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Abstract China faces difficult choices in renewing its Belt and Road Initiative [BRI] in the post-Pandemic era. With its primary BRI now extending from Asia to Africa, Latin America and beyond, China is depicted as a saviour rescuing developing states from their colonial roots and sublimation to the economic outreach of Western liberal states. Alternatively, China is envisaged as a new colonial landlord acquiring property through investment and exploiting local economies for its own economic and political good, at their expense. For those mediating between these two extremes, China is both well intended in seeking to promote global investment and to assist developing states, while sometimes aggressively seeking economic benefits for its outbound investors. Whether it is doing so primarily for its own good or for the wellbeing of its developing state partners, conciliators infer, would depend on the specific case. This article explores these dynamics in China's treaties

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providing for settling investment disputes along its BRI. It examines how China might reframe these dispute resolution options in the future.

1 Introduction

The West's recent portrayals of China as a dominant inbound and outbound investment state is decidedly negative. China is depicted as entrenching its economic dominance along its global trade and investment highway, known as its Belt and Road Initiative [BRI], through one-sided Bilateral Investment Treaties [BITs] that it has devised and implemented in its own interests. China is portrayed as expanding its Free Trade Agreements [FTAs] to extend its competitive advantage through regional partnerships, while catering to domestic protectionism that is distrustful of liberalised trade. The image is of China replicating its planned domestic economy internationally, under the guise of its willingness to engage in free trade and investment. Critics portray China as expanding its planned people-control from its domestic to the international community. The derision is of China using its state sovereignty to subordinate other developing states with which it is engaged in investment relationships, rather than recognise their sovereign rights.[1]

This depiction of China is exemplified through the image of it directing traffic along an infrastructure pathway of its creation and direction.[2] Directing state and investor travel along that Belt and Road, China is envisaged as engaged in the planned orchestrating of foreign direct investment, imposing burdensome infrastructure loans on dependent states and extracting selective licensing rights. At the same time, it is depicted as extending treaty and contract protections for the benefit of its outbound investors on empire building missions across Asia, Africa and Latin America.[3]

An illustration of China allegedly directing developing host states along its BRI is reflected in criticisms of its control over the formulation of its investment treaties or investor-state contracts. Under scrutiny is the challenge that China positioned itself in its first model BIT to impose its national interest and police powers to expropriate or otherwise regulate the investments of inbound foreign investors. As China grew into the second largest outbound investor, it reframed its model treaties to protect foreign investors, inferentially to empower its own outbound investors to invoke

[1] SOEs are sometimes depicted as engaging in unfair competition in being arms of the Chinese state in engaging with other sovereign states and non-state entities. See OECD (2016) State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity?, p. 15.

[2] See Office of United State Trade Representative, Joint Statement by the United States, European Union and Japan at MC11, 12 December 2017, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/joint-statement-united-states (joint statement 'to eliminate these and other unfair market distorting and protectionist practices by third countries').

[3] Chi and Li (2021), pp. 125–150.

those protections against developing host states.[4] The insinuation is not that China invariably so engaged in fact. It is rather that it positioned itself to able to do so under treaty and customary international law when it considered it economically justified or politically expedient. These arguments of its treaty empowerment and disempowerment of developing states is not presented as being wholly distinct to China.[5] It is instead highlighted as part of its empowerment and a reason for prospective BIT partner states to be precautious in dealing with it.[6]

The accusation of China building a BRI to sublimate the sovereign authority of vulnerable developing states is arguably overstated. China has sound reason to act, not as a dominant intruder targeted developing states along its BRI, but as engaging in fair state-to-state and investor-state practices. If it is to enjoy the confidence and trust of actual and prospective state partners and their investors, it is well motivated to offer them shared BRI benefits. One key motivate is for it to facilitate economic growth in developing states, to encourage their loyalty to it, together with a sense of common purpose. Another is to espouse its support in raising productivity, domestic standards of living, and improving social and health care benefits in developing states.[7]

China nevertheless faces formidable obstacles in formulating an outbound investment framework in a new world order. In part, Western proponents of free trade, while insinuating that China is not committed to it, have themselves gradually shifted away from investment liberalisation. Their new world order is beset with decentralisation as wary Western states have restricted reliance on foreign sources of supply and reverted to protectionism. The Pandemic has accentuated this shift from delocalisation to localisation. Trade sanctions imposed by the US and its allies, accentuated during COVID-19, have undermined inbound and outbound investment opportunities for Chinese investors.[8] China's retaliation and spiralling countermeasures has caused a downward slope in reliance on international investment; and has also led to shared economic hardship.[9]

The picture going forward is not entirely bleak. In leaning towards compliance with international health safety measures, China is gradually reacting proactively to climate change initiatives, remedying ecological damage to the environment and redressing their intergenerational implications. It is doing so by supporting foreign

[4] See Henckels (2018), p. 2825; Giest (2017), p. 337.

[5] Desierto D, Laird I, Sourgens F (2017) Oxford University Press Investment Claims Summer Academy, https://oxia.ouplaw.com/page/IC-summer-academy-2017/the-reign-of-law-in-international-investment-decisionmaking.

[6] See Berger (2019) on ISDS claims brought by Chinese investors against foreign host states.

[7] Buser (2020) on China's changing and diverging BIT policies.

[8] See Fang and Hassler (2021) on COVID-related risks to China's FDI.

[9] Lew JL et al. (2021) Independent Task Force Report No. 79, China's Belt and Road: Implications for the United States, https://www.cfr.org/report/chinas-belt-and-road-implications-for-the-united-states/download/pdf/2021-03/TFR_Belt%20and%20Road%20Initiative_03172021_SinglePages.pdf.

investments in renewable energy.[10] It is doing so self-interestedly as well, in recognising the disastrous domestic health implications of environmental ingestion, but also the costs of remediation. China is engaging in signs, more symbolic than concrete, of collaboration with Western liberal states pursuing climate reform, epitomised by the United States' announcement of a climate agreement between it and China at the COP26 summit in Glasgow in November 2021.[11] China also emphasised at the end of 2022 the mutual benefit of reigniting its trade in raw materials with Australia at the end of 2022.[12] However, these statements represent little more than encouraging comments, without substantive actioning to date.

How China will reconcile its planned domestic economy and its liberalisation of outbound investment remains an open question. How it will expand further across the developing world is disputable. How it will cement its BRI outposts through enticing trade and investment agreements remains uncertain. How the West will react, economically, to China's political and military expansionism, such as in South-East Asia and Oceano, is speculative. However, countries in proximate regions to China are expressing concern about its expansionism. Australia has reacted with hostility to China's 2022 alliance with the Solomon Islands. However, political posturing is a stance adopted by both East and West, muddying the trade and investment waters to storm levels.[13]

This chapter evaluates these issues, not abstractly, but from the perspective of resolving international investment disputes between China and its developing state partners. It concentrates specifically on the resolution of disputes between host states and Chinese outbound investors in principle, policy and practice. It does so through the history of China's international investment treaties and practices. It acts in response to shifts from its leadership in inbound and outbound investor growth to its most recent declines in global investment. It presents reasons for such developments, and how they have been fuelled by criticisms and defences of China's BRI policies and practices. Importantly, it critically assesses how China is likely to address these issues through its choice of dispute resolution mechanisms; and whether it will employ those measures selectively or pervasively. It also evaluates how China will respond to the use of Investor State Dispute Settlement [ISDS], a process devised by the West, to which China has subscribed, but not assuredly in the future.

Section 2 identifies China's entry into the international investment regime and the obstacles it posed for it as a planned domestic economy. Section 3 evaluates China's strategic and functional challenges in liberalising its investment treaties. Section 4 explores the divergent dispute resolution options available to China in resolving disputes between its outbound investors and developing host states, along its once

[10] Cohen and Schneiderman (2017) on environmental protection in China's BITs.

[11] U.S. and China Announce Surprise Climate Agreement at COP26 Summit. BBC News, 11 November 2021, https://www.bbc.com/news/uk-59240244.

[12] See Gao (2022), p. 341.

[13] Rosenberg (2022).

fast growing but now declining Belt and Road. Section 5 examines the prospect of China retreating from its Belt and Road and why and how it might do so. Section 6 considers challenges China faces in developing its Belt and Road in the future. The Conclusion highlights the complex choices ahead as China seeks to reconcile changing tensions in achieving its BRI ambitions.

2 China's FDI Dilemma

Central to China's FDI direction is its appreciation of a global economic order that is beset by both structural and functional schisms between creditor and debtor states. That obstacle is accompanied by unequal access to resources in a diffusely conceived free-market order, complicated by COVID fallout.[14] In key respects China still falls into each of these categories, as a creditor and debtor state and as having unequal access to resources. It is no longer a predominantly debtor state, but its demands for investment in its domestic social programs such as in health, unemployment and pensions, are growing.[15] China is also under increasingly pressure to build its foreign exchange reserves to maintain its market, while foregoing ambitious expansionism in response to costly domestic social programs and a declining workforce.[16]

From an ideological perspective, it would be an overstatement to maintain that China's FDI regime has expanded beyond its planned domestic economy. Its resourcing of both is inextricably interwoven. Increasing loans to foreign states and their investors is countered by China's need to resource its social programs particularly given its aging population, reduced workforce and economic shortfalls.[17] This shift does not infer that China has decided to retreat significantly from its BRI program, although it does suggest a slowdown. China has a long history of success in expanding its foreign investment regime, in becoming the second-largest outbound investor-state, after the US. That development occurred well before the Pandemic and its economic sequela. It is likely to continue, albeit with intermittent setbacks.

Four decades of international investment growth in which China concluded over 130 BITs is remarkable by any measure.[18] Its achievements were reflected in its

[14] Wei (2021) on China's evolving BIT responses to investment liberalisation.

[15] Baláž et al. (2020).

[16] Amineh (2022), pp. 36–69.

[17] Xi (2014–2017), Full Catalogue Reference MARCXML.

[18] See UNCTAD, Investment Policy Hub, International Investment Agreements Navigator, https://investmentpolicy.unctad.org/international-investment-agreements/countries/42/china.

adoption of Western style investment treaties and sometimes referred to as China's NAFTA-isation of its BITs.[19] It was also embodied in China's 1993 adoption of the Convention on the Settlement of Investment Disputes [ICSID] enacted in 1966,[20] affirming its extension of investor protections in line with the West.[21]

China's investment liberalisation has progressed in stages. China's first Model BIT, devised in the 1980s, reflected a mixed liberal and protectionist bent. Its second Model in the mid-1990s and its third Model in 1998 both demonstrated its increasing willingness to extend investment liberalisation,[22] including to protect outbound investors from expropriation by foreign host states.[23] To that end, it relaxed its national security defences in its treaties and provided foreign investors with greater due process protection.[24] The fact that China was envisaged as denying transparency in regulating inbound investment further motivated its willingness to agree to such protections, although there is scant evidence of wide scale investor claims against China.[25]

China's treaty liberalisation of investor protections in its Model BITs was also incremental. China's first-generation BITs significantly limited such protections, notably denying inbound investor claims based on 'expropriation'. But China's later BIT Models removed these limits on investor claims.[26] China has more recently adapted its BITs case-by-case rather than uniformly based on its current third Model BIT.[27] To date, there are few ISDS claims against China. In no ISDS has the foreign investor prevailed against it. However, Chinese outbound investors have won ISDS claims against foreign host states.[28]

China's liberalisation of investor protections was tactical. The protection of investors reassured developing states that their outbound investors would not be disadvantaged in China. Those protections also benefitted China. They served as

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[19] Chapter 11 of NAFTA deals with investment, including the resolution of investor-state disputes. See further Berger (2019), p. 843 on China's early reliance on NAFTA in resolving disputes.

[20] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, opened for signature 27 December 1945, 2 UNTS 134 (entered into force 14 October 1966) ('ICSID Convention'). The Preamble states: 'Considering the need for international cooperation for economic development, and the role of private international investment therein'.

[21] See, e.g. Parra (2017), Kinnear (2015) and Trakman (2012b).

[22] Shen (2013) on the evolution of China BITs.

[23] See Shan and Chen (2016) and Shan and Gallagher (2013).

[24] See Wei (2021) for a textual, comparative, and empirical analysis of China's BITs.

[25] Trakman et al. (2020), pp. 231–261.

[26] Pathirana D, A Look into China's Slowly Increasing Appearance in ISDS Case, International Institute for Sustainable Development, 26 September 2017, https://www.iisd.org/itn/en/2017/09/26/a-look-into-chinas-slowly-increasing-appearance-in-isds-cases-dilini-pathirana/.

[27] See Li and Bian (2020).

[28] See Gallagher and Shan (2009) and Trakman (2017).

inducements for developing states to encourage outbound investment to China. They also served as regulatory shields to China's investors venturing into those developing states.[29]

China's strategic aim, from the outset, was not to carbon copy liberalisation initiatives of the West, but to use such treaty liberalisation to satisfy its own economic ends.[30] Its caution was not to subordinate the economic model it embodied in the Beijing Consensus in favour of the liberalised model contained in the Washington Consensus.[31] Essentially, China retained its planned domestic economy, while shifting to accommodate free trade initiatives. Illustratively, it diverted from its planned market model in which its State-Owned Enterprises [SOEs] directed much of its outbound investment to State Sponsored Enterprises [SSEs] in which it retained a significant economic stake but less direct control. Its shift, in some measure, was in response to criticism that its outbound SOEs ought not to receive the protection accorded to private inbound investors, in that they were agents for the Chinese government. In foregoing its ownership of such entities, however, China did not relinquish its significant financial interest in them.[32]

China increasingly faces difficult choices in determining how it will modify its BIT programs to meet local, regional and global economic and political shifts. One option is to strive predominantly to find inventive new ways in which to secure its already formidable achievements as a capital exporter. Another is to revert more to its early BIT program in which it was predominantly a capital importer to attract investors to its domestic market. Another is for it to seek options that include both, such as to court new and renewed partnerships in developing states and to attract investors from those states to China.[33]

A strategic dilemma is how China will balance its domestically planned market model with its FDI regime that differs ideologically from its domestic model.[34] The related quandary is how China will respond tactically to Western states that are increasingly deglobalising their investment outreach and reverting to localisation.[35]

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[29] See Yamada H, Forgotten Promises: Bilateral Investment Treaties Between CEE and China, CHOICE, 6 November 2020, https://chinaobservers.eu/forgotten-promises-bilateral-investment-treaties-between-cee-and-china/.

[30] See Skovgaard Poulsen LN and Gertz G, Reforming the Investment Treaty Regime A 'backward looking' Approach, Brookings Institution, 17 March 2021, https://www.brookings.edu/research/reforming-the-investment-treaty-regime/.

[31] See Chen (2017) on China's adoption, adaptation, and reconstitution of the Washington Consensus. On the Washington Consensus, see Rooney (2007), p. 704 explaining that, even after China had acceded to the Washington Convention, it did not provide for ICSID in its BITs for a number of years.

[32] See Chen (2023); see also Laruelle (2018).

[33] Li et al. (2022), pp. 902–919.

[34] See Wang and Wang (2021).

[35] See Clover Alcolea L, The COVID-19 Crisis: Core Investment Law Issues Revisited. TDM, 25 May 2020, https://www.transnational-dispute-management.com/Journal-advance-publication-article.asp?key=1822 on limited commentary on investor-state claims during the epidemic.

A difficulty question also relates to the extent to which China will reformulate its investment outreach programs, how it will address resistance to them in the West and conceivably internally, and how it will achieve longer term horizons through collaborative partnership across the globe. Added to these problems is how China will respond to domestic political constraints that impact on these initiatives.[36]

China's choices are hampered by complexities relating to its cultural and economic identity. In truth, China is a regional and global power, although its domestic economy is still emerging.[37] Pursuing ambitious BRI horizons in an economically unstable global space also entail China cultivating politically sensitive responses to them, including to compromise between and among them. Among these compromises is its need to balance its political ambition to remain a first world provider of foreign direct investment and to return a significant proportion of those benefits to support its own economically pressured social programs. In so engaging, it cannot avoid the reality that, in engaging in such balancing, at least 'several sources of instability and macroeconomic problems' could arise.[38]

Nor can China escape related hard questions. How should it plan to progress from a debtor to a creditor state when it retains attributes of both? How can it remould its model of investment multilateralism to recognise the ambivalence of vulnerable debtor states to globalisation and their localisation of trade and investment as current default positions?[39] How should it offset the current criticism that it more authoritarian than collaborative in directing travel along its BRI global pathway?

3 A Directional Shift?

A big floating balloon ahead is to identify, assess and decipher prospective shifts that China will undertake in engineering its future BRI ambitions in volatile investment markets. In broad principle, China has growing reasons to reform its IIAs away from a single Model, to implement Western-style BITs to which it remains supportive, and to accommodate developing states it is courting. It is further impelled by its transformation into a developed-developing state to ensure that its BRI expansion grows prolifically and profitably and continues to outpace growth in other BRIC countries such as India.[40]

[36] He (2019), pp. 180–195.

[37] Tekdal (2018), p. 273 on China's challenge in reconciling its regional and emerging identities in building its global identity.

[38] Ibid.

[39] See Chaisse (2019) on China's investment bilateral strategies with the US and the EU regional strategies within the Free Trade Area of the Asia Pacific and global strategies in extending its BRI.

[40] See Buser (2020).

China remains well motivated in principle to continue liberalising its investment treaties.[41] It also retains functional incentives to modernise its BIT models through tactical bifurcation, to suit disparate state-to-state partnerships. China is also motivated to render its treaties more consistent across different generations of BITs and to extend them to encompass developing partners states.[42] A further motivation is for China to pursue both regional and international investment agreements. A key consideration is for it to establish agreements that provide greater and more immediate revenue benefits than many of its current FDI initiatives with developing states. China's delicate balance then is to continue to make short-term economic sacrifices to support developing state partners in turn for longer term returns, but only for so long and so extensively as it can reasonably afford to make short-term outlays. That balance is most acute in it having to offset infrastructure and construction loans to developing states and investors with more secure and sustained returns.[43]

Some directional shifts in China's BRI policies, more properly extensions, are already evident. They include China's extension of its BRI beyond its existing markets in Asia, Africa and Latin America into a global investment road. Further expansions-in-waiting encompass China's effort to conclude mutually profitable investment treaties with selected Western enclaves, such as the EU,[44] notably in negotiating the still tentative EU-China Comprehensive Agreement on Investment.[45]

China's directional challenge is whether to reject or materially modify its existing model investment treaties in reconciling intertwined domestic, regional and international belts and roads in a cost effective and sustained manner. At least three hard choices lie ahead in it so deciding. The first is to establish different treaty models, not limited to a treaty bifurcation between developing and developed states. The second is to limit reliance on its home spun treaty models in favour of a multilateral investment agreement operating across a global community of states. The third is neither to model nor publicise its guidelines in negotiating investment treaties. China's pervasive objective in considering these three options, jointly or separately, is to enable it to conclude IIAs on a partner specific basis. Each option has its perceived benefits. For example, concluding IIAs piecemeal provides China with the opportunity to frame treaties with partner states on a needs-be basis and without being unduly hampered by model treaty predetermination. However, there is a cost

[41] See Deng (2021), pp. 737–740 on China's liberalisation to build the credibility of its BRI. See also Hsueh (2011) on China's evolving strategy in global liberalisation.

[42] See Wei (2021).

[43] See Carmody and Wainwright (2022), pp. 2830–2851.

[44] See Zhang M, How China and the EU can boost investment. World Economic Forum, 17 October 2016 https://www.weforum.org/agenda/2016/10/how-china-and-the-eu-can-boost-investment; Zeng (1999) maintaining that Chinese foreign investment laws have adopted market economic principles since 1993.

[45] See Grieger G, EU–China Comprehensive Agreement on Investment: Levelling the Playing Field with China [International Agreements in Progress], https://epthinktank.eu/2020/09/14/eu-china-comprehensive-agreement-on-investment-levelling-the-playing-field-international-agreements-in-progresswith-china/.

to doing so. Negotiating treaties piecemeal ordinarily takes time. Negotiating and drafting such treaties is also subject to derailment, more than in adapting boilerplate Model agreements to specific partner states.[46]

Each approach also has perceived strategic strengths and weaknesses in China's pursuit of global political and economic leadership. Each raises cost-benefit uncertainties for China in attempting to predict divergent costs and benefits in pursuing its disparate and sometimes conflicting treaty objectives. For example, in providing infrastructure and financial assistance to developing states, China is incentivised to consider whether the cumulative benefit of doing so outweighs the economic shortfalls in not being able to finance alternative investment opportunities elsewhere, not limited to home spun projects.[47]

Given that cost-benefit measurements cannot be accurate and that macro-global economic and political developments shift, China faces the prospect of miscalculating the cost-benefit of both its piecemeal and shared investment treaty models.[48] The worst-case scenario is that it will err in balancing its domestic and international investor treaty models and suffer material economic losses that it can ill-afford.

China's choice among these alternatives hinges materially on how it weighs the interrelated costs of each in relation to others. Making such choices is tenuous at best, particularly if China determines that its global investment undertakings will extend its domestic financial shortfalls. It can willingly absorb the short-term costs of specific projects if it anticipates being able to offset those costs with benefits secured from other BRI projects. It can resile from projects it considers lacking sufficient strategic, political and economic importance compared to the alternatives. In engaging in such assessments, China will need to evaluate their relevance costs and benefits both *ex ante* and for verification purposes, *ex post*. It will need to do according to normative criteria that it values, such as the value of linked partnerships in Southern and West Africa.[49]

A balanced strategy in the sequel to COVID is for China to adopt a measured response to often unknown further eventualities, such as the economic collapse of a developing state partner in which it has invested. If China concludes that its investments in that state could seriously deplete its foreign exchange reserves, it might decide to cushion that risk through an exit strategy. If it is concerned that exit will cause other states to plan prematurely for its exit in relation to them, it may halt or limit its withdrawal. If it faces condemnation from ideologically apposed and opportunistic competitor states, it may include these factors in its cost-benefit

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[46] See Du (2022).

[47] See Li (2021) maintaining that 'the development orientation of the BRI . . . does not set rules as a threshold during its initial stage, thus providing opportunities for developing countries to participate in international economic cooperation'.

[48] See Banga R, Impact of Government Policies and Investment Agreements on FDI Inflow, ICRIER Working Paper No. 116, https://icrier.org/publications/impact-of-government-policies-investment-agreements-on-fdi-inflows/.

[49] See Afzaal (2022).

calculus.[50] A related cost-benefit assessment arising from China's choices encompasses the manner in and extent to which Chinese investors will be granted or denied access to foreign markets, and reciprocally, how foreign investors will secure or be denied access to Chinese markets.[51]

Obstacles to China's balancing of strategic options are formidable, particularly in deciding the manner in and extent to which to extend its BRI to developed states. For example, building investment bridges with the US is a formidable task, given decades of adversity between these great powers. That task appears easier in relation to the EU.[52] However, with the EU's recent announcement of its construction of competitor road to China's BRI, that task remains formidable, such as in China and the EU agreeing on state-to-state and investor-state dispute resolution options.[53]

An important consideration for China going forward is also to provide for the resolution of disputes in its treaties with partner host states. Dispute resolution is particularly significant in addressing tensions between host states and inbound investors in an era of global financial insecurity in which caution guides states, including China, to protect their outbound investors from the regulatory action of host states. Competing methods of dispute resolution encompass often controversial state-to-state and investor-state alternatives. These alternatives are growing, not only in importance, but in controversies surrounding their use as global economic tensions, including in relation to China, grow. These alternatives are discussed below.

4 How to Resolve Investment Disputes

Complex issues arise over how China will remould its BIT and IIA provisions for resolving state-to-state and investor state disputes in the immediate future. China's capacity to redesign and modify its IIA roadmap is well illustrated already in its design of dispute resolution mechanisms in BITs to meet new demands along its road. The question is to evaluate the extent to which it is incentivised to change that modelling. The related question is whether it will do so limitedly, incrementally, or radically.

China has sound reason in principle to reconsider the methods of resolving disputes between host states and inbound foreign investors, to ensure that they are both consistent with its planned-market ideology and efficient in operation. It also has sound economic reasons to reduce its BIT investment shields against inbound investors to protect its standing as an inbound host state, while also protecting its outbound investors in partner host states.

[50] See Schulhof et al. (2022).

[51] See Zhou (2020) on China's evolving rulemaking along its BRI.

[52] See Kao (2021).

[53] Fach Gómez (2021) on the absence of provision for ISDS in China-EU draft Agreement and uncertainty over its formulation.

As a foremost importer and exporter state, a central issue is for China to consider whether to rebalance its traditional shield against inbound investors with countervailing protections for its outbound investors. In refining its investment treaties proactively to satisfy these ends, it is also incentivised to remodel its International Investment Agreements [IIAs] progressively and collaboratively, and not peremptorily or autocratically. That refinement entails deciding how to accommodate Western-style BITs and FTA, while increasingly crafting them according to its own planning, design and transfiguration.[54]

What is especially challenging for China is in determining which dispute resolution options would suit it in redesigning its BRI roadmap. One option is for it to adopt an amalgam of models to accommodate economic, social, and political divergences among partner states across its Belt and Road. Another option is to adapt two dispute resolution models that recognise the dichotomy between developed and developing states.[55] A related option is for China to devise dispute resolution provisions to suit the localised needs of BIT partner states, but in compliance with pre-set dispute resolution boundaries.[56]

An experimental option is for China to trial dispute resolution pathways across partner states in Asia, Africa and Latin America and also in Europe, such as by adopting different options across states or within the same treaty.[57] That trial could address the exhaustion of local remedies; waiting periods before foreign investors can lodge Investor State Dispute Settlement [ISDS] claims; and limits placed on the scope of ISDS. These options could be reformulated incrementally (or radically) in accordance with China's ongoing gains-based analysis.[58]

The prevalent investor-state dispute resolution option, adopted in most of China's BITs, is ISDS. ISDS was initially modelled by wealthy Western countries to protect their outbound investors from being subject to regulat action be developing host states. More recently, developing host states have used ISDS to defend themselves against claims from inbound investors from such wealth states.[59]

What is uncertain is whether China will continue to adopt ISDS as a preferred mode of dispute resolution in its regional and international investment treaties. Complicating that choice is political and economic resistance to the use of ISDS, notably by developing states that maintain that it favours the outbound investors

[54] See Wang and Wang (2021).

[55] On China's infrastructure partnerships along with its Belt and Road, see OECD (2018) China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape, OECD Business and Finance Outlook, https://www.oecd.org/finance/Chinas-Belt-and-Road-Initiative-in-the-global-trade-investment-and-finance-landscape.pdf. On China's Best and Road initiatives in Africa, see Dollar D, Understanding China's Belt and Road Infrastructure Projects in Africa, Brookings Institute, 2019, https://www.brookings.edu/wp-content/uploads/2019/09/FP_20190930_china_bri_dollar.pdf.

[56] See Vaccaro-Incisa (2021) on the history of China's BIT's.

[57] See Cotula et al. (2016).

[58] See Chaisse (2021).

[59] Trakman (2016), pp. 129–194.

from wealthy Western states. That is the stated view of multiple Latin American states and states in Africa such as South Africa that now decline to adopt ISDS, and states in Asia, such as India, that have expressed concerns about its use.[60]

China could inherit such criticisms in adopting ISDS, in being perceived as a powerful BRIC host state whose outbound investors are economic resourced and politically empowered to utilise ISDS against host states to their advantage. That criticism is a disincentive for China to continue to utilise ISDS. Politically, too, China is incentivised not to replicate a dispute resolution measure that was devised by the developed West which developing states consider as the source of adverse and crippling awards against them. A further reason for China to avoid ISDS is the prospect of it being subject to ISDS claims from multinational inbound investors from the wealthy West in the future.[61]

Conversely, China is incentivised not to jettison ISDS from its investment treaties because most of its BITs provide for ISDS, and because that is consistent with global practice. China is further motivated to retain ISDS because it has seldom been subject to ISDS claims and has won or settled all cases against it. That success is attributed to the perception that it is powerful and tenacious adversary that will steadfastly defend its regulatory decisions from foreign investor claims.[62] ISDS also benefits Chinese SOEs and SSEs in lodging claims against developing and also developed host states. This benefit is attributed to a combination of their resources in bringing such claims and often the support they receive from China.[63]

In addressing the reluctance of some developing states to resort to ISDS institutions as favouring developed Western states, China could resort to ISDS institutions that are not so identified, without jettisoning ISDS itself. For example, it could exclude the Rules of the International Centre for the Settlement of Investment Disputes [ICSID] from resolving investor-state disputes from its treaty, given that the ICSID is criticised as being created by the West and a creature of the World Bank. It could opt instead for the Rules of the United National Commission on International Trade Law [UNCITRAL] that is not so identified.

As a further option, China could supplement rather than abandon ISDS. It could do so by engaging in discussion on alternative dispute resolution choices, such as establishing a multilateral investment court with an appeal division. China has already done so in deliberations before the United Nations Commission on International Trade Law Working Group III (UNCITRAL WG III).[64]

Should China favour an alternative, in whole or part, to ISDS, a further choice is for it to provide in its treaties for domestic courts to resolve investor claims against a

[60] See Sornarajah (2015).

[61] Zhao (2023), pp. 165–197.

[62] Trakman et al. (2020), pp. 231–261.

[63] See Trakman (2014) on limited ISDS claims brought China.

[64] See UNCITRAL, Working Group III: Investor-State Dispute Settlement Reform, September 2021, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/210921_status_of_work_wg_iii.pdf.

host state in that court's jurisdiction.[65] That adoption would reflect the wide practice of domestic courts hearing disputes brought by foreign corporations against the host state. The resistance to domestic courts so deciding is their perceived lack of independence from their governments, a criticism that is directed at authoritarian and also some other developing states.[66] The presupposition is that such domestic courts will decide in the host state's favour because they are dependent upon its directions.[67] China may share the concern of Western states in protecting its own outbound investors from domestic courts that it considers lack independence from the executive branch of government. That approach will also avoid the countervailing view among China's prospective partner states that reliance upon Chinese courts poses those same risks. [68]

China is therefore incentivised to avoid, or constrain, the use of both ISDS and domestic courts on grounds of alleged systemic bias: namely, that ISDS is biased against developing states, and that domestic courts lack independence from their host states. For China to avoid over-reliance upon the seeming gordian knot in electing between two irreconcilable choices, an alternative is for it to resort to international investment arbitration [IIA], such as under the auspices the China International Economic Trade Arbitration Association (CIETAC) which China has proposed for that purpose.[69] The rationale is that arbitration, modelled on international commercial arbitration, is a private dispute resolution process that is widely used, and that functions independently of governments, including the Chinese government.[70] The CEITAC option might satisfy some developing states, for these reasons and to avoid institutions that allegedly favour wealthy investors. However, advanced Western states are unlikely to agree to incorporating CEITAC into their investment treaties because it is a Chinese institution, however independent it is alleged to be from the Chinese State. These objections will be comparable to the institutional biases that developing states have lodged against the ICSID administering ISDS.[71]

A more pervasive option is for China to opt for a multilateral institution to resolve investment disputes. The problem in China proposing such a model *de novo* is in China being identified at its champion. Developed states that have brokered ISDS to date are likely to oppose it on both ideological and functional grounds, particularly if China is its primary broker. Just as developing states have been critical of ISDS as empowering investors from Western states, they and their investors are likely to be suspicious of a multilateral option brokered by a dominant planned economy.

[65] Hepburn (2023), pp. 18–34.

[66] Alvarez (2021), pp. 253–277.

[67] Trakman (2012a).

[68] Du (2022).

[69] Ibid. On CEITAC's adoption of ISDS, with the approval of the Chinese Government, see Chen (2018) and Chi (2020).

[70] Gu (2018), p. 1305.

[71] See Puig and Strezhnev (2017), pp. 731–761; Trakman (2012b), p. 603.

Should China ameliorate its proposed multilateral model to accommodate Western powers, it risks having its multilateral option being overhauled to suit a wider global community of states, contrary to its own preferences.[72]

Another option is for China to accept a multilateral investment court [MIC], along lines of the EU's International Investment Court.[73] At its best, this dispute resolution proposal could be modified to suit China. It could include the institutionalisation of an appellate tribunal with rules and procedures to govern its operation.[74] It could enable China to opt for it, while still retaining existing investor-state institutions, such as ISDS, intact. However, in endorsing this judicial option, China would be subject to the criticism for endorsing an institution that shares the limitations attributed to courts generally, such as relate to the appointment of judges, the conduct of court proceedings and the appellate process.[75] China would also likely be signing onto a treaty option that it does not lead, that has few signatories, and has terms with which third party states disagree. The comparative picture is not particularly encouraging. The EU's International Investment Court is incorporated into the EU's bilateral agreements with Canada, Singapore and Vietnam respectively, but these treaties have not been ratified A Multilateral Investment Court is touted theoretically, but has not been adopted in practice.[76]

No matter how the multilateral dispute option is conceived and constructed, it is fraught for China. That underscores China's own ambivalence towards the formulation and adoption of a multilateral dispute resolution option. Notably, no dispute resolution option is incorporated into the draft EU-China Agreement, a decision that is conspicuously left to subsequent agreement between China and the EU.[77] That might well have been an indication of the difficulty of China and the EU to reach such an agreement. It might also signal the fate of further attempts to reach one at this time. The absence of such an agreement in the EU-China draft treaty is likely to be replicated in China's multilateral treaty negotiations with other Western states, unless China agrees to modify those provisions significantly to suit otherwise reluctant co-signatories.[78]

Given obstacles to the primacy of the dispute resolution options discussed above, China could adopt a mixture of models on a case-by-case basis. That option would depend less on the model of dispute resolution that is formally adopted in advance,

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[72] Akperlinova and Jastrzebski (2022), pp. 1–9.

[73] See Bungenberg and Reinisch (2020), p. 222.

[74] See Fach Gómez (2021).

[75] Ning and Qi (2018) on obstacles between the EU and China in institutionalising an international investment court; Bungenberg and Reinisch (2020) maintaining that an international investment court can protect rule of law, reduce costs in protecting foreign investments, provide greater legal transparency and consistency in law and the effective enforcement of MIC decisions.

[76] Ji and Chaisse (2022) and Zeng (2010).

[77] See Fan (2020).

[78] Fan (2020), pp. 635–638.

than upon a broadly based option that is not tailored wholly to investor-state disputes, but also to state-to-state dispute avoidance measures. One such dispute avoidance measure is for China to endorse diplomatic measures to resolve differences between partner states. That measure could be supplemented by state-to-state mediation, such as was initiated in China and the EU's efforts to negotiate a China-EU Bilateral Investment Treaty.[79]

The model of state-to-state diplomacy could be further formalised, such as through Treaties of Friendship, Navigation, and Commerce historically adopted by Western states in colonial and post-colonial eras.[80] The benefit of this option is the ability to resolve investment differences before they become disputes. A strategic obstacle to China adopting this option is to avoid being seen to replicate treaties of overlordship attributed to Western Treaties of Friendship in the past, and contrary to its socialist ideology.[81] Even if such practices are recast as hard bargaining, for China to extract concessions from its developing state partners, while being unwilling to reciprocate, could cause them to retreat for such practices. While different in nature, China's politicised 2022 alliance with the Solomon Islands illustrates how apprehensively that alliance was perceived by developing states in the Region who became fearful of its consequences for them. It was also a reason why Australia ratcheted up its investments elsewhere in the Region.[82]

A further perception in the West is that China's outbound investors, particularly SOEs and SSEs will replicate China's alleged economic domination of developing BRI states along its BRI. In place of collaboration with host states, its outbound investors will be depicted as exercising unfair bargaining power, lacking transparency and disregarding local laws. Such disparate bargaining power will be identified with the extent to which Chinese investors are granted access to BRI partner markets, without foreign investors from those partner states securing equal access to Chinese markets.[83]

A collateral concern is that host states, including but not limited to China, should be disempowered by treaty from using their sovereignty to regulate foreign investors in a manner that is deemed to be unfair or inequitable. China's response is to market its BRI as collaborative in a manner in which developing states consider as fair and equitable to them, their local markets and their outbound investors. A related tension for such states is to ensure that dispute resolution measures in umbrella treaties and investor-state contracts with China do not favour it and its outbound investors at their expense and that of their outbound investors.[84]

[79] See Zhao (2018).

[80] See Vandevelde (2017) on the United States' early post-war BITs.

[81] See Ameyaw-Brobbey (2021), surveying the US and China's divergent diplomatic efforts to establish their supremacy in over international investment regimes from 2017 to the commencement of the Pandemic.

[82] See Lei and Sui (2022).

[83] Rudolf (2021).

[84] Maçães (2021).

5 A Retreat?

A lingering question is whether China will reduce its outbound international investment regime and if so, how and to what extent it will do so. While a total retreat is unlikely and a temporary one is more probable now, its longer-term approach is more questionable. What is clear now is that China's very swift pathway along its Belt and Road into the second largest outbound investor is being tested.[85] What is less clear is how China will redress the current diminution of its outbound investment reach. On the positive side, China has recently announced its readiness to ameliorate trade and investment restrictions. Developing states that withdrew from its BRI over the last decade primarily due to concerns about China's capacity and willingness to continue to pursue such infrastructure ventures, have returned to the fold, but not *en masse*. [86] The reaction of developed states to China's somewhat tempered outreach to them remains muted at the time of writing.

What is important to acknowledge at this juncture is the financial and political obstacles to China expanding its BRI, even as those dynamics change. It is evident that China's financial dilemma is not exclusive to it. Financial markets are beset by inflationary pressures. Supply and labour shortages remain present in securing access to the supply of foreign goods and workers. States operating across the global community face competing demands for their financial reserves, forcing them to select between foreign and domestic infrastructure and construction projects.[87] Public policy and national security imposts, too, override otherwise lucrative outbound and inbound investment.

China also faces difficult strategic choices in determining whether to withdraw investing in offshore projects generally, proportionately, or selectively. If it is to do so selectively, as at present, its arduous task is in both deciding upon the selection of those projects and the criteria to govern that selection.[88] These tasks are further complicated by economic constrains upon it and its outbound investor imposed primarily by developed Western states. China concurrently faces the blacklisting of Chinese entities abroad, their selective exclusion by those states and the application of taxes and duties to those Chinese investors who are not so excluded. China is also subject to the crippling impact of global economic dislocation upon its economy.[89]

China's responses to these obstacles remains a work in progress. The central tension is how it will respond to them and whether it will do so disparately according to the nature and source of the restrictions. Much depends, too, on whether it responds proactively by changing international investment relationships, such as in

[85] Sági and Engelberth (2018).

[86] Zou et al. (2022).

[87] See Heinberg (2011).

[88] See Liao et al. (2021) for an empirical study on the correlation between China's outward FDI and growth of its domestic economy, particularly employment.

[89] See Fang and Hassler (2021) on COVID-related risks to China's FDI.

purporting to re-engage Australia proactively in trade and investment in late 2022 following Australia's shift from a conservative to a labour government.

China's ongoing conundrum is to determine strategically whether to act proactively or reactively in restricting foreign importation and investments, such as in raw materials, in the absence of cost-effective alternative sources of supply. Influencing such choices is China's dilemma in prohibiting or discouraging outbound investments, not only to developed Western states, but also to developing states that are drawn into conflicts such as in being courted by the US.[90] China is also motivated by the sequelae of imposing constraints on both inbound and outbound investment, such as reluctance of foreign entities to invest in China or withdrawing from such investments there. Sensitive, too, is how China will use a national security rationale to justify its actions, knowing that competitor states invoke public policy justifications for their actions.[91]

The immediate obstacles to China's consolidation of the BRI are significant but not surmountable. What China cannot afford, economically and politically, is the ongoing intensification of a 'cold war' as interstate hostilities continue to undermine its Belt and Road access to global trade and investment markets. New macro-structural obstacles have also intervened, such as the EU's announcement of its new Global Gateway in competition with China's BRI.[92] Such actions underscore China's need to tactically allay foreign investor withdrawal from its Belt and Road, and for it to allocate less readily available capital to sustain it.[93] Coupled with these concerns is China's need to address spiralling regulatory action of foreign states imposing entry restrictions on inbound Chinese investors, and to support those investor claims through diplomatic or other intervention.[94]

China does have significant institutional means of protecting its outbound investors from host state restrictions. Chinese contractors have supplied project equipment, materials, and managerial expertise to multiple developing states.[95] Its regional and affiliated banks, such as the Asian Infrastructure Development Bank [AIIB], have provided financial support to such projects.[96] Importantly, China has reportedly acquired international assets of approximately $1 trillion since the advent of the Pandemic to the first quarter of 2021, as evidence of both its BRI commitment and its continued viability as a global investor state.[97]

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[90] See Sangaré (2021) on protective measures use in trade wars during the Pandemic.

[91] See McLaughlin (2020).

[92] See, e.g. Roushan A, EU to Announce Own Infrastructure Plan to Rival China's Belt and Road Initiative, 16 November 2021, http://www.republicworld.com/world-news/europe/eu-to-announce-own-infrastructure-plan-to-rival-chinas-belt-and-road-initiative.html.

[93] Liu and Dunford (2016) arguing for an open, inclusive and co-operative BRI model that aligns with China's achievements on its historical Silk Roads.

[94] On proportionality in ISDS, see Henckels (2015).

[95] Rizzi et al. (2018) on Chinese and international banks providing loans for OBOR [BRI] Initiative.

[96] See Zhao (2020) on the AIIB's importance, both regionally and globally, in financing China's BRI expansion.

[97] Ghauri et al. (2021) on China's changing global influence since the Pandemic.

6 Challenges Ahead

China's predicament in expanding or restricting investor protections is politically delicate and economically fraught. Should China strenuously expropriate and otherwise regulate inbound investments, foreign investors are likely to claim that it is engaging in unfair investment practices. They will assert that it is invoking its domestic security unreasonably to confiscate their assets; and that it is denying their rightful protections under customary international law.[98] China's defence will likely be that, as a host state, it has the sovereign authority to adopt such regulatory measures, consented to by treaty, and in compliance with international investment law.[99] Its collateral rationale will be that it has the authority to regulate inbound FDI according to its conception of the national interest and its police powers.[100]

China's defences are still unlikely to halt a potential progression in inbound investors' claims against it. Inbound investors from Australia have contemplated ISDS claims under the China-Australia Free Trade Agreement for China's alleged discrimination against them, causing them economic harm.[101] More pervasive action against China is being considered by the US, albeit expressed in general terms. A Task Force on the impact of China's BRI upon the United States has proposed 'a response that rests on four pillars: mitigating the economic risks of BRI, improving US competitiveness, strengthening the multilateral response to BRI, and protecting US security interests in BRI countries'.[102] That response is already taking place in the United States' retreat from negotiating a US-China trade and investment agreement, accentuated by accelerating economic sanctions and blame directed at China for global health and economic crises.[103]

Large-scale foreign investors, such as multilateral corporations, are also positioned to lodge ISDS claims against China. Well-healed companies have already proceeded against developed states such as Germany and Canada and secured ISDS awards.[104] Outbound US investors are also likely to receive US Government support

[98] Collins (2023); World Bank, Foreign Direct Investment – The China Story, 16 July 2010, https://www.worldbank.org/en/news/feature/2010/07/16/foreign-direct-investment-china-story.

[99] Desierto D, Laird I, Sourgens F (2017) Oxford University Press Investment Claims Summer Academy, https://oxia.ouplaw.com/page/IC-summer-academy-2017/the-reign-of-law-in-international-investment-decisionmaking.

[100] Henckels (2018) and Giest (2017).

[101] Mizen R, Exporters Mull ISDS Legal Action Against Beijing, 17 December 2020, https://www.afr.com/politics/federal/exporters-mull-isds-legal-action-against-beijing-20201216-p56o1l.

[102] Lew JL et al. (2021) Independent Task Force Report No. 79, China's Belt and Road: Implications for the United States, https://www.cfr.org/report/chinas-belt-and-road-implications-for-the-united-states/download/pdf/2021-03/TFR_Belt%20and%20Road%20Initiative_03172021_SinglePages.pdf.

[103] See deLisle (2021).

[104] See, e.g. Steinbock (2018).

in lodging ISDS proceedings against China, given concerns about China's growing BRI and the US Task Force's warning about China's expanding BRI.[105]

Realistic, too, are prospective investor claims against China for expropriating their investments on national security grounds including domestic economic instability caused by COVID-19. They will also likely raise procedural arguments against China and its BIT partner states for denying them fair and equitable treatment. The allegation will be that China is undermining due process protections along its self-created 'bumpy' BRI.[106]

In grounding its regulatory action, not limited to expropriation, on the debilitating effect of COVID-19 upon its domestic economy, China, along with its outbound SOE investors, will be denounced for subjecting vulnerable states and their local industries to economic subordination along its Belt and Road. China's BIT partner states are also likely to assert that Chinese SOEs are not legally entitled to investor protections in host states because they are state-owned and should not receive the protections accorded to foreign investors that are not state-owned.[107] China's likely response will be that, as destination states invoke ISDS to protect themselves from inbound Chinese investor claimants, it is justified in so defending against inbound investor claims against it.[108]

Whether these host state defences to China's outbound investors are overstated, incompletely substantiated, or replicate colonial state practice, they are unlikely to discourage developed Western states from imposing escalating trade sanctions on Chinese imports and investments.[109] Allied liberal states will likely continue to raise entry barriers to inbound investors from China in an accelerating saga of macro-economic politics at work. Some of their rationalisations for imposing these entry barriers will be incendiary, such as the allegation that China deliberately created the COVID virus, or intentionally planned the Pandemic's global spread. The issue is not whether these propositions are unsubstantiated or constitute overly politicised China-bashing, but that they will serve as an inflammatory torch directed at undermining, if not obliterating, China's BRI creations.

[105] Lew JL et al. (2021) Independent Task Force Report No. 79, China's Belt and Road: Implications for the United States, https://www.cfr.org/report/chinas-belt-and-road-implications-for-the-united-states/download/pdf/2021-03/TFR_Belt%20and%20Road%20Initiative_03172021_SinglePages.pdf.

[106] See Li and Bian (2020) on China's ISDS challenges ahead. See too, Grant Thornton, International Business Report – A bump in the road?, 1 August 2018, https://www.grantthornton.global/en/insights/articles/bump-in-the-road/.

[107] See Zhao (2019).

[108] Baker Mckenzie, China's Foreign Investment Law and Related Regulations Mark a New Era for Foreign Investment in China, 3 March 2021, https://www.lexology.com/library/detail.aspx?g=466b766b-9237-467f-b8d4-1bcdfedeef1a#:~:text=China%27s%20Foreign%20Investment%20Law%20and%20related%20regulations%20mark,15%2C%202019%20%28see%20our%20alert%20here%29%2C%20took%20effect.

[109] See Rusmus J, Trump's 'Real Trade War': Subverting China's Technological Advance, Global Research, 22 January 2019, https://www.globalresearch.ca/trumps-real-trade-war-subverting-chinas-technological-advance/5665992.

China is likely to react to these challenges with tenacity. It will demonstrate its determination to retain its ideologically overlayered planned economy, while also accommodating a global investment order in which freedom to invest transnationally is requisite. So long as state sovereignty remains a formal beacon of the post-modern regulatory order and sovereign association remains the functional medium through which states can exercise their sovereignty, China will accommodate both its sovereignty and sovereignty by association. China is also unlikely to be seen to jettison the delineation of equality among states and their outbound investors in the new global order. It is more likely to remodel its BRL to formally disavow the liberalised directives of a past colonising West and to resist their re-incarnation along a post-colonised highway from the East. Whether that re-incarnation is no more than the echo of a colonial past, a directed pathway under China's watchful eye, or of coalescence between a centrally planned and liberalised global economy is yet to be seen and tested.

The panoramic outsider view will nevertheless portray China as imbedding its militarised economic empowerment on a controlled BIT map and along a directed BRI highway. The accusatory metaphor will be that China is re-incantating the rhetoric of Communist China in the 1950s, but with global not only domestic aspirations. Its invading warriors will be depicted as state endowed outbound investors subordinating BRI destination states as agents for the Peoples' Party.[110] The sweeping analogy will be that China's intends to disempower developing states, less through servitude attributed to the colonising West, than through its own variant of overlordship. The contrast drawn will be between China's blending of its planned domestic economy and international free trade, and the West's amalgam of domestic liberalisation and colonialism over several centuries.[111]

The image of China as an imperialist state, dictating the scope of bilateral and regional trade and investment initiatives along with its BRI, will undoubtedly be replicated, directly or otherwise, in ISDS claims. China, its outbound SOEs, and other state-sponsored investors will be portrayed as using BITs to displace the financial sovereignty of developing home states over infrastructure projects. China and its surrogates will be portrayed as patrolling its BRI, constraining foreign investors, and subjugating developing 'partner' states to it. The imagery will be of China subduing dissent over the nature, direction, and extent of travel along its ever-expanding BRI highway.[112] It will be portrayed as using IIAs to exercise licensing authority over inbound investments;[113] extending its regulatory authority

[110] Unfair competition is often identified with the unfair advantages accorded to SOEs. See, e.g. OECD (2016) State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity?, p. 15.

[111] See Sornarajah (2011), p. 204; Sornarajah (2015), pp. 284–293.

[112] On the criticism that China is as engaging in unfair, extortionist and protectionist market practices, contrary to the requirements of WTO, see Office of United State Trade Representative, 'Joint Statement by the United States, European Union and Japan at MC11', 12 December 2017.

[113] See Aniodoh (2021) on how states surrender their monetary sovereignty when they sign BITs.

transnationally; and shielding itself and its outbound investors from ISDS review.[114] China will be perceived as abandoning its retreat from hard to soft law that it adopted in part to accommodate the West, by reasserting hard law to regulate both inbound and outbound foreign investment. It will be painted as using hard law as a double-edged sword, to impose rule-based imperatives on developing BRI states but not on itself. [115]

Still, China will articulate and publicise countervailing strategies. It will offset its historic BIT strategy of protecting itself by treaty from inbound investors from developed states, and by enhancing its commitment to outbound investor protections. It will seek to offset claims brought by inbound investors against it by extending treaty protections to its outbound investors from regulatory constraints imposed by treaty partner states. The incentive for it to pursue ambitious investment treaty and contract options will be to extend its multilateral Belt and Road and further cement its standing as a dominant investment superpower. China is likely to pursue these ends through alternative or supplementary measures to ISDS: such as state-to-state diplomacy; judicial and international commercial arbitration; and a multilateral investment court.[116]

Finding a functional equilibrium among these different and sometimes conflicting measures will be challenging, but not insurmountable. Few long-term instruments adopted to resolve global investment disputes have wholly upward trajectories.

Finally, China will not be alone among superpowers as a target of ISDS. ISDS proceedings constitute a two-way traffic. Just as inbound investors will proceed against China, China's outbound investors will lodge claims against foreign states for allegedly denying them investor protections substantively and in violation of the rule of law.[117]

7 Conclusion

China's future passageway along its Belt and Road includes realigning the profile attributed to it by detractors as being more an adversary than a friend of developing state partners and more of a market driver than facilitator. China's passageway is unlikely to be smooth. Alongside the economic setbacks in BRI planning it has suffering during the Pandemic are concomitant and ongoing political assaults upon its global trade and investment ambitions from the West. One assault is that China's BRI breeds supplication by foreign states and their outbound investors who travel

[114] On China's reluctance to utilise administrative review provisions in its BITs, see Chi and Li (2021).

[115] See Webb Yackee (2012) on a rule-based system that restricts the authority of states to regulate foreign investment.

[116] See Sect. 7.

[117] On Chinese investor claims abroad, see Berger (2019).

along it. Another assault is that the BRI is China's instrument for renewing colonialism in vulnerable investment markets, in effect, extending European colonialism into the twenty-first century.[118] That graphic depiction is of China resurrecting the assault weapons used by Western liberal states and their outbound investors to exploit the valuable assets of vulnerable states for lucrative profit.[119] A less likely but conceivable assault on China going forward is by blocs of developing countries alleging that China has besieged their fragile economies beyond their reliance on the UN General Assembly as a talking spot. [120]

Either way, the subtle economic challenge for China will be to redress the depiction of developing states being economically dependent upon it, rather than interdependent with it. China's renewed image will entail it constructing a blended vision of it as 'good neighbor, good friend and good partner', in pursuing shared not solitary gains along its BRI.[121] Building further trust will be portrayed as it seeking reciprocity of treatment for shared benefit, albeit to be sought incrementally and not instantly. The accompanying imagery will be of it establishing a viable balance between safeguarding both inbound and outbound investments and preserving financial stability in domestic markets, not limited to its own.[122] The imagery will not be of China's stoicism or sacrifice for others. It will be of mutual facilitation. However, provision for reciprocal access and treatment in China's investment treaties with developing states will need to be functional, not only formal. The functional task will be to enable foreign investors to access Chinese markets efficiently and without undue domestic regulations limiting that access.[123] Such reciprocity will ordinarily operate incrementally, as in trust building between formally sovereign states. It will also entail partner states arriving at a balance between China safeguarding its outbound investments and recipient states being able to utilise those investments to both stabilise and enrich their domestic markets.[124]

As a calculus, China's reformulation of its BRI collaborations will require that it refine narratives with state partners based on its assessment of past and prospective future costs and benefits. Central to that gains-based analysis will be how it engages in collaboration efficiently in light of its shifting geo-political objectives and changing market conditions.[125] One measure of such effectiveness is its ability to assess the economic and political risks associated with intervening market disruptions that

[118] See Vandevelde (2017).

[119] See Ahmed and Lambert (2021) on the evolving geopolitical and economic attributes of China's BRI in Eurasia and Africa.

[120] See Dzekashu and Anyu (2020) on the deceleration of China's BRI in Central and West Africa, and responses from the Forum on China-Africa Co-operation (FOCAC) in 2020.

[121] See Van Noort (2021) on China as a 'good neighbor, good friend and good partner' such as along its BRI in Africa.

[122] See, e.g. Bhasin and Manocha (2016) on whether and how India's BITs promote inbound investment.

[123] See Neumayer and Spess (2005).

[124] See, e.g. Bhasin and Manocha (2016) on India's BITs efforts to promote inbound investment.

[125] See Ramadhani and Noer (2022), pp. 90–103; Zhao and Tan-Mullins (2021).

impact upon the performance of BRI projects. This issue has already arisen in efforts to redress intervening supply shortages, price gyrations, and labour disruptions as consequences to the Pandemic.[126] China is well cognizant of these issues. President XI Jinping, in his open statement in June 2021, highlighted China's future commitment to openness, innovation, and sustained dialogue with IIA partner states. He enunciated further that China would finance operations 'along that [BRI] path' to protect the 'vital interests' of participating countries.[127] In place of confrontation is the imagery of China maintaining cross-border cooperation, affirming intercultural awareness and harnessing the shared benefits of BRI developments.

More subtle will be China's ability to present a level playing field to developing states that downplays the prospect of them becoming economically dependent along its Belt and Road. In place of that negative stamp attributed to unequal bargaining power will be the need for China to cultivate relationships built on the profitability to developing states of building BRI relationships along it. In place of China being perceived as exploiting those relationships, it will want to depict itself as using its capacity to exploit resources, not state partners. Its supporting rationale it will be that it will treat inbound foreign investors now as it would like their home states to treat its outbound investors in the future. In China's defence, it has undertaken to do so to in its 'New Foreign Investment Law' that came into force on 1 January 2020 which stipulates for equal treatment of foreign and domestic investors.[128]

China's political challenges in asserting its economic dominance regionally, such as in Africa where the US is seeking to re-establish beachheads, is likely to underscore competitive challenges to its BRI outreach. China's image as a global economic power is an important source of its credibility as both an inbound and an outbound investor state seeking to engage in mutually profitable ventures. However, China's image is also vulnerable to fracturing. Its internal financial difficulties, such as trade deficits, can cause investment partners to shy away from BRI investments partnerships with China, as occurred in Asia as China experienced an economic slowdown prior to the Pandemic. As a result, China's ambition to become the primary outbound investor state in the developing world will come at a high price to its domestic economy. Developing states with the strongest need for its financing are likely to be the most significant drain on its ability to support localised investment initiatives. For China to redress that reality will become a test of its functional resolve to achieve that objective, beyond prognosticating about it. It will need to do so fully cognisant that its domestic investment requirements have changed in material ways that were unthinkable 20 years ago. Once blessed with highly

[126] See Yaremko V and Franck Y, Proving Impediments Associated with Performance of the Contractual Obligations during the Spread of COVID-19. TDM, 2 June 2020, https://www.transnational-dispute-management.com/journal-advance-publication-article.asp?key=1828.

[127] See Rahman (2022). See also Jiang (2022).

[128] See Foreign Investment Law of People's Republic of China, adopted, 2nd Session, 13th National People's Congress, 15 March 2019, reproduced in English in www.npc.gov.cn/englishnpc/c23934/202012/5b80fe5055504efa93b6744f9272b3c2.shtml. That Law extends protections to foreign investors and provides for equality between foreign and domestic investors.

productive and growing workforce, China is now obliged to invest more fastidiously in domestic industries, work programs and pensions to support its elderly citizens.

These obstacles will require some modification in China's BRI ambitions. The prospect is that it will engage in a case-by-case gains-based analysis to determine whether the gains outweigh the costs of providing financial support to specific projects in developing states.[129] It will also be expected to assess with great care the aggregate gains of sustaining, or modifying its BRI program selectively and comparatively across its regional and global passageways.[130] Viewing its BRI as a composite whole, its idealised objective is to ensure that the sum of its BRI benefits are greater than the costs of its BRI parts. Should China opt for low-return investments on selected BRI partnership, that is likely to encourage it to embark on other offsetting projects that are more immediately profitable and provide it with realisable profit margins now, not later.[131]

How China will address its profitability conundrum along the BRI will depend somewhat on how it did so in prior investment cycles, but not always reliably.[132] In key respects, its past BRI successes will not ensure their successes going forward. Its ongoing use of a gains-based analysis will not always produce a dependable assessment of how total returns will compensate its outbound investors for travel along costly segments of its BRI. China's responses will be familiar in part: replanning modes and conditions for ongoing travel; modifying its construction of investment roads; and reformulating road maps to realign delivery along it. The fact that China has been playing the long BRI game for decades, traversing different stages of global economic development, is a pathway it is likely to continue navigating. The natural hurdles and combined economic and political obstructions it will encounter along the way are assuredly formidable. However, travelling on the high seas and weathering storms and tempests at different junctures, is what China has done for decades. In this author's view, it will continue to do so adeptly, but not always profitably, going forward.

References

Afzaal M (2022) Prospects for China's Belt and Road Initiative (BRI): implications, assessment and challenges. Asia Pac Bus Rev 28(1):130–139

[129] On the flexibility of the BRI rules in providing developing states with the opportunity to engage in international economic cooperation, see Li (2021).

[130] See Banga R, Impact of Government Policies and Investment Agreements on FDI Inflow, ICRIER Working Paper No 116.

[131] Zeng (2016), p. 517 on 'global governance' consisting of both regional economic integration and partnerships between states.

[132] See Hannon P and Jeong EY, China Overtakes U.S. as World's Leading Destination for Foreign Direct Investment, Wall Street Journal, 24 January 2021, https://www.wsJournalcom/articles/china-overtakes-u-s-as-worlds-leading-destination-for-foreign-direct-investment-11611511200.

Ahmed F, Lambert A (2021) The Belt and Road Initiative: geopolitical and geoeconomic aspects. Taylor & Francis, India

Akperlinova A, Jastrzebski K (2022) Reforming investor-state dispute settlement: the EU multilateral investment court perspective. J Invest Manag 11(1):1–9

Alvarez JE (2021) ISDS reform: the long view. ICSID Rev-Foreign Invest Law J 36(2):253–277

Ameyaw-Brobbey T (2021) A critical juncture? COVID-19 and the fate of the US–China struggle for supremacy. World Aff 184(3):260–293

Amineh MP (2022) China's rise and the question of hegemony and world order. In: Amineh MP (ed) The China-led Belt and Road Initiative and its reflections, 1st edn. Routledge, London, pp 36–69

Aniodoh AA (2021) Sovereign authority within the construct of bilateral investment treaties. J Afr Law 65(1):1–23

Baláž P, Zábojník S, Harvánek L (2020) FDI as a driving force of China's expansion. In: Baláž P, Zábojník S, Harvánek L (eds) China's expansion in international business: the geopolitical impact on the world economy. Palgrave Macmillan, Cham, pp 161–235

Berger A (2019) The political economy of Chinese investment treaties. In: Ka Z (ed) Handbook on the international political economy of China. Edward Elgar, Cheltenham, pp 151–168

Bhasin N, Manocha R (2016) Do bilateral investment treaties promote FDI inflows? Evidence from India. Vikalpa – J Decis Makers 41(4):275–187

Bungenberg M, Reinisch A (2020) From bilateral arbitral tribunals and investment courts to a multilateral investment court: options regarding the institutionalization of investor-state dispute settlement. Springer, Heidelberg

Buser A (2020) Recalibrating policy space in bilateral investment treaties: is there a common B (R) ICS approach? In: Congyan C, Huiping C, Yifei W (eds) The BRICS in the new international legal order on investment. Brill Nijhoff, Leiden, pp 163–203

Carmody P, Wainwright J (2022) Contradiction and restructuring in the Belt and Road Initiative: reflections on China's pause in the 'Go world'. Third World Q 43(12):2830–2851

Chaisse J (2019) China's international investment law and policy regime–identifying the three tracks. In: Chaisse J (ed) China's international investment strategy: bilateral, regional, and global law and policy. Oxford University Press, Oxford, pp 1–22

Chaisse J (2021) China's international investment policy: formation, evolution, and transformation (s). In: Chaisse J, Nottage L (eds) International investment treaties and arbitration across Asia. Brill Nijhoff, Leiden, pp 544–578

Chen W (2017) Debating the consensuses. In: Chen W (ed) The Beijing consensus? How China has changed western ideas of law and economic development. Cambridge University Press, Cambridge, pp 1–12

Chen H (2018) China's innovative ISDS mechanisms and their implications. AJIL Unbound 112: 207–211

Chen AH (2023) Law and social policy in the People's Republic of China: from communism to marketisation. In: Davy U, Chen AH (eds) Law and social policy in the global south. Routledge, London, pp 39–77

Chi M (2020) The ISDS adventure of Chinese arbitration institutions: towards a dead end or a bright future? Asia Pac Law Rev 28(2):279–296

Chi M, Li Z (2021) Administrative review provisions in Chinese investment treaties: gilding the lily? J Int Dispute Settlement 12(1):125–150

Cohen T, Schneiderman D (2017) The political economy of Chinese bilateral investment treaty policy. Chin J Comp Law 5(1):119–128

Collins D (2023) An introduction to international investment law. Cambridge University Press

Cotula L, Weng X, Ma Q, Ren P (2016) China-Africa investment treaties: do they work? IIED, London

deLisle J (2021) When rivalry goes viral: COVID-19, U.S.-China relations, and East Asia. Orbis 65(1):46–74

Deng Y (2021) How China builds the credibility of the belt and road initiative. J Contemp China 30(131):734–750
Du M (2022) Explaining China's approach to investor-state dispute settlement reform. Eur Law J. https://www.academia.edu/82421581/Explaining_Chinas_Approach_to_Investor_State_Dispute_Settlement_Reform
Dzekashu WG, Anyu JN (2020) China's Belt and Road Initiative: will it make or mar development in the Central and West Africa subregions? J Adm Gov 10(1):1936–1936
Fach Gómez K (2021) EU-China negotiations on investor state dispute settlement within the CAI framework: are we on the right track? Revista General de Derecho Europeo 55:61–71
Fan X (2020) Agree or agree to disagree: China–EU Comprehensive Agreement on Investment (CAI) negotiation and the ISDS reform. Chin J Comp Law 8(3):635–638
Fang T, Hassler J (2021) Globalization, political economy, business and society in pandemic times. In: Ghauri P, Fang T, Hassler J (eds) International business and management, vol 36. Emerald Publishing Limited, Bingley, pp 1–10
Gallagher N, Shan W (2009) Expropriation and compensation. In: Chinese investment treaties: policies and practice. Oxford University Press, Oxford
Gao H (2022) Trade and investment liberalization: the case of China. In: Bethlehem D, McRae D, Neufeld R, Van Damme I (eds) The Oxford handbook of international trade law, 2nd edn. Oxford University Press, Oxford, pp 341–373
Giest A (2017) Interpreting public interest provisions in international investment treaties. Chic J Int Law 18:321–352
Gu W (2018) China's Belt and Road Development and a new international commercial arbitration initiative in Asia. Vanderbilt J Transnatl Law 51:1305–1352
He B (2019) The domestic politics of the Belt and Road Initiative and its implications. J Contemp China 28(116):180–195
Heinberg R (2011) The end of growth: adapting to our new economic reality. New Society Publishers, Canada
Henckels C (2015) Proportionality and deference in investor-state arbitration: balancing investment protection and regulatory autonomy. Cambridge University Press, Cambridge
Henckels C (2018) Should investment treaties contain public policy exceptions. Boston Coll Law Rev 59:2825–2844
Hepburn J (2023) The past, present, and future of domestic investment laws and international economic law. World Trade Rev 22(1):18–34
Hsueh R (2011) China's regulatory state: a new strategy for globalization. Cornell University Press, Cornell
Ji X, Chaisse J (2022) Stress test for EU's Investment Court System: how will investments be protected in the comprehensive agreement on investment? Leg Issues Econ Integr 49(1): 101–124
Jiang Y (2022) Unpacking the Belt and Road Initiative: does its public diplomacy narratives match its implementation? East Asia 39:315–331
Kao PS (2021) The political economy of China's strategic layout in Europe: a case study of the Belt and Road Initiative. Chin Econ 55(4):303–316
Kinnear M (2015) ICSID and international investment treaty arbitration: progress and prospects. In: Shan W, Su J (eds) China and international investment law: twenty years of ICSID Membership. Brill Nijhoff, Leiden, pp 7–22
Laruelle M (2018) China's Belt and Road Initiative and its impact in Central Asia. The George Washington University, Central Asia Program, Washington D.C.
Lei Y, Sui S (2022) China-Pacific Island countries strategic partnership: China's strategy to reshape the regional order. East Asia 39:81–96
Li X (2021) High-quality development and institutionalization of the BRI. East Asian Aff 1(1): 2150004-1–2150004-28
Li Y, Bian C (2020) China's stance on investor-state dispute settlement: evolution, challenges, and reform options. Netherlands Int Law Rev 67:503–551

Li J, Van Assche A, Li L, Qian G (2022) Foreign direct investment along the Belt and Road: a political economy perspective. J Int Bus Stud 53(5):902–919

Liao H, Yang L, Dai S, Van Assche A (2021) Outward FDI, industrial structure upgrading and domestic employment: empirical evidence from the Chinese economy and the Belt and Road Initiative. J Asian Econ 74:101303

Liu W, Dunford M (2016) Inclusive globalization: unpacking China's Belt and Road Initiative. Area Dev Policy 1(3):323–340

Maçães B (2021) Belt and Road: a Chinese world order. Oxford University Press, Oxford

McLaughlin M (2020) State-owned enterprises and threats to national security under investment treaties. Chin J Int Law 19(2):283–327

Neumayer E, Spess L (2005) Do bilateral investment treaties increase foreign direct investment to developing countries? World Dev 33(10):1567–1585

Ning H, Qi T (2018) Multilateral Investment Court: the gap between the EU and China. Chin J Glob Gov 4(2):154–175

Parra AR (2017) The history of ICSID. Oxford University Press, Oxford

Puig S, Strezhnev A (2017) The David effect and ISDS. Eur J Int Law 28(3):731–761

Rahman ZU (2022) A comprehensive overview of China's Belt and Road Initiative and its implication for the region and beyond. J Public Aff 22(1):e2298

Ramadhani SN, Noer M (2022) China's influence on Australia's position in the South Pacific in the security sector and developing sector. J Soc Polit Sci 3(1):90–103

Rizzi C, Yu X, Tettamanti M, Ziccardi FE, Li G (2018) China's Belt and Road: the initiative and its financial focus. World Scientific, Singapore

Rooney KM (2007) ICSID and BIT arbitrations and China. J Int Arbitr 24(6):689–712

Rosenberg JM (2022) The Belt and Road Initiative: the threat of an economic cold war with China. Rowman & Littlefield, London

Rudolf M (2021) The Belt and Road Initiative, implications for the international order. World Scientific, Singapore

Sági J, Engelberth I (2018) The Belt and Road Initiative–a way forward to China's expansion. Contemp Chin Polit Econ Strateg Relat 4(1):9–37

Sangaré F (2021) International trading wars and governance: the effect of COVID-19. Bus Econ Dev 6(2):73–81

Schulhof V, van Vuuren D, Kirchherr J (2022) The Belt and Road Initiative (BRI): what will it look like in the future? Technol Forecast Soc Chang 175:121306

Shan W, Chen H (2016) China-US BIT negotiation and the emerging Chinese BIT 4.0. In: Lim CL (ed) Alternative visions of the international law on foreign investment. Cambridge University Press, Cambridge, pp 223–252

Shan W, Gallagher N (2013) China. In: Brown C (ed) Commentaries on selected model investment treaties. Oxford University Press, Oxford, pp 131–182

Shen W (2013) China and international investment law. In: Trakman LE, Ranieri NW (eds) Regionalism in international investment law. Oxford University Press, Oxford, pp 214–252

Sornarajah M (2011) Mutations of neo-liberalism in international investment. Trade Law Dev 3(1): 203–232

Sornarajah M (2015) Resistance and change in the international law on foreign investment. Cambridge University Press, Cambridge

Steinbock D (2018) U.S.-China trade war. China Q Int Strateg Stud 4(4):515–542

Tekdal V (2018) China's Belt and Road Initiative: at the crossroads of challenges and ambitions. Pac Rev 31(3):373–390

Trakman LE (2012a) Investor state arbitration or local courts: will Australia set a new trend? J World Trade 46(1):83–120

Trakman LE (2012b) The ICSID under Siege. Cornell Int Law J 45(3):603–665

Trakman LE (2014) China and foreign direct investment: does distance lend enchantment to the view? Chin J Comp Law 2(1):1–20

Trakman LE (2016) China and foreign direct investment: looking ahead. In: Liu Q, Shan W (eds) China and international commercial dispute resolution. Brill Nijhoff, Leiden, pp 129–194
Trakman LE (2017) China's regulation of foreign direct investment. In: Chaisse J, Ishikawa T, Jusoh S (eds) Asia's changing international investment regime. Springer, Singapore, pp 67–95
Trakman LE, Liu Q, Chen L (2020) Investor-state arbitration in China: a comparative perspective. In: Chen L, Janssen A (eds) Dispute resolution in China, Europe and world. Springer, Cham, pp 231–261
Vaccaro-Incisa GM (2021) China's treaty policy and practice in international investment law and arbitration: a comparative and analytical study. Brill Nijhoff, Leiden
Van Noort C (2021) China's communication of the Belt and Road Initiative: Silk Road and infrastructure narratives. Routledge, London
Vandevelde KJ (2017) The first bilateral investment treaties U.S. postwar: friendship, commerce, and navigation treaties. Oxford University Press, Oxford
Wang H, Wang L (2021) China's bilateral investment treaties. In: Chaisse J, Choukroune L, Jusoh S (eds) Handbook of international investment law and policy. Springer, Singapore, pp 1–21
Webb Yackee J (2012) Controlling the International Investment Law Agency. Harv Int Law J 53(2): 391–448
Wei S (2021) Decoding Chinese bilateral investment treaties. Cambridge University Press, Cambridge
Xi J (2014–2017) The governance of China II. Foreign Languages Press, Beijing
Zeng H (1999) Chinese foreign investment laws: recent developments towards a market economy. World Scientific and Singapore University Press, Singapore
Zeng K (2010) Multilateral versus bilateral and regional trade liberalization: explaining China's pursuit of free trade agreements (FTAs). J Contemp China 19(66):635–652
Zeng L (2016) Conceptual analysis of China's Belt and Road Initiative: a road towards a regional community of common destiny. Chin J Int Law 15:517–541
Zhao C (2018) Investor-state mediation in a China-EU bilateral investment treaty: talking about being in the right place at the right time. Chin J Int law 17:111–135
Zhao M (2019) Is a new cold war inevitable? Chinese perspectives on US–China strategic competition. Chin J Int Polit 12(3):371–394
Zhao S (2020) China's global reach: The Belt and Road Initiative (BRI) and Asian Infrastructure Investment Bank (AIIB), vol II. Routledge, London
Zhao L (2023) Modern China and international rules: reconstruction and innovation. Springer, Singapore
Zhao Y, Tan-Mullins M (2021) From the Ancient Silk Road to the Belt and Road Initiative: narratives, signalling and trust-building. Br J Polit Int Relat 23(2):280–296
Zhou J (2020) A new multilateralism? A case study of the Belt and Road Initiative. Chin J Comp Law 8(2):384–413
Zou L, Shen JH, Zhang J, Lee CC (2022) What is the rationale behind China's infrastructure investment under the Belt and Road Initiative. J Econ Surv 36(3):605–633

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