

# Treaties on the International Trade Dispute Settlement and the China “Belt and Road” Initiative

Hu Ren

School of Law, East China University of Science and Technology, Shanghai, China  
Email: yimhao@hotmail.com

**How to cite this paper:** Ren, H. (2019). Treaties on the International Trade Dispute Settlement and the China “Belt and Road” Initiative. *Beijing Law Review*, 10, 441-454. <https://doi.org/10.4236/blr.2019.103026>

**Received:** March 25, 2019

**Accepted:** May 31, 2019

**Published:** June 3, 2019

Copyright © 2019 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0). <http://creativecommons.org/licenses/by/4.0/>



Open Access

## Abstract

Under the background of the “Belt and Road” initiative, international trade disputes could be classified into three types: international trade disputes between states, international investment disputes between state and investor, and international trade disputes between parties as non-states. Due to the characteristic of difference disputes, there are different settlement mechanisms. For disputes that involve states in the context of the “One Belt and One Road” initiative, the Multilateral dispute settlement mechanism such as World Trade Organization (WTO) and International Centre for Settlement of Investment Disputes (ICSID) should not be applied directly because of their limitations or shortcomings of their mechanism, but the New York Convention is the most effective mechanism for resolving disputes between individuals over international trade. The model of international trade between countries along the “Belt and Road” is “China-centered” and “peer-to-peer”, which determined the superiority of bilateral consultation and settlement mechanism, thus it is urgent to improve or revise bilateral treaties between China and the countries along the “Belt and Road”. At the meantime, it is also essential to create a “reticular trade” environment among countries with a view to promoting the establishment of multilateral cooperation mechanisms among countries along the “Belt and Road”.

## Keywords

“Belt and Road” Initiative, International Trade, International Investment, Dispute Settlement, Enforcement of Arbitration Award

## 1. Introduction

According to the BELT AND ROAD POTENTIAL (BARP) organized by Chinese

government, since Chinese President Xi Jinping proposed the “Belt and Road” initiative in 2013, 133 countries have signed “Belt and Road” cooperation agreements with China<sup>1</sup>, and the number is still likely to continue to expand. The Belt and Road initiative is a development strategy and framework that focuses on connectivity and cooperation among countries primarily between China and the rest of Eurasia, which consists of two main components, the land-based “Silk Road Economic Belt” and oceangoing “Maritime Silk Road” (BARP, 2019). With the implementation of the “Belt and Road Initiative”, China’s trade and investment activities with countries along the route have become increasingly active. In 2017, China’s total import and export volume along the “Belt and Road” countries was 7.4 trillion RMB, a year-on-year increase of 17.8%; the contract value of the newly signed contracting project reached US \$144.3 billion, a year-on-year increase of 14.5%.<sup>2</sup>

Although there is no authoritative data related to trade disputes among countries in the Belt and Road Initiative. From the two batches of cases issued by the Supreme Court of China, disputes have begun to appear (Ni, 2018). In order to promote international cooperation of the Belt and Road countries, properly resolve commercial disputes with the construction process, protect the legal rights and interests of Chinese and foreign parties equally, and create a fair and just business environment, Chinese government decided to establish two Transnational Commercial Courts which locate in Xi’an and Shenzhen to resolve the international trade dispute between the individual (WCPG, 2018). But a dispute will have different solutions or methods due to its subject and nature. Just as a doctor must treat a patient with diagnosis before applying a prescription, the premise of resolving the international trade disputes under the “Belt and Road Initiative” is to correctly analyze the types of disputes and their characteristics. Therefore, the effectiveness of the establishment of two transnational commercial courts by the Chinese government is questionable. Especially, the effective settlement of the Belt and Road disputes under the international treaty system needs to be reconsidered.

An international dispute is a contradiction between two subjects concerning the differences of laws or facts, legal opinions or interests. The international trade legal disputes between countries along the “Belt and Road” initiative are nothing more than three aspects, including: 1) international trade disputes between states; 2) investment disputes between the state and investor; 3) non-state disputes between the individuals. This article intends to point out its inadaptability and weakness of current international trade dispute mechanism, and propose alternative solutions through the review of the current treaties related to Belt and Road dispute settlement, aiming at effectively protecting the interest of Belt and Road initiative from Chinese perspective.

<sup>1</sup>According to the BARP, a total of 133 countries have signed “One Belt, One Road” cooperation agreements with China, including 43 Asian countries, 26 European countries, 37 African countries, and 10 Oceania countries, and 17 Latin American countries.

[https://www.yidaiyilu.gov.cn/info/iList.jsp?cat\\_id=10037](https://www.yidaiyilu.gov.cn/info/iList.jsp?cat_id=10037).

<sup>2</sup>China Financial Information Network, “In 2017, Chinese enterprises directly invested US\$14.4 billion in countries along the ‘Belt and Road’”, <http://rmb.Xinhua08.com/a/20180125/1746610.shtml>.

## 2. Current Treaties on International Dispute and their Inadaptability

### 2.1. Treaties between States and their Inadaptability

International trade disputes between states refer to legal or actual disputes arising from the interpretation and implementation of bilateral or multilateral agreements concluded or joined by states (including independent customs zones), including disputes related to trade, investment, competition, intellectual property, finance, labor, transportation and environment. According to incomplete statistics, China and the countries along the “Belt and Road” have signed about 3000 bilateral treaties and multilateral agreements including borders, consular affairs, trade, investment, and judicial assistance, including about 25% of Bilateral Economic and Trade Treaties and Free Trade Agreements (FTA). Multilateral agreements of the WTO, the Shanghai Cooperation Organization, and the Asian Infrastructure Investment Bank are also included.

Among them, the WTO enjoys the most successful dispute resolution mechanism in the current international trade field, and contributes to the dispute settlement between the WTO members in the countries along the “Belt and Road”. But the direct application of the WTO dispute settlement mechanism is subject to the limitations of the subject and disputes. Firstly, among the 133 countries along the “Belt and Road”, the number of non-WTO member countries is 22<sup>3</sup>, therefore, international trade disputes between non-WTO members cannot be resorted to the WTO dispute settlement mechanism. Secondly, in accordance with Article 1, paragraph 1, of the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), the WTO dispute settlement mechanism applies to “disputes in accordance with the agreements listed in Appendix 1 to this Understanding, footnote citations, consultations and dispute settlement provisions<sup>4</sup>”, and “consultation and settlement of disputes between members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization and of this Understanding”. Therefore, international trade disputes that are not subject to WTO norms adjustment cannot be resorted to the WTO dispute settlement mechanism; examples of such are trade policies and measures other than the GATT and GATs schedules, the authors’ moral rights protection issues in the TRIPs Agreement, and competition policies and measures. Although the WTO dispute settlement system is the only internationally accepted and most utilized

<sup>3</sup>According to the statistics of the WTO official website, the 22 countries, includes Niue, Cook Islands, Micronesia, South Sudan, Algeria, Somalia, Sudan, Libya, East Timor, Bhutan, Iran, Iraq, Lebanon, Syria, Palestine, Serbia, Bosnia and Herzegovina, Uzbekistan, Turkmenistan, Belarus, Azerbaijan, and Ethiopia, in which, 17 countries are observer countries of the WTO, except for Niue, Cook Islands, Micronesia, Turkmenistan and Palestine.

<sup>4</sup>Annex 1: Agreement on the use of this understanding: (A) Establishment of the World Trade Organization Agreement; (B) Multilateral Trade Agreement: Annex 1A: Multilateral Trade in Goods Agreement, Annex 1B: General Agreement on Trade in Services, Annex 1C: Trade-Related Aspects of Intellectual Property Rights Agreement, Annex 2: Understanding of dispute settlement rules and procedures; (C) Plurilateral trade agreements: civil aircraft trade agreements, government procurement agreements, international dairy products agreements, international beef agreements.

international dispute settlement mechanism in China, China is also one of the countries with the most complaints, in a total of 43 cases.<sup>5</sup> Although the complainants are countries such as Canada, EU<sup>6</sup>, Guatemala, Japan, Mexico, the United States, etc., countries along the “Belt and Road” (single) are not included. However, the international trade trends under the “Belt and Road” Initiative cannot guarantee that countries along the “Belt and Road” will not join the ranks of the complainants in the future. The closer the international trade relations become, the more frequent the probability of international trade disputes will be. For example, in terms of Sino-US trade relations, the United States is China’s largest export market, accounting for 16% of China’s total exports. While China is the largest export market for the United States except for the market of North America, it is the largest export market for US aircraft and soybeans, and the second largest export market for automobiles, integrated circuits and cotton (MOC, 2017). At the same time, China and the United States are the countries with the most frequent trade frictions. Among the 43 cases in which China was sued in the WTO, the United States was the complainant of 23 cases. Among the 97 cases in which the United States was sued in the WTO during 2002 to 2019, China was the complainant of 15 cases.

In addition to the DSU of WTO, China’s dispute settlement clauses that have been signed under bilateral or multilateral agreements often adopt the following three methods:

First, adopting the method of “negotiation and consultation between the parties”, featuring the exclusion of non-mandatory dispute settlement methods such as mediation, good-office and arbitration. For example, Article 15 of the *Agreement on Cooperation and Mutual Assistance in Customs Affairs between the Governments of the Member States of the Shanghai Cooperation Organization*<sup>7</sup>, signed on 2 November 2007, states that “in the event of disputes between the Parties and differences in the interpretation or application of this Agreement, the Parties shall settle them through consultations and negotiations.”

Second, if the parties cannot resolve the dispute through negotiation, they shall be submitted to the Standing Committee or the Council composed of representatives of the participating countries. For example, Article 21 of *The First Agreement on Trade Negotiations among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Asia-Pacific Trade Agreement)*<sup>8</sup>, as implemented on 1 September 2006, states that “Any dispute that may arise among Participating States regarding the interpretation and application of the provisions of this Agreement or any instrument adopted within its framework shall be amicably settled by an agreement between the parties con-

<sup>5</sup>Until February 17, 2019, The United States was the respondent in 165 cases, the EU was the respondent in 96 cases

[https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm#complainant](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm#complainant).

<sup>6</sup>According to the statistics of the EU website, among the 28 EU countries, there are 13 countries along the “Belt and Road” including Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Greece and Austria.

<sup>7</sup>The Shanghai Cooperation Organization. <http://eng.sectsc.org/documents/>.

<sup>8</sup>China FTA Network. [http://fta.mofcom.gov.cn/yatai/xieyiwenben\\_en.pdf](http://fta.mofcom.gov.cn/yatai/xieyiwenben_en.pdf).

cerned. In the event of Participating States' failure to settle a dispute among themselves, the dispute will be brought to the Standing Committee to resolve. The Standing Committee shall review the matter and make recommendation thereon within 120 days from the date on which the dispute was submitted to it. The Standing Committee shall adopt appropriate rules for this purpose." Although *the Asia-Pacific Trade Agreement* does not provide for a more detailed dispute settlement mechanism, it stipulates in Article 24 that "The Committee shall communicate with third countries and international organizations in matters relating to the interpretation and operation of this agreement, and may request the technical advice and the co-operation of national and international organizations", thus leaving the possibility of drawing on dispute resolution mechanisms from international organizations such as the WTO.

Third, drawing on the WTO dispute settlement mechanism and the expert group trial or arbitration system when consultations fail, taking good-office, conciliation and mediation, such as, *Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between the People's Republic of China and the Association of Southeast Asian Nations*<sup>9</sup>, signed on 29 November 2004, and bilateral Free Trade Agreements including China-Korea, China-New Zealand, China-Georgia, China-Australia and others. Generally speaking, China tends to resolve non-mandatory consultations in the settlement of international trade disputes between countries, but it lacks consistency and unity. In addition, in terms of the composition of the arbitral tribunal, the above-mentioned free trade agreements generally stipulate that "the Director-General of the WTO shall be authorized to designate the chair of the arbitral tribunal".<sup>10</sup> This provision appears to give the WTO Director-General the right to designate an arbitrator, but the essence is to confer an obligation on it because there is no provision for the WTO Director-General or the Deputy Director-General to refuse to exercise this right. Although Article 5, paragraph 6, of the WTO DSU provides that "the Director-General may, acting in an ex-officio capacity, offer good offices, conciliation or mediation with the view to assisting members to settle a dispute", the above mentioned obligations of the WTO Director General were not given. Furthermore, in accordance with Article 34 of the *Vienna Convention on the Law of Treaties* and the *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, "a treaty does not create either obligations or rights for a third state without its consent", unless there is an intention to impose obligations on a third state under Article 35, and the third state expressly accept this obligation in writing, and may not create obligations and effect on the third state.<sup>11</sup> The third parties in the two conventions are either national or

<sup>9</sup>China FTA Network. <http://fta.mofcom.gov.cn/dongmeng/annex/zdxieyi2004en.pdf>.

<sup>10</sup>China FTA Network, China-Georgia Free Trade Agreement, Chapter 15 Dispute Settlement, Article 15.6.4. [http://fta.mofcom.gov.cn/georgia/annex/xdzw\\_en.pdf](http://fta.mofcom.gov.cn/georgia/annex/xdzw_en.pdf).

<sup>11</sup>In addition, according to Article 36 of the Vienna Convention on the Law of Treaties, in order to create rights for a third state, a treaty must satisfy three conditions, namely, the assent of a third state, the intention of creating rights for a third state and the exercise of the rights of a third state.

international, and do not include natural persons, any institutions of nations or international organizations, therefore, the legality and effectiveness of such an agreement are worth discussing.

## 2.2. Treaties between State and Investor and their Inadaptability

The investment dispute mechanism of state and investor means related disputes resolved in accordance with the procedures stipulated in the Investment Treaty between state government and non-state individuals including natural persons, legal persons and other economic organizations (Wang, 2016). With the rapid advancement of the “infrastructure” construction project in the “Belt and Road” Initiative, potential disputes may arise due to investment behaviors such as Built-Operate-Transfer and international project contracting, so it is the most pressing disputes that need to be resolved under the current “Belt and Road” Initiative.

Despite the lack of a unified multilateral arrangement in the investment field of the state and investor, the Bilateral Investment Treaty (BIT) is more common. As of 25 March 2019, China has signed FTA with investment measures with countries such as South Korea and New Zealand along the “Belt and Road Initiative”. At the same time, 85 countries along the “Belt and Road” have signed BITs with China, and 48 countries have not signed.<sup>12</sup> Taking the dispute between the investor and the contracting party and its solution as an example, there are four types of disputes and corresponding solutions in BITs between China and countries along the “Belt and Road”:

First, A dispute concerning the amount of compensation. *Agreement between the Government of the People’s Republic of China and the Government of the Republic of Tajikistan on Encouraging and Reciprocal Protection of Investments*<sup>13</sup> (1993.3.9), Article 9.1-9.5, provides that, any dispute concerning the amount of compensation may be submitted to the arbitral tribunal. The arbitral tribunal shall establish its own rules of procedure; in which case the arbitral tribunal may refer to the arbitration rules of Stockholm Chamber of Commerce when formulating procedures. The arbitral tribunal shall, in accordance with the provisions of this Agreement, make decisions on the laws and regulations of the Contracting Party that conducts investments in its territory, including its conflict norms, and the principles of recognized international law.

Second, all disputes related to investment. *Agreement between the Government of the Republic of India and the Government of the People’s Republic of*

<sup>12</sup>According to the analysis and statistics of the World Bank website and the Ministry of Commerce website, as of 1 February 2019, there are still 15 countries that have not signed BIT with China. They are: Panama, Grenada, Dominica Republic, Antigua and Barbuda, Dominican Republic, Salvador, Suriname, Venezuela, Ecuador, Niue, Fiji, Vanuatu, Samoa, Cook Islands, Micronesia, Tonga, Bosnia, Montenegro, Portugal, Palestine, Afghanistan, Brunei, Timor-Leste, Bhutan, Iraq, Maldives, Nepal, Togo, Cambodia, Uganda, Burundi, Chad, Kenya, Angola, Namibia, Mozambique, Zambia, Seychelles, South Sudan, Sierra, Cote d Ivoire, Djibouti, Mauritania, Guinea, Somalia, Rwanda, Senegal, Libya. In addition, China has updated BIT with 9 countries including Czech Republic, Bulgaria, Romania, Slovakia, Russia, South Korea, Uzbekistan, Cuba and Nigeria.

<sup>13</sup>UNCTAD. <https://investmentpolicyhub.unctad.org/Download/TreatyFile/763>.

*China for the Promotion and Protection of Investments*<sup>14</sup> (2006.11.21), Article 9.1, provides that, all disputes relating to investor investment under this agreement are jurisdictional disputes, but it is clear that under the premise of “exhaustion of the domestic reconsideration procedure”, the dispute may be submitted to international mediation or international arbitration by either party or by the parties to the dispute.

Third is any investment dispute and dispute over compensation. *Agreement Between the Government of the People’s Republic of China and the Government of the Democratic Socialist Republic of the Sri Lanka on the Reciprocal Promotion and Protection of Investments*<sup>15</sup> (1986.3.13). Article 13.1-13.3, provides that, any disputes may be settled in the Court of Jurisdiction of the Contracting Party, but the disputes over the collection of compensation may be settled by arbitration in the court or arbitral tribunal. The arbitral procedure stipulates the reference to the Arbitration Rules of the International Center for Settlement of Investment Disputes, but it does not stipulate the law of arbitration. Likewise, there are similar regulations in *Agreement between the Government of the People’s Republic of China and the Government of the Republic of Indonesia on the Promotion and Protection of Investments* (1994.11.18) as well as *Agreement between the Government of the People’s Republic of China and the Government of Malaysia on Mutual Encouragement and Protection* (1988.11.21).

Fourth, All investment disputes with limitations and exceptions: *Agreement among the Government of the People’s Republic of China, the Government of Japan and the Government of the Republic of Korea for the Promotion, Facilitation and Protection of Investment*<sup>16</sup> (2012.5.13), Article 15, provides that, an investment dispute is a dispute between a contracting party and an investor of another contracting party. One or both of the following remedies, only if the disputing investor’s loss or damage is attributed to such breach: monetary damages and applicable interest; and restitution of property, in which case the award shall provide that the disputing contracting party may pay monetary damages, excluding the intellectual property system and financial prudential measures of the parties. It is also stipulated that the relief of the investor’s loss can be arbitrated by one or two of the following reliefs, including monetary compensation, appropriate interest, and return of property. The ruling should provide that parties to a dispute may pay monetary damages and appropriate interest in lieu of restitution of property. In addition, the agreement provides for the “the exhaustion of local remedies” before arbitration, that is, it must go through the internal administrative review procedure of the contracting party.

The countries which signed the BIT not only include the member countries of the Organization for Economic Cooperation and Development, such as South Korea, Portugal, Italy and New Zealand, but also the BRICS countries such as

<sup>14</sup>UNCTAD. <https://investmentpolicyhub.unctad.org/Download/TreatyFile/742>.

<sup>15</sup>MOFCOM. <http://tfs.mofcom.gov.cn/aarticle/h/at/201002/20100206778545.html>.

<sup>16</sup>UNCTAD. <https://investmentpolicyhub.unctad.org/Download/TreatyFile/2633>.

Russia and India, as well as developing countries such as Sri Lanka and less developed countries. The BIT includes bilateral agreements signed from the 1980s, 1990s, to early 21st century (Ren, 2016). Therefore, in the content, especially in the dispute settlement clauses, there are mutually inconsistent dispute resolution mechanisms, which are not conducive to the accumulation of overseas investment practices for China and also the international legal system construction of the “Belt and Road”.

In particular, provides in the BIT that the jurisdiction of the ICSID based on *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States* (Washington Convention), it does not include all countries along the “Belt and Road”<sup>17</sup>, and its existence in the “Belt and Road” countries is not balanced, the rulings are uncoordinated and conflicting and the enforcement of arbitral awards is difficult (Wang, 2016). Therefore, it is not advisable to emphasize the application of ICSID dispute jurisdiction and its settlement mechanism. Moreover, China is currently in a period of parallel introduction of capital and output, the interests of Chinese overseas investors and the role played as a host country are both necessary to China, thus any decision which is biased towards one party is not conducive to the overall interests of China.

### 2.3. Treaties between Parties as Non-States and their Inadaptability

International trade dispute settlement mechanism for parties as non-states refers to disputes about international trade between natural persons, legal persons or other economic organizations, including disputes related to trade, investment, intellectual property transfer and licensing, and so on commercial activities. It generally belongs to a foreign-related legal dispute in one country. Due to the serious mistrust of the international trade to the judicial system of the opposing countries, it is inclined to adopt an arbitration resolution mechanism unless the relevant country has a compulsory jurisdiction, such as bankruptcy liquidation of joint ventures.

The problem lies in the choice of the place of arbitration and the institution of arbitration. The jurisdiction of the international trade and the jurisdiction of the arbitration institution are based on the autonomy of the parties to the transaction. In other words, it depends on the status of the parties in the transaction.

For example, if one of the parties is very dominative, it will ask the other party to accept its claims about the place of arbitration, the arbitration institution, the arbitration rules, and the applicable law. That could lead to choosing the arbitration institution of the country where the dominative party located, or an arbitra-

<sup>17</sup>According to the analysis and statistics of the World Bank website, the 24 countries that have not yet joined the Washington Convention are: Antigua and Barbuda, Cuba, Salvador, Suriname, Venezuela, Bolivia, Ecuador, Niue, Vanuatu, Cook Island, Poland, India, Palestine, Myanmar, Bhutan, Vietnam, Iran, Laos, Maldives, Tajikistan, Angola, Djibouti, Libya and South Africa; the 7 countries that have signed but not ratified: Dominica, Dominican Republic, Russia, Thailand, Kyrgyzstan, Namibia, and Ethiopia.



tion institution of the third country which conducive to the dominative party, as the jurisdiction. If the parties to a transaction are of equal status, it is possible to seek an international arbitration institution with high reputation jointly agreed upon by both parties which belongs to a third country, such as the Arbitration Institute of the Stockholm Chamber of Commerce in Sweden, the London International Court of Arbitration, and the Singapore International Arbitration Center.

The first situation is obviously unfair. It is not conducive to fair, stable, safe and sustainable commercial transactions. The second situation, while guaranteeing the fairness of the jurisdictional choice, due to the high arbitration fees and lawyer fees, the cases which both parties to the small and medium-sized subject disputes abandon the arbitration requests after weighing the pros and cons are great in number. It is not conducive to the settlement of disputes.

Therefore, some international trade contracts stipulate that the arbitration clause states that “if one party applies for arbitration, it must be settled at an arbitration institution at the place where the applicant is located, according to the arbitration rules of the institution”, to achieve the fairness of the choice of arbitration or arbitration institutions. To a certain extent, it also guarantees the obligation of both parties to perform their contracts honestly.

However, whether the settlement of an international trade dispute is satisfied by the parties, it depends on whether the arbitral award can be effectively implemented. *The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 1958)*, is the most influential arbitral award enforcement mechanism currently accepted by the international community. According to its terms, except as provided in Article 5<sup>18</sup>, the courts of contracting parties shall not refuse to recognize and enforce the arbitral award, moreover, the arbitral award may not be revoked. As of February 2019, a total of 163 countries have acceded to and ratified the New York Convention,

<sup>18</sup>Article v: 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. 2 Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

including 108 countries along the “Belt and Road”, but there are still 25 countries such as Grenada that have not yet accessed.<sup>19</sup> Therefore, the New York Convention is undoubtedly the most effective mechanism for resolving disputes over international trade between countries along the “Belt and Road”.

Except for the New York Convention, bilateral civil and commercial judicial assistance treaty and *Convention on Choice of Court Agreements* can be considered as an alternative to the judgment or ruling enforcement mechanism for China and the mentioned 25 countries. According to the information published on the website of the Ministry of Foreign Affairs, as of February 2017, China has concluded 135 agreements with 70 countries, including judicial assistance treaties, asset return and share treaties, extradition treaties and conventions against terrorism, separatism and extremism, 108 of them have entered into force (MOFA, 2018). Although civil and commercial judicial assistance treaties do not necessarily include mutual recognition and enforcement of arbitral awards or court decisions, in addition to Namibia, Turkmenistan, Ethiopia, and Grenada four countries, China has not signed any civil and commercial judicial assistance treaties with the above-mentioned 21 countries so far. In addition, it was adopted at the 20th Diplomatic Conference of the International Conference on Private International Law in Hague on 30 June 2005. *Convention on Choice of Court Agreements*, which has come into effect on 1 October 2015 and China signed it on 12 September 2017, is not yet in force for China, nor do the mentioned 25 countries.<sup>20</sup>

### 3. The Proper Dispute Settlement Mechanism from China’s Perspective

#### 3.1. The Aspect of Resolving Disputes between States

What kind of mechanism from China’s perspective would be the proper solution for inter-state trade disputes under the “Belt and Road” Initiative? For this, the author believes that in addition to multinational cross-border rail transportation, road transportation, pipeline transportation and multimodal transportation<sup>21</sup>, bilateral settlement mechanisms should be adopted in other areas of international trade. The international trade of countries along the “Belt and Road” mainly revolves around China, it is the “peer-to-peer” trade status centered on

<sup>19</sup>According to the analysis of the New York Convention website, 25 countries including Grenada, Salvador, Suriname, Niue, Papua New Guinea, Vanuatu, Samoa, Micronesia, Tonga, Turkmenistan, Yemen, Timor-Leste, Iraq, Maldives, Togo, Gambia, Chad, Namibia, Seychelles, South Sudan, Sierra Leone, Somalia, Libya and Ethiopia, have not yet acceded to the New York Convention.

<sup>20</sup>According to the website of The Hague Conference on Private International Law, among countries which ratify the Convention, there are 14 countries which along the “Belt and Road”, including Greece, Austria, Montenegro, Latvia, Estonia, Slovenia, Croatia, Czech Republic, Hungary, Poland, Bulgaria, Romania, Slovakia, Singapore. There are also two countries including Ukraine and China that have signed.

<sup>21</sup>Since cross-border transportation generally involves the interests of multiple national entities, and the positions between the originating, routing, and destination countries are different, the multilateral cooperation mechanism is more conducive to solving the problem than the bilateral mechanism.

China rather than the “mesh” trade status under the WTO’s multilateral trading system, so that disputes in those trade states are not interconnected but may be a multi-country interest game. Therefore, the multilateral dispute settlement mechanism is not conducive to protecting the interests of China. Specifically, based on the bilateral FTA dispute mechanism, make consultation, mediation, arbitration mechanisms, laws application, procedures, and operational mechanisms clear, in particular, the selection process for the expert group or arbitrator must be clarified. It can be made in a way that, for example, each of the two parties appoints an expert or arbitrator, and recommends four candidates who do not belong to either party, and also do not have the permanent residence of either party. If the two parties cannot reach an agreement on the selection of the chief expert, it will be drawn from the candidates.<sup>22</sup> Of course, at the national level, a model clause for a dispute settlement mechanism in bilateral international trade should be formulated to maintain the consistency of China’s fair treatment to countries along the “Belt and Road”.

### 3.2. The Aspect of Resolving Disputes between State and Investor

What kind of mechanism from China’s perspective would be the proper solution for investment disputes between countries and investors under the “Belt and Road” Initiative? Based on the characteristics of the capital market in the current period of capital introduction and export in China under the “Belt and Road” Initiative, the author believes that it is adhere to the independent settlement mechanism of investors and host country investment disputes between the parties to the BIT Agreement, and do not invoke multilateral or third-party dispute settlement mechanisms. Because if China authorize Chinese investors to submit claims against host governments arising out of Belt and Road investment projects to arbitration, China can expect pressure from other governments (involved in Belt and Road Investment or not) to demand reciprocal rights in their own BITs with China (Norton, 2018). In view of the fact that China and the countries along the “Belt and Road” have issues such as inconsistency and discomfort of the signed treaty, the BIT negotiations between countries along the “Belt and Road” should be accelerated. On the premise that it does not contradict the measures as the host country, to fight for interests in countries along the “Belt and Road” for Chinese investors. In terms of dispute settlement mechanism and institution building, it is recommended to use the WTO dispute settlement mechanism or the China-South Korea FTA agreement to negotiate dispute settlement mechanisms such as consultation, mediation, arbitration and *ad hoc* dispute settlement mechanism to resolve investment disputes. In terms of the composition of mediators and arbitrators in dispute settlement organizations, it is recommended that the China International Economic and Trade Arbitration

<sup>22</sup>Article 21.7 of the Korea-Canada Free Trade Agreement, which came into force on 1 January 2015.

<https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/korea-coree/fta-ale/index.aspx?lang=eng>.

Commission, the Supreme Court or the Ministry of Justice sign a Memorandum of Cooperation with relevant institutions in the countries along the “Belt and Road”, providing highly respected judges, scholars or government officers to serve as a member of the organization to form a roster of experts on dispute organization. When the dispute arises, each of the two parties selects one of the national experts, and jointly select the experts of third-country nationals based on some simple rules<sup>23</sup> as the chief staff. The country of nationality of the chief expert is the country of arbitration.

### **3.3. The Aspect of Resolving Disputes between Parties as Non-States**

What kind of mechanism from China’s perspective would be the proper solution for disputes between parties as non-states under the “Belt and Road” initiative?

Firstly, since 108 of the 130 countries along the “Belt and Road” are parties to the New York Convention, arbitration is undoubtedly the preferred option. As for how to choose the place of arbitration and the arbitral institution, it is possible to negotiate and select the arbitration institution within the New York Convention by virtue of their respective advantages.

Secondly, as for the international trade disputes between China and the above 25 countries, the third countries which have signed the bilateral civil and commercial judicial assistance treaties with both the above 25 countries and China can be consulted. It is a secondary alternative to choose a particular arbitration institution as the arbitration jurisdiction to apply for a ruling. If there is no such country, the negotiation promotion and signing of the bilateral civil and commercial judicial assistance treaties with the above-mentioned 25 countries are expected to be made by the relevant departments of China as soon as possible.

Finally, the promotion and rapid roll out of inter-governmental, non-governmental mediation agencies and mediation mechanisms under the “Belt and Road” initiative can be expected. Mediation has been hailed by the international community as “Oriental Value” and “Oriental Treasure”. The “Belt and Road” initiative, which was initiated by China, emphasizes that mediation can play a role in promoting Chinese traditional culture and it also meets the trend of dispute resolution (Wang, 2016).

## **4. Conclusion**

Since Chinese President Xi Jinping first introduced the “Belt and Road” initiative in 2013, a series of institutional development, policy development and summit forums have been promoted in the progress of the “Belt and Road” initiative, such as Asian Infrastructure Investment Bank set in October 2014, “Vision and Action to Promote the Construction of the Silk Road Economic Belt and the 21st Century Maritime Silk Road” which jointly issued by three Chinese Ministries

<sup>23</sup>For example, choose an expert from the country where the capital city is located on the same distance from the capitals of the two countries; or an expert from the nearest country (or the prosecution party).

(MOC, 2015), as well as Belt and Road Forum for International Cooperation held in May 2017. The “Belt and Road” initiative has entered the field of law research very clearly. However, as a subject of jurisprudence research, information to support the arguments is still insufficient.

The international trade cooperation of countries along the “Belt and Road” has the characteristics of “peer-to-peer” centered on China<sup>24</sup>, which determines the tendency of the bilateral negotiation on the choice of the dispute settlement mechanism. In terms of the construction of specific dispute settlement mechanism, we can still draw lessons from mature systems such as consultation, mediation and arbitration, but we should consider their feasibility, effectiveness and convenience. For example, on the question of being elected as the chief arbitrator or a member of the chief expert group, *Korea-Canada Free Trade Agreement*<sup>25</sup> can be a reference, which is to elect a number of arbitrators of third country nationality and the chief arbitrator is selected by lot. It ensures that the dispute is not delayed due to procedural issues such as the selection of arbitrators.

International Law consists primarily of treaties negotiated between States and between States and international organizations, and the customs of countries bound by their behaviors. A perfect treaty mechanism is an important guarantee for the stability of the international community. The binding behavior of the state is the source of power for promoting the development of international law. Treaties which China signed under the “Belt and Road” initiative are undoubtedly an important force to promote the development of today’s international law. Therefore, it is a priority to improve the bilateral treaties of countries along the “Belt and Road”.

The “Belt and Road” is a win-win “road” which promotes mutual development and achieves mutual prosperity as well as a friendly “road” which enhances understanding and strengthens all-round communication (MOC, 2015). The ultimate goal of the “Belt and Road” initiative, is to realize the mutual prosperity and development of the countries alongside, is to create and promote a “Network” trade system between countries alongside, and to develop harmoniously together with all of the countries.

In consequence, the study of regional trade agreements or multilateral trade agreements based on the multilateral trading system and its dispute settlement mechanism including establishment of a Belt and Road international investment disputes settlement institution (Lu, 2018) is also imperative. In order to better guarantee the successful implementation of the “Belt and Road” initiative, it is noteworthy that China should still focus on maximizing the use of bilateral dispute settlement mechanisms and sort out, improve, update the bilateral treaties

<sup>24</sup>According to the current domestic official research data, the author believes that the international trade cooperation under the “Belt and Road” initiative is at least the current state.

<sup>25</sup>Government of Canada.

<https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/korea-coree/fta-ale/21.aspx?lang=eng>

between countries along the “Belt and Road”, at the current time which bilateral trade with “peer-to-peer” is the main form of cooperation.

### Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

### References

- BARP (2019). *What Is “Belt and Road” Initiative?*  
<https://eng.yidaiyilu.gov.cn/ghsl/cjwd/2757.htm>
- Lu, Y. (2018). The Establishment of “Belt and Road” International Investment Disputes Settlement Institution. *Journal of Law and Commerce*, 37, 1.  
<https://doi.org/10.5195/jlc.2018.151>
- MOC (2015). *Vision and Action to Promote the Construction of the Silk Road Economic Belt and the 21st Century Maritime Silk Road*.  
<http://ydyl.people.com.cn/n1/2017/0425/c411837-29235511.html>
- MOC (2017). *Research Report on Sino-US Economic and Trade Relations* (p. 5 & 22).  
<http://www.mofcom.gov.cn/article/ae/ai/201705/20170502581448.shtml>
- MOFA (2018). *China’s Foreign Judicial Assistance and Extradition Treaty*.  
[http://www.fmprc.gov.cn/web/ziliao674904/tytj674911/wgdwdjdsfhzty\\_674917/t1215630.shtml](http://www.fmprc.gov.cn/web/ziliao674904/tytj674911/wgdwdjdsfhzty_674917/t1215630.shtml)
- Ni, S. M. (2018). *On the International Dispute Settlement of the “Belt and Road”*.  
<http://news.sina.com.cn/sf/news/fzrd/2017-05-31/doc-ifyfuvpm6835399.shtml>
- Norton, P. M. (2018). China’s Belt and Road Initiative: Challenges for Arbitration in Asia. *University of Pennsylvania Asian Law Review*, 13, 72.
- Ren, H. (2016). Analysis of the Basis of International Law for the “Belt and Road”. *Dong-jiangxuekan*, 33, 62-68.
- Wang, G. G. (2016). On the “Belt and Road” Dispute Resolution Mechanism. *China Law Review*, 2, 33-38.
- WCPG (2018). *Opinions on the Establishment of “Belt and Road” International Commercial Dispute Settlement Mechanism and Institutions*.  
[http://www.gov.cn/zhengce/2018-06/27/content\\_5301657.htm](http://www.gov.cn/zhengce/2018-06/27/content_5301657.htm)