27, 2019), https://perma.cc/2YWX-8Q5V.
B. Media and Public Sentiment

Citing various political experts and commentators, foreign media generally view the BRI as China’s attempt to broaden its economic and geopolitical power and spread its culture. Some are concerned that China is embedding military strategies in its BRI projects, undermining Cambodia's independence and aggravating Cambodia’s corruption problems.81

In addition, support from major countries like United States, Australia, and Japan as well as the European Union is regarded as at risk.82 A political analyst stated that, if Cambodia continues to support China’s BRI, Cambodia might lose its benefits from Indo-Pacific geopolitics even though it may gain China’s political support.83

Some media report supporting opinions and views of the BRI. Chheang Vannarith, president of the Asian Vision Institute, expressed hope that the economic opportunities the BRI will provide to Cambodia outweigh the debt trap risks that others are concerned about.84 Further, political analyst Lao Mong Hay has claimed that most BRI projects in Cambodia are BOT projects, and thus, Cambodia should not incur any debt.85

C. Political Support and Opposition

Cambodian King Norodom Sihamoni, during an official visit to Beijing for the Conference on Dialogue of Asian Civilizations, expressed to President Xi that “[Cambodia] stands ready to promote the Belt and Road Initiative with China.”86 Cambodia’s Prime Minister Hun Sen fully embraces and supports BRI.87 He said Cambodia would not fall into any debt trap because Cambodia accepts only BRI projects that are beneficial to Cambodia. He added that Cambodia “will negotiate and prepare projects in the interests of the nation and its people, and not increase financial burden and public debt.” Hun Sen said the BRI is very favorable to Cambodia’s economic and cultural development, referring to the SSEZ as an example.88

Sam Rainsy, the former leader of Cambodia’s now-dissolved main opposition party, wrote an article against BRI projects in Cambodia. He claimed that the BRI would put Cambodia in

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82 Andrew Nachemson, Chinese Investment in Cambodia Is Bringing Phnom Penh Closer to Beijing—and Further from the EU, S. China Morning Post (May 1, 2019), https://perma.cc/YX84-5E7N.
83 Rith, supra note 81.
84 Hul Reaksmey, Cambodian King Supports Belt and Road Initiative: Chinese Media, VOA Cambodia (May 16, 2019), https://perma.cc/5MNP-8Z6K.
85 Niem Chheng, Hun Sen: Cambodia Will Not Fall into Belt and Road Debt Trap, Phnom Penh Post (Apr. 29, 2019), https://perma.cc/2HSL-FHNL.
86 Reaksmey, supra note 84.
87 Chheng, supra note 85.
excessive debt to China and under its dominance, and that it is a cause of more corruption in Cambodia.  

D. Public Support and Criticism

Cambodian people who benefit from BRI projects, such as property owners who can rent property at a higher price, support the BRI. However, some Cambodians express environmental concerns because forests have been cleared for construction of casinos, condominium complexes, and roads on a large scale. Other concerns include the degree of construction quality and the lack of transparency in the Chinese projects, “especially compared to investment projects funded by other donors and development partners.” In addition, some residents, nongovernmental organizations, and civil society groups criticize reported land grabbing, forced evictions, unfair compensation for relocation, and corruption.

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89 Sam Rainsy, Cambodia Entrapped by China’s New Silk Road Dominance, Geopolitics (May 1, 2019), https://perma.cc/P5NR-NUEK.

90 Ellis-Petersen, supra note 53.

91 Sok Kha, supra note 13.

92 Id.
Malaysia is China’s most significant trading partner within the Association of Southeast Asian Nations. In 2013, the relationship between the two countries was elevated to a “comprehensive strategic partnership.” In the following years, multiple agreements or memoranda of understanding (MOUs) were signed, and projects commenced under the banner of China’s Belt and Road Initiative (BRI), including significant infrastructure and e-commerce projects. These included government-to-government arrangements and broad MOUs related to cooperation in different areas, agreements involving Malaysian state governments and Chinese businesses, and business-to-business agreements. The specific details of the content of most of these agreements is not publicly available, although information on the projects themselves and aspects of their financing is widely reported. This includes significant loans from Chinese state institutions and partnerships and investments involving both private and state-owned enterprises in both countries.

Some of the projects and deals have generated controversy in Malaysia and became linked to corruption allegations against the prime minister who initiated them, Najib Razak. A new prime minister sought to renegotiate or terminate some of the significant projects between 2018 and 2020, arguing that they imposed too great a burden on the country, and Najib was subsequently convicted of corruption offenses in 2020. However, Malaysia has maintained its overall involvement and support for the BRI and for Chinese investment in various sectors. Accusations that China has been involved in “debt-trap diplomacy” in Malaysia have been disputed by several commentators, who note the influence of domestic interests, politics, and agency with respect to BRI-linked projects. Studies on media and public sentiment in Malaysia with respect to the BRI have indicated generally positive views, with support for cautious involvement and awareness of some of the challenges and opportunities on the part of Malaysian businesses.

I. Introduction

A. Malaysia-China Bilateral Relationship and the BRI

The bilateral trade and investment relationship between China and Malaysia has strengthened over the past two decades. Since 2013, multiple memoranda of understanding (MOUs) and agreements have been signed by the two countries and their various enterprises in a range of fields, including MOUs and agreements that may be considered part of or related to the Belt and Road Initiative (BRI).

In 2013, the two countries agreed to “elevate [the] China-Malaysia strategic cooperative relationship to a comprehensive strategic partnership, bringing the relationship to a track of
comprehensive and mature development.”¹ In addition, they agreed to a “Five Year Program for Economic and Trade Cooperation (2013-2017).” The “comprehensive strategic partnership” reportedly “aimed to boost military cooperation and nearly triple two-way trade to $160 billion by 2017.”²

Between 2013 and 2017, various MOUs and agreements were signed related to a number of infrastructure projects involving Chinese funding and companies. This included eight government-to-government MOUs signed in 2015 and 14 MOUs signed in November 2016 during an official visit by the then-prime minister of Malaysia, Najib Razak. At the end of that visit, a joint press statement stated that “Malaysia highly valued its place as one of the important countries under the Silk Road Economic Belt and 21st Century Maritime Silk Road (Belt and Road) Initiative proposed by the Chinese government in 2013.”³

Between 2018 and 2020, following the election of a new coalition government (Pakatan Harapan, PH) led by Mahathir Mohamad, which replaced the previous coalition (Barisan Nasional, BN) led by the United Malays National Organisation (UMNO) party that had been in power in some form for 60 years, Malaysia sought to renegotiate some of the BRI-related infrastructure development deals with China. This came amid a corruption scandal involving former prime minister Najib, which included allegations that the cost of certain BRI projects had been inflated in order to bail out the state-owned investment fund 1Malaysia Development Berhad (1MDB), from which Najib was accused of misappropriating funds. According to one author,

> [t]here are numerous indications that Najib concluded very unfavourable deals with Beijing amounting to at least USD 34 billion in order to close 1MDB’s financial gap that was created by his embezzlement. Some observers say these deals aided and abetted money laundering.⁴

Najib was convicted of corruption offenses related to the 1MDB scandal in July 2020 and sentenced to imprisonment for 12 years. His appeal against the sentence was heard in April 2021, and he is also facing other tax and corruption-related proceedings this year.⁵

Throughout this period, while some agreements were revised and some projects appear to have stalled or been canceled, Malaysia continued its overall involvement in the BRI. For example, in August 2018, a joint statement by Mahathir and the premier of China’s State Council following Mahathir’s official visit to China stated, “Malaysia welcomes, supports and will continue to

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⁵ Kenneth Tee, Appeals Court Reserves Ruling in Najib’s SRC Conviction Appeal, Decision Date to Be Announced Later, Malay Mail (May 18, 2021), https://perma.cc/P5QH-KGGS; Khairah N. Karim, Najib’s Appeal over RM1.69bil Tax Payment Rescheduled to Aug 11, New Straits Times (June 16, 2021), https://perma.cc/G8EU-7S5H.
actively participate in the Belt and Road Initiative. The two sides will speed up the implementation of the MOU on Promoting Mutual Economic Development through China’s Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative, and discuss the formulation of relevant outline of cooperation plans.”

In March 2020, the PH government collapsed and was replaced by a new coalition (Perikatan Nasional, PN) led by Prime Minister Muhyiddin Yassin, remaining in power as of mid-July 2021. However, in the first week of July, UMNO, the largest party in the ruling coalition, withdrew its support for Muhyiddin, which could result in a further change of government. In October 2020, Muhyiddin met virtually with China’s foreign minister and reportedly said “Malaysia welcomes Chinese companies to invest in Malaysia, is willing to work with China to promote cooperation under the BRI framework and further strengthen cooperation in areas including agriculture, aquaculture, electronics and digital economies.” According to a Chinese state media report, the Chinese foreign minister also met with his counterpart in Malaysia in October 2020. Speaking at a joint press conference, he said that

[b]oth countries have agreed to speed up the Belt and Road cooperation. The two sides will continue to advance the cooperation of the twin industrial parks, namely the China-Malaysia Qinzhou Industrial Park and the Malaysia-China Kuantan Industrial Park, the East Coast Rail Link (ECRL) and other key projects to continue to release dynamism for development and boost the economic recovery and growth of both countries at a faster pace, he said, adding that China stands ready to continue to import high quality Malaysian palm oil.

In March 2021, ahead of an official visit to China by Malaysian Foreign Minister Hishammuddin Hussein, the Malaysian government stated that

Malaysia and China are close friends and partners. Bilateral relations between the two countries have grown steadily and significantly, despite the challenges of COVID-19. In year 2020, bilateral trade between both countries expanded by 4.2%, reaching RM 329.77 billion [about US$79.54 billion] in total. China stood as Malaysia’s largest trading partner.

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8 See Eileen Ng, Key Party in Malaysia Ruling Alliance Pulls Support for Prime Minister, PBS NewsHour (July 7, 2021), https://perma.cc/NX3M-SFFB.

9 Malaysian PM Meets Chinese FM on Deepening Bilateral Cooperation, Xinhua (Oct. 13, 2020), https://perma.cc/7BRY-4KTT.

for 12 consecutive years and accounted 18.6% of Malaysia’s total trade. Exports to China also contributed 16.2% to Malaysia’s total exports in 2020.11

Following the meeting, a Chinese foreign ministry spokesperson said that “[g]oing forward, the two sides will launch a high-level committee on cooperation to further synergize development strategies for high-quality BRI cooperation.”12 According to an article on the foreign ministry’s website, Hishammuddin said that

[t]he high-quality Belt and Road cooperation between the two countries is pushing Malaysia-China relations to a new phase. Malaysia hopes to learn from China’s experience in pandemic prevention and control, continue to boost bilateral cooperation in various areas in the post-pandemic period, and strengthen cooperation in the fields of energy, investment, and food security under the framework of the Belt and Road Initiative.13

B. Goals and Interests

In terms of China’s geopolitical and economic goals, one author wrote in February 2020 that “Malaysia’s centrality in Southeast Asia and the Association of Southeast Asian Nations (ASEAN), as well as its location at the midpoint of maritime and overland East-West trade routes make it pivotal to the BRI.”14 Furthermore, as outlined above, ”Malaysian-Chinese relations have developed historically. Malaysia is China’s most important ASEAN trading partner, while the PRC has been Malaysia’s most important trading partner for the last decade, and since 2016, its biggest investor.”15

In terms of Malaysia’s interests and strategic objectives, the director of the Institute of China Studies at the University of Malaya in Kuala Lumpur, Malaysia, has stated that

[d]iplomatically Malaysia understands China sees support for the BRI as an important indicator of how countries assess their relationship with China. Kuala Lumpur wants to preserve a stable and positive relationship with Beijing and is willing to give strong rhetorical support to the BRI. But beyond that, there is also a genuine belief among many politicians and policymakers in Malaysia, across the political divide, that Chinese investment into the infrastructure sector in Malaysia potentially could bridge the gap of regional economic balances in Malaysia. Moreover, Chinese capital, technology, and talent can be well harnessed to support Malaysia’s next phase of economic development and upgrade its industrial chain to a more technologically advanced stage. From 1970s and 1990s, Malaysia relied a lot on Western and Japanese capital and technology during its

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14 Grassi, supra note 4, at 3.

15 Id. at 4.
early phase of industrialization. China is now a major economy (though not the only one), that is able to replicate that role for Malaysia’s economic and technological development.16

C. BRI Investments and Debt

One article that discussed the November 2016 agreements and their implications for the Malaysian economy stated that the estimated value of the 14 MOUs and agreements was RM143.64 billion (about US$34.5 billion). However, it noted that “[a]s there are no details on how this figure was arrived at, one can only make some rough estimate of the economic value of some of these deals based on details from the media including the press reports on related projects announced prior to Najib’s visit to China.”17 In addition, according to the consultancy company PWC, a further RM31 billion (about US$7.5 billion) worth of additional MOUs were signed between Chinese and Malaysian companies in May 2017.18

According to data from the China Global Investment Tracker, cumulatively from 2013 to 2018, “Malaysia was the largest recipient of China-sourced investment and construction contracts in Southeast Asia, receiving some $35 billion.”19

According to a New York Times article, Mahathir Mohamad was elected in 2018 “with a mandate that included getting the country out from under its suffocating debt—roughly $250 billion of it, some of it owed to Chinese companies.”20 Mahathir stated that three existing projects involving China and Chinese companies, the East Coast Rail Link (ECRL), Multi-Product Pipeline, and Trans-Sabah Gas Pipeline, were overpriced, created no local jobs, and would bankrupt Malaysia.21 He further “accused China of ensnaring Malaysia in a debt trap in order to seize strategically significant assets.”22 However, one author argues that while many observers were quick to opine that Malaysia under Mahathir “was ‘pushing back’ against Beijing’s BRI, ‘confronting’ China’s assertiveness in the South China Sea, and ‘resisting’ Chinese hegemony in the region,” these views “are too simplistic.”23 Despite suspending the three major projects, he allowed many other China-related projects to proceed. He also “repeatedly stressed Malaysia’s support for both the BRI and Chinese investments” and, during his visit to China in August 2018,

17 Cassey Lee, Deepening of Malaysia’s Economic Ties with China: What Are the Implications?, 69 ISEAS Persp. 1, 6 (Dec. 20, 2016), https://perma.cc/6TAM-BE4G.
21 Grassi, supra note 4, at 6.
he “raised the ‘unfair deals’ and loan issues with Chinese leaders, but put all the blame on Najib’s Barisan Nasional (BN) government for the country’s debt.”

According to reports, the 2016 ECRL deal involved a financing agreement that included “soft loans” to finance 85% of the project, originally estimated to cost RM55 billion. The loans were provided by the Export-Import Bank of China (also referred to as Exim Bank) and were to be repaid over 20 years at an annual interest rate of 3.25%. The remaining 15% of the project cost would be funded by Islamic bonds. In addition, a 2018 article stated that Malaysia had “already secured around [US]\$34bn of loans for infrastructure projects under China’s Belt and Road initiative.” For example, the Export-Import Bank of China had also “provided a USD 800 million low-interest rate loan to Malaysia to build the 22.5 kilometre second Penang bridge, the longest cross-sea bridge in Southeast Asia.”

An analysis of China’s investment in Malaysia in 2018 found that Chinese foreign direct investment (FDI) “increased after 2014 and is spread over diverse sectors,” with Malaysia having “tapped on the BRI to increase flows of FDI into the country.” The paper states that there is “no mutually agreed list of BRI projects between Malaysia and China,” but that the 14 MOUs signed in 2016 are frequently attributed to BRI projects. The analysis showed that “besides transport, real estate is a big recipient, with the partnership between Country Gardens and supposedly the Johor state government to develop Forest City as announced in 2013, being the largest thus far. Other non-manufacturing recipients include agriculture, finance, and technology, indicating a diverse range of investments.” In terms of loans, it explains that

[g]overnment to government projects are or will be primarily funded through loans that are transacted through non-affiliated companies, with China providing the technology needed. The data on these transactions are not captured by traditional FDI data since they do not comply with the standard definition of FDI. Instead, these transactions are registered as “Other investments” in Malaysia’s Balance of Payments data, which is also unpublish by country, unlike FDI data. . . . FDI data therefore understate the extent of


25 Malaysia Admits It’s Too Late to Cancel China’s $14bn East Coast Rail Deal, Global Construction Rev. (June 4, 2018), https://perma.cc/ZKS8-CDH7.

26 Tham Siew Yean, Chinese Investment in Malaysia: Five Years into the BRI, 11 ISEAS Persp. 1, 5 (Feb. 27, 2018), https://perma.cc/DK8U-93BS.

27 Malaysia Admits It’s Too Late to Cancel China’s $14bn East Coast Rail Deal, supra note 25.

28 OECD, China’s Belt and Road Initiative in the Global Trade, Investment and Finance Landscape 18 (2018), https://perma.cc/3VE3-RRKA.

29 Id. at 2.

30 Id. at 4.

31 Id.
Chinese investment in Malaysia. The total amount of loans undertaken for financing these types of projects is unknown, but a good indicator is that a simply calculated average of the loan amount of the ECRL project alone over the projected duration of eight years made up as much as 16.6% of net FDI flows to Malaysia in 2016. It is unclear whether the annual loan amount of all the loan-financed projects will exceed the net inflows of Chinese FDI into Malaysia at some point in the future.33

While some, including former prime minister Mahathir and the PH government, consider that the various agreements with the Chinese government and Chinese companies have resulted in unmanageable debt and insufficient local benefits, one article argues that

the IMF . . . judged Malaysia’s public debt to be ‘manageable’ in late 2017 and predicted it would decline steadily relative to GDP in the period to 2022. Malaysia’s supposed pushback was also rather modest. Only four BRI projects were suspended; others proceeded or were even revived from suspension. Even the ECRL eventually went ahead, albeit at reduced cost. The PH coalition also reasserted its support for the BRI and continued Malaysia’s economic engagement with China.34

The article further argues that decisions to leave other projects involving China untouched “reflects the entrenched power of the politico-business interests involved in Malaysia’s political economy, which the 2018 election did little to dislodge.”35 This includes vested interests among the different political parties with connections to various businesses. The article argues that “[t]hese vested interests constrained PH Finance Minister Lim Guan Eng to renegotiate rather than scrap many inflated projects, including those with no Chinese involvement.”36 In a separate article, one of the authors further stated that Malaysia debt distress “did not arise predominantly from the granting of predatory Chinese loans, but rather from the misconduct of local elites and Western-dominated financial markets,”37 and that

[t]he common narrative about China’s BRI projects in Malaysia is that it was seeking influence over the strategically important Malacca Straits. The debt-trap narrative was further fuelled by claims that Beijing had inflated loans for the East Coast Rail Link (ECRL) and two gas pipeline projects in order to bail out the troubled sovereign wealth fund 1Malaysia Development Berhad (1MDB). When the Pakatan Harapan (PH) coalition surprisingly unseated the long-standing United Malay National Organisation (UMNO) led coalition, it suspended the projects, leading pundits to claim that PH was spearheading an anti-BRI pushback.

The ECRL and pipelines deal was actually proposed by former Malaysian prime minister Najib Razak and his crony Jho Low to cover up their misuse of billions of 1MDB funds for political and personal gain. Their criminal misconduct, which recently landed Najib Razak in jail, was facilitated by Western financiers including Goldman Sachs, not Beijing. The

33 Id. at 5.
34 Jones & Hameiri, supra note 22.
35 Id.
36 Id.
37 Shahar Hameiri, Getting China’s Belt and Road Initiative Right, East Asia F. (Sept. 9, 2020), https://perma.cc/BVW8-7CMX.
ECRL was not proposed by China but had been part of Malaysian development planning for almost a decade prior to its initiation in 2016.

The Malaysian government never fell into debt distress and there has been no prospect of any asset seizures. It is likely that Chinese authorities agreed to the deal because it seemed to be a low risk way of maintaining relations with a friendly government, given that Malaysia guaranteed the loan and that UMNO had ruled Malaysia since independence. PH’s shock win upended these assumptions. The new government did not cancel the ECRL, but instead negotiated the price down and secured more work for Malaysian construction firms.38

II. Legal and Policy Framework

As indicated above, Malaysia and China, and entities within those two countries, have signed multiple MOUs and agreements related to projects that are seen as being connected to the BRI. This includes agreements for construction and financing, in addition to broader MOUs, such as between government agencies, on cooperation in certain sectors. In terms of the policy and institutional settings related to the BRI in Malaysia, one author wrote in 2020 that

[the tendency of Chinese companies to go ‘incentive shopping’ in different Malaysian states is pushing the federal government towards the implementation of stricter requirements on transparency, stronger monitoring of the FDI approval process, and towards the re-drafting of investment incentives. This shift has led to a higher emphasis on localization and on prioritizing high-tech investments to develop Malaysia as one of the digital and automation hubs in Southeast Asia. Furthermore, the country is increasingly turning down investments related to polluting industries while implementing stricter environmental requirements and providing incentives for green FDI. The Malaysian Ministry of International Trade and Investment (MITI) established the Belt and Road Initiative National Secretariat (BRINS) right after the signing of the BRI Memorandum of Understanding between Malaysia and China. In 2019, BRINS was renamed China Section to reflect better the work of the department, which also encompasses other non-BRI related bilateral matters.39

The following examination of relevant MOU agreements is non-exhaustive. While statements from the two governments and various news sources often name particular documents, the majority could not be located through publicly available sources.

A. 2013 Comprehensive Strategic Partnership and “Twin Parks” Agreements

As stated above, in October 2013, China and Malaysia agreed to “elevate” their relationship to a Comprehensive Strategic Partnership and signed the Five Year Program for Economic and Trade Cooperation (2013-2017).40 At the same meeting, the two governments signed the “Agreement on the Establishment of the China-Malaysia Qinzhou Industrial Park and the Agreed Minutes on the

38 Id.


40 China and Malaysia, supra note 1.

Prior to this, according to a speech by Najib announcing the launch of the MCKIP in February 2013, five strategic documents were signed at that time to “kick-start the inflow of investments”:

First, the Shareholders Agreement between the Malaysia Consortium and China Consortium for the Establishment of MCKIP Joint Venture Company;

Second, the Memorandum of Understanding of Investment between the East Coast Economic Region Development Council (ECERDC) and Guangxi Beibu Gulf International Port Group for three projects in the park: a steel plant, an aluminium plant and an oil palm refinery;

Third, the Memorandum of Understanding between Guangxi Beibu Gulf International Port Group and Rimbunan Hijau Group for the investment in the oil palm refinery in MCKIP;

Fourth, the Memorandum of Understanding between IJM Corporation Berhad and Guangxi Beibu Gulf International Port Group on the Development and Expansion of Kuantan Port; and

Last but not least, the Framework Agreement on Financing Cooperation between China Development Bank Corporation and the Master Developer of MCKIP comprising a Malaysia consortium and a China consortium, which will involve collaboration between the parties in the areas of project financing and financial consulting services for the MCKIP project.

B. 2015 China-Malaysia Port Alliance MOU

According to reports, in November 2015 eight government-to-government MOUs were signed that related to “various fields,” including bilateral defense cooperation, cooperation in the field of education, and agricultural cooperation. These included an MOU between the Malaysia Port Alliance and the China Port Alliance. According to the China-Malaysia Port Alliance (CMPA) website,

Under the initiative of the 21st Century Maritime Silk Road initiative, the Ministry of Transport (MOT) Malaysia has taken the initiative to establish a Port Alliance with China ports which currently consists of 9 Malaysian Port Authorities and 12 Chinese Ports.

On 23rd November 2015, The Memorandum of Understanding (MoU) between the Malaysian Port Alliance and China Port Alliance called China-Malaysia Port Alliance

41 Id.
43 Malaysia, China Ink Eight MoUs, Agreements in Various Fields, Malay Mail (Nov. 23, 2015), https://perma.cc/6XTU-2UDL.
(CMPA) was signed by Minister of Transport and witnessed by Prime Minister [sic] from both countries.

The scope of the MoU includes Port Studies, Training and Apprenticeship, Technical Assistance, Traffic Development and Promotion of Services.

Further to the CMPA MoU, MOT Malaysia has appointed Port Klang Authority (PKA) to be the Secretariat for Malaysia and at the same time MOT China has also appointed China Ports & Harbours Association (CPHA) as the Secretariat for Chinese Ports.

The parties agreed to establish the meeting mechanism of the CMPA to further implement relevant actions to be implemented in strengthening communication and cooperation between ports of China and Malaysia and to accelerate long-term development of port business based on pragmatic conditions.

The objective of CMPA establishment is to establish mutual assistance and joint cooperation particularly in the fields of port studies, communications and cooperation between the Parties.44

The MOU, which is available on the CMPA website, includes articles setting out the purpose and form of cooperation, its scope (including port studies, training and apprenticeship, exchange of information, technical assistance, and traffic development and promotion of services between the ports), and provides for an action plan program, financial arrangements to cover expenses for the cooperative activities, as well as containing articles on the protection of intellectual property rights and confidentiality. Article 9 provides that each party reserves the right “for reasons of national security, national interest, public order or public health” to temporarily suspend the implementation of the MOU. Article 10 deals with entry into force, duration, and termination (requiring three months’ notice), and article 11 provides for revision, modification, and amendment of the MOU. Article 12 states that disputes “shall be settled amicably by consultation or negotiation between the Parties without reference to any third party or international tribunal.”45 There is a further MOU signed between two particular ports “for the establishment of a sister-port relationship.”46

C. 2016 MOUs and Agreements

According to reports, the following were the 14 MOUs and agreements signed following the January 2016 bilateral meeting:

1. Engineering, procurement, construction and commissioning agreement between Malaysia Rail Link Sdn Bhd, China Communications Construction Co Ltd (CCCC) and China Communications Construction Company (M) Sdn Bhd (CCCCM).

45 Memorandum of Understanding Between Malaysia Port Alliance and China Port Alliance for the Establishment of a Port Alliance, Kuala Lumpur, Nov. 23, 2015, https://perma.cc/P76M-H3QU.
46 Memorandum of Understanding Between the Port Kelang Authority, Malaysia, and Xiamen Port Authority, China, for the Establishment of a Sister-Port Relationship, Xiamen, Oct. 28, 2015, https://perma.cc/W4ED-87MY.

3. Heads of agreement between Bandar Malaysia Sdn Bhd and Greenland Holdings Group Overseas Investment Co Ltd in respect of the proposed purchase of land and development thereon in Bandar Malaysia.

4. Heads of agreement between Selat PD Sdn Bhd and CCCC Dredging (Group) Co Ltd.

5. Framework cooperation agreement between the State Government of Sarawak, Hebei Xinwuan Steel Group and MCC Overseas Ltd on the proposed development of steel plant in Sarawak.

6. Memorandum of agreement between KAJ Development Sdn Bhd, Power China, Shenzhen Yantian Port and Rizhao Port for partnership collaboration on Melaka Gateway Port.


8. Memorandum of understanding between East Coast Economic Region Development Council (ECERDC) and Wuxi Suntech Power Co Ltd for production of crystalline silicon solar cells and module within the Malaysia-China Kuantan Industrial Park.

9. Memorandum of agreement between BHS Industries Bhd and China Nuclear Huaxing Construction Co Ltd for Green Technology Park in Pekan, Pahang.

10. China Construction Bank (M) Bhd was granted a banking licence by the Minister of Finance under the Financial Services Act 2013. With an initial paid-up capital of US$200mil, China Construction Bank will be able to provide infrastructure financing to support Malaysia’s infrastructure development.

11. Memorandum of understanding between Yanming Resources Sdn Bhd and Fuzhou Xin Zibu Culture Communication Co Ltd for the growth and development of bird’s nest market in China.

12. Memorandum of understanding between Malaysia External Trade Development Corp (Matrade) and Alibaba.com.

13. Research and development collaboration agreement between Royal Bird’s Nest, Walet Company-International Private Ltd Co and Peking University on standardisation of edible bird’s nest extract and medical properties for pharmaceutical drug discovery.

14. Memorandum of understanding between Aladdin Group Sdn Bhd and Suzhou Lian Cheng Yihao Information Technology Co Ltd.

These MOUs and agreements relate to several BRI-linked projects, including the ECRL, MCKIP, Melaka Gateway (an off-shore development of three reclaimed and one natural island in Malacca.

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47 M’sian, Chinese Firms Sign Agreements Worth RM144bil, Star (Nov. 1, 2016), https://perma.cc/4729-4HHJ.
Belt and Road Initiative: Malaysia

Malaysia), Bandar Malaysia (a “mixed-use, transit-oriented development” in Kuala Lumpur), and the Green Technology Park (an industrial park in Pahang, Malaysia, intended to provide a “new source of sustainable pulp and paper from palm oil biomass”). There was also an agreement related to building a steel plant in Sarawak, which would see “the largest ever foreign direct investment in Sarawak worth of RM13-billion (about US$3 billion).” In addition, the agreement between Matrade and Alibaba relates to the Digital Free Trade Zone, which is also considered a BRI project.

D. 2017 MOUs on Belt and Road and Transportation Infrastructure

China and Malaysia appear to have signed a general MOU on BRI cooperation, the “MOU on Promoting Mutual Economic Development through China’s Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative,” on May 13, 2017. However, information on what this contains was not located.

In addition, according to the China Ministry of Commerce, on the same date, during the Belt and Road Forum for International Cooperation, “China International Trade Representative and Vice Minister of Commerce Fu Ziyi and Malaysian Minister of Transportation Liow Tiong Lai signed the Memorandum of Understanding between Chinese Ministry of Commerce and Malaysian Ministry of Transportation on Cooperation of Transportation Infrastructure.” The MOU made it clear that, under the framework of the laws, regulations, policies of their own and the MOU, and on the basis of the principle of equality and mutual benefit, the two parties will make efforts to strengthen, promote and develop comprehensive cooperation on transportation infrastructure between the two countries. The cooperation fields will include railway, ports, airports and the other infrastructure projects agreed by the two parties. The two parties will establish the joint working team on transportation infrastructure cooperation, so as to provide convenience to transportation infrastructure.

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49 Bandar Malaysia Master Plan, SOM, https://perma.cc/64VL-4J6L.
50 About Green Technology Park (GTP), Green Technology Park, Pahang, https://greentechnologypark.com/about-us/.
52 See Nyshka Chandran, Alibaba’s “Digital Free Trade Zone” Has Some Worried About China Links to Malaysia, CNBC (Feb. 12, 2018), https://perma.cc/ES7N-297D.
54 China and Malaysia Sign MOU on Infrastructure Cooperation to Promote the Healthy Development of Capacity Cooperation, Ministry of Commerce PRC (May 15, 2017), https://perma.cc/26QI-FXVE.
cooperation through exchanging information and experience, sharing good practice and methods, strengthening cooperation on reciprocal initiatives and projects, and holding symposiums, seminars, trainings and meetings.\textsuperscript{55}

In addition, nine business agreements were signed between Malaysian and Chinese companies, with most of the projects to be carried out in Malaysia. According to a news report, these included a strategic alliance agreement between Johor Corporation and Siasun Robot Investment Co. Ltd to develop 400 hectares of land for the Robotics Future City in Johor; an MOU between Yayasan Hartanah Bumiputera Sarawak, Consortium of Huanqiu Contracting & Engineering Co, and MACFeam Sdn Bhd. for the development of a methanol and derivatives complex in Sarawak; an MOU between KAJ Development and Power China, Shenzhen Yantian Port Group and Rizhao Port Group, to jointly develop Melaka Gateway; a cooperation agreement to promote and develop the Malaysian Innovation Cluster within the China-Malaysia Qinzhou Industrial Park; an exclusive agent agreement between Agrofresh International Sdn Bhd and Dashang Co. Ltd for the supply of Cavendish Banana and Tropical Fruits; and investment for a mixed development, “The Shore,” in Sabah.\textsuperscript{56}

E. 2018 Statement and Agreements

At the August 2018 visit to China by then-prime minister Mahathir, the two countries agreed to actively discuss the formulation of the “Five-year Program for Economic and Trade Cooperation for the period of 2018-2022.” They also agreed to “jointly push forward the cooperation on “Two Countries, Twin Parks”, namely China-Malaysia Qinzhou Industrial Park (CMQIP) and Malaysia-China Kuantan Industrial Park (MCKIP) through the active role of the Joint Cooperation Council on CMQIP and MCKIP.”\textsuperscript{57} In addition, the two sides “welcomed the renewal or signing of various agreements and memoranda of understanding (MOU) during the visit,” which covered various sectors and matters, but did not appear to relate to BRI projects.\textsuperscript{58}

F. 2019-2021 Revised Agreements

Also in August 2018, Mahathir said he was “halting a contract for the China Communications Construction Company [CCCC] to build the East Coast Rail Link [ECRL], thought to have cost the government around $20 billion, along with a $2.5 billion agreement for an arm of a Chinese energy giant to construct gas pipelines.”\textsuperscript{59} At the time, the construction costs for the ECRL had increased to RM65.5 billion (about US$15.8 billion). Previously, Malaysia’s finance minister had stated that the ECRL would proceed, as that would be cheaper than canceling the deal, for which RM20 billion (about US$4.8 billion) had already been paid out to CCCC.\textsuperscript{60} In April 2019, the government announced that a new agreement had been signed, enabling the resumption of the

\textsuperscript{55} Id.


\textsuperscript{58} Id.

\textsuperscript{59} Jones & Hameiri, supra note 22.

\textsuperscript{60} Malaysia Admits It’s Too Late to Cancel China’s $14bn East Coast Rail Deal, supra note 25.
project, with costs for phases 1 and 2 reduced to RM44 billion (about US$10.6 billion), while the length of the route was shortened to 640 kilometers from 688 kilometers (about 400 miles from 427 miles).  

Subsequently, the Muhyiddin government announced in April 2021 that it had again revised the deal to establish “ECRL 3.0,” which increased the costs to RM50 billion (about US$12 billion) and extended the length to 665 kilometers (about 413 miles).  

As outlined in Section III of this report, below, it appears that other projects were also canceled or delayed during the past two years, resulting in amendments to or withdrawals from agreements.  

G. 2021 MOU on the Establishment of a High-Level Committee to Promote Cooperation in the Post-Covid-19 Era  

According to reports, at the meeting between the foreign ministers of Malaysia and China in April 2021, an MOU on establishing a committee to promote cooperation between the two countries in the post-Covid-19 era was signed. This committee would act as an overarching bilateral mechanism, overseeing the implementation of all understandings and provide policy guidance for all aspects of Malaysia-China relations on pandemic preparedness and response, trade and investment, commodity, food security, science, technology and innovation, travel facilitation as well as “Belt and Road” initiative projects.  

In addition, according to reports in November 2020, Malaysia and China were finalizing the “first draft of the second cycle of the Five-Year Programme for Economic and Trade Relations” for the period 2021 to 2025. Further information on this document in subsequent months was not located.
III. Major “Flagship” Projects

The following appear to be the most significant infrastructure and development projects in Malaysia connected in some way to the BRI:

- ECRL,
- MCKIP and Kuantan Port,
- Bandar Malaysia,
- Forest City,
- Gemas-Johor Bahru electrified double-tracking railway project,\(^{65}\)
- Melaka Gateway and Deepwater Port,
- Malaysia-Singapore High Speed Rail (HSR),
- Trans-Sabah Gas Pipeline (TSGP),
- Melaka/Port Dickson-Jitra Multi-Product Pipeline (MPP), and
- an oil and gas pipeline connecting Melaka to a Petronas plant in Johor.

In addition, the Digital Free Trade Zone,\(^{66}\) launched in 2017 in partnership with China’s Alibaba Group, “aims to connect Malaysia’s SMEs [small and medium enterprises] globally through Alibaba-inspired electronic world trade platforms that are being established to support greater exchange between Belt and Road Initiative (BRI) countries.”\(^{67}\)

However, one author argues that

> [o]ne should be cautious . . . in treating China’s involvements in all these projects as the same. Some were completely private initiatives, some were initiated by the governments of both sides but with significant private sector participation, and some were government-to-government projects. Some projects were driven by local (state-level) governments. The financing also differed from project to project, and not all of them would result in the increase of debt. Some projects are not strictly speaking “investment,” rather the Chinese companies only won the construction contracts, although not always under the most transparent manner. Hence, the tendency by certain foreign and domestic media alike to lump together all these projects as if they’re all the same and constitutive components of a strategically designed “debt-trap” diplomacy by China is misleading.

In addition, one should also take note that China’s investment in the manufacturing sector in Malaysia has been extensive and increasing. Chinese companies have invested in steel, solar energy, glass, locomotive, automobile, telecommunications and many other sectors

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\(^{67}\) Tham Siew Yean, *The Digital Free Trade Zone (DFTZ): Putting Malaysia’s SMEs onto the Digital Silk Road, Belt and Road*, HKTDC (Sept. 11, 2018), https://perma.cc/58EM-K6QY.
in Malaysia, creating jobs and transferring technology and knowledge. This side of China’s economic presence in Malaysia is however usually overlooked.68

A study of two of the largest projects, the ECRL and the MCKIP, highlighted some of the differences in approaches, stating that “[t]he role of the central state is considerably more noticeable in the ECRL while it is comparatively less visible in the MCKIP.”69 Furthermore, with respect to the ECRL, the state-business relations are relatively cohesive, marked by strong coordination between the Chinese central state and CCCC, the SOE concerned. The state-business relations undergirding the MCKIP is more decentralised as business expansion has been primarily orchestrated by provincial authorities and a provincially-owned SOE using mostly market-based mechanisms in the absence of detectable directives from the central state. Lastly, the implementation of both the ECRL and the MCKIP infrastructure projects is conditioned and constrained by the host economy’s political-institutional environment, undermining the implicit assumption that the agency of local stake-holders is unimportant in the study and operationalisation of Chinese financial statecraft.70

A. Canceled Projects

The three pipeline projects referred to above, the TSGP, MPP, and Melaka-Johor pipeline, were terminated in September 2018 by the PH government.71 At the time of their cancellation, it was reported that the Chinese state-owned company involved, China Petroleum Pipeline Co Ltd (CPP), had issued a statement saying that “CPP understands and respects that the decision is due to economic and financial reasons. CPP will proceed to discuss with the asset owner/ Malaysian government for a fair and equitable compensation for the cancellation of the projects.”72 Previously, former prime minister Mahathir had said that the projects were too expensive and Malaysia could not afford them. He noted that “compensations would have to be paid to Chinese contractors due to the deferments, only because of the poor deal-making ability of the previous Barisan Nasional government,” stating

[w]hat kind of stupidity is it that to strike a deal without a proper exit clause. Exit clauses are supposed to be of mutual interests, but in these contracts, it burdens the Malaysian government.


70 Id.


It is not the Chinese government or contractors to be blamed, but the previous Malaysian government.\(^73\)

The contractors for the MPP and TSBG projects had reportedly been paid “RM8.3 billion (about US$2 billion) or 88% of the total contract value of RM9.3 billion (about US$2.24 billion), even though only 13% of the projects were completed.”\(^74\) In January 2021, the Malaysian finance minister said that “Malaysia has yet to reach consensus with China over the amount of compensation to be paid relating to these projects.”\(^75\)

In addition, the HSR was canceled in late 2020 following various delays and suspensions. In the end, Malaysia and Singapore “were reportedly unable to settle disagreements after Malaysia pushed for structural changes to the project and to fast-track construction by two years.”\(^76\) Subsequently, in April 2021, the governments of Malaysia and Singapore announced that a settlement had been finalized with respect to the termination of the bilateral agreement on the HSR project, stating that a “payment of SGD102,815,576.00 (RM320,270,519.24) [about US$77.25 million] has been made by the Government of Malaysia to reimburse the Government of the Republic of Singapore for costs incurred for the development of the HSR Project, and in relation to the extension of suspension of the HSR Project.”\(^77\) According to a Singapore law firm, “[t]he termination payment received by Singapore would ordinarily be considered insufficient, being less than half of the actual costs incurred by Singapore, but in the context of the geo-political backdrop, it bodes well in that it leaves the door open for future collaboration in transport and infrastructure projects on a government to government level.”\(^78\)

The Melaka Gateway project was also effectively canceled in November 2020 by the Melacca state government, which stated in a letter that the developer, KAJ Development Sdn Bhd, had “failed to complete the reclamation works after three years as contracted.”\(^79\) However, the KAJ

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\(^73\) P Prem Kumar et al., ECRL, Gas Pipeline Cancellation to Ease Debt Load, Malaysian Res. (Aug. 23, 2018), https://perma.cc/C973-W7QD.


\(^75\) Azman, supra note 74. See also M’sia, China Yet to Reach Consensus on Compensation for Cancelled Pipeline Projects, GTC Media Group (Jan. 5, 2021), https://perma.cc/QD47-EFAN.

\(^76\) Malaysia and Singapore Drop High-Speed Rail Plan, ASEAN Today (Jan. 5, 2021), https://perma.cc/6MRE-LLHZ.


\(^79\) Hazlin Hassan, Controversial Melaka Port Project Scrapped by State Govt, Straits Times (Nov. 21, 2020), https://perma.cc/S4NN-MU8D.
Development called the termination “unfair” and stated that it was considering legal action.\(^{80}\) The Chinese partner in the project, PowerChina International, had previously pulled out of the venture. In February 2021, a court dismissed KAJ Development’s application for judicial review of the state government’s decision, ruling that there was no public law element involved. The developer subsequently lodged an appeal with the Court of Appeal.\(^{81}\)

**B. Select Ongoing Projects**

1. **ECRL**

The Chinese company contracted to construct the ECRL, CCCC, states on its website that the railway is “a flagship project” of the BRI and is “the largest overseas project of Chinese companies under construction and will continue to be the most eye-catching mega project both in Malaysia and in the entire South-east Asia.”\(^{82}\)

According to the study referred to above,

> the ECRL boasts an apparent geopolitical undertone as it connects the Kuantan Port . . . on the east coast of Peninsular Malaysia to Port Klang on the west coast. This potential land bridge could provide a ‘significant resolution’ to China’s over-reliance on the US Navy-patrolled Straits of Malacca, a problem known to Beijing as the ‘Malacca Dilemma’. The project’s geo-economic and energy security appeal to the Chinese central state was witnessed during the ground-breaking ceremony of the ECRL on 9 August 2017. A high-level Chinese delegation headed by State Councillor Wang Yong attended the much-publicised event. Wang was accompanied by SASAC Chairman Xiao Yaqing, Vice Foreign Minister Zhang Ming, and then Chinese Ambassador to Malaysia Huang Huikang. One can deduce the strategic importance of the ECRL from the excerpts of State Councillor Wang’s speech:

> [The] ECRL will be the flagship project of both countries, a model of China-Malaysia collaboration . . . Malaysia is located at the heart of Southeast Asia, with maritime and land routes interlinking the entire region, a location of utmost geostrategic value . . . I hope China and Malaysia will seize this historic opportunity to promote the Belt and Road Initiative, thereby achieving win-win outcomes. . . .’\(^{83}\)

As outlined above, the new PH government sought to renegotiate the arrangements for the project soon after it came to power in 2018. The above study provides further information on the positions, interests, and tactics of those involved:

> Merely three months after returning as Prime Minister, Mahathir, in his official visit to China in August 2018, announced in the Great Hall of the People in Beijing after meeting

\(^{80}\) Id. See also Sebastian Strangio, *In Malaysia, A Gargantuan Chinese-Backed Development Bites the Dust*, Diplomat (Nov. 19, 2020), https://perma.cc/YZ3P-VWWE.


\(^{83}\) Lim et al., supra note 69.
with Chinese Premier Li Keqiang that the ECRL would be ‘deferred until such time we can afford, and maybe we can reduce the cost also if we do it differently’ (Goh, 2018). Mahathir went further, saying: ‘We do not want a situation where there is a new version of colonialism happening because poor countries are unable to compete with rich countries’. Such an announcement made international news, but several interviewees made the point that Mahathir’s intention behind the bold announcement was more nuanced, with him wanting to re-negotiate the terms of the original project rather than cancelling it outright.

The subsequent development of the ECRL project demonstrates that Mahathir’s unorthodox tactics had seemingly achieved his goals of re-negotiating the project to the advantage of Malaysia. CCCC had originally insisted the project went on or 22 billion Malaysian ringgits worth of compensation and penalty be paid to it if the Malaysian side unilaterally terminated the ECRL (TODAY, 2018). It also refused to recognise the ECRL as a G2G project, claiming that it was a purely business-to-business undertaking. CCCC also turned down Malaysia’s offer of railway re-routing as the company was wary of losing money (or earning less than initial projections) out of the project (Malgeri, 2019). The apparent upper hand of CCCC over Malaysia was confirmed by Daim Zainuddin, special envoy of Mahathir for the purpose of re-negotiations: ‘There is a binding agreement . . . it may be one sided, but it is equally binding [on Malaysia]. . . . If you are silly enough to sign the agreement, then it’s your problem’ (Jaipragas, 2019).

This impasse was eventually broken when the powerful National Development Reform Commission (NDRC) of China stepped in. Clearly, China’s central authorities realised that its global ambitions would be thwarted if the international community took the ECRL as a positive example of Chinese ‘debt trap diplomacy’. At the time, the ‘debt trap diplomacy’ narrative was gaining momentum after the opposition parties in several developing countries (such as Sri Lanka, Malaysia and the Maldives) came to power by attacking their respective incumbents for a perceived over-friendliness to the BRI and accusations of them being captured by Chinese financial largess (Malgeri, 2019). The NDRC moved to prevent further escalations, especially when President Xi Jinping was to host the second Belt and Road Forum (BRF) for International Cooperation in late April 2019. Expecting the attendance of important national leaders and international economic organisations, the Chinese national leadership and the NDRC saw in Mahathir an influential, senior political figure in the developing world and Muslim community. As an ‘old friend’ since at least the 1980s, Mahathir has consistently championed China’s growing role in the international arena and Asian regionalism (Khoo, 2019). Therefore, a rapprochement with Malaysia would have sent the perfect signal, showing how China was receptive to international concerns and keen on supplying win-win solutions and common prosperity. This recalibration also meant [sic] that pressure was applied from the highest echelons of the Chinese national government on CCCC whose commercial interests eventually yielded to national foreign policy goals in the end (Malgeri, 2019).

On 15 April 2019, about two weeks before the BRF took place in Beijing, Mahathir’s office announced that it had successfully re-negotiated the terms of the ECRL project with CCCC (PMO, 2019). Among other changes, the construction cost was reduced from 55 billion to 44 billion Malaysian ringgits. In addition to reducing the principal repayment amount, this would also lighten the financing interest payment. The railway track was also re-routed, passing through five states (Negri Sembilan added to Pahang, Terengganu, Kelantan, and Selangor) and Putrajaya rather than the previous four states, allowing more states to access the economic benefits of the improved deal. For CCCC, while it has been retained as the main contractor, it now has a longer-term stake in the project after agreeing to participate in the operation and maintenance of the ECRL through a 50/50 joint venture arrangement.
with the Malaysians. CCCC also signed a memorandum of understanding to develop industrial parks along the railway aiming to transform the transport corridor into an economic corridor. This agreement, when realised, involves the establishment of logistics hubs at transport interchanges to promote connectivity and transportation of goods, and transit-oriented development stations to promote new development and to support the growth of industrial parks (Zainul, 2019).84

As also noted above, the contract with CCCC was further revised by the current PN government, with an agreement for “ECRL 3.0” reached in March 2021. This involved a realignment back to the original route, with particular impacts in Selangor, and an increase to the cost of the contract. The new plan was met with further controversy, including accusations by the Selangor state government that it had not been consulted and that the move was a political ploy to swing voters in particular areas in the next general election.85 The transport minister argued that “the decision to revert the East Coast Rail Link (ECRL) project to a northern alignment in Selangor was to maximise the project’s economic and technical benefits.”86

2. MCKIP and Kuantan Port Development

The CMQIP and the MCKIP, which were launched in April 2012 and February 2013 respectively, are “sister” industrial parks established based on the “partnership between Malaysia Consortium and China Consortium.”87 One author notes that the MCKIP was actually proposed by then-prime minister Najib in April 2012 when he was in China launching the Qinzhou Industrial Park.88

In 2019, the two countries agreed to “step up cooperation in developing the flagship twin industrial parks in an effort to increase bilateral economic cooperation,” and Malaysia’s deputy minister for international trade and industry stated that “the progress made through the MCKIP and CMQIP would be further enhanced with greater integration of the twin parks into the China-proposed Belt and Road Initiative.”89

According to the above study,

[i]n terms of shareholding structure, a Malaysian consortium holds 51 per cent of the MCKIP’s equity. This Malaysian consortium is in turn owned by two Malaysian SOEs (combined 60 per cent equity) and one private firm (40 per cent equity). The MCKIP’s remaining 49 per cent equity is held by Qinzhou Investment Company (5 per cent) and

84 Id. See also Gerstl, supra note 24.
87 Homepage, MCKIP, https://perma.cc/T6VH-RRPM.
88 Kuik, supra note 23, at 229.
89 China, Malaysia to Strengthen Cooperation in Development of Twin Industrial Parks, Xinhua (June 14, 2019), https://perma.cc/KR3F-J6WJ.
Guangxi Beibu Gulf Port Group (BGP, 95 per cent), the latter arguably the largest and most well-capitalised SOE at the behest of Guangxi province. The Kuantan port is also the BGP’s inaugural overseas investment in seaports. . . .

While producing a variety of commodities, covering steel products, porcelain, energy application systems, concrete panels, and solar energy cells, the largest investor to date is the Alliance Steel Group integrated steel mill. . . .

Besides its role as an investor, Guangxi BGP also takes the initiative to play a coordinating and facilitating role, promoting the MCKIP to other Chinese firms from Guangxi and beyond. Thanks to the BGP’s influence, new investments by Guangxi Zhongli Enterprise Group (a Guangxi-based private firm, hereinafter Zhongli) and Guangxi Investment Group (GIG, a Guangxi province-owned SOE) were channelled to the MCKIP. . . .

Like Alliance Steel, the shared growth strategy of Zhongli and GIG revolves around the opportunity to ‘use’ Malaysia as an avenue to work around tariff measures imposed by the West against Chinese manufacturers. In terms of financing, our desk research and fieldwork did not lead to concrete evidence suggesting that they received direct central government financial support. Their investment into the MCKIP is in fact funded through commercial loans from a consortium of Chinese retail banks including China Construction Bank, Agricultural Bank of China and others. . . .

3. Forest City

Forest City, in the Malaysian state of Johor, involves four reclaimed islands close to the border with Singapore. It has been called “probably the most ambitious property project in Malaysia” and is in a special status zone (the Iskandar Malaysia Special Economic Zone). The project, launched in 2014, came to be pitched as part of the BRI. The official website states that “the newly-built Forest City will be a smart and green futuristic city that combines environment, technology and cutting-edge technology to create an ideal, idyllic and technology-driven living and working space ecosystem.” Furthermore, “[m]any key industries have already committed to setting up their operations here, and this will further spur regional economic growth amid an already-robust backdrop of a consolidating ASEAN community and China’s “Belt and Road” initiative.”

According to news articles written in 2014,

[t]he venture . . . is being undertaken by Country Garden Pacific View Sdn Bhd (CGPV). According to the promoters of the project, the shareholders of CGPV are Country Garden

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90 Lim et al., supra note 69.


93 About Forest City, Forest City, https://perma.cc/G2GZ-AU43.

94 Id.
Holdings (60%) and KPRJ [Kumpulan Prasarana Rakyat Johor, a Johor state agency] via Esplanade Danga 88 Sdn Bhd (40%).

But checks with the Companies Commission of Malaysia (CCM) show otherwise.

CCM records show that Sultan Ibrahim is the single largest shareholder in Esplanade with 1,998 shares, which is equivalent to a 99.9% stake. Meanwhile, former directors Amutha Vasundeven and Rabindranah Nandy each hold one share.

As of now, KPRJ has no shares in Esplanade. . . .

Instead of 40% as had always been stated by the promoters, Esplanade holds only 34% equity interest in CGPV while Country Garden Holdings holds the remaining 66%.95

According to further reports, in June 2014 the Malaysian Department of Environment issued a stop-work order pending completion of an approved environmental impact assessment (EIA), following an outcry by local fishermen. A month later, “Country Garden announced it was downsizing the project by a third, dividing it into four islands, and taking a host of other steps to demonstrate its project would be a showcase of ecological sensitivity.”96 Furthermore, “Country Garden also spent $25 million to compensate some 250 fishermen for losses in their catches, and has actively been involved in financially supporting schools and an environmental education program in Kampong Pok.”97 The government approved the EIA in January 2015, requiring the developer to abide by 81 ecologically sensitive directives, and construction resumed two months later.98

A November 2019 article in Foreign Policy argued that Forest City “is a case study in how easily Chinese investment projects that are entirely private can become boondoggles due to the interference of Chinese politics and poor Chinese management.”99 It further said that the Chinese developer “became embroiled in the machinery of domestic politics in both China and Malaysia.”100 In addition to the environmental and political issues, the article states that “corrupt local leaders seem to have captured the fund that Country Garden established to compensate local fishermen for their loss of livelihoods” and, while the developer “made some effort to employ locals in Johor,” “large swaths of Forest City’s workforce are low-wage laborers from South Asia or white-collar Chinese workers who were hired to cater to Chinese clientele.”101

97 Id.
98 Id.
99 Sagatom Saha, Chinese Companies Are Worse at Business than You Think, Foreign Pol’y (Nov. 21, 2019), https://perma.cc/YTH2-UMDK.
100 Id.
101 Id.
IV. Public and Media Perceptions of the BRI in Malaysia

A 2019 study on perceptions of socioeconomic, cultural, and educational implications of the BRI in Malaysia, involving interviews with businesspeople and the general public, as well as media analysis of six major newspapers, found that Malaysians were generally not yet familiar with the BRI. There was also limited coverage of it in the newspapers. Overall, however, BRI was viewed as an initiative that would benefit Malaysia in its economic, social, and cultural development, but there were concerns about the negative implications of BRI. Therefore, “most of the respondents thought Malaysia should participate in BRI but cautiously.”

A study on public perceptions towards the BRI as reflected in articles published in two Malay newspapers between April and December 2018 found that such articles were limited and mainly focused on economic aspects of the BRI and Malaysia’s relationship with China. In fact, “[m]ost of the articles are basically clarifying the idea or concept of the BRI, rather than analyse or examine the subject. Almost all the articles highlight BRI as a win-win game and how it is beneficial to Malaysia, and to China as well.” Furthermore, “most articles try to relate the subject globally, but most of them end up with Malaysia and China-centred conclusions. Therefore, the main characteristic and perceptions of Malay newspapers is positive and moderate towards the BRI.”

Another study of national newspaper articles focused on media sentiment polarity related to the Forest City project, which it described as being a “heavily publicized Chinese FDI project.” In particular, the study sought to “uncover if there is a correlation between the bilateral political interactions and the media sentiment towards Chinese FDI projects.” It found that

- “the news coverage of Forest City increased significantly in Malaysian media from 2014 to 2018. It also became a politicalized economic issue, with the average sentiment score of media shifting across time in accordance with the media’s agenda-setting.”
- “the sentiment of mainstream media represented by NST [New Straits Times] remained positive, while independent media, as represented by Malaysiakini, held a negative sentiment towards Forest City.”
- “there are correlations between Sino-Malaysian bilateral interactions and the sentiment polarity of the mainstream media on the issue of Forest City because the government wants positive media exposure of FDI projects due to political concerns. As for Malaysiakini, its sentiment tends to link more with the perceived economic consequences of the project instead of political factors.”

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102 Belt & Road Initiative in Malaysia: Public Perception of Socio-Economic, Cultural and Educational Implications, UTAR Belt & Road Strategic Res. Ctr. (2019), https://perma.cc/2YU9-QHSV.
103 Nor Azlili et al., Public Perceptions Towards Belt and Road Initiative (BRI) in Malaysia, 24(8) Int’l J. Psychosocial Rehab. 9201, 9211 (2020), https://perma.cc/VCX2-P5JB.
104 Id.
106 Id.
“[t]he sentiment of independent media may provide a reliable indicator of the public opinions towards FDI projects whereas mainstream media sentiment is determined by government attitudes.” 107

A study of the opportunities brought by the BRI from the perspective of Malaysian SMEs, published in 2019, found that local SMEs showed positive attitude towards this initiative, and they generally believed that this initiative will bring huge opportunities and numerous benefits to Malaysia at three levels, namely country, organizational and individual levels. Local SMEs believed that Belt & Road Initiative will bring overall improvement to the infrastructure and facility development in Malaysia, and they could even foresee that this will eventually improve the living quality of local people and bring a greater business environment for both local SMEs and Chinese firms. 108

However, it also found the interview results indicated that some Malaysian SMEs found that BRI imposes numerous challenges towards their business. Based on the results, the expansion of Chinese firms to Malaysia will increase the market competition in some industries. For instance, the respondents worried that food and beverage brands from China will venture into domestic industry, which will subsequently increase the market competition in the industry. Respondents also commented that the competitive market will reduce the profit margin of local SMEs as they are not only competing with the local firms but also with the multinational companies from China.

Besides, the respondents from manufacturing industry feared that they will be forced to shut down as Chinese products are cheaper and can provide better service than that of the local manufacturers. In addition, respondents informed that they might lose their comparative advantages to China-owned firms by sharing their knowledge and skills if those firms are not keen to seek for long-run partnership. However, the respondents agreed that they will be able to overcome the challenges and transform the threat into opportunities, if they have proper way forward plan. For instance, the respondents informed that they can focus on industries in which Malaysia has the comparative advantage, such as tourism. Furthermore, the respondents also suggested that Malaysian SMEs can tap into China-owned multinational company in order to explore the international market. 109

A broader study regarding engagement in the BRI in Laos, Malaysia, and Thailand, with respect to elite legitimation and host country agency, published in 2021, stated that [a]mong the Southeast Asian cases, Malaysia’s engagement with China’s BRI has been the most receptive and regionally transformative. However, it has also been repeatedly recalibrated according to changing political circumstances. Malaysia’s case displays the

107 Id.


109 Id. at 172.
agency of the host country in multiple manifestations: mostly in the forms of proactive initiation and active involvement (driven largely by elites’ performance and particularistic legitimation), but periodically also in the forms of passive recalibration and active renegotiation. The latter recalibration and renegotiation occur especially when inter-elite contestation and bottom-up resentment combine to increase the imperative for democratic procedural legitimation, compelling the government of the day to recalibrate the country’s BRI involvement while correcting the terms of cooperation.\textsuperscript{110}

\textsuperscript{110} Kuik, supra note 23, at 227.
SUMMARY
The Pakistan part of the Belt and Road Initiative (BRI) is called the China-Pakistan Economic Corridor (CPEC). CPEC has been described as BRI’s flagship project. CPEC officially launched in April 2015 during an official visit by China’s President Xi Jinping to Pakistan. CPEC projects include four major areas: the energy sector, transportation infrastructure, the deep-sea port of Gwadar, and industrial cooperation through the development and construction of Special Economic Zones. Projects are divided into three timeframes, Phase I (2017-2020), Phase II (2020-2025), and Phase III (2025-2030). Initial investments were valued at $46 billion, while estimates as of 2020 were $62 billion.

Projects under CPEC take the form of numerous bilateral agreements and other arrangements. At the time of its official launch in 2015, both countries signed 51 agreements, memoranda of understanding (MOUs), and financing contracts. The details of these and later agreements are generally kept secret. Every CPEC project has different terms and conditions and are built and financed independently from each other. They are also financed using a variety of different structures that may involve Pakistani state entities, Chinese state-owned enterprises, Pakistani private firms, and other third parties. Project financing often include a mix of Chinese grants, government concessional low-interest loans, zero-interest loans and investments through public-private partnerships (which may involve equity financing).

CPEC infrastructure projects being developed through low-interest government concessional loans, no-interest loans, or grants are often highlighted to dispute the narrative that Pakistan is taking massive loans and that CPEC and is creating a debt burden. On the other hand, CPEC power projects have engendered particular controversy over debt sustainability; the government faces a “circular debt” problem and is negotiating with China to restructure the terms of these projects. Though some experts believe that these projects will add to Pakistan’s sovereign debt burden, there is disagreement on whether this is a deliberate strategy on the part of China to create a “debt trap” or if it is due to the need for electricity infrastructure upgrades and other poor governance/planning issues.

The Gwador port is often highlighted as a potential or likely site for a People’s Liberation Army (PLA) overseas naval base. However, it is reportedly not currently being used for a PLA base, and both governments have downplayed any military use for the port. Some experts note, however, that the port may still serve China’s broader strategic and other policy objectives.
I. Introduction

China’s Belt and Road Initiative (BRI), also known as Silk Road Initiative, is a global infrastructure development strategy that “connect[s] more than 70 countries on the continents of Asia, Europe and Africa via a series of rail, road and sea infrastructure projects, thus forming a ‘new Silk Road’.”1 The goal is to “promote regional connections and economic integration, thereby expanding China’s economic and political influence.”2 Some commentators argue that Pakistan is one of the most important host countries in the BRI, if not the most important.3 China and Pakistan have long shared a cooperative economic and strategic relationship. Pakistan borders China’s Xinjiang Province in the north, which “provides China with a potential corridor through the Karakoram Highway to the seaport at Gwadar in Baluchistan on the Indian Ocean.”4 The Pakistan part of the BRI is called the China-Pakistan Economic Corridor (CPEC), which has been described as the BRI’s flagship project. The plans for establishing an economic corridor between Pakistan and China appears to have preceded the BRI.5 The project was first announced in 2013, when Prime Minister Nawaz Sharif of the Pakistani Muslim League-Nawaz (PML-N) party met Chinese Prime Minister Li Keqiang in Beijing. The emphasis was on “connecting China with the Chinese-invested Pakistani port of Gwadar through highway, rail and pipeline infrastructure.”6

CPEC officially launched in April 2015 during an official visit by China’s President Xi Jinping to Pakistan, and the earlier projects were reframed as part of CPEC. Of the high profile projects, the development of the shipping port of Gwadar is considered the most important CPEC project. However, in its earlier phases, CPEC’s emphasis has been on power generation7 and most CPEC funds have “gone to building new coal-fired power plants to help Pakistan overcome its crippling power shortages.”8

CPEC projects include four major areas: the energy sector, transportation infrastructure, the Gwador port, and industrial cooperation through the development and the construction of Special Economic Zones (SEZs).9 Projects are divided temporally into three phases.10 Phase I

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2 Id.
4 Id.
6 Id.
7 Id.
(2017-2020) focused on power plants and transport infrastructure in order to “address the major bottlenecks in Pakistan’s economic and social development.”

According to a report published by the US Institute for Peace, “[t]he first phase [was] essentially an economic stimulus, aimed at helping eliminate Pakistan’s industry-crippling electricity shortages and address its infrastructure inefficiencies while promoting intra-Pakistan and regional connectivity.”

Phase II (2020-2025) is focused on medium-term projects, including SEZs and social projects “where industrialization, agriculture, science, improving livelihood of people and technology transfer to Pakistan are the key goals.” The second phase “aims to leverage the enhanced productive capacity in Pakistan by boosting industries, particularly export-oriented ones, through special economic zones backed with Chinese investments.”

Phase III (2025-2030) will focus on longer-term projects. Investments initially were valued at $46 billion, but later increased to $55 billion, and estimates as of 2020 were $62 billion.

Other major projects within CPEC include a “$7 billion upgrade to the railway from Peshawar to Karachi,” two hydroelectric power plants in the disputed Kashmir region, a metro system in Lahore, the establishment of multiple SEZs, and “Huawei fiber-optic cables running from China to Pakistan.”

One report notes that Pakistan’s debt sustainability has become a concern “because of the country’s heavy and increasing debt burden” stemming from BRI:

Pakistan’s debt-to-GDP ratio increased from 70 percent in 2017 to 75.3 percent in 2018 and is projected by the IMF to reach a high of 80.5 percent in 2020. Research indicates that countries with rising debt-to-GDP ratios above 50–60 percent are at greater risk of default or debt treatment. Pakistan’s debt is partly the result of borrowing from China. According to an IMF report published in July 2019, Chinese bilateral and commercial loans accounted for 26 percent of Pakistan’s total outstanding debt of $85.5 billion.


14 Rafiq, supra note 12, at 9.


16 Id.


18 Sacks, supra note 8.


20 Id.
As of April 2021, Pakistan’s external debt is $90.12 billion, “with Pakistan owing 27.4 percent—$24.7 billion—of its total external debt to China.”

When the current Prime Minister Imran Khan was elected in 2018, he “sought a reset of CPEC,” by renegotiating agreements and plans affiliated with the previous Nawaz Sharif government, which he considered more beneficial to China than to Pakistan:

In September 2018, with Pakistan’s external debt having mounted to $96 billion, Khan’s minister for commerce, industry, and investment, Abdul Razzak Dawood, told the Financial Times: “The previous government did a bad job negotiating with China on CPEC...they didn’t do their homework correctly and didn’t negotiate correctly so they gave away a lot.” Dawood said that Khan had established a committee to “think through CPEC—all of the benefits and the liabilities. I think we should put everything on hold for a year so we can get our act together. Perhaps we can stretch CPEC out over another five years or so.”

This interview saw pushback from the Chinese government and from Pakistan’s military, which tried to repair relations. Since 2019, after projects began to stall, Pakistan’s government has sought to revive CPEC. In late December 2020, the Chinese and Pakistan governments held a meeting through a Joint Working Group on International Cooperation on CPEC, during which they proclaimed that both sides “are satisfied with the progress and committed to turn this mega project into a role model for the rest of the world to follow.” Some experts believe the “revival” is more “a slimmed-down package” and that “[g]oing forward, CPEC instead will comprise smaller projects with less potential economic impact.” One report notes that in the coming years, CPEC’s agenda will “largely be focused on completing investments that have already been agreed (including around Gwadar port), moving ahead with considerably slimmed-down plans for special economic zones, and identifying small additions that fit the current Pakistani government’s agenda, such as socioeconomic projects.”

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22 Madiha Afzal, At All Costs: How Pakistan and China Control the Narrative on the China-Pakistan Economic Corridor 3 (June 2020), https://perma.cc/3MQU-59EW.


25 Sacks, supra note 8.

26 Andrew Small, Center for Asian Law, German Marshall Fund of the United States, Returning to the Shadows: China, Pakistan, and the Fate of CPEC 3 (Sept. 2020), https://perma.cc/7QJIE-DCNX.
II. Legal & Policy Framework

A. Bilateral Agreements

In November 2003, Chinese President Hu Jintao and Pakistani President Pervez Musharraf signed a “joint declaration on the directions of bilateral cooperation” outlining their commitment to promote and expand bilateral trade and cooperation in investment, economic development, agriculture, technology, and tourism.27

In November 2006, the countries signed the China-Pakistan Free Trade Agreement (CPFTA),28 which was drafted “according to World Trade Organization (WTO) guidelines.”29

Projects under CPEC take the form of myriad number of bilateral agreements and other arrangements, including cooperation agreements, framework agreements, exchanges of notes, MOUs, protocols, financing agreements, commercial contracts, and third party agreements between state parties.30 At CPEC’s official launch in April 2015, both countries signed “51 agreements, memorandums of understanding (MoUs), and financing contracts.”31 However, the details of these agreements and contracts have generally been kept secret; few details have been disclosed to the public.

One case study notes that “[e]very project in the CPEC has different terms and conditions as each is executed by a different Chinese state-owned enterprise (SOE) and is independent from other CPEC projects.”32 To illustrate this point, this study noted the varying financing structures used for CPEC projects, which often also involve third parties:

the PowerChina-invested coal-fired power plant is jointly invested with a Qatar-based consortium undertaking the project on a build-operate-transfer (BOT) basis (Pakistan Observer 2019), whereas the coal-fired power plant located in Thar Block II, which has less than a 10 per cent Chinese shareholding, is a public-private partnership between the Sindh provincial government, the China Machinery Engineering Company (CMEC), and Engro (a Pakistani company). The Gwadar International Airport, on the other hand, is financed by a grant (CPEC 2019a).33


31 Lakhani, supra note 29, at 417.


33 Id.
B. Long Term Plan

CPEC is also subject to a joint Long Term Plan (LTP). On November 21, 2017, both governments approved a document named the *Long Term Plan for China-Pakistan Economic Corridor (2017-2030)* as a “conceptual framework” to provide “macro guidance for the implementation” of CPEC.\(^{34}\) According to an International Crisis Group (ICG) report, this LTP was “formulated by the centre with little input from local leaders, business or civil society actors. It was not disclosed until December 2017—and then only in broad strokes—after the rollout of some major elements had already begun.”\(^{35}\) It includes chapters on the definition of CPEC and building conditions, visions and goals, guidelines and basic principles, key areas of cooperation, and the investment and financing mechanism and supporting measures.\(^{36}\) This document, however, appears to be an abridged version of a “full 231-page report from 2015” which is not publicly available. According to a USIP report:

> In May 2017, excerpts from a draft of the full long-term plan dated from 2015 were leaked by the Pakistani English-language daily Dawn. Planning Minister Ahsan Iqbal described the report as outdated, stating that the full long-term plan is actually a “live document” subject to change. Still, although the extent to which the full and abridged drafts are aspirational is unclear, they, combined with the new projects added to the portfolio, offer a sense of the future direction of CPEC.\(^{37}\)

An ICG report quotes a senior journalist investigating CPEC saying, “we still know very little about CPEC. The material that would tell us more is still vigorously concealed.” Another analyst commented that “the launch of the detailed CPEC plan neither adds anything new to our understanding of the project nor helps remove the concerns of critics regarding the overall impact of the project.”\(^{38}\)

C. Institutional Framework

1. Joint Cooperation Committee (JCC)

The Joint Cooperation Committee (JCC) is the “principal decision-making body” for CPEC.\(^{39}\) It is jointly chaired by Pakistan's Federal Minister for Planning, Development & Special Initiatives and the vice chairman of China's National Development and Reform Commission (NDRC). All the major decisions related to CPEC are discussed and finalized in this committee with the mutual


\(^{36}\) Government of Pakistan Ministry of Planning, Development and Reform, supra note 34, at iii.


\(^{38}\) ICG, supra note 35, at 10.

collaboration of Pakistan and China. The JCC is further divided into a five-level hierarchy of Joint Working Groups (JWGs) which cover SEZs, the Gwadar port, planning, energy projects, and transport infrastructure. These working groups “convene in between the JCC meetings and make recommendations to the full committee.”

2. **CPEC Authority**

On Oct 8, 2019, the President of Pakistan promulgated the China-Pakistan Economic Corridor Authority Ordinance, which established the CPEC Authority. The Authority was established to better coordinate and ensure the timely completion of long delayed CPEC projects. The ordinance was extended for 120 days, but lapsed on May 31, 2020. On June 4, 2021, a law to replace the ordinance received presidential assent. Section 4 sets out the powers and functions of the Authority, which “shall be responsible for planning, facilitating, coordinating, enforcing, monitoring and evaluating the smooth implementation of all activities related to” CPEC. The law provides the Authority shall do so in accordance with an MOU between China’s NDRC and Pakistan’s Ministry for Planning, Development & Special Initiatives on the “Outline of the Long Term Plan on CPEC” signed on November 8, 2014, as well as with decisions taken at meetings of the JCC.

The Authority is headed by a chairperson and also includes an executive director operations, an executive director research, and six other members. The act gives the CPEC Authority the power to organize meetings of the JCC and the joint working groups and to ensure “inter-provincial and inter-ministerial coordination” on CPEC related activities. The Authority reports directly to the Prime Minister. A Carnegie Endowment for International Peace report notes that the JCC will still be co-chaired by the Minister for Planning, Development & Special Initiatives on the Pakistani side, but according to section 4(4)(ii), the CPEC Authority may “interface with” NDRC “after due deliberations and consultations with relevant ministries, departments, and other existing fora constituted by the government.” Concerns have been raised that the Authority is being headed by a retired military general, which could lead to a shift of control over CPEC projects away from

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40 Id.
42 China Pakistan Economic Corridor Authority Ordinance, 2019, Pakistan Gazette (Oct. 8, 2019), https://perma.cc/AT7A-Q5LU.
44 China Pakistan Economic Corridor Authority Act, 2020, Pakistan Gazette (June 10, 2021), https://perma.cc/795S-ZH6W.
45 Id. § 4(1).
46 Id.
47 Id. § 5(1).
48 Id. § 4(3)(iii)-(iv).
49 Id. § 4(4)(ii).
49 Adeney & Boni, supra note 41, at 22 (quoting id. § 4(4)(ii)).
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The creation of the Authority has also raised concerns over further centralization of CPEC decision-making and reduced provincial influence.51

According to the same Carnegie Endowment report, this centralization has apparently pleased the Chinese government, “but Beijing has still sought to increase ‘effective oversight and monitoring’ by proposing a new Pakistan-China joint parliamentary committee on the CPEC. This body will not replace the JCC but reportedly will be responsible for ‘day-to-day monitoring of [the] CPEC.’”52

III. Major CPEC Projects

This part will highlight certain CPEC projects and debt-related issues that have engendered discussion in policy and scholarly circles regarding Pakistan’s debt sustainability in relation to the BRI.

The exact financial structures and terms of various project arrangements are unclear, and information is dependent mostly on secondary sources. Generally, projects under CPEC are financed with a “mix of grants, long-term government concessional loans, zero interest loans and simple partnership or investment mode.”53 These four types of “financing instruments” under CPEC can be summarized as follows:

The first type is called “Investment” where the Chinese firms that are undertaking the infrastructure projects borrow commercial loans with an interest rate between 4-5% The second category is called “Concessional Loans” which are given to the Government of Pakistan at an interest rate of 2-2.5% with a maturity period of 25-30 years. The third category is called “Interest-free loans” which constitute a small proportion of the overall financing and have zero interest payments. The last category is “Grants” which are aimed at improving state capacity.54

A. Controversy Surrounding Debt Terms and Conditions of Projects

1. CPEC Infrastructure Projects

CPEC infrastructure projects are being developed mostly through low-interest government concessional loans.55 According to one paper, “[a]pproximately $11 billion worth of infrastructure projects being developed by the Pakistani government will be financed by concessionary loans,

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50 Mifrah Haq, Pakistan Army Set to Gain Sweeping Belt and Road Authority, Nikkei Asia (Nov. 30, 2020), https://perma.cc/5MF4-AJSB.
51 Adeney & Boni, supra note 41, at 22.
52 Id. at 23.
53 FAQs, CPEC, https://perma.cc/3L6S-LNQD.
with composite interest rates of 1.6%. Concessionary loans will be dispersed by the Exim Bank of China, China Development Bank and Industrial and Commercial Bank of China.”

China’s Exim Bank’s 1.6% low interest concessional loan is covering part of the costs of the upgrading and reconstruction of certain sections of the Karakoram Highway. The $1.6 billion Orange Line of the Lahore Metro is being financed at an interest rate of 2.4%, although China reportedly wanted over 3%. The $44 million China-Pakistan fiber optic project is at a concessional interest rate of 2%.

There have been reports of disagreement between the governments of Pakistan and China over the terms of a $6 billion loan and the financial viability for Karachi-Peshawar Railway Line, which includes upgrading a 1,872 km rail line from the capital of Khyber Pakhtunkhwa, Peshawar, to the main port city of Karachi. More recently, the Express Tribune newspaper reported that due to the “weakening financial position” of Pakistan, the Chinese government during negotiations proposed requiring “additional guarantees” and a “mix of commercial and concessional loans against Islamabad’s desire to secure the cheapest lending.” The Chinese Foreign Ministry, on the other hand, denied that it had sought the additional guarantees on a CPEC loan guarantee and said that “[t]hese reports are simply baseless.”

Some loans from the Chinese government are interest-free. The Eastbay Expressway was financed by such an interest-free loan. Also, Pakistan's Gwadar Port and Gwadar airport are being funded by a “grant-based investment,” which “means the government of Pakistan does not have to pay back the investment amount for the development” of the projects. The financing of the airport was converted from a $230 million dollar loan into a grant.

These projects are often highlighted by the Pakistani and Chinese governments to dispute the narrative that Pakistan is taking “massive loans” for CPEC and “claims that China wants to

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57 Karakoram Highway, Belt and Road Initiative, https://perma.cc/N9RP-MDRF.


59 Syed, supra note 56, at 25.

60 Adnan Aamir, China and Pakistan Fall Out Over Belt and Road Frameworks, Nikkei Asia (Jan. 19, 2021), https://perma.cc/P7U8-FWTB.

61 Drazen Jorgic, Fearing Debt Trap, Pakistan Rethinks Chinese ‘Silk Road’ Projects, Reuters (Sept. 30, 2018), https://perma.cc/JVN7-NPWT.


64 Adeney & Boni, supra note 41, at 10.

65 China Converts $230m Loan for Gwadar Airport into Grant, The News International (Sept. 23, 2015), https://perma.cc/84Q3-4ZDK.
colonise Pakistan through CPEC.” In one response to criticism, Pakistan’s foreign office spokeswoman, Aisha Farooqui, has said CPEC was a “transformational project for Pakistan” and “[t]o claim that CPEC is always in the form of loans and other forms of financing often non-concessional with sovereign guarantees is not based on facts.”

2. CPEC Energy Projects

The majority of CPEC investments in the first phase went to energy and power projects, mainly coal power plants. Currently, nine energy and power projects have been completed out of 22 that are planned under CPEC; “a total estimated cost of the projects is at least $20.9 billion.”

Experts have argued that CPEC’s energy projects are creating debt distress problems for Pakistan and are adding to the country’s sovereign debt burden. According to one report, most if not all of the “energy-related projects are structured as public private partnerships (P3s).” Chinese state-owned power generation companies (also called independent power producers (IPPs)) and other partners build power plants financed mostly through loans from Chinese state-owned financial institutions and banks. One paper describes them as a “private consortia” that are “Joint Chinese–Pakistani firms” to which the Exim Bank of China will “provide investments at 5–6% interest rates.” The CPEC power projects also sometimes involve equity investments “equivalent to 15–30 percent of the total project cost.” This capital investment is typically provided by IPPs and their partners. For example, “China Three Gorges Corporation provided 93 percent [$316.2 million] of the equity financing for the Karot Hydropower Station.”

The IPPs supply power to the Government of Pakistan (through the National Electric Power Regulatory Authority (NEPRA)) through power purchasing agreements. The Pakistani government is “contractually obliged to purchase electricity from those firms at pre-negotiated rates.” The repayments of the Chinese loans are included within these electricity tariffs. The government of Pakistan also guarantees the obligations of NEPRA to power producers, and “[t]his sovereign guarantee has made investing in the development of power plants in Pakistan

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70 Downs, supra note 19, at 14.
71 Lakhani, supra note 29, at 419.
72 Syed, supra note 56, at 26.
73 Downs, supra note 19, at 35
74 Id.
75 Syed, supra note 56, at 26.
more attractive to Chinese firms and their partners.”76 However, the government is obligated to “honor the sovereign guarantees it issues to back the development of CPEC power projects”77 and this puts the government in a risky debt situation:

Some of these sovereign guarantees support the payment obligations [for purchases] of power [by] the purchaser, the [Central Power Purchasing Authority (CPPA)], to the power producers. . . . [I]f consumers do not pay the distribution companies in full, the distribution companies will not have enough money to pay the CPPA, which will not have enough money to pay the power producers. Under the sovereign guarantee, in the event of a default of payments by the CPPA leading to the termination of the power purchase agreement between the power producer and the CPPA, the power producer can exercise a put option to sell its power plant and recover its investment and return on investment from the government of Pakistan.78

Also, the current government has said that the previous PML-N government “entered into guaranteed power purchase agreements with Chinese companies on what are now perceived as onerous terms, including fixed and high power purchase rates.”79 As one report indicates:

Pakistan is obliged to pay $5.9 billion to the power companies for take-or-pay capacity payments alone over the next four years by 2025. Those will entail more pay than take at current power usage rates. The money is owed despite the fact many of the plants are not actually producing power due to overcapacity and the failure of Pakistani power authorities to develop the national grid and related delivery systems to fully meet grassroots demand. The contracts and their now perceived as onerous conditionalities were made at a time Pakistan faced acute power shortages.80

One report notes that “[a] Pakistani government committee concluded that Chinese contractors were overcharging Islamabad by $3 billion on two CPEC power plants, and reports emerged that Chinese investors were guaranteed large annual returns on their investments.”81 Another report indicates that “China can expect to reap an estimated 27% return on investment from most CPEC projects.”82 Experts are also concerned that “Pakistan could be in serious financial trouble due to the outflow of loans along with interest payments (of Chinese companies to Chinese development Banks) and profit remittances to Chinese companies.”83 A similar assessment is

76 Downs, supra note 19, at 57.
77 Id. at 37.
78 Id.
79 FM Shakil, Chinese Power Loans Fueling a Debt Trap in Pakistan, Asia Times (Feb. 23, 2021), https://perma.cc/4FLT-8XJZ.
81 Sacks, supra note 8.
82 Lakhani, supra note 29, at 420.
83 Siegfried O. Wolf, Why The Term ‘Debt Trap’ of BRI Projects is a Dangerous Mismomer, SADF Comment, 3 (Dec. 19, 2019), https://perma.cc/B4PC-VKYJ.
shared by an ICG report on overly generous terms to Chinese investors, unreformed power infrastructure, and its impact on Pakistan’s balance of payment crisis:

These assessments reflect that in its bid to attract investment, Pakistan offers overly generous terms to foreign (including Chinese) investors. These will be unaffordable if the increased power generation does not yield the expected economic growth. If, and when, Islamabad seeks another IMF bailout, the IMF will likely demand greater transparency in CPEC energy and other projects’ financing, so as to assess the impact of expensive Chinese loans on Pakistan’s balance of payment crisis.

The new plants are in any case inadequate since an aging and inefficient power infrastructure will remain unreformed. Domestic industries and consumers will also continue to pay more, because of a tariff policy that is overly generous to foreign investors and reflects rising expenditure on security for CPEC projects and personnel.\textsuperscript{84}

Additional costs for CPEC projects also stem from project insurance for energy and infrastructure projects. Sinosure, China’s state-owned China Export and Credit Insurance Corporation, is China’s “only official export guarantee agency,”\textsuperscript{85} and it charges a percentage fee on loans granted to Chinese companies. Sinosure has a “mandate to promote Chinese equipment exports and overseas investment through the provision of insurance against nonpayment and economic losses due to risks including war, expropriation, and breach of contract.”\textsuperscript{86} According to a leading expert:

\begin{quote}
China requires Chinese financial institutions and state-owned enterprises to obtain insurance from Sinosure before lending and making investments overseas. . . . Sinosure has underwritten 11 power sector projects in Pakistan with an insured amount of $14.92 billion. NEPRA has allowed a Sinosure fee of up to 7 percent of the total debt servicing to be included in the project cost used to calculate the tariffs for all CPEC power generation projects.\textsuperscript{87}
\end{quote}

Another paper notes a number of issues involving insurance arrangements for these projects:

\begin{quote}
First of all, Sinosure insurance coverage is mandatory for all Chinese loans and investments; it is required for anyone outside China who wants access to this type of capital. This is not uncommon since insurance for international development measures can be seen as standard procedure. But Sinosure is the only insurance provider accepted by Chinese lenders, and consequently is holds the monopoly over China’s development project insurances in both the BRI and CPEC. Sinosure’s monopoly not only undermines the free market choice in this sector; the company also charges higher fees than its international competitors which does not conform with international norms and practices.\textsuperscript{88}
\end{quote}

\begin{footnotes}
\item[84] ICG, supra note 35, at 11.
\item[85] Id. at 27.
\item[86] Id.
\item[87] Downs, supra note 19, at 27 (citations omitted).
\item[88] Wolf, supra note 83, at 3 (citations omitted).
\end{footnotes}
Pakistan is seeking to reschedule and renegotiate CPEC loans that have resulted in its oversupply of power plants. The government is trying to “decelerate agreed plans to build even more power plants that would add to the overcapacity problem,” cut interest rates on current power sector related loans, and seek a 10-year extension on the debt repayment period.

It recently has been reported that CPEC power projects are being hit with a circular debt problem, “and the government has not been able to clear Rs188 billion (approximately US$1.179 billion) due payments in breach of a bilateral energy framework agreement.” According to the report, “circular debt, which was Rs1.15 trillion in June 2018, has swelled to Rs2.6 trillion” (approximately US$16.3 billion) and the “government has now made a three-pronged strategy to reduce this debt to June 2018 level in the next two years.” The Government also “plans to negotiate with China to restructure $3 billion IPPs repayments for 10 to 12 years.” Another news report observes:

Reportedly, under a CPEC Energy Framework Agreement from November 2014, the Pakistan government was supposed to establish a revolving fund “equal to 22% of monthly invoice” for power costs, backed by the sovereign guarantees provided by the Ministry of Finance. The purpose of the fund was to ensure that if the power purchaser “fails to make payments, the dues of the Chinese firms will be settled against this account to ensure uninterrupted payments to Chinese sponsors of energy projects.” The government of Pakistan “will assume the liability and pay the Chinese power producers.” This was a means for the Pakistani government “to attract Chinese investment in coal power projects”; the government “offered this incentive to CPEC coal power plants in April 2015 and subsequently extended it to all CPEC power projects.

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89 Faseeh Mangi, *Pakistan to Seek Debt Relief From China Belt and Road Loan*, Bloomberg (Feb. 9, 2021), https://perma.cc/DK4Y-7XGP.
90 Shakil, supra note 79.
91 Shahbaz Rana, *Circular Debt also Hits CPEC Projects*, Express Tribune (May 9, 2021), https://perma.cc/J7YF-2GDX.
92 Id.
93 Id.
94 Shakil, supra note 80.
95 Rana, supra note 91.
96 Downs, supra note 19, at 23.
in February 2016 as a result of concerns by Chinese investors about the risk of delayed payments.”

**B. Level of Involvement of Local Companies/Workforce**

Almost all major CPEC projects are being “implemented by Chinese companies and state-owned enterprises,” and there has been considerable criticism over the lack of competitive bidding and fair procurement practices. One World Bank working paper describes the deficiencies and lack of transparency in the procurement process:

> According to the interviews, procurement of high-value CPEC projects financed through the EXIM Bank of China is restricted to Chinese contractors. The Chinese CPEC authorities nominate three Chinese firms for bidding purposes. Procuring entities then issue the bidding documents to the three nominated Chinese contractors, seeking bids for the contract. Contracts make allowance for domestic contractors to collaborate with Chinese counterparts via joint ventures. The processes used during the initial selection of the three Chinese contractors were not known, impeding an assessment of the extent to which possibilities for collusive practices are controlled for in the process of selecting the winning contractor. The feasibility of domestic construction firms being able to obtain sub-contracting work is left to the Chinese contractors, and the extent to which the government of Pakistan is willing and able to pursue “local content” objectives when negotiating BRI projects. The CPEC agreement between Pakistan and China allows for sub-contracting up to a maximum of 30% of the contract value, subject to the procuring entity’s agreement. The perception of interviewees is that Chinese contractors use their own labor and that BRI procurement contracts are not very helpful in providing employment opportunities within the country. This is consistent with other assessments that even if local capacity exists, Chinese labor and equipment are generally used for BRI projects.

A number of Senate standing committees and the Auditor General of Pakistan (AGP) have noted a number of “irregularities” in the procurement processes in the award for highways and motorways projects, including a lucrative contract for the Multan-Sukkur Motorway project granted by the National Highway Authority (NHA) to a Chinese state-owned corporation, China State Construction Engineering Corporation (CSCEC). They found that the project was awarded to the Chinese company on an “alternate bid” in violation of procurement regulations, and that tax exemptions and concessions were granted that were not in the original bidding documents. Though initially admitting irregularities, the NHA later claimed that project was “processed and

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97 Id.


100 CPEC’s transparency: NHA Admits Irregularities in Award of $2.9b contract to Chinese Firm, Express Tribune, (Feb. 28, 2018), https://perma.cc/M6NV-2BQK; Over Rs400bn Irregularities Found in Road Projects, Dawn.com (Oct. 17, 2017), https://perma.cc/7KN4-NDGW.

101 Id.
awarded as per the prevalent rules and regulations with total transparency and there is no question of violation of any rule in this regard.”

No agreements or conditions could be found on “local content” rules for Pakistani companies or workforce for CPEC-related projects. Statistics vary, but reports indicate that in 2017, 30,000 jobs were generated for Pakistanis; in 2018, 70,000 such jobs were created; and in 2019, 75,000 were added. Some reports state CPEC is “expected to add over 700,000 jobs to the Pakistani labor market” from 2015 to 2030, while others report estimates of 2.3 million jobs by 2030.

However, according to one working paper,

> [t]he employment generated under early harvest projects of CPEC required precise definite skills and experiences, which was unfortunately lacking in the prevailing domestic workers. Consequently, Chinese companies became more inclined towards foreign workers. In this regard, the proportion of unskilled domestic labors hired in these projects were far more than the skilled/technical labors of Pakistan.

Therefore, a large portion of generated employment was “comprised of raw labourers, leaving space for the Chinese skilled workers to seize the employment opportunities in early harvest projects of CPEC.” Chinese companies “had to opt for foreign workers and the proportion of unskilled domestic labourers hired in these projects were more than the skilled and technical labourers of Pakistan. For example, an energy plant under CPEC hired almost 3,000 skilled labourers, of which 77% were of Chinese origin.”

The China-Pakistan Economic Corridor (CPEC) is “likely to create about 575,000 direct and over 1 million indirect jobs in four special economic zones (SEZs) to be set up in Pakistan’s Khyber Pakhtunkhwa (KP), Punjab, Sindh and Balochistan provinces,” according to a Pakistani

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103 ‘CPEC Provides Jobs to 30,000 Pakistanis,’ Express Tribune (Jun. 7, 2017), https://perma.cc/WT2X-YRGX.

104 70,000 Employed under CPEC, 0.7m to Get More Jobs, The News International (Apr. 4, 2018), https://perma.cc/FH8V-N73S.


106 Lakhani, supra note 29, at 418.


110 Id.
government official in the Ministry of Planning, Development and Reform. But critics say the CPEC has “been sold to the Pakistani people as a way to ensure local development, job creation, and the inclusion of all provinces. The reality is that the government has centralized power, and there is little evidence to date of new skilled jobs being created.”

As of 2020, Chinese companies working in Pakistan were “facing [an] acute shortage of skilled labor as [a] majority of local workers falls under [the] unskilled category.” China promised to help Pakistan establish vocational institutes in Pakistan to help meet demand for a skilled workforce.

C. Military or Strategic Purpose of Projects

Gwadar port is a deep-sea commercial and multipurpose port located in the province of Baluchistan at the Arabian sea, situated “at the mouth of the Persian Gulf, just outside the Straits of Hormuz, near the key shipping routes in and out of the Persian Gulf.” It is being developed as an “economic hub” for other CPEC projects in the area, including the Gwadar Eastbay Expressway (connecting Gwadar Port to Mehran Coastal Highway), a new international airport, an SEZ, and other projects. The port of Gwadar was a “Pakistani-initiated proposal in the early 2000s that was only later rebranded as a BRI project after 2013”; “[a]ll Pakistani governments over the past twenty years, both military- and civilian-led, have encouraged China’s involvement in Gwadar, while Beijing in turn sees the port as a strategic access point to the Indian Ocean.”

Since February 2013, construction and operations/management of the Port have been conducted by a state-run Chinese enterprise—China Overseas Port Holding Company (COPHC) through a leasing agreement “on a build-operate and transfer model spread over 40 years.” Per this agreement, which has been criticized for being one sided (“the impression in Pakistan is that benefits will accrue mainly to the Chinese”), 91% of the revenue and port generated profits will go to COPHC and 9% to the Gwadar Port Authority. Also, 85 percent of the revenue generated by the Gwadar free zone will also go to China.

One report notes that the Chinese government’s “likely hopes [are] that CPEC would open up a direct route between China and the Indian Ocean, that a prosperous Pakistan would no

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111 CPEC Special Economic Zones to Create 575,000 Direct Jobs in Pakistan, Xinhua (June 23, 2021), https://perma.cc/U5FY-3EKZ.
112 Adeney & Boni, supra note 41, at 22.
113 Pakistan to Set Up Vocational Training Institutes with China’s Support, Daily Times (Sept. 14, 2020), https://perma.cc/YW27-LGFQ.
114 Gwadar Port, Gwadar Port Authority, https://perma.cc/5JCJ-DTZM.
115 Adeney & Boni, supra note 41, at 2.
116 Iftikhar A. Khan, China to Get 91pc Gwadar Income, Minister Tells Senate, Dawn.com (Nov.25, 2017), https://perma.cc/5PGL-7RZQ.
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longer be a hotbed of extremism,” and that a “stronger Pakistan would advantage China over its strategic competitor, India, and by extension the United States.”

The Gwador port is also often seen as a potential site for a People’s Liberation Army (PLA) overseas naval base. It is not currently not being used for a PLA military base, however. According to a Carnegie report,

Islamabad’s initial offer allegedly included developing a military base at Gwadar, or as then defense minister Chaudhary Ahmed Mukhtar announced, “We have asked our Chinese brothers to please build a naval base at Gwadar.” China, however, denied these claims. As the New York Times put it, Mukhtar’s statement was seen by some “as a pointed, if graceless, effort to send a message to the United States that Pakistan had other options should its foundering relationship with Washington prove beyond repair” after bin Laden was killed on Pakistani soil. Since then, both China and Pakistan have downplayed the military development of Gwadar.

According to a China Maritime Studies Institute (CMSI) case study, the port still serves to further “broader PRC foreign and domestic policy objectives.” The study notes that “[f]oremost among PRC objectives for Gwadar are (1) to enable direct transport between China and the Indian Ocean, and (2) to anchor an effort to stabilize western China by shoring up insecurity on its periphery.”

The study finds that “China’s interest in Gwadar—and in Pakistan’s economic development in general—thus does not depend primarily on commercial returns or military utilization. Instead, the Gwadar project is a mode of strategic investment in China’s external and internal security.”

IV. Scholarly Criticisms; Assessment of Projects’ Impact

A. CPEC as “Game-Changer” or “Debt Trap”

Some observers maintain that “China is intentionally attempting to saddle countries with unsustainable levels of debt in order to gain control of strategic infrastructure or political influence when borrowing countries can’t repay their loans.” This is described as the “debt trap” diplomacy narrative. One expert notes, however, that

the term “debt trap” is not suitable to describe the whole range of monetary risks and current as well as upcoming financial burdens in the context of the CPEC. Not being in a “debt trap” situation as currently—and narrowly—defined does not mean that Pakistan is able to avoid an unpleasant financial situation.

A report by Center of Energy Policy notes that:

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118 Sacks, supra note 8.


120 Downs, supra note 19, at 34.

121 Wolf, supra note 83, at 4.
there is a risk that the CPEC power projects will add to Pakistan’s sovereign debt burden, but multiple factors indicate that any increase in sovereign debt from these projects is unlikely to be the result of a deliberate strategy on the part of China. Although the debt financing arrangements for CPEC power sector projects primarily involve loans from Chinese banks to project companies wholly or partly owned by Chinese firms, these projects may increase Pakistan’s debt because of sovereign guarantees issued by Islamabad to support CPEC power projects and the liquidity crisis in Pakistan’s power sector known as circular debt. That said, several aspects of the China-Pakistan relationship and the large stake that China’s government and companies have in the success of CPEC indicate that Chinese interests are better served by sustainable CPEC projects than unsustainable ones.122

Other observers, including the current Pakistani government, describe the “debt trap” narrative as a false, misleading, or simplistic assessment. Advocates of CPEC, including the Pakistani government, have described it as an economic “game changer” and a “win-win project of China-Pakistan economic cooperation.”123 Both governments describe characterizations of CPEC as a “debt trap” as “devoid of facts” and hold that not enough attention is drawn to the mutual economic benefits to both countries and the region.124 One paper highlights some of these economic and trade benefits to Pakistan:

The benefits that Pakistan is likely to gain from CPEC include upgrading of the road and deep-water port infrastructure, an enhanced capacity for energy production and a boost in manufacturing activity due to the SEZs. Moreover, there are opportunities for technology transfer in the manufacturing sector of Pakistan through foreign direct investment (FDI) or through collaborative arrangements. Also, the initiative provides an opportunity to position Pakistan as a major transit point connecting the Eurasian region with South Asia and Southeast Asia, which is much needed for the country’s economic growth. In 2017, the Pakistan Credit Rating Agency (PACRA) suggested that the establishment of energy projects under CPEC would help overcome shortages and play a positive role in achieving the required economic growth of 7% in the next two to three years.125

Prime Minister Imran Khan has stated that CPEC “is really helping the country,” has highlighted that loans are only a small part of the total CPEC portfolio, and has argued that as a result of the project Pakistan has attracted more foreign investment and helped Pakistan with technology/skill transfer.126 Another article summarizes the government’s point of view that CPEC loans for infrastructure are concessional loans with low interest rates and that “energy-related projects in the CPEC can prove to be very helpful for “overcoming the energy shortages”

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122 Downs, supra note 19, at 8.
123 CPEC a Game Changer Project Not Only for Pakistan, But Also for Entire Region: Shibli, Radio Pakistan (Nov. 25, 2020), https://perma.cc/BC8V-LNSZ.
124 Id.; Dr. Moonis Ahmar, CPEC as a Game Changer?, Express Tribune (Nov. 29, 2019), https://perma.cc/77EY-AERN.
125 Syed, supra note 56, at 22 (citations omitted).
126 CPEC is Not Debt-Trap But Helping Pakistan, Says PM, Gulf Today (Jan. 24, 2020), https://perma.cc/422P-ZC8K.
and increasing the GDP growth rate. One paper notes that the Chinese embassy in Islamabad emphasizes that “the 42% of foreign-debt of Pakistan is from multilateral financial institutions such as the IMF and World Bank. 18% of the debt is from the Paris Club. Chinese preferential loans only account for 10% of [Pakistan’s] whole foreign debt and offer a much lower rate in the form of concessional loans rather than commercial bank loans.”

A 2020 Chatham House paper observes that BRI cannot simply be narrowly reduced to geo-strategic terms, as

[Chinese] leaders and central agencies attempt to shape the overall direction of the BRI through (often vague) policy statements and broad commitments to particular countries or regions, but the institutional fragmentation of China’s development financing regime and its recipient-driven nature means that projects emerge in a piecemeal, non-strategic and bilateral manner.

The paper also states that “[o]verall guidance from the government exists, but operates loosely, steering the system towards broad objectives rather than specifying detailed outcomes,” and “[e]ven where top leaders support specific projects, typically at foreign counterparts’ request, policy banks and SOEs may refuse or stall their participation if they cannot extract sufficient profit.” The paper gives the example of coal-fired plants proposed under the CPEC that “have been scrapped because SOEs could not secure their desired margins.”

The paper goes on the conclude that “rather than debt-trap diplomacy, bumps on the Belt and Road are typically caused by the intersection between powerful interests and associated governance shortcomings on the Chinese and recipient sides.” Chinese SOEs’ “desperate need for contracts, and weak governance of development financing, coupled with poor planning or venal interests in recipient countries, are generating badly conceived projects that replicate China’s surplus capacity crisis.” The 2020 paper also notes that fewer than a third of CPEC projects had been completed, observing that “[a]t Gwadar, for example, the port is reportedly barely used; construction of an airport (which would have been Pakistan’s largest) has still not begun after six years of delays; and an industrial park sits empty.”

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130 Id. at 9.

131 Id.

132 Id.

133 Id. at 11.

134 Id.

135 Id.
One report also notes that China has also established a “track record of waiving or restructuring loans without taking control of assets.”

A report published by the Center of Asian Law states:

> while CPEC will not be the game-changer for the Pakistani economy that its supporters once hailed, it is not a debt trap either. This picture could change if there is injudicious selection of new projects designed around maintaining the CPEC narrative rather than Pakistan’s economic needs but the two sides have so far been more cautious on debt-financing than has been seen elsewhere on the BRI.

Another writer says there is scant evidence supporting the criticism that the BRI pushes countries into debt traps, but notes that the BRI can generate debt problems for some countries, as well as “a range of short to medium-term economic problems, . . . such as acute fiscal issues, balance of payments crises, and a dramatic fall in foreign reserves.”

Another paper draws a similar observation on what it calls misleading and simplistic narratives on CPEC:

> CPEC is also an illustration of the fact that assessing the BRI’s future direction will continue to require a close read of the practical developments in the countries concerned, rather than a scan of public pronouncements and a hunt for data to fit a preexisting analytical framework. Discussion of CPEC has consistently been characterized by a major gap between the facts on the ground and how it is described. Even some of the best, and most thoughtful experts continue to use figures that have long lost their connection to reality. The BRI meta-narrative casts a long shadow over whichever specific case is being examined, whether it be lines drawn on maps across Asia, superlative numbers, dual-use ports, debt traps, and other tropes. In the case of Pakistan, some of these framings have been misleading. The “corridor” concept and transportation routes from Xinjiang to Gwadar have been a consistent, distracting focal point from the nature of the investments that have been made. Rumors of large-scale debt distress—which are founded in several other BRI cases—have not been fully borne out by the facts. There continues to be more interest on the part of many outside observers in potential dual-use facilities at a barely functional port than out-and-out military cooperation taking place in plain sight.

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136 Downs, supra note 19, at 35.
137 Small, supra note 26, at 5.
139 Small, supra note 26, at 5.
## Hambantota Port (Sri Lanka)

On the discussion of “debt trap” and BRI, the controversy surrounding the deep sea port of Hambantota in Sri Lanka is often mentioned. The story as commonly framed is that despite feasibility studies showing that the port was not financially viable, the Sri Lankan government took out loans with onerous terms to construct the port; it was unable to pay off the loans, which pushed the country into default, and the government had no choice but to hand over control of the port to a Chinese firm as collateral. However, other experts believe the situation is more complex. While the government of Sri Lanka’s previous president, Mahinda Rajapaksa, took out loans from China at commercial interest rates to “build infrastructure in his hometown of Hambantota, including a port,” these loans were not a significant portion of the foreign debt servicing payments. Facing a “persistent balance of payment (BOP) crisis,” the government “had to look for various avenues to obtain foreign currency inflows.” Leasing the port “was one of the ways to increase the country’s foreign reserves.” In 2017, China Merchants Port Holdings (CMPH) “became the majority shareholder in a joint venture with Sri Lanka Ports Authority that holds a concession to develop and operate the port for 99 years. CMPH paid the Sri Lanka Ports Authority $1.12 billion for the joint venture stake.”

### B. Impact Assessment of Projects

A number of impact assessments and other policy studies have been done looking at the political/strategic, environmental, economic, and social impact of CPEC projects. For example, the Sustainable Development Policy Institute (SDPI) conducted a preliminary environmental impact assessment of CPEC northern route road construction activities in Khyber Pakhtunkhwa, and found that “the impacts of the road construction activities are different and vary with the process and component and [m]ost of these impacts have a detrimental effect on the environment & public health and require mitigation measures to minimize the damage.” Criticisms have also been directed towards the negative impact on the environment and health from coal power plants and the lack of “economic cost benefit analysis and Environmental Impact Analysis (EIA) of the said coal-based projects in Pakistan.” Other studies have looked at the negative impact on Pakistan’s biodiversity:

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141 Id.


143 Downs, supra note 19, at 35.


145 Downs, supra note 19, at 35.


Despite its positive aspects, it has may have negative impact on local fauna and flora. Sadly, the road route proposed for the CPEC requires forest cutting, as Pakistan already has the lowest sustainability performance score, by having the smallest share of forests in South Asia. Pakistan has already launched different collaborative conservation projects with different donor agencies such as the World Wide Fund for Nature (WWF), mainly aimed at conserving habitats for fauna and flora and developmental skill programs for the locals of the northern area. Biodiversity in the northern mountain has a pivotal role in supporting and sustaining the livelihood of surrounding communities. In this context, China and Pakistan are engaged in identifying different ways to address, minimize, and mitigate harm to biodiversity on a priority basis and maximize the social acceptability and environmental benefits of the CPEC.\(^{148}\)

Another study looked at the social impact of investment activities in different parts of the country according to different stakeholders:

According to the Pakistani side, political and safety risks are higher than other risks. We also found that different stakeholders within Pakistan have different attitudes to different risks. Based on the questionnaire results and the four divided regions in accordance with the [regional discourse method], we determined that social risks of the western high mountain region include tribal obstacles and religious extremism. The social risks to the southeast coastal plains include preserving the historical and cultural heritage of the area and international protection of national parks. The social risks in north Kashmir include disputes, extremist threats, religious and cultural differences, and the protection of natural reserves.\(^{149}\)

Another study looks at displacement and the impact on the social life patterns of fishing communities of Gwadar port.\(^{150}\)

Other studies have also evaluated the lack of due diligence and evaluation of the financial viability of projects. For example, one study stated:

This need and greed [i.e., regional favoritism and patronage in infrastructure projects], and associated political contestation, very often overwhelm rational development planning, generating projects of dubious economic viability with substantial negative political, social and environmental implications. Many developing countries have limited capacity to assess projects’ viability or ensure their appropriate governance, and bureaucratic niceties are often overridden by powerful interests. For example, Pakistani interest groups’ wrangling has repeatedly changed the route and scope of the CPEC, with many additional projects being added on, some of which appear commercially unviable. Plans for the


\(^{150}\)Khawar Abbas, Socio-economic Impacts of China Pakistan Economic Corridor (CPEC) at Community Level. A Case Study of Gwadar Pakistan (University of Agder, 2019), https://perma.cc/A8LR-DFAY.
development of facilities at the Pakistani port of Gwadar, for example, seem likely to generate surplus capacity, given stiff competition from the port at Karachi, also in Pakistan, and the Indian-backed Chabahar port in Iran.151

V. Public Support and Political Opposition

Individual parliamentarians have raised concerns about “inequitable distribution of CPEC projects and resources,” increased centralization of CPEC decision making, and lack of transparency over specific CPEC projects. However, according to a 2018 ICG report, “all the major opposition parties have also supported CPEC and been reluctant to discuss it in parliament,” and “[c]ommittee chairs and ranking members have failed to promote open debate or exercise oversight over one of Pakistan’s most ambitious economic and geostrategic undertakings.”152

However, despite near universal political support for CPEC among all major political parties, the opposition has criticized the government for lack of progress on projects. For example,

The slowdown of CPEC in Pakistan has provided an overt opportunity to the opposition parties, especially the Pakistan Muslim League-Nawaz party led by Sharif. Opposition leaders have repeatedly criticized the current government for being responsible for stalled-out projects. The current government is trying hard to overcome the opposition by focusing its attention on the CPEC projects’ revival.153

There is also opposition to CPEC projects from Baloch separatist or nationalist groups, and there have been sporadic terrorist attacks in Gwadar and elsewhere in the province of Balochistan and Sindh. Local residents of Gwadar have shown opposition to CPEC over concern with its impact on livelihoods, fear of displacement, and whether they will “reap the fruits of Chinese investment.”154 More recently, in January 2021, Baluchistan government authorities shelved a controversial fencing plan around Gwadar that had drawn local protests and opposition.155 In 2020, government of Sindh province, led by the Pakistan Peoples Party, opposed156 a presidenially-promulgated Pakistan Islands Development Authority (PIDA) Ordinance157 that took direct control of two islands off the coast of the port city of Karachi “to facilitate reclamation and urban planning” and develop the islands into commercial zones.158 Some news reports indicate that Sindhi nationalist politicians also oppose PIDA “because they believe the islands

151 Jones & Hameiri, supra note 129, at 11 (citations omitted).
152 ICG, supra note 35, at 10.
156 Centre, Sindh at Odds over Islands Ordinance, Express Tribune (Oct. 6, 2020), https://perma.cc/3AM2-7WZV
157 Pakistan Islands Development Authority Ordinance, 2020, https://perma.cc/KX86-84DQ.
could be handed to China as another CPEC component.”\textsuperscript{159} The ordinance has since lapsed as the federal government has not extended it nor has Parliament passed a law to replace it.\textsuperscript{160}

\textsuperscript{159} Id.

\textsuperscript{160} Ordinance for Islands Development Authority has Lapsed, SHC Told, The News (Jan. 16, 2021), https://perma.cc/54HD-CEWL.
SUMMARY The Philippines and China signed a Memorandum of Understanding (MOU) on Cooperation on the Belt and Road Initiative (BRI) in 2018. The MOU provides that the Philippines and China agree to cooperate on a number of areas of common interest, including infrastructure projects. On the same date of signature of the BRI MOU, the Philippines and China signed 28 additional agreements, which include the development of a number of infrastructure projects, such as the Chico River Pump Irrigation Project and the Kaliwa Dam Project. The financing for these projects is being provided by China, through contracts that include nondisclosure and immunity clauses that have been criticized by a number of scholars.

I. Introduction

Philippines President Rodrigo Duterte visited China on May 13-15, 2017, to participate in the Belt and Road Forum for International Cooperation hosted by China, along with 29 other world leaders.1 During his visit, he held bilateral meetings with Chinese President Xi Jinping, during which President Duterte expressed the Philippines’ commitment to pursue stronger ties with China.2

In November 2018, the governments of the Philippines and China signed a Memorandum of Understanding (MOU) on Cooperation on the Belt and Road Initiative (BRI).3 The MOU provides that the Philippines and China agree to cooperate on a number of areas of common interest, including infrastructure, trade, transportation interconnectivity, telecommunication and energy.4 The BRI MOU is effective through 2022 and may be renewed for another four years.5

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1 Phl-China Relations, Embassy of the Philippines in Beijing, China, https://perma.cc/TX7J-HPFH.
2 Id.
4 Id. See also Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the People’s Republic of China on Cooperation on the Belt and Road Initiative (MOU on BRI), Part II, Areas of Cooperation, Nov. 20, 2018, https://perma.cc/8HWP-BBQV.
5 MOU on BRI, supra note 4, Part VI, Effectivity, Amendments and Termination.
II. Legal Framework

The 2018 MOU on the BRI provides that it does not create legally binding obligations for the signatory parties, as it is “an expression of their common aspiration to cooperate on the Belt and Road Initiative for their own benefit.”

It also states that any disputes that may arise from the interpretation or implementation of the MOU should be settled in an amicable manner through diplomatic channels. This MOU does not provide specific information on implementing projects derived from it.

Notably, the Philippines and China signed 28 additional agreements on the same date that the BRI MOU was entered into, according to a release from the Embassy of the Philippines in Beijing. These agreements cover several topics, including the development of a number of infrastructure projects, such as the Chico River Pump Irrigation Project and the Kaliwa Dam Project. These projects were reportedly prioritized and expedited in recent years by the Philippines government with Chinese financing and project involvement, per pertinent agreements discussed in Section III below.

III. Major “Flagship” Projects

A. Kaliwa Dam

The Kaliwa Dam, located in Quezon Province, is about 200 feet high and spreads over approximately 279 acres. It is supposed to hold more than 15 billion gallons of water and increase the water supply sent to the Philippine National Capital Region and its neighboring provinces. These provinces currently receive their water from another source (the Angat Dam), which has experienced frequent resource shortfalls in the last decade.

The China Energy Engineering Corporation Limited (or Energy China), a major Chinese state-owned enterprise (SOE), is in charge of the construction of the Kaliwa Dam, with support from the local Metropolitan Waterworks and Sewerage System.
B. Chico River Pump Irrigation Project

The Chico River Pump Irrigation Project is designed to provide water to more than 18,600 acres of arable land in certain municipalities of Cagayan Province, and to nearly 2,900 acres in Pinukpuk, in Kalinga Province. This project includes the “construction of a pump house, substation, transmission line, diversion main canal, lateral canals, appurtenant structures, service/access road, and terminal facilities for Chico River PIP.”

The China CAMC Engineering Company Limited (affiliated with Sinomach, another major Chinese SOE) is working with the Philippines National Irrigation Authority to build this project.

C. Confidentiality Clauses in Both Financing Agreements

Both of these agreements include a confidentiality clause providing that the Philippines, as a borrower, must keep all terms of the accord strictly confidential, unless the Chinese lender agrees to their disclosure to third parties or such action is required by Philippine law or a pertinent order from a court.

Alvin Camba, a frequently cited researcher who recently published a study on these agreements, has stated that although both contracts were published by the Philippine Department of Finance on March 18, 2019, the agreements were finalized in 2018, and they were released under public pressure for their disclosure.

The study further indicates that “such clauses effectively prevent civil society actors or foreign lenders from forming strategies to match Chinese lending terms,” and “increase the exclusivity of an investment partnership to those who have forged it, excluding . . . civil society leaders from the process.”

D. Dispute Resolution Clauses

Both contracts provide that these agreements and the rights and duties of the parties are to be governed by, and construed under, Chinese law, and disputes deriving them must be subject to

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15 Id.
16 Id.
17 Id.
18 Id. at 16, 18. See also Philippine Dep’t of Finance, Preferential Buyer’s Credit Loan Agreement on the Chico River Pump Irrigation Project, art. 8.8, https://perma.cc/485Y-N6EX; Preferential Buyer’s Credit Loan Agreement on the New Centennial Water Source-Kaliwa Dam, art. 8.9, https://perma.cc/SCV8-D53A.
19 Camba, supra note 10, at 18-19.
20 Id. at 16.
arbitration in Beijing (Pump Irrigation Project) and Hong Kong (Kaliwa Dam project). An article recently published by Radio Free Asia (RFA) provides the following commentary on such clauses:

Clauses in the two contracts give China power over the settlement of disputes, said Renato de Castro, a researcher at the Philippines' Stratbase ADR Institute, which analyzes strategic issues influencing the Philippines and the Indo-Pacific region.

“If there are issues in terms of the implementation of the contract, it has to be arbitrated in Beijing,” de Castro told BenarNews, an RFA-affiliated online news service, referring to the Chico River Pump Irrigation Project. “During the arbitration, each side picks one of the three members, but if they can’t agree on the third member, CIETAC can choose that member, giving China overt control of the process.”

Under the 2018 loan agreement for the Chico River project, in which the Export-Import Bank of China agreed to lend Manila $62 million, disputes are to be arbitrated by the Beijing-based China International Economic and Trade Arbitration Commission (CIETAC), the document says.

Similarly, under the 2018 contract on China’s $211 million loan for the Kaliwa Dam project, a dispute between the Philippines and China would be arbitrated by the Hong Kong International Arbitration Center.

These clauses contrast with arbitration practice for World Bank loans. The Washington-based global financial institution uses the International Center for Settlement of Investment Disputes, a multilateral body in which 163 member countries have a stake. While the center has been criticized for favoring investors’ rights over those of states, it is an autonomous institution.

E. Clause on Waiver of Immunity Included in the Chico River Pump Irrigation Project Loan Agreement

Clause 8.1 of the Chico River Pump Irrigation Project Loan Agreement provides that the Philippines has agreed to waive any immunity on grounds of sovereignty “for itself or its property” related to any arbitration proceeding derived from disputes pertaining to the loan agreement.

The RFA article on this agreement cited in Section III.D. above provides the following commentary on this clause:

21 Preferential Buyer’s Credit Loan Agreement on the Chico River Pump Irrigation Project, art. 8.4, supra note 18; Preferential Buyer’s Credit Loan Agreement on the New Centennial Water Source-Kaliwa Dam, art. 8.4, supra note 18.


23 Preferential Buyer’s Credit Loan Agreement on the Chico River Pump Irrigation Project, art. 8.1, supra note 18.
The Chico River project has also raised concerns, with critics saying it placed the Philippines’ “patrimonial assets” as collateral. The contract states that the Philippines “irrevocably waives any immunity” on “patrimonial assets and assets dedicated to commercial use.”

Patrimonial assets are properties owned by the Philippines that are not for public use, public service, or the development of national wealth, legal sources say. That means under the Chico River loan contract, the Philippines has no immunity on assets it owns that are used for commercial purposes.

Antonio Carpio, a former senior associate justice at the Philippine Supreme Court, believes Beijing could end up taking over assets such as the gas-rich Reed Bank in the disputed South China Sea, if Manila failed to pay back the loan.

In March 2019, then-Finance Assistant Secretary Antonio Lambino told CNN Philippines that the Reed Bank could not be classified as a patrimonial asset because its exploitation would increase national wealth.

But Carpio told BenarNews that Reed Bank must be considered a commercial use asset because the government would sell gas obtained from it to the market.

There are “many . . . laws authorizing the sale of oil and gas to private parties under Service Contracts. Once covered by a Service Contract, [they] are patrimonial assets, they can now be collateralized and subject to seizure by creditors,” he said.

Other countries that lend do not employ such clauses in their loan agreements. For instance, Japan, also a major investor of infrastructure projects in the Philippines, does not require waivers of immunity, or the use of Japanese law. Japan also doesn’t require waiving rights to patrimonial assets in its general terms and conditions for overseas development loans.24

IV. Criticism

In May 2021, the Stratbase ADR Institute (ADRi, an independent, international research organization focused on analysis of economic, social, political, and strategic issues influencing the Philippines and the Indo-Pacific region) held a virtual town hall discussion that examined the BRI’s impact on Southeast Asian countries, in particular the Philippines.25

According to a news report on this event, participants criticized the confidentiality and waiver of immunity clauses included in the financing agreements explained in Section III above, for similar reasons described therein.26 In addition, a scholar with ADRi addressing the interest rate of the projects was quoted as follows:

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24 RFA, supra note 22.


At an interest rate of 2%, the Chico River Pump Irrigation Project and the Kaliwa Dam project contracts to China were disadvantageous to the Philippines.

Compared to less than 0.2 percent. Remember the two projects, Chico river, Kaliwa Dam, were at an interest rate of 2 percent per annum, whereas we could have gotten it at 0.2% from . . . South Korea and Japan.27

On this matter, Alvin Camba stated the following:

Keeping interest rates low was not important to the Philippine government. Both the Kaliwa Dam project and the CRPIP had interest rates of 2 percent, which are slightly higher than those that must be paid to Japanese lenders but far lower than what commercial bank lenders have demanded from the Philippines. As a Philippine Department of Defense interviewee pointed out, “The payment scheme for both Chinese-financed projects will last for twenty years across multiple Philippine administrations but the construction period would mostly happen now during Duterte’s term.” The Duterte government cared more about meeting the president’s own political needs on the projects’ timeline and was willing to accept a higher interest rate as part of the bargain. Duterte and his negotiators made concessions on the financing terms to secure their preferred operational timeline. Reportedly, the timing was a higher political and domestic priority for Duterte himself.28

Regarding environmental and social impacts of the infrastructure projects in question, Camba has indicated that, based upon his research (including interviews with interested parties), the Philippine government conducted “superficial” environmental impact assessments to the surrounding areas, which caused environment groups to criticize the projects.29 In addition, local residents and authorities reportedly were not consulted on the development of the projects, which will displace a number of indigenous communities from their ancestral territories.30

27 Id.
28 Camba, supra note 10, at 20.
29 Id. at 4, 9, 12, 21, 23.
30 Id. at 4, 21, 22.
Caribbean
Caribbean Countries

Ruth Levush
Senior Foreign Law Specialist

SUMMARY  Caribbean countries have reportedly signed a number of Belt and Road Initiative (BRI) agreements with China in recent years. The text of these agreements, however, is not readily available. China’s Caribbean portfolio includes highways and bridges, housing, energy, mining, airports and seaports, tourism projects, hospitals and official residences. Several port projects involving partnership with China began before the recipient country formally joined the BRI. These projects have allegedly served as incentives in the formal negotiation process, which is not available in the public record.

Flagship projects in the Caribbean include the construction of a 2,000-acre special economic zone and modernization of the main deep-water cargo port in Antigua and Barbuda, building a dry dock facility in Trinidad and Tobago, and a transshipment port and industrial park in Jamaica. Some BRI projects have raised environmental concerns in addition to concerns about potential violations of procurement processes, fair labor practices, and building and other codes in the relevant countries.

I. Introduction

By March 2021, seven Caribbean countries had reportedly signed Belt and Road Initiative [BRI] agreements with China: Antigua and Barbuda (A&B), Barbados, Dominica, Grenada, Guyana, Jamaica, and Trinidad and Tobago (T&T).

A December 2019 report by the Caribbean Investigative Journalism Network (CIJN) estimated the total Chinese investment in the Caribbean to be $8.25 billion in the preceding 25 years, with an additional $8.92 billion expected for upcoming projects. China’s Caribbean portfolio “includes highways and bridges, housing, energy, mining, air and sea ports, tourism projects, hospitals, and even official residences, forming a part of that country’s strategic thrust into Latin American and the Caribbean.”

The Caribbean Development Bank (CDB) projected that the region would need about $30 billion to modernize its infrastructure over the next decade. Estimates by the Inter-American Development Bank as of November 14, 2017, indicated that Latin America and the Caribbean together needed an additional $120 billion to $150 billion per year in investment to close their

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1 Jennifer Hillman & David Sacks, China’s Belt and Road: Implications for the United States (Table, The Belt and Road Initiative Has Gone Global), Council on Foreign Rel. (updated Mar. 2021), https://perma.cc/4AT4-UJZZ.

infrastructure gap. According to the CBD, “[w]ith global development assistance from traditional partners drying up, Caribbean countries have readily grasped Beijing’s offer of easy financing.”

Trinidad and Tobago (T&T) was the first Caribbean country to sign a BRI memorandum of understanding (MoU) with China in May 2018. Describing the strategic geopolitical and economic goals behind the $4 trillion T&T’s BRI MoU, Prime Minister Keith Rowley stated:

“We told them we need your investment and you need our location in the Caribbean... As the world economy evolves... so too must T&T: “Foreign investment came to this country from Britain and later from the United States, and all along we’ve had this foreign investment inflow. But today China is the world’s second-largest economy so while the economy of Britain drove us for a while and the US for another period, if we are to tap into serious inflows of foreign direct investment we have to look into countries that are looking for investment opportunities abroad and China is that today.”

We were unable to locate specific data on investments and external public debt accrued to China resulting from BRI agreements in Caribbean countries.

II. Legal and Policy Framework

There are a number of media and official Chinese reports on various Caribbean countries signing BRI agreements with China. The text of these agreements, however, does not appear to be publically available.

For example, BRI funding in Barbados, in addition to projects related to maritime and air transportation and infrastructure, was reportedly expected to include modern agriculture, marine economy, renewable energy sources, culture and sports-themed tourism, medical services, and health.

China’s ambassador to Jamaica has said that BRI’s projects in Jamaica focus on infrastructure, trade, finance, and people-to-people exchanges. The MoU signed with Antigua and Barbuda in June 2018 reportedly “mentions projects such as roads, bridges, civil aviation, ports, energy and telecommunications.” Similarly, Grenada’s September 2018 MoU appears to focus “on

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4 Carla Bridglal et al., supra note 2.

5 Id.


8 China, Jamaica Signed MoU on Belt and Road Cooperation, supra note 6.
connectivity and cooperation with different regions of the world” and “objectives would be met with a $40 billion fund investment in infrastructure” to facilitate “the movement of goods and capital between developing areas of the world.”

Researchers have identified port construction as one of the central BRI activities in Central America and the Caribbean region. Several port projects involving a partnership with China began before the recipient country formally joined the BRI. These projects have allegedly served as incentives in the formal negotiation process, which is not available in the public record. The exact start dates of negotiation and construction are similarly unclear. According to experts at the Tearline Project, “Given the actors involved and increased public/private/government favor towards China, it is clear that these are BRI projects.”

Seven Chinese-financed port projects were identified in Central America and the Caribbean region by August 14, 2020. The projects spanned six countries and included container ports, cruise terminals, and dry docks. Of those, one project was completed (in Cuba), one was progressing according to schedule (in A&B), three were behind schedule or delayed (two projects in Panama and one in T&T), and two were canceled (in El Salvador and Jamaica).

III. Major “Flagship” Projects

As noted in Section II above, Chinese investments in the Caribbean began before recipient countries formally joined the BRI. The following describes major BRI projects in the Caribbean region.

A. Antigua and Barbuda

1. Yida

Following Hurricane Irma in September 2017, China invested heavily in rebuilding efforts and other sectors of the A&B economy, especially tourism. The Yida project involves plans to construct a 2,000-acre special economic zone that will include factories, homes, and resorts. The project has inspired public opposition, as it allegedly “largely ignores environmental safeguards, thus increasing Antigua’s hurricane risk and destroying coastal vegetation home to many endangered animals.”

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9CIJN Staff Writers, The Caribbean Engages the Belt and Road Initiative, CIJN (Dec. 1, 2019), https://perma.cc/3D2T-V78B.


11 Id. at 4.

2. Expansion of St. John’s Deep Water Harbor

In January 2018, A&B signed an agreement with China Civil Engineering Construction Corporation Ltd., a Chinese state-owned enterprise, to modernize A&B’s main deep-water cargo port at St. John. The Export-Import Bank of China, a Chinese state-funded and state-owned policy bank, would finance the US$90 million contract with a low-interest loan. “Acknowledging complaints that China’s BRI can be non-sustainable, delayed, and utilize primarily Chinese laborers, Antigua and Barbuda’s Prime Minister, Gaston Browne, mandated that at least 40% of laborers must be local. There has been no recent public indication that China has not followed this mandate.”13 The construction of the port began in April 2018 and is expected to be completed in mid-2021.14

B. Trinidad and Tobago

On September 7, 2018, the T&T government signed an MoU with the state-owned China Harbour Engineering Company Ltd. (CHEC) to build the La Brea Dry Dock facility over a four-year period. Accordingly, CHEC would finance 30% of the port with a direct equity investment. Concerns regarding the debt drew attention to whether there is sufficient demand for the dock, whether the La Brea location is appropriate, and to the fact that the World Bank blacklisted CHEC for bribery. According to the Tearline Project,

> [t]here was increased economic pressure for the Government of Trinidad and Tobago to partner with China for a large infrastructure project in the La Brea area after the Petrotrin oil refinery closed, causing over 5,000 people to lose their jobs and the region to lose its industry. The port will benefit the local area directly and indirectly. Once operational, it will generate $500 million USD annually, create training programs for community members on ports, support a more diverse local economy by consistently bringing in foreign business, and create thousands of jobs. This economic benefit, specifically the creation of 3,500 direct jobs and 5,700 indirect jobs during construction, is desperately needed in the region after the closing of the oil refinery. However, there is skepticism that the port will not generate the jobs that CHEC has announced for locals, due to the trend of importing Chinese laborers for large infrastructure construction associated with BRI, which is already occurring elsewhere in Trinidad and Tobago.

Per the Trinidad and Tobago government, the port will include two dry docks, a berth, land reclamation to support the proposed facilities, deep water dredging for the channel and turning basin, and necessary terminals to facilitate the operation of the port. However, despite the September 2018 agreement and the announced plans, our most recent imagery from late May 2020 shows that no construction has occurred, not even the beginning stages of land reclamation. The project has been further delayed by COVID-19 halting all foreign investment occurring in the spring of 2020. The indefinite delay of the project emphasizes how Trinidad and Tobago cannot build the port and bring business to the economically struggling La Brea area without Chinese aid. It appears that either the port is not a priority to the BRI or there are unpublicized reasons for its delay, as CHEC has continued to push

13 Matthew Crittenden et al., supra note 10.
14 Id.
back the project years after designs were finalized without any announcement about issues.15

C. Jamaica

In August 2013, the Government of Jamaica announced that CHEC would be developing a transshipment port and industrial park on Great Goat Island and Little Goat Island. The project would have required leveling the islands to construct the necessary infrastructure and extensive dredging to accommodate Super Post Panamax ships. The project was subject to strong opposition as environmentally endangering the habitat for endangered species, leaving surrounding communities vulnerable to hurricanes, and destroying small-scale fisheries that sustain local communities. Prime Minister Andrew Holness, elected in 2016, announced that the Jamaican government would cancel the plans to build a transshipment port on the Goat Islands.16

IV. Public Support/Criticisms; Assessment of Projects’ Impact

In addition to the public criticism of BRI projects described in Section III above, concerns have been expressed “about procurement processes and concessions related to local content, labour practices and adherence to building and other codes.”17

Among problems associated with BRI implementation are the following:

A. Bahamas

Legal disputes associated with the $3.5 billion Baha Mar resort project constructed by a subsidiary of China State Construction Engineering reportedly led to a downgrading of the Bahamas’ S&P Global rating in 2015.18

B. Jamaica

According to CJIN,

a 2012 independent forensic audit of the Jamaica Development Infrastructure Programme (JDIP) and the Palisadoes Shoreline Protection and Rehabilitation Works Project concluded there was “non-adherence to allocations approved by Parliament and the Ministry of Finance. There was also the arbitrary issuance of Variation Orders and selection of subcontractors along with unprogrammed and arbitrary allocation of funds for institutional strengthening,” according to the audit document.19

15 Id.
16 Id.
17 Carla Bridglal et al., supra note 2.
18 Id.
19 Id.
C. Trinidad and Tobago

The CIJN report further found that,

[i]n Trinidad and Tobago, the sudden termination of the Government’s $71.7 million project between China Gezhouba Group International Engineering Company and the Housing Development Corporation (HDC) in 2019 has drawn attention to a lack of transparency in the award of the contract, and what has been described as overly generous concessions to the Chinese company.20

D. Guyana

Also according to the CIJN report, “In Guyana, a $150 million project to upgrade the Cheddi Jagan International Airport remains incomplete more than 10 years after it began—seven years behind schedule and counting—due to various concerns over workmanship and other technical issues.”21

20 Id.
21 Id.
Eurasia
Russian Federation and Central Asian Countries

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SUMMARY
The Belt and Road Initiative (BRI) has become an instrument for deeper integration between Russia and other former Soviet Central Asian republics and the People’s Republic of China. The initiative coincided with increased confrontation between Russia and the West, resulting in Russia’s attempts to leverage the BRI as an alternative to western investments, technologies and financial instruments while facing Western economic sanctions.

Two out of six transport corridors in the BRI cross Russia, and transport is thus an important component of Russian-Chinese cooperation. Transport corridors are seen as vital to developing poorer Chinese provinces bordering Russia and Mongolia. Nevertheless, the dominant area of cooperation of two countries is energy. Two BRI flagship projects are the Power of Siberia natural gas pipeline project and the Yamal liquefied natural gas project. Russia and China have also intensified their cooperation in nuclear energy.

The BRI plays an important role in the broader context of Eurasian integration through the Eurasian Economic Union (EAEU) and the Shanghai Cooperation Organization (SCO), in which China and Russia play a leading role. The EAEU is a key partner in the BRI, since it comprises a majority of states covered by the BRI’s overland route. The BRI and the EAEU have formally signed an agreement of cooperation.

China’s Arctic strategy became another area of collaboration with Russia. Even though the security sector is not an official part of the BRI, evidence suggests China sometimes uses the BRI to leverage gains. Cooperation in the security sector is increasing and taking various forms, including the transfer of advanced technology and joint military exercises.

The legal framework for cooperation is multifaceted but opaque. While high-level meetings regularly result in packages of new agreements in the various sectors, the public is informed only of the titles of the agreements. The economic and financial parts of the agreements remain unavailable to the public and can be analyzed only through indirect evidence and information reported by mass media.

The Russian public generally is in favor of increased cooperation with China. Experts point to the highly political nature of implementing the BRI projects, and argue there are few benefits, including economic ones, for Russia. Several projects caused scandals, and environmental groups have raise alarms on the BRI’s ecological impact. In Central Asia, the public appears more concerned about the impact of BRI projects, and anti-Chinese protests have periodically occurred across the region.
I. Introduction

China’s Belt and Road Initiative (BRI), which was launched in Kazakhstan in 2013, is being actively implemented in Russia and other former Soviet republics of Central Asia. Working with these countries, China is focusing on two out of three major components of the Initiative, namely the land-based Silk Road Economic Belt (SREB), comprising six development corridors, and the Polar Silk Road, a northern sea route. Apart from Russia, these countries are landlocked, and thus are not involved in the third BRI component, the 21st Century Maritime Silk Road.

The SREB refers to land-based trade corridors linking Asia and Europe by roads, railways, and pipelines. The New Eurasian Land Bridge Economic Corridor (NELBEC) and the China-Mongolia-Russia Economic Corridor (CMREC), both of which go through Russia, are two of the six corridors of the BRI.

According to the American Enterprise Institute’s China Global Investment Tracker, since 2005, China had invested US$34.76 billion in Russia. The Ministry of Foreign Affairs of the Russian Federation lists official statistics of Sino-Russian cooperation; that in 2019, bilateral trade reached US$110.9 billion. In the first half of 2020 (the latest data available), the trade between two countries amounted to US$49.15 billion.

In addition to Russia, BRI projects extend to the Eurasian Economic Union (EAEU), created in 2014 to promote the free movement of goods, capital, services, and people within its five member states, Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. The Joint Declaration on Cooperation in Coordinating Development of the Eurasian Economic Union and the Silk Road Economic Belt, signed in 2015, serves as the framework for partnering between China and the EAEU, as well as for bilateral agreements between China and individual member states of the Union. Under this framework and such bilateral agreements, China and the EAEU agreed to work...
on joint projects in infrastructure and trade facilitation. It was believed that cooperation would be beneficial for both sides, regardless of the fact that the Chinese initiative is focused on broad free trade zones, while the Eurasian Economic Union provides for the protection of domestic markets from external players and a tariff-free zone only for its members. Even though the most recent strategic document for the development of the EAEU does not mention the BRI, member states agreed to enforce the Agreement on Trade and Economic Cooperation between the EAEU and China, Which is a prior agreement regulates the entire structure of trade and economic relations between the Member States and the PRC. Some analysts argue that inherited differences between Chinese and Russian projects and politically boosted integration plans ungrounded in economic necessity could potentially cause serious friction between the two sides.

For the post-Soviet Central Asian states, China’s Belt and Road Initiative (BRI) and China’s overall economic influence became crucial factors shaping their economic development. China’s cumulative investment and construction expenditures since 2005 equaled US$34.68 billion in Kazakhstan, US$4.73 billion in Kyrgyzstan, US$2.32 billion in Tajikistan, US$6.8 billion in Turkmenistan, and US$7.7 billion in Uzbekistan.

II. Legal and Policy Framework

A. Political Cooperation at the Highest Level

Russian President Vladimir Putin and Chinese President Xi Jinping meet several times a year. A special state commission coordinates every meeting and agenda.

In May 2017, Putin attended the Belt and Road High-Level International Forum in Beijing, where he held separate meetings with Xi and Li Keqiang, the Premier of China’s State Council.

On July 4, 2017, Xi paid an official visit to Russia. During the meeting, issues of trade, economic, military-technical, political interaction and humanitarian cooperation between the two countries

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15 These amounts derive from the China Global Investment Tracker, American Enterprise Institute, https://perma.cc/QR6S-Q6KZ.


17 Belt and Road International Forum, President of Russia (May 14, 2017), https://perma.cc/UN9R-UXPE.
were discussed and important agreements on the further promotion of bilateral ties in diverse areas were reached. A package of intergovernmental and commercial documents on cooperation between the countries were signed following the visit.\footnote{Press Statements Following Russian-Chinese Talks, President of Russia (July 4, 2017), https://perma.cc/58F6-F2CD.}

In June 2019, Xi made a state visit to Russia.\footnote{Joint Statement of the People's Republic of China and the Russian Federation on the Development of a Comprehensive Strategic Partnership for Collaboration in the New Era, June 5, 2019, https://perma.cc/8MAS-EZRK (in Russian); Bilaterals.org, https://perma.cc/Y9HE-USEK (English translation).} High-level negotiations were held in Moscow, and twenty-seven documents on cooperation were signed.\footnote{Russian-Chinese Documents Signed During the State Visit of the President of the People's Republic of China Xi Jinping to the Russian Federation, President of Russia (June 5, 2019), https://perma.cc/7TVJ-X32V (in Russian).}


The Joint Statement on the Development of a Comprehensive Strategic Partnership for Collaboration in the New Era states that its objectives include deeper integration; close coordination and strategic collaboration on national development strategies; expansion of mutually beneficial economic, trade, and investment cooperation; innovation and improvement of concepts and mechanisms of cooperation between two countries; and development of new fields, projects, and technologies, based on principles of multilateralism. The countries agreed to “solve international and regional problems, do justice in international affairs, and promote the formation of a more just and reasonable multipolar world that benefits the peoples of the world and to achieve win-win cooperation.”\footnote{Joint Statement on the Development of a Comprehensive Strategic Partnership, supra note 19.}
In 2019, the St. Petersburg Economic Forum was largely dedicated to the BRI and was attended by Putin and Xi. The Chinese Foreign Ministry described the relationship between Russia and China as “a model of cooperation.” The prime ministers of both countries actively continued their interaction and follow-up regarding the decisions of their respective leaders. State academic institutions dedicated special research studies to this emerging and rapidly growing collaboration.

B. Cooperation at the Eurasian Economic Union Level

As noted above, the EAEU was established in 2014 as an economic union of its five member states: Armenia, Belarus, Kazakhstan, Kyrgyzstan, and its founding member, Russia. The EAEU sought to introduce the free movement of some goods, services, capital, and people within its five member states by 2015. Russia intended the EAEU to partner with China, amid China’s own bilateral engagements with the individual members of the EAEU within the framework of the BRI.

In May 2015, Vladimir Putin offered to coordinate the BRI with economic integration within the EAEU. Guaranteed bilateral engagements with most of the EAEU countries gave comfort to China to safely engage with the EAEU without any significant extra diplomatic or economic costs. Coordination of the BRI with EAEU integration was officially reflected in the Joint Declaration on Cooperation in Coordinating Development of the Eurasian Economic Union and the Silk Road Economic Belt. In this declaration, China and the EAEU agreed to work on joint infrastructure projects and trade facilitation. Even though the declaration involved the five EAEU states, it was signed on behalf of the EAEU by Putin rather than the EAEU’s chairman.

The most recent strategic document for the development of EAEU–China relations is the Economic and Trade Cooperation Agreement of 2018. Also, the importance of the Greater

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26 Head of Chinese Ministry of Foreign Affairs Calls the Relations with Russia a Model of Cooperation, RBC (Dec. 24, 2019), https://perma.cc/HN8L-VZST.


29 General Information, Eurasian Economic Union, supra note 8.


31 Russian-Chinese Talks, President of Russia (May 8, 2015), https://perma.cc/6F73-UM7W.

32 Id.

33 Joint Declaration on Cooperation in Coordinating Development of the Eurasian Economic Union and the Silk Road Economic Belt, supra note 9.

34 Agreement on Economic and Trade Cooperation between the Eurasian Economic Union and Its Member States, of the One Part, and the People’s Republic of China, of the Other Part, https://perma.cc/6THC-454C.
Eurasian Partnership is featured in the Joint Statement on the Development of a Comprehensive Strategic Partnership for Collaboration in the New Era. According to this Joint Statement, the “One Belt, One Road initiative and the Greater Eurasian Partnership can go hand in hand, coordinate development and jointly promote regional organizations and bilateral and multilateral integration processes for the benefit of the peoples of the Eurasian continent.” It further mentions the following tasks:

- To continue to deepen all-round integrated energy cooperation between the upper, middle and lower regions, and to promote exchanges and cooperation between the two sides in energy-saving technologies, standards, talents and information. Support for the start-up of the China-Russia East Line gas pipeline project and the launching of the gas supply ceremony within the year [2019].

- To actively promote the construction of "One Belt, One Road" and the Eurasian Economic Union. To promote the establishment of an effective mechanism for dialogue between the Government of the People’s Republic of China and the Eurasian Economic Commission. To effectively promote priority projects in the interests of China, the Eurasian Economic Union and its member States.

- To implement the package of cooperation projects in the nuclear field agreed on June 8, 2018 [and] to deepen and expand cooperation in the field of peaceful uses of nuclear energy and explore feasible cooperation projects.

- [To] jointly promote more investment and cooperation projects to land. Strengthening the guidance of bilateral cooperation funds such as the Russian-Chinese Investment Fund and the Russian-Chinese Regional Cooperation and Development Investment Fund, and enhancing the level of financial support and services.

- [To] expand and deepen long-term mutually beneficial cooperation in the space sector between the two countries, including cooperation in such key areas as launch vehicles and engines, lunar and deep space exploration, Earth observation, aerospace electronic components, space debris monitoring and low-orbit satellite communication systems.

- Deepening cooperation in the field of transport. Adhere to the principle of mutual benefit and win-win, build and renovate existing cross-border transportation infrastructure, and promote the implementation of landmark major cooperation projects in the fields of railways, bridges and other areas. To strengthen cross-border transport cooperation between the two countries, promote the facilitation of transport clearance and improve the quality and efficiency of transport services.
C. Legal Mechanisms Used in the Agreements

The acceleration of cooperation between Russia and China has been accompanied by multiple declarations on collaborative projects and signed agreements, but most of these agreements are not publicly accessible. Typically, the public is informed only on the general subjects of the agreements, without further details. In some instances, officials have invoked the need to maintain trade secrecy as the reason for lack of disclosure. For example, in 2019, the Vice Foreign Minister of Kazakhstan, Ernem Kosherbayev, said in an interview that the “founders of industrial projects with the participation of Chinese companies in Kazakhstan may be against the disclosure of commercial information.” In numerous official statements, Kazakh authorities asserted that the reason for the lack of transparency regarding BRI projects is due to commercial privacy and has nothing to do with any hidden agenda.

According to analysts, the BRI disproportionately involves state-backed players or sovereign governments themselves:

The BRI projects are predominantly built by Chinese investors, and such projects are disproportionately backed by Chinese state financiers, especially the China Development Bank, the Silk Road Fund and the China EXIM Bank. On the other side, many of the projects are directly backed or guaranteed by the BRI-targeted countries, especially in Central Asia.

1. Dispute Resolution Principles

It appears that legal institutions along the BRI routes are embracing international dispute resolution, because it takes time for investors to gain confidence in individual domestic legal systems, and there are significant challenges created by the different legal systems potentially involved in the cross-border BRI projects.

However, a commentator has argued that the preferred use by the Chinese of friendly consultation, rooted in both its culture and its international legal instruments, makes it difficult for non-Chinese counterparts to bring Chinese parties before an arbitration panel. While the Chinese Government has signed dozens of MOUs with BRI countries, these MOUs are not legally binding, and almost none of them include specific dispute resolution mechanisms.


42 Id.

43 Id.
2. Debt Issues

According to recent report of the Center for Global Development, Kyrgyzstan and Tajikistan are among eight BRI recipient countries that are at a high risk of debt distress due to BRI loans.\footnote{Jonathan Hillman & Matthew P. Gillman, “All Rise? Belt and Road Court is in Session,” Center for Strategic and International Studies, July 26, 2018, https://perma.cc/7URE-JGTG.}

Observers have noticed the general trend of BRI projects using low-interest loans as opposed to aid grants. Most BRI investments involved non-transparent bidding processes, which enable local authorities to capitalize through corrupt practices, and which involved contracts requiring the use of Chinese firms and equipment, and often the employment of Chinese workforce as well. The resulting inflated costs at times lead to canceled projects and political backlash.\footnote{Alyssa Ayres, Elizabeth Economy & Daniel Markey, Rebalance the Rebalance: China, India, and the United States, Foreign Aff. (July 13, 2016), https://perma.cc/GEV5-3LGT (by subscription).}

Observers also noted that the poorest countries of the region, Kyrgyzstan and Tajikistan, are vulnerable to debt shocks, as they borrow under unfavorable conditions to finance BRI-related infrastructure projects. Reportedly, in 2019 China held 40% or more of both countries’ foreign debts.\footnote{Tatyana Panchenko, “One Belt, One Road”: Central-Asian States Are Driven into a Debt Trap, Forbes Kazakhstan (Sept. 18, 2019), https://perma.cc/4P795BVY (in Russian).} Some publications expressed alarm about the implications of the BRI for these countries’ debt sustainability.\footnote{John Hurley, Scott Morris & Gailyn Portelance, Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective, 3(1) J. Infrastructure, Pol’y & Dev. 139, 154 (2019), https://perma.cc/RT5H-LGHB; Eiji Furukawa, Belt and Road Debt Trap Spreads to Central Asia, Nikkei Asia (Aug. 29, 2018), https://perma.cc/CT48-KD9S.}

3. Financing of Projects

Experts note that Chinese credit is much easier to obtain than traditional World Bank or International Monetary Fund loans. Simultaneously, borrowing from China is non-transparent, and outcomes are subject of individual negotiations and in some cases political decisions.\footnote{Aidai Erkebayeva, Katya Myachina, “They Left – The Water is Cleaner and the Grass Grows Normally Once Again”: How the Kyrgyz Revoluted Against “Chinese Expansion,” Novaya Gazeta (Nov. 8, 2019), https://perma.cc/WY4K-QLGA (in Russian).}

Tajik National University Professor Safovudin Dzhaborov describes the practice of financing BRI projects as “predatory lending,” which he argues applies to “a bilateral loan transaction between two states that, in addition to paying back the loan principal and interest, prompts the borrowing country to make statements containing certain promises and/or make economic or political concessions favoring the lender country or its agent, company or representative.”\footnote{Belt and Road Initiative and Its Influence in Central Asia (Book Review), Central Asia Analytical Network (Feb. 2, 2018), https://perma.cc/9DUW-ZJTY (in Russian).}
As a rule, BRI projects financed by Chinese banks are built by Chinese companies working in partnership with local businesses inside the country. Reportedly, a rare exception was the construction of the Astana light rail transport in Kazakhstan, which was listed among the flagship initiatives of the BRI. Observers noted that money was delivered directly to the local company without involvement of the Chinese partner. It was discovered later that much of the funding had been embezzled, resulting in the prosecution of several former officials and leading to a dispute with China. Kazakhstan had to reimburse Chinese losses through its public treasury.50

4. Land Ownership

All of the countries in Central Asia prohibit foreign nationals to own land. However, in March 2016, the Kazakh government announced amendments to the Land Code, allowing foreign citizens to rent and buy agricultural land. Proposed amendments generated massive rumors claiming that the land would be “bought up by the Chinese.” A wave of anti-government rallies swept through Kazakhstan.51 Protesters claimed that unfair land distribution would eventually lead to ‘Sinification.’52 Eventually, the amendments were put on hold.53

5. Employment of Chinese Labor

Media reports on anti-Chinese protests in Kazakhstan state that one factor provoking the protests were loan conditions in BRI projects requiring Kazakh businesses to buy Chinese goods and machinery, and in particular, to staff the projects with Chinese labor. Although infrastructure projects provide some employment opportunities for local workers, the use of foreign workers has at times led to discontent among the local population, particularly since such practices do not help address the region’s high unemployment.54 However, official statistics register significantly lower numbers of Chinese workers than are perceived by the public. Kazakh authorities annually impose a special quota for foreign workers, but it is unclear if Chinese workers on BRI projects are covered by the quota.55

Addressing these public concerns, as well as the lack of transparency in BRI-related agreements, the Kazakh Foreign Ministry stressed that Kazakhstan considered China a source of new

50 Ainur Koskina, Astana LRT: A Project or a Scam?, Central Asian Bureau for Analytical Reporting (Dec. 24, 2019), https://perma.cc/F3SD-629C.
technologies and investment, and that Kazakh-Chinese projects provided for the use of foreign specialists only at the construction and initial operation stages.\(^{56}\)

**D. Specifics of BRI Projects in Individual Industries**

1. **Transportation**

Two of the six transport corridors of the BRI cross the Russian Federation, and seek to build optimal transport routes along the China–EAEU–EU axis.

One BRI project, the New Eurasian Land Bridge (NELB), is an international passageway linking the Pacific and the Atlantic. This route extends from China’s coastal cities of Lianyungang and Rizhao to Rotterdam, Netherlands and Antwerp, Belgium. The 10,800-kilometer-long rail link runs through Kazakhstan, Russia, Belarus, Poland, and Germany, and serves more than 30 countries and regions.\(^{57}\)

Critics have argued this and similar projects have little economic value and that there are intrinsic difficulties in implementing such large-scale projects. Critics argue the New Eurasian Land Bridge Economic Corridor appears to be largely political in nature, and is aimed at providing an alternative supply route for Chinese goods if China were to face increased pressure on maritime routes.\(^{58}\) Also, the new route would help develop adjacent Chinese regions, which are far from coastal shipping ports, and otherwise would demand robust investments in Chinese infrastructure, linking more developed coastal parts with inland provinces. An economic justification is that air transportation of the same goods would cost much more, while the delivery time through the routes, two to three weeks, is significantly shorter than through traditional sea routes.\(^{59}\)

Some researchers believe that from Russia’s perspective, the BRI would help capitalize on growing inland industrial centers and incorporate industrial and agrarian clusters into the larger international economy. The BRI routes would be most beneficial for Russia if it could help develop innovative and competitive production centers, create opportunities for small and medium-sized businesses, and provide a boost for regional development, these researchers say.\(^{60}\)

Another of the six major BRI corridors is the China-Mongolia-Russia Economic Corridor (CMREC), initiated in 2016, which derives from landlocked Mongolia’s own integration project,

\(^{56}\) Mamishev, supra note 39.

\(^{57}\) *What are Six Economic Corridors under Belt and Road Initiative?* State Council Information Office, PRC (Aug. 4, 2020), https://perma.cc/2ZPV-FJ7Z.


called Steppe Road. The Corridor provides for the implementation of joint projects to increase trade, ensure the competitiveness of products, and facilitate cross-border transport and infrastructure development. Such projects include the construction of a cross-border highway and railway, the development of transit transport, and the expansion of cooperation in the industrial, energy, tourism, educational, and scientific and technical sectors. The establishment of the CMREC is considered a promising step toward regional connectivity and economic development in Eurasia through the territory of Mongolia; the Mongolian initiative fits easily with China’s goals for the BRI, and matches Russia’s desire for active involvement in the project. Mongolia’s vision for the CMREC is much more than a mere transit zone between China and Russia. At present, 32 projects covered by the CMREC are being implemented.

Challenges related to the implementation of the projects are similar for Mongolia and Russia. Both countries expect China to finance all those initiatives, with the likely consequence of increased dependence on China.

2. Energy Sector

The energy sector has been a dominant field Sino-Russian cooperation from the early days of the BRI initiative. China was seeking accessible energy resources for its northern regions, especially for the Xinyang province, while Russia was trying to reduce its dependence on European markets. Collaboration in the oil and gas sector has also triggered joint projects in petrochemical production. In these projects, China has emphasized requiring the use of Chinese equipment for the plants, having majority ownership in the associated businesses, locating processing facilities on Chinese territory, and using Chinese workers in projects on Russian territory.

Both sides have kept the details of the signed deals secret. However, sources have revealed the substantial scale of the countries’ cooperation. The Joint Sino-Russian Energy Forum of 2018 resulted in twenty agreements in the energy field. The energy sector attracts most of the investments from China in Russia. According to Russian reports, in 2019, energy constituted 90.2% of all Chinese investments.

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63 Id.
65 Hillman, supra note 14.
Russia and China are also actively collaborating in the field of nuclear energy. In 2018, a major package of deals were signed between Russia and China to build several new units at China’s Tianwan and Xudapu nuclear power plants, as well as the construction of a fast neutron reactor.68 The construction work at the Tianwan and Xudapu plants started in 2021.69 The Chinese Foreign Ministry called its cooperation with Russia on nuclear projects of great importance to Sino-Russian collaboration.70 The power units are expected to enhance China’s nuclear energy capacity to ensure a reliable supply of clean electricity to the country’s grid.71 The Chinese side also portrayed these projects as part of its efforts to tackle climate change.72

3. Arctic Cooperation

A recent addition to the BRI is the Northern Sea Route, which derived from China’s Arctic Policy.73 “In June 2017, the State Committee for Development and Reform and the State Oceanographic Administration of China named the Arctic as one of the directions of the BRI project. The ‘Concept of Cooperation at Sea within the Framework of the BRI’ refers to the need to involve Chinese companies in the commercial use of Arctic transport routes.”74 Russia has signed a Memorandum of Understanding with the Chinese Oceanographic Administration, aimed at expanding international cooperation in the Arctic and Antarctic.75 Russia and China claim they have cooperated in Arctic for some time. Their first joint Arctic expedition was conducted in 2016, and a second was conducted in 2018 with the goal to “provide scientific support for the development of a Polar Silk Road.”76 China’s Arctic Agenda states that China will not favor any specific Arctic country and will respect international law and the sovereignty and jurisdiction of Arctic countries.77

71 Joint Statement on the Development of a Comprehensive Strategic Partnership, supra note 19.
73 China’s Arctic Policy, Belt and Road Portal (Jan. 29, 2018), https://perma.cc/EVP8-3T7F.
74 Maria Smotrytska, Implementation of BRI at Sea: South Maritime & Arctic Silk Roads, Belt & Road News (July 14, 2020), https://perma.cc/484R-XS6Z.
75 Maria Smotrytska, The Implementation of the BRI Project at Sea: South Maritime and Arctic Silk Roads, Modern Diplomacy (July 13, 2020), https://perma.cc/F3YZ-3FXX.
4. Military Cooperation

Military and security cooperation is not officially encompassed by the BRI. However, there are multiple indirect signs that China leverages economic engagement for achieving its security objectives.78 China and Russia have signed major BRI deals that correspond in time with the decisions of Russia to share its most advanced military technology with China. For example, the Power of Siberia deal to supply natural gas to China did not go forward until Russia decided to sell to China its advanced S-400 air defense missile system,79 which was later followed with its sale of its flagship Su-35 aircraft.80

According to analysts, Russia’s worsening relationship with the West encouraged Russia’s further collaboration with China in the military domain. Allegedly, the trust and partnership developed during implementation of the BRI projects gave Russia confidence to foster closer cooperation with Beijing by advancing Chinese capabilities that would challenge western technological military dominance.81 For example, Russia helped China to develop a missile early warning system.82 However, in 2020, Russia suspended its delivery of S-400 missiles, for reasons that are unclear.83

III. Major “Flagship” Projects

A. Projects in Russia

1. Power of Siberia

A natural gas pipeline project, Power of Siberia, was initiated in 2014 between the Russian state-owned GAZPROM and the state-owned China National Petroleum Corporation (CNPC). The deal envisioned supplying 38 billion cubic meters of natural gas to China annually for 30 years.84 It took 10 years to negotiate the deal. Unlike in previous cases, China did not offer any credit, but

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78 Joel Wuthnow, Chinese Perspectives on the Belt and Road Initiative: Strategic Rationales, Risks, and Implications, Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, China Strategic Perspectives No. 12 (Oct. 2017), https://perma.cc/C9J3-DAFR.
80 Franz-Stefan Gady, Confirmed: China Buys 24 Advanced Fighter Jets From Russia The Diplomat (Nov. 20, 2015), https://perma.cc/UA8E-KQ4F.
it agreed to a guaranteed procurement contract under a specified pricing formula. At the time they signed the deal, Russia was under significant economic pressure from sanctions imposed by Western nations, and China leveraged this situation to its benefit.

The pipeline was launched in 2019 with the personal engagement of the presidents of both countries. Immediately after launching, a group of experts questioned its economic benefits for Russia. Due to the non-transparent character of the deal, the exact economic benefits are unknown. Experts and some official statements underlined the political importance of the project over its economic value. Media sources reported that Russia even agreed to annul its mineral extraction tax specifically for this project, further decreasing its economic benefits. This project encountered major challenges in 2020 due to an inaccurate calculations in gas field developments, which further decreased the economic benefits for Russia.

2. Yamal LNG Project

The Yamal Liquified Natural Gas (LNG) Project, the largest one beyond the Arctic Circle, was launched in 2017. China’s National Petroleum Corporation (CNPC) owns 20% of the business, and an additional 9.9% is owned by the Chinese Silk Road Fund. The US$27 billion project was developed by the Russian firm Novatek, a privately-owned gas production company, the second-largest in Russia, which owns 50.1% of the project. Besides Novatek and Chinese companies, the French petroleum conglomerate Total holds 20%. The operational capacity equals 16.5 million tons per annum.

The project faced financing challenges due to US and EU sanctions on Russia. It completed financing in 2016 with a US$3 billion loan from the Russian development bank VEB and loan

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92 China, Russia Jointly Launch Yamal LNG Project in the Arctic, Belt and Road Portal (Dec. 11, 2017), https://perma.cc/E24P-MXMX.

agreements with Chinese banks worth over US$12 billion. Additional lending in the amount of US$4 billion was provided by the Russian banks Gazprombank and Sberbank. The Japan Bank for International Cooperation provided €200 million (approximately US$240 million), and the Italian commercial bank Intesa Sanpaolo provided €750 million (approximately US$899 million) under coverage from the Italian and French export credit agencies, Sace and Coface, amounting to €350 million (approximately US$420 million). In addition, Yamal LNG received the equivalent of US$2.4 billion from Russia’s National Welfare Fund. The project became partly operational in 2017, and after some delays is reportedly now running at full capacity.

In February 2021, Novatek and Chinese state-owned Shenergy Group Company signed a 15-year agreement under which Novatek will supply 3 million tons of LNG annually. It will come from the Arctic LNG 2 project, which is the next phase of the Yamal project, and which will have 19.8 million tons per annum capacity. All products of the project are Asia bound and are aimed at diversification of Russia’s gas supply markets. Novatek’s owners are believed to be close associates of President Putin, and one of them, Gennady Timchenko, as well as Novatek itself, are subject to US sanctions.

B. Projects in Kazakhstan

At present, Kazakhstan is the leading destination in the Central Asian region for Chinese investments, absorbing 80% of such investment; Chinese investment in Kazakhstan exceeds US$70 billion. More than a half has been in the energy sector, with the next largest sector being infrastructure. Chinese investors own 24% of Kazakhstan’s oil production assets and 13% of its gas production assets.

In order to match the BRI institutionally, the Government of Kazakhstan began its own initiative called “Nurly Zhol,” the State Program for Infrastructural Development. Its goals include infrastructural support for and transport links between the territories; an efficient transit, export and logistics infrastructure; increased economic efficiency and competitiveness of transport

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94 Russia’s VEB Guarantees $3 bln of Yamal LNG Debt (June 24, 2016), Reuters, https://perma.cc/9DU4-B4GF.
97 Atle Staalesen, New Yamal LNG Plant is Made in Russia. It Comes More than Year After Schedule, Barents Observer (June 2, 2021), https://perma.cc/9B9P-GY5A.
99 Project Arctic LNG 2, PAO Novatek, https://perma.cc/2LAK-RFYN.
102 Kazakhstan, Crude Accountability, https://perma.cc/KRR5-TKHK.
infrastructure entities and carriers; and improved operational and environmental safety of transportation infrastructure.103

C. Projects in Kyrgyzstan

Kyrgyzstan’s experience with a project to reconstruct an aging heat and power plant in Bishkek illustrates China’s involvement in Central Asia. When officials were considering bids on the project, the Chinese Embassy in Kyrgyzstan reportedly put pressure on Kyrgyzstan’s Ministry of Energy and Ministry of Foreign Affairs, recommending a Chinese company, TBEA, as the sole contractor for the project, and hinting that a loan from China to the Kyrgyzstan government was linked to that selection. Consequently, a more experienced contractor, Russia’s Inter RAO, was passed over, as was another Chinese contractor, China Machinery Engineering Corporation. The unsuccessful modernization implemented by TBEA resulted in a breakdown in January 2018 that left a large part of the Kyrgyz capital without heating and electricity during bitterly cold weather.104 The failure of the heating and power plant was interpreted by local media as the result of China’s “neo-colonialism” in Central Asia.105

D. Projects in Tajikistan

In Tajikistan, priority economic projects are focused in the mining industry, especially gold, silver, and rare earths like antimony. Thus far, 80% of Tajikistan’s mining industry has been developed by joint Chinese-Tajik companies, and Chinese interest in investing in the Tajik mining sector is likely to continue to grow.106 Observers say projects in this sector are the subject of various controversies, lack transparency, and raise serious questions among both experts and the Tajik population.107 In some cases, Chinese companies own 100% of a business, such as in the case of a London-listed company called China Nonferrous Gold, which was the first foreign company to own a 100% stake in a mine in Tajikistan.108 This project entailed serious controversy. According to media reports, China Nonferrous Gold paid a consulting company owned by the Tajik president’s son-in-law, Shamsullo Sakhibov, US$2.7 million for the gold mining concession.109


109 Vlad Lavrov et al., Lust For Gold, OCCRP (June 5, 2018), https://perma.cc/C8T6-MWYS.
In another case, a mining project was not the result of a direct commercial contract but rather an unusual swap. Tajik authorities were unsuccessfully seeking an investor for a power plant in the capital, Dushanbe, and they gave China’s TBEA the concession to develop a gold mine in the Upper Kurmag region in exchange of building the power plant. The gold mine concession served as payment for construction of the power plant, and benefits from the mine will go to TBEA until the full amount of its costs in building the power plant is recouped.

Tajikistan is the only republic in Central Asia which hosts a Chinese military base, demonstrating China’s desire to complement its economic interests with military posture. The Tajikistan base may be important to Chinese efforts to include Afghanistan as a part of the BRI project.

IV. Public Support and Criticisms; Assessment of Projects’ Impact

It is hard to get accurate information on public attitudes in Russia toward the BRI project given the controlled media environment in Russia and the massive propaganda efforts of the government. The BRI’s major projects are not subject to public debate or scrutiny of their economic or environmental impact. This is also the case in China.

However, some studies indicate attitudes of the Russian public toward Russia’s relationship with China, which could indirectly suggest views toward the BRI. A joint Chicago Council on Global Affairs-Levada Analytical Center report based on data from multiple surveys finds generally favorable views of the Russian public to the growing bilateral relationship. According to these surveys, three out of four Russians (74%) express a favorable view of China. Nearly six in ten (57%) believe that in 10 years, Russia and China will grow closer. A majority of Russians say their respect for China has grown compared to 10 years ago (56%), while fewer say so about their respect for Russia (42%) and for the United States (46%). More than half of respondents (55%) believe that Russia’s ties to China strengthen Russia’s position in the world. A separate study

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113 Id.
117 Id.
of the Levada Center on xenophobia and nationalism noted an improvement of attitudes toward Chinese individuals.\textsuperscript{118}

Russian government officials have made efforts publicly downplay a threat of Chinese expansion into Russia, which indirectly confirms they are concerned such public fears exist. In a newspaper interview, Foreign Affairs Minister Sergey Lavrov said that fears of “massive Chinese expansion into the Far Eastern regions of the Russian Federation are ‘exaggerated’” and that “[t]he data that already 12 million Chinese citizens live in Siberia raises serious doubts about the reliability.”\textsuperscript{119}

There have been no reports of public demonstrations against Chinese workers or businesses in Russia. This could be explained by several factors, including declining Russian population in its far eastern regions and the increased dependency of those regions on Chinese investments and trade.\textsuperscript{120}

Unlike in Russia, opinion polls conducted in the Central Asian republics indicate that 69\% of Kazakhstanians, 77\% of the Kyrgyz population, and 30\% of people in Uzbekistan are concerned with Chinese acquiring local land. These fears increased after Kyrgyzstan and Tajikistan ceded some territory to the PRC.\textsuperscript{121} Respondents were also asked to rate their confidence that China’s investments “will improve energy and infrastructure in our country.” Only 6\% of surveyed in Kazakhstan and 7\% in Kyrgyzstan answered positively.\textsuperscript{122} Some experts argue that Sinophobia limits the ability of Central Asian countries such as Kazakhstan to borrow money from China at low cost.\textsuperscript{123}

Serious anti-Chinese clashes and protests have periodically occurred in Central Asian republics. In September 2019, right before the first state visit of the new Kazakhstani President, Kassym-Jomart Tokayev, to China, mass protests were held against an intergovernmental agreement establishing 55 agricultural and industrial enterprises in Kazakhstan with Chinese capital. In several provinces across the country, including the capital city of Nur-Sultan, protesters expressed their concern over transferring what they called Chinese “dirty manufacturing” to Kazakhstan.\textsuperscript{124} Later that month, a wave of anti-Chinese protests expanded to include China’s

\textsuperscript{118} Xenophobia and Nationalism, ANO Levada-Center (Sept. 23, 2020), https://perma.cc/FB6D-PAS8.


\textsuperscript{122} Marlène Laruelle & Dylan Royce, Kennan Cable No. 56: No Great Game: Central Asia’s Public Opinions on Russia, China, and the U.S., Wilson Center (Aug. 2020), https://perma.cc/Q8MH-7WMD.


severe oppression of its Uyghur population in China’s Xinjiang region, a Turkic minority that has Central Asian origins and includes some citizens of Kazakhstan.125

In early 2020, new anti-Chinese protests took place targeting plans to build an industrial trade and logistics center in At-Bashi in Kyrgyzstan's Naryn Region, 60 miles from the border city of Torugart.126 Earlier, it had been announced that China would invest US$280 million in the project, which was projected would eventually create 15,000 new jobs for local residents, even though only 70,000 people live in the district. The directorate of the Naryn free economic zone planned to allot 170 hectares of land for 49 years for the construction of a complex of warehouses, terminals, hotels, catering enterprises and a gas station. Hundreds of locals held a series of protests, claiming the project was a “land grab” by China and demanding that the project be cancelled. In order to avoid a conflict, in mid-February the Chinese investor decided to terminate the project and sent a letter to the government of Kyrgyzstan demanding the return of about US$600,000 paid earlier.127

On March 27, 2021, Kazakh authorities detained at least 20 people as demonstrators staged anti-China protests in towns and cities across country. The protesters rallied against China’s increasing influence and economic power over Kazakhstan, and denounced the suppression of Uyghurs and ethnic Kazakhs in Xinjiang.128


127 Id.

South America
South America

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Senior Foreign Law Specialist

SUMMARY

Only six South American countries have joined the Chinese Belt and Road Initiative (BRI) investment program, beginning in 2018. Although many of these countries already had a longstanding investment and trade relationship with China, the BRI framework has provided a boost in funding, mainly in infrastructure and energy, including roads, ports, railways, power plants, and agriculture. In recent years, the BRI has also focused on public health, the digital economy, green development, and other new forms of infrastructure. Most projects in the region have involved a partnership with local companies or joint ventures as part of their involvement in the BRI. Concerns and criticisms of the BRI in Latin America involve the inefficient legal frameworks, regulatory risks, lack of transparency, China’s geopolitical interests, and the effect on domestic political issues.

I. Introduction

The Belt and Road Initiative (BRI) is an investment program launched by China in 2013 to advance regional cooperation, strengthen communications between civilizations, and safeguard world peace and stability.1 The content of the BRI includes financing and investment agreements focused mainly on infrastructure projects in Asia, Europe, Africa, and Latin America. Even though the economic impact of BRI investment is important, its geopolitical consequences cannot be underestimated, because it reinforces China’s capacity to strengthen itself as a regional and global leader.2

Although China has long-standing links with a number of Latin American countries, the region is a relatively recent addition to BRI.3 Since its inception, 19 countries in Latin America and the Caribbean have signed up, including Bolivia, Chile, Ecuador, Uruguay, and Venezuela in 2018 and Perú in 2019.4 However, other countries like, Argentina and Colombia, who are not BRI members, have been recipients of substantial Chinese investment in recent years and have comprehensive bilateral cooperation agreements with China.5

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1 CMS Legal Servs., Belt and Road Initiative: The View from Latin America 4 (2021), https://perma.cc/ES3K-ZZ4F. (CMS Legal Services is a European Economic Interest Grouping that coordinates an organization of independent law firms.)

2 Gabriela Correa Lopez, Inversión Extranjera Directa y la Iniciativa China de La Franja y la Ruta, Metropolitan Autonomous U., Mex., https://perma.cc/3EUS-49KJ.

3 CMS Legal Servs., supra note 1, at 6.

4 Countries of the Belt and Road Initiative (BRI), Green Belt & Road Initiative Ctr. (Jan. 2021), https://perma.cc/7ADM-PF8H.

5 CMS Legal Servs., supra note 1, at 6.
The BRI has vague boundaries, and China’s pragmatic approach allows nations that have not officially join BRI (mainly for political reasons) to benefit nevertheless from China’s investments in the region.6

Under the BRI, China focuses on funding mainly energy development and infrastructure, including roads, ports, railways, power plants, and agriculture.7 In recent years, it has also focused on public health, the digital economy, green development, and other new forms of infrastructure in the so-called China-LAC (Latin American Countries) Health Silk Road and a China-LAC Digital Silk Road, to include 5G networks and fiber-optic cables throughout the world.8

According to China’s Foreign Minister Wang Yi, health care, the digital economy, and green development are the main drivers of future BRI projects in Latin America.9

II. Legal & Policy Framework

In 2017, China began entering into memoranda of understanding (MOUs) within the BRI framework and BRI-related deals with governments in Central America, the Caribbean, and South America.10

Most projects in South American countries have involved a partnership with local companies or joint ventures as part of their involvement in the BRI.11

The official signing of an MOU has been announced by government officials of Ecuador,12 Bolivia,13 and other countries involved. However, the full text of most BRI-related MOUs is not

6 Id.
7 Id. at 8. See also David Sacks, Countries in China’s Belt and Road Initiative: Who’s In and Who’s Out, Council on Foreign Rel. (Mar. 24, 2021), https://perma.cc/6A5H-ERWR.
8 CMS Legal Servs., supra note 1, at 8.
9 Id. at 12.
11 CMS Legal Servs., supra note 1, at 9.
13 China-Bolivia Cooperation: Various Agreements Signed Including MOU on Belt & Road Initiative, CGTN (Sept. 6, 2018), https://perma.cc/FCW7-Z36E.
published. Two exceptions are the MOU signed with Bolivia, which was published in that country’s official gazette,\textsuperscript{14} and the MOU signed with Uruguay.\textsuperscript{15}

The basic structure of the MOUs includes the commitment to adopt policies for coordinating and deepening cooperation. Parties to an MOU agree on the following priorities of the BRI:

- policy coordination,
- facilities connectivity,
- unimpeded trade,
- financial integration, and
- people-to-people bonds.\textsuperscript{16}

These five priorities are guided by the principles of extensive consultation and shared contribution benefits.\textsuperscript{17}

Cooperation under MOUs has taken the form of a joint transportation infrastructure development plan, the building of industrial parks jointly with local companies, the establishment of sister-city networks, trade and investment promotion plans, and financial cooperation between Chinese and local and regional banking and financial development institutions.\textsuperscript{18}

The terms of the MOUs are not legally binding.\textsuperscript{19} However, according to Chris Devonshire-Ellis, an expert in the BRI, “these agreements allow for the parties to formulate interpretations of certain parts of the agreements. . . . [C]ertain elements within the MoU could be interpreted by either party, and especially the Chinese. Such interpretations can, in fact, influence the way in which China views statements made within the MoU, and regard [sic] these as important in future diplomatic talks. In short, the purpose of these non-legally binding MoU is to influence, rather than direct.”\textsuperscript{20}

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{14} Ley 1170 on the Memorando de Entendimiento entre Bolivia y Gobierno de la República Popular China Sobre la Cooperación en el Marco de la Iniciativa de la Franja Económica de la Ruta de la Seda y la Ruta Marítima de la Seda del Siglo XXI, Gaceta Oficial [G.O.], Apr. 25, 2019, https://perma.cc/34A7-T3GK.
\item\textsuperscript{15} Memorando de Entendimiento entre el Gobierno de la República Oriental del Uruguay y el Gobierno de la República Popular China sobre la Cooperación en el Marco de la Iniciativa de la Franja Económica de la Ruta de la Seda y la Ruta Marítima de la Seda del Siglo XXI, Beijin, Aug. 20, 2018, https://perma.cc/4Q4T-EJD5.
\item\textsuperscript{16} Sebastion Ibold, \textit{Cooperation Agreements and MoUs Under the Belt and Road Initiative}, Belt and Road Initiative (Nov. 28, 2018), https://perma.cc/Y2W5-AMKG.
\item\textsuperscript{17} Id.
\item\textsuperscript{18} Id.
\item\textsuperscript{19} Id.
\item\textsuperscript{20} Id.
\end{enumerate}
\end{footnotesize}
According to Devonshire-Ellis, “The MoU appear [sic] largely benign; however, it does contain the seeds of what could, in future, be used as diplomatic tools in terms of insisting that agreements have been reached over certain areas.”

III. Major “Flagship” Projects

China has formulated priority areas of cooperation with Latin America within BRI, as follows:

To achieve this goal, China has proposed five suggestions in order to deepen cooperation in key areas:

- Building of infrastructure by land and sea
- Opening of a large market to encourage trade and investment
- Cooperation in production capabilities
- Ecological development and innovation
- Cultural and research exchange between the countries.

While most of the BRI projects in Latin America concern traditional infrastructure, digital technology is an increasingly important part of the initiative in the region.

Most of the Latin American countries that are part of the BRI already had an established trade and investment relationship with China. For example, Chile and China had a free trade agreement before Chile joined the BRI in 2018. The agreement requires the parties to act in good faith and forbids them from discriminating against each other’s companies. Both countries are obliged to protect investments so that their investments are treated in a way no less favorable than national investors or investors from any other country under equal circumstances. Expropriations, direct or indirect, are prohibited.

Chinese companies are attracted to Chile for investment purposes because of its political and economic stability, sound legal system and strong regulatory institutions, free market economy, and high sovereign credit rating. Foreign investment policies, regulated under Law 20,848, allow foreign investors to remit profits abroad, have access to a formal foreign exchange market,

21 Id.
23 CMS Legal Servs., supra note 1, at 18.
24 Id.
26 CMS Legal Servs., supra note 1, at 24.
27 Id.
28 Id.
29 Id.
and have the right to be governed by the same legal framework as domestic investors.\textsuperscript{30} It also provides for legal protections against antitrust violations.\textsuperscript{31}

Chinese state-owned companies in Chile have a past record of investments in renewable energy and public utilities as well as in natural resources such as lithium.\textsuperscript{32}

In November 2020, State Grid Corporation of China acquired Chilean electricity distributor CGE for US$3 billion. CGE is Chile’s biggest power distribution company and its second-largest transmission company.\textsuperscript{33}

However, tensions arose recently, caused by the negotiations for the so-called Chile-China transoceanic cable. The project would have become the first fiber-optic undersea cable connecting China and Latin America via Chile, and it was considered part of the BRI initiative.\textsuperscript{34} Chile started to receive pressure from the United States to refrain from contracting with the Chinese company Huawei for 5G technology in the project, however, to avoid the risk of China collecting sensitive data.\textsuperscript{35} Chile finally chose a route proposed by Japan for the first fiber-optic cable to directly connect South America and the Asia-Pacific region, with Australia and New Zealand as endpoints instead of Beijing.\textsuperscript{36}

The MOU between Chile and China on the Cooperation within the Framework of the BRI was signed in Beijing in November 2018.\textsuperscript{37} It addresses integration of development policies and programs.\textsuperscript{38} Cooperation is focused mainly on infrastructure plans, including the building of roads, railroads, and bridges, and the development of civil aviation, ports, energy, and telecommunications.\textsuperscript{39} It also aims at expanding cooperation on investment, trade, and industry matters, envisaging the establishment of financial institutions in both countries and the increased use of local currency in investment and trade transactions between them.\textsuperscript{40}

\textsuperscript{30} Ley 20848 Establece Marco para la Inversión Extranjera Directa en Chile y Crea la Institucionalidad Respectiva, Diario Oficial [DO], June 25, 2015, https://perma.cc/J6XM-CLRK.

\textsuperscript{31} CMS Legal Servs., supra note 1, at 24.

\textsuperscript{32} Id.

\textsuperscript{33} Id.

\textsuperscript{34} Id. at 4.

\textsuperscript{35} \textit{How Geopolitics Shaped Chile’s Trans-Pacific Cable Route}, BNAmericas (July 31, 2020), https://perma.cc/4VFX-9PF7.

\textsuperscript{36} \textit{Chile Elige Cable Transpacífico vía Japón Desairando a China}, La Voz de Chile (Aug. 20, 2021), https://perma.cc/K7X3-RN9X.

\textsuperscript{37} \textit{China and Chile Have Signed a Memorandum of Understanding on Cooperation Along the Belt and Road}, China Belt & Road Portal (Nov. 6, 2018), https://eng.yidaiyilu.gov.cn/home/rolling/70834.htm.

\textsuperscript{38} \textit{Chile y China Firma Convenio de Cooperación Sobre la Iniciativa de la Franja y la Ruta}, Mundo Marítimo (Nov. 5, 2018), https://perma.cc/WG6E-HCQH.

\textsuperscript{39} Id.

\textsuperscript{40} \textit{La Franja y la Ruta Chile China, May 2019}, Subsecretaría de Relaciones Económicas Internacionales, https://perma.cc/GH3Y-TV9K.
IV. Public Support/Criticisms; Assessment of Projects’ Impact

China’s announcement of the principles guiding BRI 2.0 was viewed as a response to claims that BRI was disproportionately benefiting the interests of the Chinese state and Chinese companies over those of China’s partners in the BRI. Many BRI participants expressed concerns regarding transparency issues and environmental impacts. A key driver behind BRI 2.0 is a wish to ensure more non-Chinese participation in the BRI.

Inefficient legal frameworks, regulatory risks, lack of transparency, Chinese geopolitical interests, and domestic political issues are the most commonly cited obstacles in BRI projects in Latin America, according to a survey conducted by CMS legal services.

The legal risks in BRI projects derive from the fact that the BRI is based on “soft law,” such as non-binding MOUs and agreements on principles, which do not constitute formal treaties. This format gives flexibility to negotiate and implement projects, but at the same time, it poses risks in terms of project management, consistency, predictability, and transparency.

The potential benefits of BRI investments in Latin America are clearly important. However, according to a survey conducted by the CMS European Interest Grouping, only 14% of Latin American businesses surveyed are considering BRI-related projects, with 6% having considered them in the past, and 80% never having considered them. Concerns are mainly based on the conditions imposed on the Latin American partners regarding compliance with labor and environmental standards, expensive financing, and payments in Chinese currency.

In response to concerns expressed by international participants, China launched BRI 2.0 in 2019 to address many of the points of concern. The principles guiding BRI 2.0 include the following:

- Consultation, joint contribution and shared benefits;
- Spirit of multilateralism;

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41 Id.
42 Id.
43 Id.
44 CMS Legal Servs., supra note 1, at 19, 26-27.
45 Id.
46 Id.
47 Id. at 18.
48 Id.
49 Id.
51 CMS Legal Servs., supra note 1, at 13.
- Pursuing of open, green and clean cooperation;
- Committing to transparency;
- Promotion of sustainable development;
- Adopting widely accepted rules and standards;
- Respecting laws and regulations of participating countries;
- Prioritizing poverty alleviation and job creation; and
- Ensuring commercial and fiscal sustainability of all projects.52

Chinese participants are enthusiastic about BRI 2.0’s increased emphasis on environmental and sustainability issues.53 However, many international participants are not yet ready to take advantage of the opportunities it offers, with some skeptical about the change it promises.54 China’s announcement of the principles guiding BRI 2.0 was viewed as a response to claims that the BRI was disproportionately benefiting the interests of the Chinese state and Chinese companies over those of China’s partners in the BRI.55 Many BRI participants expressed concerns regarding transparency issues and environmental impacts.56 A key driver behind BRI 2.0 is a wish to ensure more non-Chinese participation in the BRI.57

52 Id. at 16.
53 Id.
54 Id.
55 Id.
56 Id.
57 Id.
Western Europe
SUMMARY
The most important Chinese foreign direct investment in Greece that is generally considered associated with the Belt and Road Initiative (BRI) is the Chinese state-owned enterprise COSCO Shipping’s interest in the Port of Piraeus. COSCO’s interest in the Port of Piraeus began in 2008 when a subsidiary of COSCO won a 35-year concession to operate one of the port’s container terminals, which became the Piraeus Container Terminal (PCT). Following the concession, PCT became one of the fastest-growing container terminals in Europe, and in 2019, it became Europe’s fourth busiest container terminal in terms of total container throughput. In 2016, COSCO acquired a majority stake in the Piraeus Port Authority (OLP), which manages all other operations in the Port of Piraeus, including passenger and car terminals, and an additional container terminal. The apparent success of COSCO investments in Piraeus appears to have attracted the interest of Chinese enterprises in other FDI opportunities in various sectors in Greece. The commercial success of Piraeus under COSCO management notwithstanding, there appears to have been some resistance from Greek political leadership and labor groups to the initial concession and subsequent acquisition of the OLP by COSCO. The initial concession agreement was also the subject of proceedings before the European Commission, which found that certain provisions thereof constitute unlawful state aid under European Union law.

I. Introduction

A. Chinese Foreign Direct Investment in Greece

While Chinese foreign direct investment (FDI) in Europe is mainly in the larger European economies (in particular, the United Kingdom, Germany, France, and Italy), it appears that Greece and several Balkan countries have received the bulk of the Chinese investments that are specifically within the scope of the Belt and Road Initiative (BRI), which was officially launched in 2013.¹

Chinese seaport investments in Greece is a subject of major importance for observers of the Chinese Belt and Road Initiative (BRI) due to its commercial and possibly strategic implications. Since 2008, the Chinese state-owned enterprise COSCO Shipping (COSCO) and its subsidiaries have won concessions and made acquisitions that enabled COSCO to be the controlling actor in the operation of Greece’s largest commercial port, the Port of Piraeus, until at least the year 2047. COSCO, which among its subsidiaries has China’s largest container shipping company, has made particularly significant investments in the development of the container terminals in the port, making it one of Europe’s fastest-growing major container ports since 2008 and Europe’s fourth

busiest container port in 2019 in terms of container volume handled. Although they began before the announcement of the BRI, in the relevant literature COSCO Shipping’s investments in the Port of Piraeus are generally considered as being associated with the BRI, particularly the “21st Century Maritime Silk Road” strategic trade objective. The apparent commercial success of the project and its financial scale arguably makes COSCO’s investment in Piraeus the most significant among several other Chinese investments in Mediterranean ports in other countries.

Piraeus functions as a terminus of the land transportation leg of the China-Europe Land-Sea Express Route (LSER), which consists of a railway line that ends in Budapest, Hungary, and stretches through Serbia and North Macedonia. The LSER infrastructure thus directly connects seaports in mainland China to central Europe. Compared to sea routes from China that use the large northern European ports, this route has a relative advantage in terms of travel time: The travel time of a container ship from Shanghai to Piraeus appears to be approximately 22 days, which is 10 days less than the time the ship must sail to a northern European port such as Rotterdam or Hamburg.

Chinese investments in Greece are not limited to the Port of Piraeus. It has been reported that Chinese state-owned enterprises have been making major investments, especially in the energy and transportation infrastructure sectors; some commentators attribute Chinese interest in additional investments to the attraction created by COSCO’s successes in Piraeus.

B. Chinese Investments in Central and Eastern Europe

In 2012, a year before China officially launched the BRI in 2013, China and 16 Central and Eastern European (CEE) countries formed a platform for closer economic and diplomatic relations,
informally calling it the “16 + 1” group. Reportedly, between 2012 and 2018, China invested US$15.4 billion in the 16 + 1 countries in multiple sectors, including transport, energy, manufacturing, and information and communication technologies, with FDI rising in recent years, although still minor relative to investments from large European Union (EU) member states.

Greece eventually joined the group in 2019, transforming it into the “17 + 1.” Although the practical impact of the 17 + 1 group on the inflow of Chinese FDI in CEE countries appears not to be entirely clear, such institutionalization of economic and diplomatic ties between CEE countries appears to have caused some apprehension in certain EU member states about China’s objectives and their implications regarding a cohesive EU foreign policy vis-à-vis China.

II. Legal and Policy Framework

Greece and China signed a memorandum of understanding (MOU) on August 27, 2018, regarding the two countries’ cooperation within the BRI. Thus, major Chinese investments in Greece identified in this report, in particular the port-related investments, predate the MOU and Greece’s joining the 16 + 1 group. As will be explored in Sections III and IV below, major port investments appear to have taken place following general privatization efforts on the part of the Greek Government in the context of the 2007-2008 global financial crisis and the subsequent European sovereign debt crisis. Investments appear to have been made generally in accordance with concession agreements concluded following competitive tendering subject to Greek public procurement law and relevant EU rules.

III. Major Projects

A. The Piraeus Container Terminal Concession and the Privatization of the Piraeus Port Authority: An Overview

In 2008, COSCO Pacific (now COSCO Shipping Ports Ltd., a subsidiary of COSCO Shipping, which is a Chinese state-owned enterprise) won a 35-year concession for the operation of container terminals on Pier II and the future Pier III at the Port of Piraeus.

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8 The official title of the initiative is “Cooperation Between China and Central and Eastern European Countries.” See the platform’s website at https://perma.cc/RBT6-5L5G. The 16 countries include 11 EU member states, Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia; and five non-EU member states, namely, Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia. Greece officially joined the group in 2019.

9 Tzogopoulos, supra note 6, at 6.

10 Rhode, supra note 4, at 406.

11 See Tzogopoulos, supra note 6, at 3-7; Zoltán Vörös, Chinese Expansion in CEE, 60(1-2) Der Donauraum 57, 59 (2020).

12 Mo Jingxi, China, Greece Ink BRI Memorandum, State Council of the People’s Republic of China (Aug. 28, 2018), https://perma.cc/DE7C-B9TF.

13 At the time, the Port of Piraeus included two piers that were capable of handling container ships, namely, Pier I and Pier II. The 2009 concession agreement included operation rights to Pier III, which was to be built by
The concession was awarded following an international tender in which two bids were made; the call for tender required a throughput guarantee of 2 million TEU (20-foot equivalent unit) per annum by the sixth year of the concession and 3.7 million TEU by the eighth year. The initial duration of the concession was determined to be 30 years, with a five-year mandatory expansion conditioned on the concessionaire’s construction and operation of Pier III. The winner of the tender, COSCO Pacific, established a corporation in Greece named Piraeus Container Terminal S.A. (PCT), which it wholly owned, and which became the concessionaire under the agreement. Under the agreement, PCT is expected to pay a nominal sum of approximately €4.3 billion (about US$5 billion) in rent over the 35-year period, which consists of an initial lump sum payment of €50 million (about US$59 million) and periodic payments of a percentage of consolidated revenues plus lease cost calculated based on pier surface area and quay length. The concession agreement, which technically was between the Piraeus Port Authority (OLP), PCT, and COSCO Pacific, was finalized in November 2008 and approved by the Greek parliament in March 2009, whereupon the management of Pier II was transferred to PCT.

The remaining container terminal in the Port (Pier I), the passenger and car terminals, and the ship repair bases located in the port remained under the management of the OLP after the concession, and thus, OLP’s Pier I operation became a direct competitor to PCT. In September 2013, COSCO and the Greek government concluded an additional agreement whereby COSCO would invest an additional €230 million (about US$272 million) for the development of Pier III to increase the capacity of PCT to 6.2 million TEU per annum; this additional investment was accompanied by other investments by COSCO, including the completion of PCT’s railroad link and the construction of a distribution center in the port, of which COSCO owned 50 percent. In return for the promise to invest €230 million, COSCO was relieved of the obligation to pay the

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COSCO. Currently, all three piers are in operation and have their own cranes and facilities that determine their container-handling capacity. See the PCT (Piers II and III) and OLP (Pier I) websites for terminal and pier layouts and specifications at https://perma.cc/FUD7-38G2 and https://perma.cc/J34T-FWG5, respectively.

15 Id.
16 Id. at 37-38.
17 Law 3755/2009, Ephemeris tes Kyverneseos tes Hellenikes Demokratias [E.K.E.D.] 2009, A:52, https://perma.cc/A5QX-CCZ4 (in Greek). Currently, as at the time of the 2009 concession, the entire Port of Piraeus, including container, car, and passenger terminals, ship repair bases, and the surrounding land estate, is leased by the Greek state to the OLP under a 45-year concession agreement signed in 2002 (amended later to increase the concession period from 40 years to 45 years for the purpose of accommodating the COSCO concession). Before the incorporation of the OLP in 1999 as a public company listed in the Athens Stock Exchange, the port was under public management. The OLP was fully state owned until 2016, when a majority stake was sold to COSCO Shipping. For an overview of the port’s management before the concession and the creation of the OLP, see Psaraftis & Pallis, supra note 14, at 29-34.
fees to the OLP in the 2009 concession agreement until the Greek GDP returned to its level before the European sovereign debt crisis took place in 2011.19

Following the European sovereign debt crisis and the bailouts that followed, the Greek state decided to privatize the OLP in 2014.20 COSCO was expected to win the tender because of its experience with the PCT concession. During the same year, Chinese leaders visited Greece and concluded at least 19 agreements involving additional Chinese investments in the country.21

The privatization of the OLP was put on pause when the SYRIZA party led the government in 2015, but eventually the state followed through, and in August 2016, COSCO won a bid for a majority stake in the OLP, making the Port of Piraeus the first major seaport in the EU that was wholly managed by a Chinese company.22 COSCO acquired 51% of OLP for €280.5 million (about US$331.6 million) with an option to acquire an additional 16% by the year 2021 for €88 million (about US$104 million), conditioned on an additional investment of €300 million (about US$344.6 million) made to the port.23 The total value of the deal is reported to be €1.5 billion (about US$1.8 billion) when additional investments and revenue, dividends and interest that the Greek state will collect under OLP’s port concession is taken into account.24 The deal was approved by the Greek parliament in June 2016.25

The deal ran into problems regarding COSCO’s acquisition of the additional 16% stake in OLP when it became apparent that COSCO was unable to fulfill the mandatory investments on which release of the shares was conditioned. It has been reported that a significant portion of the mandatory investment concerned improvements for the port’s cruise ship terminals. Media reports suggest that COSCO suspended work on the improvements following the opposition of local residents to the development on environmental grounds and that COSCO blames the...

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21 “In 2014, Chinese and Greek officials and entrepreneurs signed 20 agreements, worth about seven billion dollars, for Chinese investment into Greece,” id.; “In June 2014, Premier Li Keqiang spent three days in Greece—an exceptional duration for an official trip—which led to no less than 19 cooperation agreements and commercial contracts for a total amount of €3.4 billion,” Le Corre, *Chinese Investments in European Countries: Experiences and Lessons for the “Belt and Road” Initiative*, supra note 3, at 166.


23 Id. at 12.


government for not issuing the necessary permits, causing delays.\(^\text{26}\) Despite the reported optimistic expectations of the parties, it appears that the dispute is not settled.\(^\text{27}\)

**B. Post-Concession Performance of Piraeus Container Operations**

Under the management of COSCO, the PCT’s container capacity and container throughput increased rapidly. In 2008, before the concession, it was estimated that Pier II had a capacity of 1.6 million to 1.8 million TEU per annum, which could potentially be increased by 1 million TEU with appropriate technical upgrades, and that the development of Pier III could add a capacity of 1 million to 3.7 million TEU per annum.\(^\text{28}\) The actual container throughput of the entire port was estimated to be approximately 433,000 TEU in 2008.\(^\text{29}\) After the concession, PCT became Europe’s fastest-growing container terminal in terms of throughput, with its throughput increasing to 2.7 million TEU by 2012, and to 5.2 million TEU by 2019.\(^\text{30}\) In 2020, the throughput was 4.9 million TEU.\(^\text{31}\) It has been reported that, in 2019, €395 billion worth of Chinese goods were transshipped via Piraeus.\(^\text{32}\)

On the other hand, the performance of Pier I, which was operated by OLP, remained relatively stagnant until after COSCO Shipping acquired a majority share in OLP in 2016. OLP is still operating the Pier I terminal. According to OLP financial reports, Pier I’s throughput was approximately 489,000 TEU in 2019 and 541,000 TEU in 2020, increasing from approximately 204,000 TEU in 2016, the year COSCO acquired its shares in OLP.\(^\text{33}\) The 2020 financial report ascribes the increase primarily to COSCO’s contribution in bringing in transshipment volume.\(^\text{34}\)

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\(^\text{27}\) Id.; “We are looking forward to seeing all projects and requirements fulfilled on the part of COSCO in terms of this Master Plan, something that is a precondition for the enhancements of its share to the level of 67 percent as pre-agreed,” Greek Ambassador to China Georgios Iliopoulos, as quoted in Xie Wenting, *Greece Relishes Transparent Chinese Investment, Looks Forward to Stronger Future Partnership: Ambassador*, Global Times (Mar. 25, 2021), https://perma.cc/UM8X-7W7J.

\(^\text{28}\) Psaraftis & Pallis, supra note 14, at 34-35.


\(^\text{32}\) Le Corre, *China’s BRI: Implications for Europe*, supra note 1, at 88.


IV. Public Support, Criticisms, and Assessments of Projects’ Impact

A. Labor Issues

It appears that COSCO faced occasional opposition from labor groups since the beginning of its involvement in the Port of Piraeus. Before the concession of 2008, the civil service personnel and the dockhands working on Pier II appear to have been fully unionized, and they were apprehensive about potential loss of the jobs, overtime pay, and advantageous salary structures that a number of workers reportedly enjoyed (presumably based on legacy contracts from the time the port was under state management).35

The concession agreement appears to have included no provision regarding labor practices, other than the obligation to retain the existing workers of Pier II for the first 18 months of the concession.36 It has been reported that COSCO insisted on a pier “clean” of machinery but also workers, and that OLP received the displaced workers after they were made redundant by the PCT.37 PCT was reported to have directly hired a few hundred Greek personnel while not importing Chinese labor other than a few managerial level staff, and most of the labor appears to have been supplied by third-party subcontractors that hired workers on short-term contracts who were employed by PCT on an “on call” basis.38 The workers of Pier II after PCT took over the operations do not appear to have unionized, and PCT appears to have structured its labor supply in a manner that circumvents any legal requirements necessitating union representation for its workforce.39

Nevertheless, PCT’s labor practices appear to have caused a significant increase in efficiency in the handling of containers at the PCT piers. The managing director of the PCT was reported to have said in 2013 that the performance of Pier II had increased from 12 containers per hour to 44 since COSCO took over.40 PCT’s abandonment of the labor practices based on a collective bargaining agreement that were in force before the concession and were still in force in the OLP-operated pier at the time appears to have reduced PCT’s labor costs by 30% relative to OLP’s

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35 Meunier, supra note 20; “In fact, the annual salaries of a few dockers, gantry crane drivers, straddle carrier drivers and selected other personnel working in the container terminal had reached exorbitant levels,” Psaraftis & Pallis, supra note 14, at 33.


37 Meunier, supra note 20.


39 van der Putten, Chinese Investment in the Port of Piraeus, Greece: The Relevance for the EU and the Netherlands, supra note 18, at 15. Nevertheless, PCT workers were able to obtain some concessions from PCT following a strike, which took place in 2014. See Hatzopoulos et al., supra note 36, at 17.

40 Hatzopoulos et al., supra note 36, at 16.
costs.\textsuperscript{41} In 2013, PCT was employing approximately 270 regular workers, while OLP was employing around 1300.\textsuperscript{42}

It has been reported that parts of the social democratic PASOK party and the port labor unions disputed the legality of the concession, and lawsuits had been filed against it. However, it appears that by 2014, public and political opposition to the concession somewhat subsided in light of the new investments and commercial success of the enterprise, while the official positions of the labor unions remained in opposition.\textsuperscript{43}

\textbf{B. European Commission’s Investigation into Violation of EU State Aid Rules}

In April 2009, Piraeus Prefect Yiannis Michas filed a complaint with the European Commission alleging that the tax exemptions and other favorable provisions included in PCT’s concession agreement constituted unlawful state aid to the concessionaire under EU law.\textsuperscript{44} Subsequently, the Federation of Greek Port Workers and the International Dockworkers’ Council also filed complaints including similar allegations.\textsuperscript{45} The European Commission held that eight favorable measures contained in the concession agreement were in violation of EU law and ordered Greece to recover from the PCT and its parent COSCO the aid improperly granted.\textsuperscript{46}

\begin{itemize}
\item \textsuperscript{41} Id. at 13.
\item \textsuperscript{42} van der Putten, \textit{Chinese Investment in the Port of Piraeus, Greece: The Relevance for the EU and the Netherlands}, supra note 18, at 16.
\item \textsuperscript{43} Id. at 15, n. 50.
\item \textsuperscript{45} Commission Decision (EU) 2015/1827, at paras. 2-3.
\item \textsuperscript{46} Id. art. 3. The European Commission found that the following state aid measures were in violation of article 108(3) of the Treaty on the Functioning of the European Union: “[1] Exemption from income tax on interest accrued until the date of the commencement of operation of Pier III; [2] Right to VAT credit refund irrespective of the stage of completion of the contract object; definition of the notion of ‘investment good’ for the purposes of VAT rules; right to arrear interests from the first day following the 60th day after the VAT refund request; [3] Loss carry-forward without any temporal limitation; [4] Choice among three depreciation methods concerning the investment costs of the reconstruction of Pier II and the construction of Pier III; [5] Exemption from stamp duties on the loan agreements and any ancillary agreement for the funding of the project; [6] Exemption from taxes, stamp duties, contributions and any rights in favour of the State or third parties on the contracts between the creditors of the loan agreements under which are transferred the obligations and rights resulting therefrom; [7] Exemption from stamp duties for any compensation paid by PPA [i.e. OLP] to PCT under the Concession contract, which is outside the scope of the VAT code; [8] Protection under the special protective regime for foreign investments.” Id. art. 1. The seventh finding on stamp duties was amended after Greece showed that certain types of stamp duties were generally abolished prior to the concession agreement. See Commission Decision 2018/612. An appeal made by Greece against the European Commission’s original decision was rejected by the EU general court. Case T-314/15, Greece v. Comm’n, Dec. 13, 2017, https://perma.cc/RE6N-W8NY (unpublished decision, in French).
\end{itemize}
C. Impact on Greek Foreign Relations

Some commentators have suggested the existence of a relationship between Chinese FDI in Greece and the Greek government’s successful efforts to block the EU from criticizing China’s human rights practices in the UN Human Rights Council in 2017. Greece (together with Croatia and Hungary) has also played a role in the watering down of an EU statement responding to an arbitral decision of a tribunal based in The Hague that was generally considered to be against China’s interests in a case brought by the Philippines regarding disputes in the South China Sea, preventing an explicit call in the statement for China to abide by the ruling.

D. Commentary on Strategic Implications

Some commentators have pointed out the port’s strategic importance for military purposes and its implications for Greece’s defense and for the military forces of Greece’s allies that could expect to rely strategically on the Port of Piraeus.

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48 van der Putten, Greece: Piraeus and the Maritime Silk Road, supra note 5, at 19.

49 Hillman & Sacks, supra note 46, at 64. The report also points out the strategic threat of the proximity of the Port of Piraeus to the three undersea cables on which Greece depends entirely for intercontinental electronic communications. Id. at 112. See also Marshallee E.M. Clarke, China’s Global Port Expansion: A Maritime Security Threat to U.S. Geographic Combatant Commands (Mar. 24, 2020) (unpublished paper, Naval War C.), https://perma.cc/WT4T-62BE.
Luxembourg
Nicolas Boring
Foreign Law Specialist

On March 27, 2019, Luxembourg signed a bilateral memorandum of understanding (MOU) with China to participate officially in the Belt and Road Initiative (BRI).¹ The text of this MOU does not appear to be publicly available, but Luxembourg Prime Minister Xavier Bettel has stated “the signing of this agreement constitutes a new phase in the development of Sino-Luxembourger relations and of our cooperation on an economic, commercial, academic and cultural level, as well as on research and development.”² In a press conference held on March 29, 2019, Chinese Foreign Ministry spokesperson Geng Shuang declared that “the signature between the two countries of the memorandum of understanding on cooperation for the joint construction of the Belt and Road marks a new step in our friendly cooperation,” adding that “China will collaborate with Luxembourg to reinforce their pragmatic cooperation in various domains, reinforce their ties, and realize new progress in their friendly cooperation within the framework of the Belt and Road to secure more advantages for the people of both countries.”³ Luxembourg’s participation in the BRI is interesting because, contrary to many other countries, it is not destined to receive significant investment in its transportation infrastructure.⁴ Instead, the agreement seems to focus on financial services, with Luxembourg seeking to cement its status as an international financial center—in particular for green finance—and China seeking to conduct more financial operations in continental European hubs such as Luxembourg rather than London in the wake of Brexit.⁵ On the same date as Prime Minister Bettel and Chinese Premier Li Keqiang signed the MOU regarding the BRI, four agreements were signed by the Luxembourg Stock Exchange with the Shenzhen Stock Exchange, the Shanghai Stock Exchange, the Shanghai Clearing House, and the Bank of China.⁶ While these agreements do not appear to be publicly available, reports indicate that the agreements between the Luxembourg Stock Exchange and the Shenzhen and Shanghai Stock Exchanges aim to use Luxembourg’s expertise in the field of green finance to help China’s energy transition.⁷ Meanwhile, the agreement with the Shanghai Clearing House would allow the Luxembourg Stock Exchange to connect the Grand Duchy to the Chinese

¹ Luxembourg, a Member of the BRI, One Belt One Road Europe (Apr. 1, 2019), https://perma.cc/W6F5-X3W9 (in French); Bettel signe plusieurs accords avec la Chine, L’Essentiel (Mar. 28, 2019), https://perma.cc/GK8Z-WLLD.
⁴ Luxembourg, a Member of the BRI, supra note 1.
⁵ Id.
⁶ Id.; Ministère d’Etat, Le gouvernement luxembourgeois, supra note 2.
⁷ Luxembourg, a Member of the BRI, supra note 1.
interbank market, while the agreement with the Bank of China would make the latter an intermediary between the Chinese and European markets.\(^8\)

It may be worth noting that, while the MOU appears to focus mostly on financial services, Luxembourg has also seen some development in the realm of transportation. On April 4, 2019, a train left the multimodal center of Bettembourg-Dudelange, in Luxembourg, reaching Chengdu, China, approximately 15 days later, after a trip of approximately 6,200 miles.\(^9\) Six months later, on October 19, 2019, a train containing automobile parts, electronic components, textiles, and consumer goods left Chengdu for Luxembourg.\(^10\) This rail link offers an opportunity for Luxembourg to become a major actor in the logistical sector of Europe, with Minister of Mobility and Public Works François Bausch stating, “we can deliver goods delivered to Bettembourg [multimodal station] towards Southern Europe as well as Western Europe.”\(^11\) Initial plans to implement a weekly connection between the two countries have been revised downwards to once or twice a month, in part because of the difficulty of gathering a sufficient volume of merchandise on the European side, but also due to competition from similar projects linking other European cities to China.\(^12\)

\(^8\) Id.


\(^11\) Id.

\(^12\) Id.
SUMMARY

Sweden is not part of the Belt Road Initiative (BRI). However, China is one of the largest foreign direct investors in Sweden, with about 36 billion SEK (about US$4.25 billion) worth of investments in 2018. In addition, Sweden is one of the members of the European Union that received the most foreign direct investment from China in 2019.

China has expressed a desire to create a “Polar Silk Road” transportation route into and through the Polar Region, including the Nordic countries Finland, Norway, and Sweden. Currently, no initiatives with respect to the Polar Silk Road have been implemented in the Nordic countries.

Chinese investment projects have been scrapped in Sweden and the Nordic countries because of public criticism.

The Swedish government has been reluctant to endorse the BRI or a Polar Silk Road, and government agencies, in particular the Swedish Armed Forces and the Security Police, have argued against Chinese investments in Sweden. On the other hand, Swedish trade and business interest groups have argued in favor of Sweden becoming involved in the BRI.

I. Introduction

A. Chinese Direct Investments in and Relation to Nordic Countries

Sweden, as is true of all the Nordic countries, is not a BRI member state. However, China is a large exporter of goods to all the Nordic countries, and, in particular, in 2019 both Finland and Sweden ranked among the top five countries in the European Union (EU) receiving Chinese foreign direct investment. Chinese foreign direct investment in Sweden amounted to close to 36 billion SEK (about US$4.25 billion) in 2018. According to the Swedish government, this was largely a result of Geely investments in AB Volvo, totaling about 31 billion SEK (about US$3.5

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Sweden, like all Nordic nations, is a founding member of the Asian Infrastructure Investment Bank (AIIB).4

B. Polar Silk Road Initiative

In January of 2018, the Chinese government announced that it was establishing a “Polar Silk Road” initiative to create Arctic transportation routes.6 No projects have been initiated yet, but China previously expressed interest in investing in transportation routes in northern Finland, Sweden, and Norway. In particular, China has reportedly shown interest in a proposed railway from Rovaniemi, Finland, to Kirkenes, Norway, which would give China access to the Norwegian arctic coast.7 The regional council in Lapland, Finland, scrapped that project in May of 2021, following criticism from indigenous groups.8

The Nordic governments, including Sweden, have not publicly expressed any interest in a Polar Silk Road. On the contrary, the Swedish Foreign Affairs Committee of the Swedish Parliament has expressed support for the “government ambition that Sweden together with like-minded countries and the EU should cooperate and act jointly in response to the issue of the challenges and possibilities that an increased Chinese presence globally entails.”9

C. Huawei Banned from 5G Network Bid

In 2020, the Swedish Post and Telecommunication Authority (PTS) excluded Huawei products from a national bid to create its 5G network, citing national security.10 Huawei brought the matter to court, and on June 22, 2021, the Administrative Court declared that, based on the national security interest, the limits on the bid were both proportional and legal.11 In its decision, the court pointed out that the Swedish Security Police (Säkerhetspolisen, Säpo) had designated China as one of the most severe threats with respect to foreign espionage.12 The court determined that

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4 Id.
10 See Stockholm District Administrative Court Stockholm, Cases 24231-20 and 2378-21, https://perma.cc/WXP8-9N7F.
11 Id.
12 Id. at 27.
Huawei’s relationship to the Chinese state was such that the government could pressure Huawei to take measures against Sweden or Swedish interests. Thus, PTS had correctly found that Huawei “could be assumed” (kunde antas) to be a national security risk. Invocation of similar national security concerns in other national projects, in particular in relation to necessary infrastructure (samhällsviktig infrastruktur), could cause the Swedish government to exclude Chinese companies from other public bids.

II. Policy Framework

The Swedish parliament and government publicly are largely in agreement that the relationship with China should be managed jointly with other Nordic and European Union countries. In a 2019 government report, the government described Chinese direct investments related to the BRI as investments that “may contribute to meet the global demand for investments in infrastructure. At the same time, there are several clear examples that China is using BRI as a way to export its industrial excess capacity, and that local and other country alternatives are competed out by attractive financing solutions that mix financial and export credits and are sometimes accompanied by demands for political counter measures from the recipient nations.”

Swedish government agencies, in particular the Swedish Armed Forces and the Security Police, have warned against foreign direct investment from China. For example, the Swedish Defense Research Agency issued a report in 2020 where it stated that Chinese foreign direct investment “can have negative consequences for Swedish security” and “be a security risk in connection to an investment.” Similarly, the Swedish Security Police recommended against Chinese involvement in infrastructure projects such as the 5G network (see Section I.C. above) and flagged Chinese espionage in Sweden more broadly.

III. Major “Flagship” Projects

As Sweden is not a party to the BRI and has yet to commit to the Polar Silk Road Initiative, there are no major flagship projects in Sweden currently.

IV. Public Support/Criticisms

We have found no public opinion polls or surveys specifically addressing Sweden-China relations or future BRI or Polar Silk Road participation. However, public objections to Chinese

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13 District Administrative Court Stockholm, at 29, citing FOI Memo 6698, 2019-03-22 at page 11, on file with author.
14 Stockholm District Administrative Court Stockholm, supra note 10, at 35.
15 Id. at 55. See also FOI memo 6698, 2019-03-22, 3, on file with author.
17 Magnus Petersson (red), Utländska direktinvesteringar i skyddsvärda verksamheter En studie av risker, branscher och investerare, FOI-R--5069—SE (Nov. 2020), at 3, on file with author.
direct investments have reportedly stopped such investments from going forward in Sweden. For example, in 2018, a Chinese investment in a deep harbor in Lysekil was canceled, following objections from the local community.\(^{19}\) Similarly, in neighboring Finland, the Rovaneimi-Kirkenes railroad plan was scrapped following public objection.\(^{20}\)

Other groups have argued that Sweden should participate more actively in Chinese BRI investments. For example, in 2017, researchers at the Institute for International Affairs called the Swedish response to the BRI “too reactive and too passive.”\(^{21}\) The researchers called for increased collaboration between the Swedish government and the Swedish business community in order to maximize the possibilities associated with the BRI.\(^{22}\) Similarly, the Swedish Trade and Investment Council (Business Sweden) published a report on the challenges and possibilities of the BRI for Swedish companies in 2019.\(^{23}\)

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\(^{20}\) Liito, supra note 8; Nilsen, supra note 8.


\(^{22}\) Id.

SUMMARY

China is Switzerland’s third most important trading partner, with a bilateral trade volume of 36 billion Swiss Francs (CHF) (about US$40.1 billion). In 2014, a free trade agreement between China and Switzerland entered into force. In 2016, Switzerland and China agreed to an “innovative strategic partnership,” with strategic dialogues held every year. In April 2019, a memorandum of understanding focused on financial and economic matters related to the Belt and Road Initiative (BRI) was signed to “further deepen the innovative strategic partnership between Switzerland and China and to expand areas of collaboration in trade, investment and finance for projects in third countries along the Belt and Road Initiative.” The Swiss China Strategy 2021-2024 welcomes the opportunity for closer connectivity between Europe and China, but adopts a cautious approach toward the BRI as there are “risks as well as opportunities.” No major flagship projects with Swiss cooperation were identified.

I. Introduction

Since the 1980s, the bilateral relationship between Switzerland and China has been strengthened in all areas and covers diverse topics such as politics, human rights, business, the labor market and employment, science and technology, education, environment, migration, and culture. Since 2010, China has been Switzerland’s most important trading partner in Asia. In 2019, the bilateral trade volume amounted to 36 billion Swiss Francs (CHF) (about US$40.1 billion), making it Switzerland’s third most important trading partner overall. In 2014, a free trade agreement entered into force, which improved access to the Chinese market for Swiss companies. In 2016, Switzerland and China agreed to an “innovative strategic partnership,” with strategic dialogues held every year. However, companies continue to face challenges in the Chinese market. In 2019, China held capital of CHF 14.9 billion (about US$16.6 billion) in Switzerland, whereas total Swiss direct investments in China at the end of 2019 amounted to CHF 22.5 billion (about US$25.1 billion).

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2 Id.
3 Id. at 16.
4 Id. at 15; Free Trade Agreement Between the Swiss Confederation and the People’s Republic of China, July 6, 2013, https://perma.cc/6QBS-HQGA.
5 FDFA, supra note 1, at 15.
6 Id. at 17.
7 Id.
In April 2019, a memorandum of understanding (MoU) focused on financial and economic matters related to the Belt and Road Initiative (BRI) was signed between China and Switzerland. Its objective is to “further deepen the innovative strategic partnership between Switzerland and China and to expand areas of collaboration in trade, investment and finance for projects in third countries along the Belt and Road Initiative.”

We were unable to identify specific data on external public debt accrued to China resulting from BRI agreements within the framework of the MoU.

II. Legal and Policy Framework

According to the 2019 MoU, cooperation between China and Switzerland should be enterprise-led, market-based, in compliance with international practices and norms, as well as the laws and policies of the countries benefitting from such cooperation. This cooperation should be based on economic viability and long-term sustainable growth, social and environmental sustainability, mutual benefits, consensus, inclusiveness, open and non-discriminatory procurement processes and a level playing field, in line with national development priorities as devised by the countries concerned and with the common pursuit of the UN Sustainable Development Goals.

The press release announcing the collaboration stated that cooperation will be based on the following five principles:

(1) Private capital for private projects,

(2) Sustainable handling of debts,

(3) Consideration of social impacts,

(4) Environmental protection criteria, and

(5) Transparency.

The MoU invites companies from both countries to jointly explore opportunities for third-party market cooperation and encourages financial institutions to explore financing for such projects.

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9 Id. at 2.

10 Id. at 2, no. 2.


12 MoU, supra note 8, at 2, nos. 3, 4.
The Chinese and Swiss governments aim to support these efforts by helping the establishment of platforms to exchange project information, identify specific areas of mutual interest, and facilitate cooperation. Where appropriate, the governments may participate themselves.\footnote{Id. no. 5.} In addition, the MoU envisages the establishment of a “Belt and Road Initiative competence-building platform” in Switzerland for high-level officials and executives from Switzerland, China, and countries in which BRI-related projects are carried out with a focus on risk management, project governance, and international standards.\footnote{Id. no. 6.} Lastly, the creation of a Switzerland-China third-party market cooperation working group to encourage third-party market cooperation between enterprises from both countries is proposed.\footnote{Id. no. 7.}

III. Major “Flagship” Projects

No major flagship projects with Swiss cooperation were identified. However, in January 2020, the Chinese ambassador to Switzerland stated in an interview with the Swiss newspaper Neue Zürcher Zeitung that “Swiss firms are deeply involved with the Belt and Road Initiative, for example ABB, Schindler, and Nestlé. In addition, the bank Vontobel has established a fund for Belt and Road projects together with the China Construction Bank. I have complained to the Swiss CEOs. They concentrate on their own projects, but do not talk about them in Switzerland. This is an important reason why the Swiss media and public does not know much about the Sino-Swiss cooperation.”\footnote{Das Interview vom Botschafter Geng Wenbing mit der renommierten Neue Zürcher Zeitung, Embassy of the People’s Republic of China (Feb. 17, 2020), https://perma.cc/65PK-73QM.}

IV. Public Support/Criticisms

The Swiss China Strategy 2021-2024 welcomes the opportunity for closer connectivity between Europe and China, but adopts a cautious approach towards the BRI. It states that

[j]n view of its manifold relations with China, Switzerland has an economic interest in enabling a level playing field for Swiss companies to participate in BRI projects. Swiss actors can contribute to the development of sustainable infrastructure in the regions covered by the BRI. At the same time, Switzerland intends to systematically raise its concerns regarding compliance with international standards, especially with regard to environmental impact and working conditions, human rights, the rule of law, sustainable project financing and transparency. This constructive while cautious approach determines Switzerland’s actions in regard to cooperation in the context of the BRI.\footnote{FDFA, supra note 1, at 24.}
On December 5, 2018, China and Portugal signed 17 bilateral agreements during a visit of Chinese President Xi Jinping to the country. According to a press release issued by the office of the Portuguese Prime Minister, the agreements were mostly in the areas of finance and business, including a memorandum of understanding on cooperation within the framework of the “Silk Road” and 21st century “Maritime Silk Road” initiatives. The press release stated that this MOU establishes arrangements for bilateral cooperation within the scope of the initiative, covering a wide range of sectors, with emphasis on connectivity and electric mobility.

It was not possible to determine further details of the MOU, as it is not available to the public, or, it seems, to members of the Portuguese Assembly of the Republic.

A study of Chinese investment in the European Union, particularly in Portuguese maritime assets, mentions that one of its main objectives is to extend the Belt and Road Initiative to the “Portuguese Sea.” The study states that China considers Portugal an important link between the terrestrial and Maritime Silk Roads, and this is the reason why bilateral cooperation in this area became so important. The Port of Sines and the archipelago of the Azores are the points that have attracted most interest from China.

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2 Id.

3 On January 9, 2019, deputies Rubina Berardo and Fernando Negrão of the Portuguese Assembly of the Republic requested that the Prime Minister make available to the Assembly the full contents of the 17 agreements signed between Portugal and China. Assembleia da República, Requerimento 44/XII(4a.)-AC (Jan. 9, 2019), https://perma.cc/VYA9-496Y.


5 Id.
The United Kingdom (UK) does not currently appear to have any Belt and Road Initiative (BRI) projects in its territory. It has not signed a memorandum of understanding with China to participate in the BRI due to concerns about certain aspects of the BRI, particularly about debt sustainability and concerns over whether China will maintain international standards. It is involved in the BRI by encouraging UK companies to finance these projects, and it is working to ensure the economic interests of the UK are not left behind and that any participation is structured in a way that does not contravene the UK’s strategic interests.

I. Introduction

While the United Kingdom (UK) recently described China as “the biggest state-based threat to the UK’s economic security,” the two countries continue to have significant trade ties, which have grown exponentially since 1999. China is currently one of the UK’s largest export markets and source of imports outside of the European Union (EU), second only to the US. In 2019, China was the UK’s sixth largest export market and the fourth largest source of imports, with UK exports amounting to £30.7 billion (approximately US$43.2 billion) and the import of Chinese goods and services into the UK amounting to £49 billion (approximately US$69 billion). UK businesses in China have found the most success in the consumer, pharmaceutical, and automotive sectors, along with financial services, although it should be noted that the export of UK financial services to China only accounted for 0.4% of UK financial exports in 2018.

2 UK Businesses Urged to Benefit from Belt and Road Opportunities, Gov.uk (June 28, 2018), https://perma.cc/NHS6-GP2R.
5 Id. at 18.
In 2017, Chancellor of the Exchequer Philip Hammond welcomed the BRI as an opportunity to strengthen ties between China and the UK, proclaiming that the UK is a “natural partner in the West,”6 and that this is the “golden era” of UK–China relations.7

The UK has regularly engaged with China at the senior level about the BRI as it has developed.8 In 2018, the China Britain Business Council estimated that the UK could realize gains of £1.8 billion (approximately US$2.53 billion) annually from the BRI, which will “cover 65 countries, accounting for around 63% of the world’s population and 29% of global GDP.”9 The UK aims to ensure that it is considered the “premier global centre for funding and facilitating BRI projects.”10 The UK believes the BRI has the potential to accelerate trade and economic development, but has also expressed concern over the social, environmental, and debt sustainability risks that it poses to countries and communities in which projects take place. It wants any involvement in the BRI to “maximize the development benefits and minimize the risks of this initiative.”11 The UK’s Independent Commission for Aid Impact notes that, for UK companies to benefit from commercial opportunities provided by the BRI, international environmental, social, and governance standards must be met. It has acknowledged that “commercial and other incentives may work against China’s adoption and implementation [of these standards].”12

While expressing enthusiasm for the economic prospects offered by the BRI, the government has also acknowledged that China is a “systemic competitor”13 and is attempting to reconcile the fact that “China is an authoritarian state, with different values to ours”14 against the many benefits that engaging with the country brings. A House of Commons Committee concluded that China’s increasing power and international assertiveness is likely to be the most significant geopolitical factor of the 2020s. The scale and reach of China’s economy, size of its population, technological advancement and increasing ambition to project its influence on the global stage, for example through the Belt and Road Initiative, will have profound implications worldwide. Open, trading economies like the UK will need to engage with China and remain open to Chinese trade and investment, but they must also protect themselves against practices that have an adverse effect on prosperity and security.

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9 UK Businesses Urged to Benefit from Belt and Road Opportunities, supra note 2.

10 Baroness Fairhead, Why China’s Belt and Road Offers the UK Huge Opportunities (May 10, 2018), https://perma.cc/VL3H-QRPZ.

11 HM Gov’t, supra note 1, at 63.


13 HM Gov’t, supra note 1, at 63.

14 Id.
Cooperation with China will also be vital in tackling transnational challenges, particularly climate change and biodiversity loss.\textsuperscript{15}

The UK government has acknowledged China’s economic status and the delicate situation that arises from conducting international relations with the country. It has stated

China will contribute more to global growth than any other country in the next decade with benefits to the global economy. China and the UK both benefit from bilateral trade and investment, but China also presents the biggest state-based threat to the UK’s economic security. We will require a robust diplomatic framework for this relationship that allows us to manage disagreements, defend our values and preserve space for cooperation where our interests align.\textsuperscript{16}

The UK government has stated that it intends to “continue to pursue a positive trade and investment relationship with China, while ensuring our national security and values are protected.”\textsuperscript{17}

II. Legal & Policy Framework

A. Government Policy

The government aims to ensure that any “engagement with the BRI is consistent and aligned with UK strategic objectives”\textsuperscript{18} and is “focused on practical steps and collaboration to help ensure that projects are delivered in line with the highest standards in order to deliver sustainable development outcomes and deliver opportunities for UK and international businesses.”\textsuperscript{19}

The UK’s National Security Council (NSC), a cabinet committee chaired by the prime minister that is responsible for national security matters,\textsuperscript{20} sets the “overall strategic approach towards China.”\textsuperscript{21} It “co-ordinates across Government and is central to ensuring an effective and strategic policy which promotes UK values and interests.”\textsuperscript{22} The NSC’s strategy on China is a national security matter and thus not publicly released, but the government has stated that

[the] broad areas of focus are: trading safely to ensure maximum economic benefit to the UK while protecting national security; China’s global role and the rules based international system; countering security threats; Hong Kong; human rights; people to people links; and

\textsuperscript{15} Id. at 26.
\textsuperscript{16} Id. at 63.
\textsuperscript{17} Id. at 22.
\textsuperscript{19} Id. at 3.
\textsuperscript{20} National Security Council, Gov.uk, https://perma.cc/QH6C-CTQX.
\textsuperscript{22} Id.
digital and technology. Underpinning these areas of work is a further strand to increase capability and expertise on China across government.23

The government has placed the Foreign, Commonwealth and Development Office (FCDO) as the lead “on the bilateral, foreign policy and geo-strategic strands of our China relationship.”24 This applies to BRI activities, and the intent is to ensure that the UK’s strategic interests are considered in any agreements.

1. Memorandum of Understanding for the Belt and Road Initiative

While the UK and China are significant trade partners, and there are significant economic benefits that may arise from being part of the BRI, the UK has not signed a memorandum of understanding (MOU)25 with China to participate due to concerns about certain aspects of the BRI, notably debt sustainability,26 and concerns over whether China will maintain international standards and provide a “clear, transparent tendering process.” 27 The UK believes that if these standards are met, it will “mitigate the risks of indebtedness, adverse social and environmental impacts, and unbalanced development.”28

A House of Commons committee agreed with the government’s decision to refrain from signing an MOU for the BRI, noting that the BRI “represents a foreign policy ambition with repercussions for other states, as well as both positive and negative implications for UK interests.”29 Specifically, the committee found:

[T]he Belt and Road Initiative, in the form it is currently being pursued, raises concerns regarding UK interests. These include the risk that Chinese investment will encourage countries to strike deals that undermine international standards that the UK seeks to promote, or that leave countries with unsustainable debt that undermines development and political stability. There is also a risk that the promise of Chinese investment, or the coercive leverage of indebtedness to China, could encourage countries to join China’s efforts to undermine certain aspects of the rules-based international system, and could weaken the alliances and partnerships that help preserve international peace and prosperity. We therefore commend the Government’s decision not to sign a Memorandum of Understanding in support of the Belt and Road Initiative on the basis of these risks. Further, the Government is right not to accede to China’s request for the UK to give what would be in effect a blanket endorsement of a key pillar of its foreign policy.30

23 Id. at 14.
24 Id.
25 Countries of the Belt & Road Initiative (BRI), Green Belt & Road Initiative Ctr., https://perma.cc/7LNG-WQVE.
27 Id.
28 Id.
29 Id. ¶ 33.
30 Id. ¶ 35.
The committee further determined that the BRI “is likely to have geopolitical effects that are as important as, and potentially more important than, its economic impact.” The committee highlighted that the UK’s strategic interests, values, and national security must be considered along with any economic benefits before it engages in projects in the BRI. In reaching this conclusion, the committee emphasized that the government response to the BRI must be lead and coordinated by the FCDO to ensure that all other government departments with an interest comply with the UK strategy. The committee stated the “FC[D]O’s job [is] to identify those projects in which UK involvement will serve the whole spectrum of UK interests. The FC[D]O’s role in providing such strategic context and advice on BRI projects should be explicitly acknowledged in the UK’s China strategy.”

The committee ultimately concluded, in line with government policy, that “Chinese-led investment in foreign countries, and particularly developing countries, need not inherently conflict with British interests.” It further recommended that the government assess any BRI projects on a case-by-case basis and “refrain from expressing an overarching view on the merits of the initiative as a whole.” The FCDO has stated, “[o]ur intention remains to work with China in ways which support mutual and global benefits, fully in line with the international rules based system.”

The UK has expressed concern over the impact Chinese investment has in areas that it considers to be fragile or those that are affected by conflict. The UK had to adapt its policy in response to the China-Pakistan Economic Corridor, which was initially presented by the Department for International Trade as a “huge opportunities for Pakistan and the wider region, bringing economic development, greater connectivity and regional security.” In contrast, the FCDO stated that it “does not support commercial projects in disputed territories.”

2. Belt and Road Initiative Strategic Oversight Board

The Belt and Road Initiative Strategic Oversight Board was established in 2017. The board has cross-party membership and is led by the head of the China Department at the FCDO. The board

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31 Id. ¶ 34.
32 Id. ¶ 33.
33 Id. ¶ 33.
34 Id. ¶ 35
35 Id. ¶ 32.
36 Id. ¶ 35.
40 Indep. Comm’n for Aid Impact, supra note 12, at 7.
meets quarterly, or when needed, to monitor the BRI, consider proposals for BRI activities, and help to provide a coordinated response by the UK “on the bilateral, foreign policy and geo-strategic strands of our China relationship, how this relates to our other global partners and international organisations, as well as the rules-based system.” The board does not directly engage in any BRI projects, but instead ensures that other departments considering engagement with the BRI are aware of the wider spectrum of UK interests, the strategic context, and priorities such as adherence to international standards. This applies to both engagement with specific BRI projects and to HMG activities intended to influence BRI at a more systemic level, such as engagement with Chinese banks and State Owned-Enterprises. The Board ensures that proposed BRI-related activities can be considered on a case-by-case basis and that advice to Ministers on HMG engagement can take full account of UK interests, the broader strategic projects, and whether projects will contribute to sustainable prosperity outcomes.

As is normal practice for internal government meetings, minutes are not published, and we have been unable to locate further information about the work of this board.

3. Financial Assistance

While development cooperation with China is controversial, the UK continues to consider China a developing country, and the UK is thus able to provide it with official development assistance (ODA), although this ODA occurs in government departments outside of the Department for International Development, as its focus is to reduce poverty. The UK is using both ODA-funded and non-ODA activity to engage with the BRI, with both “aim[ing] to maximise the development benefits and minimise the risks of this initiative.” Notably:

UK government departments have used between £2 million and £3 million [approximately US$2.8 million and USD$4.1 million respectively] annually to engage Chinese actors on infrastructure standards. This spending has supported the Prosperity Fund in implementing a pilot project in Kenya, which is promoting the application of ESG standards to a road construction project involving Chinese and Kenyan companies, and in training Chinese infrastructure companies and researching their practices in relation to

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42 Id. at 14.
45 Belt and Road Initiative: China, Question for the Department for Business, Energy & Industrial Strategy, supra note 43.
46 Indep. Comm’n for Aid Impact, supra note 12, at ¶ 1.2, 7.4.
47 Id.
48 Id. ¶ 5.10.
issues such as community consultation, gender and inclusion. It has also supported DFID in commissioning research on the risks and opportunities of the BRI.49

4. UK Export Finance

The government is encouraging UK companies to engage in the BRI through the Department for International Trade, which is providing financial backing from UK Export Finance with £25 billion (approximately US$35 billion) worth of export support available for UK companies, along with a variety of other export support measures.50 During the 10th UK-China Economic and Financial Dialogue, UK Finance signed a memorandum of cooperation with the Export-Import Bank of China to help support Chinese and UK exports in third-party markets. This was welcomed by both countries during the dialogue, and “China welcome[d] UK financial institutions to actively participate in the Belt and Road Inter-bank Regular Cooperation Mechanism initiated by Industrial and Commercial Bank of China, and enhance third market cooperation under this framework.”51

B. Government-Led Agreements

The UK has been the impetus behind a number of agreements with China, and, while not being a signatory to the BRI itself, the UK has signed MOUs that address other areas. Some of these agreements are discussed briefly below.

1. MOU on Infrastructure Cooperation

In 2019, the Department for International Trade and the National Development and Reform Commission of the People’s Republic of China signed an MOU on infrastructure cooperation in third-country markets between UK and Chinese companies.52 This MOU is a technical agreement that facilitates cooperation between UK and Chinese firms on overseas projects to ensure they are “delivered in line with the highest economic, environmental, social and financial standards in order to deliver sustainable and inclusive development outcomes and deliver real opportunities for UK and international businesses.”53 The MOU aims to “facilitate market-led cooperation in third markets in line with G20 Principles for Quality Infrastructure Investment and the Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative.”54

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49 Id. ¶ 5.11.
50 UK Businesses Urged to Benefit from Belt and Road Opportunities, supra note 2.
53 Press Release, Dep’t for Int’l Trade et al., Big Wins for British Businesses as Vice Premier Hu Chunhua Visits, (June 17, 2019), https://perma.cc/5ZJN-A7FP.
2. Belt and Road Financing Guiding Principle

The UK and China have both agreed to implement the Belt and Road Financing Guiding Principle. This aims to “promote cooperation on investment and financing under the Belt and Road Initiative.”

3. UK-China Green Finance Centre

The UK government supports the UK-China Green Finance Centre (UKCGFC), which aims to “enhance UK and China green finance cooperation to accelerate the global transition to an environmentally sustainable future.” The UKCGFC intends to achieve this aim by providing leadership on green finance and investment and connecting UK and Chinese firms to green finance and investment opportunities. It also is advocating for regulatory reform to allow for further green financing in both the UK and China.

4. Green Investment Principles

The City of London Corporation established a Greening the Belt and Road Investor Alliance (GBRIA) in 2017 to set green infrastructure standards for BRI projects. Work by the GBRIA led to the launch of the Green Investment Principles, on to which financial service companies may sign. The Green Investment Principles are seven principles that aim to ensure low carbon, sustainable projects and minimize the environmental impact of these projects.

The GIP includes seven principles at three levels, i.e. strategy, operations, and innovation:

- Principle 1: Embedding sustainability into corporate governance
- Principle 2: Understanding Environmental, Social, and Governance Risks
- Principle 3: Disclosing environmental information
- Principle 4: Enhancing communication with stakeholders
- Principle 5: Utilizing green financial instruments
- Principle 6: Adopting green supply chain management
- Principle 7: Building capacity through collective action

57 Id.
59 The Green Investment Principle (GIP) for the Belt and Road Initiative, Green Belt & Road Initiative Ctr., https://perma.cc/5FV5-WFGW.
60 Press Release, UK and Chinese Governments Welcome City Corporation Aspiration to Green Belt and Road, City of London (June 17, 2019), https://perma.cc/T22B-XXWG.
61 Green Belt & Road Initiative Ctr., supra note 58.
Signatories to the Green Investment Principles are “expected to incorporate the principles into their corporate strategy and decision-making processes and are invited to report regularly on their performance to the GIP Secretariat.” As of April 30, 2021, the Green Investment Principles had 39 signatory institutions from 14 countries.

5. 10th UK and China Economic and Financial Dialogue

During the 10th UK and China Economic and Financial Dialogue, held in 2019, the two countries reaffirmed their commitment to “working together to strengthen their economic co-operation, boost bilateral trade and investment, and deepen financial links.” The two countries endorsed the recommendations of the UK BRI Expert Board with plans to work towards the development of a BRI asset class by:

- Developing a new emerging markets infrastructure platform to consolidate and access a pipeline of bankable infrastructure projects; and
- Collaborating on a financing mechanism to crowd-in private finance.

C. Agreements with Private Companies

In January 2018, Standard Chartered Bank signed an MOU with the China Development Bank that is worth up to $1.6 billion over five years “to fund corporate finance projects and trade finance transactions linked to the BRI.”

III. Major Flagship Projects and Ongoing UK-China Relations

The UK has been engaging with China regarding sustainable financing of BRI projects, but there do not appear to be any major flagship projects. Engagement with China and the BRI has been occurring despite a deterioration in UK-China relations, which has been described by the government as a reset and by others as a breakdown. The deterioration has been attributed to a combination of factors. Concern over Chinese company Huawei’s involvement in the UK’s 5G cell phone network and over China’s treatment of Hong Kong, once a former UK territory for which the UK passed sovereignty to the Chinese in 1997. These issues, combined with frustrations over China’s lack of transparency during the COVID-19 pandemic, and the UK’s belief that China has been engaging in human rights abuses in the Western Province of Xinjiang have been notable causes in the decline in relations.

62 Id.
63 Id.
64 Factsheet: 10th UK China Economic and Financial Dialogue, HM Treasury (June 17, 2019), https://perma.cc/2PY4-FGUR.
65 Id.
67 House of Commons Libr., The UK-China Relationship, supra note 3.
68 Id.
A briefing paper to the UK Parliament extensively details the risks and advantages in the UK-China relationship but does not specifically mention the BRI.69

IV. Public Support/Criticisms

There has been a variety of reactions to the UK’s participation in the BRI. In evidence provided to a House of Commons committee, commentators expressed concern over the standards applying to BRI deals, noting that many fall short of international best practices and expressing concern that financiers have failed to conduct proper risk assessments, leading to social and environmental costs. One example cited was the construction of pipelines that led to the forcible displacement of populations and the use of the military to protect investments.70 The Overseas Development Institute has expressed apprehension over the engagement of the BRI in fragile countries, claiming that it “could make fragile situations worse by failing to consider local conflict dynamics.”71

The UK’s approach to the BRI has been criticized for lacking in coherence and failing to complement the responses of other countries, such as the United States, and the EU and for not “rais[ing] awareness in recipient states of the possible risks associated with BRI projects.”72

69 Id.


71 Id.