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## **China's Governance Approach to the Belt and Road Initiative (BRI): Partnership, Relations, and Law**

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# China's Governance Approach to the Belt and Road Initiative (BRI): Partnership, Relations, and Law

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**Abstract:** This paper looks at how China conducts intergovernmental relations with the BRI countries. By examining the normative documents produced in the BRI cooperation as well as the rather informal BRI dialogue mechanisms, this paper argues that China adopts a partnership-based, relational approach in ordering bilateral, regional and global economic cooperation. The Chinese approach may offer an alternative governance model in international cooperation but we have to wait and see what will eventually happen in the already very dynamic BRI process from the perspectives of international law and international relations.

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## The Rise of the Belt and Road Initiative

The Belt and Road Initiative (BRI), also known as the One Belt One Road (OBOR), is Chinese President Xi Jinping's signature foreign policy vision. The BRI comprises a Eurasia landmass-based Silk Road Economic Belt (the "Belt") and a 21<sup>st</sup> Century Maritime Silk Road (the "Road"), both proposed by Xi in 2013. According to China's original plan, the BRI runs through the three continents of Asia, Europe and Africa, under which the Belt aims to bring together China, Central Asia, Middle East, South Asia, Russia and Europe, while the Road will link China's coasts to Europe through South China Sea, Indian Ocean and the South Pacific.<sup>1</sup> However, in the few years after the original BRI ideals were publicized, "[t]he scheme has expanded far beyond its original core of Eurasia and the Middle East, from New Zealand to the Arctic, Africa to Latin America and even outer space".<sup>2</sup> By end 2017, the BRI officially covered 71 countries, with 3.4 billion people which is 47.6 percent of the world's population, total GDP (Gross Domestic Product) valued of USD14.5 trillion that accounted for 18.4 percent of the annual global wealth, and foreign trade of USD9.3 trillion which was 27.8 percent of world trade.<sup>3</sup>

The BRI is a project with profound geopolitical and geoeconomic implications. It is probably China's first mega strategic initiative aiming to reshape the development of the international order and reorganize the various existing forces in international relations.<sup>4</sup> China has committed tremendous financial, diplomatic and financial resources for this project, which was hailed by President Xi as "project of the century".<sup>5</sup> The investment scale of the BRI projects ranges from USD1.4 trillion to USD6 trillion,<sup>6</sup> an astronomical figure in either case.

China has identified five areas of cooperation between China and the BRI countries, including (1) policy coordination to promote government-to-government cooperation and

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<sup>1</sup> *Vision and Actions on Jointly Building Silk Road Economic Belt and 21<sup>st</sup>-Century Maritime Silk Road*, jointly issued by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, 28 March 2015, at [http://en.ndrc.gov.cn/newsrelease/201503/t20150330\\_669367.html](http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html) (hereinafter the *BRI Vision and Actions*).

<sup>2</sup> See "Gate to the Globe: China Has a Vastly Ambitious Plan to Connect the World", *The Economist*, July 26<sup>th</sup> 2018, at <https://www.economist.com/briefing/2018/07/26/china-has-a-vastly-ambitious-plan-to-connect-the-world> (hereinafter, *The Economist*, "Gate to the Globe").

<sup>3</sup> Guojia Xinxin Zhongxin "Yidai Yilu" Dashuju Zhongxin, *YIDAI YILU MAOYI HEZUO DASHUJU BAOGAO 2018* (国家信息中心“一带一路”大数据中心:《一带一路贸易合作大数据报告 2018》[STATE INFORMATION CENTER BELT AND ROAD BIG DATA CENTER, *BIG DATA REPORT ON TRADE COOPERATION 2018*], at 1, available at China's official website for the BRI at [www.yidaiyilu.gov.cn](http://www.yidaiyilu.gov.cn) (hereinafter the State Information Center, *BIG DATA REPORT*).

<sup>4</sup> Jiangyu Wang (王江雨), *Diyuan Zhengzhi, Guoji Huayuquan yu Guojifa Shang de Guize Zhidingquan* (地缘政治、国际话语权与国际法上的规则制定权) [Geopolitics, Discursive Power and Rule-making in International Law], *China Law Review* (2016) 2, at 39, available at SSRN: <https://ssrn.com/abstract=2970391>

<sup>5</sup> Xi Jinping, "Work Together to Build the Silk Road Economic Belt and the 21<sup>st</sup> Century Maritime Silk Road", speech delivered at the Opening Ceremony of The Belt and Road Forum for International Cooperation", 14 May 2017, available at [http://www.xinhuanet.com/english/2017-05/14/c\\_136282982.htm](http://www.xinhuanet.com/english/2017-05/14/c_136282982.htm) (hereinafter, Xi, "Speech at the 2017 BRI Forum"),

<sup>6</sup> Fan Zhai, "China's Belt and Road Initiative: A Preliminary Quantitative Assessment", *Journal of Asian Economics* (2018) 55, 84 at 85.

establish intergovernmental policy exchange and communication mechanisms; (2) infrastructure connectivity, which is the BRI's priority area, to connect the BRI countries through infrastructural building and development of common technical standards; (3) trade facilitation to remove investment and trade barriers and create a sound business environment for all BRI countries; (4) financial integration to promote financial cooperation and regulatory harmonization in the areas of currency stability, bonds, new development banks, bank lending, and payment systems; and (5) people-to-people bond to promote exchanges between the BRI countries in culture, education, media, tourism, epidemic prevention, among others.<sup>7</sup> Driven by a "top-level framework", China has proposed to build six economic corridors which are the New Eurasian Land Bridge Economic Corridor, the China-Mongolia-Russia Economic Corridor, the China-Central Asia-West Asia Economic Corridor, the China-Indochina-Peninsula Economic Corridor, the China-Pakistan Economic Corridor, and the Bangladesh-China-India-Myanmar Economic Corridor, all of which will connect China with other countries through "six means of communication" including railways, highways, seagoing transport, aviation, pipelines, and aerospace integrated information network.<sup>8</sup> In the end, through the BRI,

[The Chinese government] promotes practical cooperation in all fields, and works to build a community of shared interests, destiny and responsibility featuring mutual political trust, economic integration and cultural inclusiveness.<sup>9</sup>

Although the BRI is touted to be able to offer business opportunities to both Chinese and international companies,<sup>10</sup> it is still a top-level driven project, in which the success of the hundreds of thousands of transactions, including mainly Chinese investments, depends on China's relations with the BRI countries in general, and China's approach to arrange BRI-related cooperation with the individual BRI countries in general. That is, government-to-government cooperation serves as the foundation for all kinds of other activities, projects and transactions under the BRI. In this regard, it can be observed that China follows a partnership-based, relational approach rather than a rule-based system in ordering the bilateral, regional and global economic cooperation along the Belt and Road.

This paper looks at how China conduct intergovernmental relations with the BRI countries. By examining the normative documents produced in the BRI cooperation as well as the rather informal BRI dialogue mechanisms, this paper argues that China adopts a partnership-based, relational approach in ordering bilateral, regional and global economic cooperation. The Chinese approach may offer an alternative governance model in international relations. Ideally, it features a dominate power which controls the direction of cooperation but is

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<sup>7</sup> *BRI Vision and Actions*, Part IV: "Cooperation Priorities", above note 1.

<sup>8</sup> Office of the Leading Group for the Belt and Road Initiative, *Building the Belt and Road: Concept, Practice and China's Contribution* (Beijing: Foreign Language Press, 2017), p. 10 (hereinafter *Building the Belt and Road*).

<sup>9</sup> *BRI Vision and Actions*, Part III: "Framework", above note 1.

<sup>10</sup> See "Belt & Road: Opportunity & Risk", Baker McKenzie (2017), pp. 12-21 (discussing the vast investment opportunities under the BRI for Chinese state-owned enterprises, private enterprises, and international companies). See also "How Singapore companies can be a part of BRI", Enterprise Singapore, available at <https://ie.enterprisesg.gov.sg/venture-overseas/browse-by-market/asia-pacific/china/about-obor/how-singapore-companies-can-be-a-part-of-obor> (visited 27 December 2018).

willing to share the power (and responsibility) with other stakeholders to achieve mutual benefits, a system in which the participants do not have to surrender sovereignty as much as they have to do in the America-led liberal international order, and regional economic integration achieved through infrastructure-driven connectivity and an investment-led development model. However, this “romantic” vision may still be overridden by China’s realist pursuits, and we have to wait and see what will eventually happen in the already very dynamic BRI process.

This paper is organized as follows. It starts with an analysis of the overall institutional approach adopted by China under the BRI, and a critical discussion of the characteristics of this Chinese approach. It then examines the features of the government-to-government approach in the normative documents including the Vision and Actions, and Plans, followed by a systematic discussion of Memorandum of Understandings (MoUs) China has signed with more than a hundred BRI participants. In particular, it compares the arrangements China signed with the Philippines and New Zealand, respectively, to illustrate the similarities and differences between different MoUs, and explain the possible reasons in the differences. The last part concludes.

### **The Overall Institutional Approach: A Partnership based, Relational Approach**

Western approach to international economic cooperation, regional economic integration and international development share one common feature: the rule of law.<sup>11</sup> More specifically, Western trade and investment projects would require the application of a uniform set of rules at the three levels of international/bilateral cooperation, domestic regulation, and private transactions. The Chinese approach to the BRI is distinctive in the sense that it adopts a more informal and less institutional approach, which can be called a “partnership-based relational approach”. Being “*relational*” means the cooperative framework for the BRI is not based on a treaty-based institutional design. Rather, it utilizes a variety of means, most of which are rather abstract and even ambiguous, with the view to building confidence and developing good relations through volunteer cooperation and non-binding promises. The “*partnership*” dimension in the BRI indicates that the bilateral cooperation between China and individual BRI countries is always oriented toward building partnership, for which the BRI does not impose a uniform model applying to all countries. Rather, China seemingly seeks a model of “One Country One Approach” (*yiguo yice*). That is, China’s bilateral cooperation with each and every BRI country can adopt a different model, as long as it is mutually acceptable solution through friendly bilateral negotiations.<sup>12</sup> This partnership-based approach is featured with a strong degree of pragmatism, which is both result-oriented and progress-oriented,

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<sup>11</sup> See Caroline Roseveare, “The Rule of Law and International Development”, Department for International Development (DFID) (London, 2013), at [https://assets.publishing.service.gov.uk/media/57a08a0be5274a27b20003c7/Literature\\_Review\\_RoL\\_DFI\\_D-GSDCH-PEAKS\\_FINAL.pdf](https://assets.publishing.service.gov.uk/media/57a08a0be5274a27b20003c7/Literature_Review_RoL_DFI_D-GSDCH-PEAKS_FINAL.pdf) (visited 2 January 2019).

<sup>12</sup> Chen Yiyuan, “BRI Needs a ‘One Country, One Approach’” [陈艺元：“‘一带一路’建设需要‘一国一策’”], China’s Belt and Road Portal, 26 February 2018, at <https://www.yidaiyilu.gov.cn/ghsl/gnzjgd/48891.htm>.

while flexible enough to accept compromises and even failures in order to maintain good relations in the long term.

Institutionally, China's overall approach to the BRI has the following features:

First, the BRI does not have a treaty-based institutional framework, which means the BRI is neither an international treaty/agreement, nor an international organization. As Wade Shepard so remarked about the BRI,

This is an initiative for which there are no publicly-stated KPI, no overarching institutionalization, no formal membership protocols, no founding charters, and a timeline for development that is not measured in mere years, but decades.<sup>13</sup>

Shepard however noted that the vagueness in the BRI, such as lack of institutionalization, and very broad definition, “is probably one of its greatest strengths – and one of the main reasons for its current, and more than likely, future success”.<sup>14</sup> In the end, the BRI is “a framework for partnering with China on economic, political, and infrastructural development – a series of unrelated but nonetheless interconnected bilateral trade pacts and partnerships”.<sup>15</sup>

Second, China orders the BRI through dialogues at China-led multilateral and bilateral forums and a wide of normative documents. The multilateral forum refers to the Belt and Road Forum for International Cooperation (BRF), which is the flagship international conference organized by the Chinese government for which China seemingly expects to invite as many as possible heads of states from around the world, although sometime its “punishes” some state leaders by not inviting them.<sup>16</sup> The first BRF was held in Beijing in 2017 while the second is to be convened in April 2019. The following types of normative documents have been employed in the BRI: (1) Vision and Actions; (2) Cooperation Plans; (3) White Papers; (4) Joint Communiques (5) Guiding Principles; (6) Planning Programmes; and (7) Memorandum of Understandings (MoUs). The first three types of documents are issued by the Chinese Government itself to explain its vision for both the general framework, ideas, objectives and the blueprint for cooperation in specific areas. The only Joint Communique was adopted by the first BRF in April 2017, endorsed by some but not all the leaders who attended the BRF.<sup>17</sup> Guiding Principles are also adopted at the BRF by ministries of countries who attend the BRF. For example, the Guiding Principles on Financing the

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<sup>13</sup> Wade Shepard, “Why the Ambiguity of China’s Belt and Road Initiative Is Perhaps its Biggest Strength”, *Forbes*, 19 October 2017, at <https://www.forbes.com/sites/wadeshepard/2017/10/19/what-chinas-belt-and-road-initiative-is-really-all-about/#72adce76e4de>. See also Heng Wang, “China’s Approach to the Belt and Road Initiative”, University of New South Wales Law Research Series, [2018] *UNSWLRS* 82, p. 7 (noting the BRI “neither has a constituting treaty with all BRI states (a BRI-wide treaty), as is the case with international organizations, nor formal membership protocols”).

<sup>14</sup> Shepard, id.

<sup>15</sup> Shepard, id.

<sup>16</sup> “Ministry of Foreign Affairs Holds Briefing for Chinese and Foreign Media on President Xi Jinping’s Attendance and Chairing of Related Events of the BRF”, 25 April 2017, available at <http://www.beltandroadforum.org/english/n100/2017/0425/c22-214.html>.

<sup>17</sup> “Joint Communique of the Leaders Roundtable of the Belt and Road Forum for International Cooperation”, 16 May 2017, at <http://www.beltandroadforum.org/english/n100/2017/0516/c22-423.html>.

Development of the Belt and Road were adopted by the finance ministries from 27 countries at the first BRF on 14 May 2017.<sup>18</sup> A Planning Programme, such as the Planning Programme for the China-Mongolia-Russia Economic Corridor, provides for specific areas and even projects of cooperation for the BRI countries involved. Lastly, the largest body of BRI documents are MoUs,<sup>19</sup> which are declarations of the principles of cooperation and are results of bilateral negotiations between China and its BRI partners.

Arguably, this approach of ordering cooperation activity under the BRI is vividly coloured by “soft law” rather than “hard law”. That is, “BRI-specific documents call for voluntary cooperation instead of hard law-imposing treaty obligations backed by enforcement mechanisms”.<sup>20</sup> For instance, Part V of the China-Philippines MoU on BRI, under the heading of “Legal Status”, provides,

*This Memorandum of Understanding does not create legally binding obligations for the Participants. It is an expression of their common aspiration to cooperate on the Belt and Road Initiative for the mutual benefits.*<sup>21</sup>

The notion of soft law is a useful concept to capture “norms that are neither law, nor mere political or moral statement, but lie somewhere in between”.<sup>22</sup> Soft law has certain independent advantages of its own. For instance, soft legalization is much easier to achieve than hard legalization, especially when the states concerned are not willing to be seen to have their sovereignty directly challenged. Soft legalization is more effective in dealing with uncertainty, especially when the state actors need some time to learn the impact of real, hard law agreements over time. In addition, soft law facilitates compromises – and thus mutual beneficial cooperation – between states with divergent interests, values, and degrees of powers.<sup>23</sup>

In the context of the BRI, the soft law approach serves, particularly, a twofold objective. First, from the perspective of international relations, it helps alleviate the concerns of the BRI countries, especially China’s neighbors, that China will use the BRI to “assert regional leadership in Asia” economically, diplomatically and militarily.<sup>24</sup> Not requiring the parties to

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<sup>18</sup> These Guiding Principles are available at

<http://wjb.mof.gov.cn/pindaoliebiao/gongzuodongtai/201705/P020170515761133537061.pdf>.

<sup>19</sup> The agreement between China and New Zealand on the Belt and Road is however called “Memorandum of Arrangement on Strengthening Cooperation on the Belt and Road Initiative” (MoA), which is essentially an MoU (hereinafter the China-New Zealand MoA).

<sup>20</sup> Wang (2018), p. 8, above note 13.

<sup>21</sup> “Memorandum of Understanding between the Government of the Republic of Philippines and the Government of the People’s Republic of China on Cooperation on the Belt and Road Initiative”, 20 November 2018 (hereinafter the China-Philippines MoU on BRI).

<sup>22</sup> See M. G. Desta, “Soft Law in International Law: An Overview”, in A. K. Bjorklund and A. Reinisch (eds.), *International Investment Law and Soft Law* (Cheltenham, L Edward Elgar, 2012), p. 40.

<sup>23</sup> K. W. Abbott and D. Snidal, “Hard and Soft Law in International Governance”, (2000) 54(3) *International Organization*, p. 421.

<sup>24</sup> Charles Clover and Lucy Hornby, “China’s Great Game: Road to a New Empire”, *Financial Times* (13 October 2015) < <https://www.ft.com/content/6e098274-587a-11e5-a28b-50226830d644> >. See also “Southeast Asia Wary of China’s Belt and Road Project, Skeptical of U.S.: Survey”, *Reuters* (7 January 2019) < <https://www.todayonline.com/world/southeast-asia-wary-chinas-belt-and-road-project-skeptical-us-survey> >.

make hard commitments under binding legal obligations will reduce the fear of the BRI countries that, given the power asymmetry between them and China, as well as, the uncertainty about China's intention and future, specific and binding commitments will make them vulnerable to Chinese dominance. On the other hand, the very broad definition, vague language and lack of institutionalization in the BRI also reveals China's sense of uncertainty about the project's future. At best, China is following its traditional "crossing the river by touching the stone" approach, which limits its own ability to commit to specific and clear legal obligations.

Third, although law is generally assigned a secondary role (to diplomatic negotiations and bilateral consultations, *inter alia*), China has ironically made great endeavors to build judicial institutions for dispute resolution under the BRI. As early as 7<sup>th</sup> July 2015, the Supreme People's Court of China (the SPC) issued a circular to offer Chinese judiciary's determination to provide "judicial services and safeguard" for the BRI,<sup>25</sup> which indicates that "the rule of law is an important safeguard for the BRI, in which the role of the judiciary is indispensable".<sup>26</sup> In the afterward, the SPC issued a range of judicial interpretations targeting at adjudication of BRI-related cases. In addition, it published two batches of "model cases" (*dianxing anli*) respectively in July 2015 and May 2017 with a view to "responding to difficult and complicated questions, clarifying the commercial rules, unifying the application of laws, as well as, demonstrating the good image of impartiality and efficiency of our country's judiciary".<sup>27</sup> Most significantly, China launched two International Commercial Courts (*guoji shangshi fating*, CICC), one based in Shenzhen and the other in Xi'an, to handle disputes concerning the BRI.<sup>28</sup>

The SPC's commitment to provide tailor-made dispute resolution services to the BRI can certainly be understood as its aspiration to play a role in the BRI. Understandably – and more importantly, it is the gesture of the leadership of Chinese judiciary to necessarily plea allegiance to Xi Jinping, China's power-loving paramount leader. However, the rapid and sophisticated institutional building about the CICC demonstrates China's pragmatic and instrumental view of the role of law. Though, for various reasons, China does not intend to entirely pursue a rule-based approach in ordering the BRI, it still aims to build a framework for legalized dispute resolution for the BRI transactions, at least in case of need.

### **Government-to-Government Cooperation in the Vision and Actions, and Plans.**

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<sup>25</sup> "Zuigao Renmin Fayuan Guanyu Renmin Fayuan wei "Yidai Yilu" Jianshe Tigong Sifa Fuwu he Baozhang de Ruogan Yijian" ("Several Opinions of the Supreme People's Court on the Judiciary's Provision of Judicial Services and Safeguard for the Belt and Road"), Fa Fa (2015) 9 Hao, 16 June 2015 (hereinafter the "SPC's BRI Opinions").

<sup>26</sup> SPC's BRI Opinions, id, art. 1.

<sup>27</sup> Li Min, "Zijue Dandang Shiming, Yingzao Youzhi Sifa Huanjing – Renmin Fayuan Fuwu Baozhang 'Yidai Yilu' Jianshe Gongzuo Zongshu" ("Consciously Shoulder the Mission to Build a Superb Judicial Environment – A Review of the People's Courts' Contribution to Servicing and Safeguarding the BRI"), *People's Court Daily* (5 March 2018) <<https://www.chinacourt.org/article/detail/2018/01/id/3178206.shtml>>.

<sup>28</sup> The CICC in Xi'an handles disputes concerning the Belt, leaving the maritime-related Road disputes to Shenzhen CICC. The official website of the CICC is <http://cicc.court.gov.cn>.



Various Vision and Action have been published by the Chinese Government to explain the objectives and principles for cooperation and the blueprint for specific actions. The first Vision and Actions set the umbrella provisions under which the BRI states are expected to adopt the following principles in conducting intergovernmental relations:<sup>29</sup>

- (1) Compliance with the purposes and principles of the United Nations Charter, and, in particular, the Five Principles of Peaceful Co-existence;
- (2) Openness to make the BRI accessible to all countries and all regional and international organizations;
- (3) Harmoniousness to promote tolerance and dialogue among civilizations and encourage mutual respect of paths and models of development chosen by different countries;
- (4) Market-driven operation to ensure the adoption of principles of market economy and prevailing international rules and practices; and
- (5) Pursuing mutual benefit to ensure that the interests and concerns of all parties involved are accommodated and seek the “biggest common denominator” for cooperation.

On this basis, policy coordination among the BRI states, which serves of the foundation of BRI cooperation, aims to “build multilevel intergovernmental macro policy exchange and communication mechanisms, expand shared interests, enhance mutual political trust, and reach new consensus for cooperation”.<sup>30</sup> For example, in the *Vision for Maritime Cooperation under the BRI*,<sup>31</sup> China vows to work with the countries along the Road to joint protect the marine ecosystem, address climate change, develop technical standards for carbon cooperation, enhance cooperation on marine resource utilization, promoting maritime connectivity, promote common maritime security, prevent and mitigate marine disasters, conduct joint research on scientific and technological development concerning the ocean, promote marine education and cultural exchange, and, in the end, development collaborative ocean governance based on the *Blue Partership*.<sup>32</sup> In the *Vision and Actions for Energy Cooperation under the BRI*,<sup>33</sup> China promises to “establish bilateral working mechanisms (with other BRI states) to study implementation plans and blueprints for energy cooperation”.<sup>34</sup>

In all the Vision, Actions and Plans, the Chinese Government demonstrates a persistent attitude in making it a priority for seeking the endorsement of the governments of countries along the BRI. Seemingly, China sincerely believes that a welcoming attitude of the BRI

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<sup>29</sup> *BRI Vision and Actions*, above note 1, Part II.

<sup>30</sup> *BRI Vision and Actions*, above note 1, Part III.

<sup>31</sup> *Vision for Maritime Cooperation under the Belt and Road Initiative*, jointly issued by the National Development and Reform Commission and the National Ocean Administration (20 June 2017) <<https://www.yidaiyilu.gov.cn/wcm.files/upload/CMSydylgw/201706/201706200153032.pdf>>.

<sup>32</sup> *Id.*, pp. 1-12.

<sup>33</sup> *Vision and Actions for Promoting Energy Cooperation under the Silk Road Economic Belt and 21<sup>st</sup> Century Maritime Silk Road*, jointly issued by the National Development and Reform Commission and National Energy Administration (May 2017) <<https://www.yidaiyilu.gov.cn/zchj/qwfb/13745.htm>>.

<sup>34</sup> *Id.*, Part IV.

partner country, which should be achieved through a bilateral MoU, is essential for the success of all kinds of projects and transactions in that country. Conversely, China has appeared to be extremely sensitive about whether other countries are willing to sign up on the BRI in the name of their governments.

### **Government-to-Government Cooperation in BRI Cooperation Arrangements**

By the end of December 2018, China has signed 170 arrangements of cooperation, including mainly MoUs, with 122 countries and 29 international organizations.<sup>35</sup> As noted previously, these arrangements are not meant to create binding legal obligations. Instead, they are supposed to create a framework for confidence building and possibilities for bilateral cooperation in mutually agreed areas under the BRI.

Not the texts of the all the MoUs or similar arrangements with slightly different names but the same structure and functions have been published. As a matter of fact, for unknown reasons, China and its BRI partners released only a limited number of such documents as a matter of public record onto the public domain. An examination of the published text reveal that the basic structure and provisions of the arrangements tend to remain the same while some interesting differences exist. In the table below, we compare two such BRI arrangements, namely the China-Philippines MoU<sup>36</sup> and the China-New Zealand MoA,<sup>37</sup> to illustrate the general attributes of and the substantive differences between the arrangements.

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<sup>35</sup> “List of Countries Which Have Signed BRI Cooperation Documents with China”, Belt and Road Portal (14 January 2019) <<https://www.yidaiyilu.gov.cn/gbjg/gbgk/77073.htm>>.

<sup>36</sup> Id, above note 21.

<sup>37</sup> Id, above note 19.

Table 1: Comparison between the China-Philippines MoU and China-New Zealand MoA

<i>Provisions</i>	<i>China-Philippines MoU</i>	<i>China-New Zealand MoA</i>
<i>Preamble</i>	<ul style="list-style-type: none"> <li>(1) Emphasizing China’s offer to assist in the development of other countries;</li> <li>(2) Emphasizing common prosperity and non-zero-sum game in bilateral relations.</li> </ul>	<ul style="list-style-type: none"> <li>(1) Emphasizing the BRI spirit “peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit”;</li> <li>(2) Drawing on the comparative advantage and contributions of the Participants and their private sectors.</li> </ul>
<i>Objectives</i>	To realize sustainable growth and development and translate economic complementarities and people-to-people exchanges into advantages for practical cooperation;	<ul style="list-style-type: none"> <li>(1) Cooperation and exchanges of support for achieving common development and translating advantages of close political relations, economic complementarities and cultural exchanges into practical cooperation and sustainable growth;</li> <li>(2) Cooperation in inter-regional connection to advance regional peace and development.</li> </ul>
<i>Principles</i>	<ul style="list-style-type: none"> <li>(1) Mutual respect for territorial integrity and sovereignty;</li> <li>(2) Complete transparency;</li> <li>(3) Development and prosperity through extensive consultation, joint contribution and sharing of benefits;</li> <li>(4) Maximization of existing bilateral, regional and multilateral mechanisms.</li> </ul>	<ul style="list-style-type: none"> <li>(1) Mutual respect of interests and trust under the principles of “wide consultation, joint contribution and shared benefits”;</li> <li>(2) Maintaining and enhancing existing bilateral and multilateral mechanisms;</li> <li>(3) Promoting practical cooperation in accordance with international good practice, market orientation and professional principles.</li> </ul>
<i>Cooperation Areas</i>	<ul style="list-style-type: none"> <li>(1) Policy dialogue and communication on key macroeconomic policies and development strategies;</li> <li>(2) Infrastructure development and connectivity;</li> <li>(3) Cooperation on trade and investment, adhering to national customs rules, regulations and policies;</li> <li>(4) Financial cooperation on expanding the use of local currencies;</li> <li>(5) Social-cultural exchanges.</li> </ul>	<ul style="list-style-type: none"> <li>(1) Policy cooperation by carrying out dialogue on development strategies, plans and policies on a regular basis;</li> <li>(2) Bilateral mutually beneficial cooperation including increasing bilateral trade; upgrading the China-NZ FTA; expanding investment; cooperation in infrastructure, agricultural technology, clean energy, information technology and regulatory harmonization;</li> <li>(3) Cultural exchanges, especially in the screen sector;</li> <li>(4) Cooperation at the multilateral and regional mechanisms.</li> </ul>
<i>Modes of Cooperation</i>	<ul style="list-style-type: none"> <li>(1) High-level visits;</li> <li>(2) Pilot programmes in key areas;</li> <li>(3) Investment and financial support for projects on the basis of free market principles.</li> </ul>	No provisions.
<i>Settlement of Differences</i>	Amicable settlement by consultations through diplomatic channels.	Settlement through friendly consultation.

<i>Legal Status</i>	Providing clearly that the MoU does not create legally binding obligations.	No provision on legal status but providing that the “Arrangement only expresses the common will” of participants to cooperate for the BRI.
<i>Amendment</i>	Amendment or revision “shall” be done by mutual consent.	Arrangement “will” be amended by mutual written consent.
<i>Effectivity</i>	Four (4) years subject to renewal.	Five (5) years subject to renewal.

Obviously, the structures and provisions of the two arrangements are very similar. However, if the China-Philippines MoU is representative of China’s BRI cooperation with a developing country while the China-New Zealand MoA represents BRI arrangement with a developed country, several interesting points of differences can be observed. First, there is clearly a “development” dimension in the China-Philippines MoU, in which China offers assistance to Philippines’ development. Understandably, China-New Zealand MoA does not need such development-based assistance, but it constantly stresses the importance of the private sector and market economy. Second, in cooperation principles, the China-New Zealand MoA mentions the need to follow “international good practice, market orientation and professional principles”, which does not exist in the China-Philippines MoU as the latter seems to emphasize adherence to national rules and regulations. Third, in areas of cooperation, the China-Philippines MoU specifically encourages the use of local currencies in bilateral trade and investment, while the China-New Zealand MoA specifically mentions regulatory harmonization. Fourth, both arrangements provide that they only embody the “common will” or “common aspiration” of the state actors involved, but the China-New Zealand MoA does not contain a “legal status” clause to emphasize that none of the provisions in the text is binding.<sup>38</sup> Further, with respect to amendment, though both arrangements require mutual consent for amending the text, the China-Philippines MoU uses “shall” while the China-New Zealand MoA uses “will”, arguably indicating a stronger consensus requirement, which is symbolic in nature, in the MoU for changing anything that is already agreed upon between the Participants.

The functions of the MoUs (and similar arrangements including the MoAs) present an interesting question. Clearly enough, both participants agree that the document does not create any legally binding obligations. Nevertheless, the MoUs serve a few functions which are useful for both China and its BRI partners. First, they lend legitimacy to the BRI at both domestic and international levels. Internationally, the number of MoUs and significance of the countries signed up for them can strengthen the legitimacy of the BRI in the international order. For instance, certain provisions imply the signatories’ support for the China-led global financial institutions such as the Asian Infrastructure Investment Bank (AIIB), as well as, Chinese government-sponsored institutions such as the Confucius Institute. Domestically, the MoUs can be used to showcase the international acceptance of the BRI, thus proving to the Chinese people that the BRI is the right thing to do. Second, since all the MoUs are based on a template drafted by China, it shows China is able to write rules which are acceptable at the international society, although (a) the so-called rules are still rudimentary and ambiguous;

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<sup>38</sup> See China-Philippines MoU, Part VI:2, and China-New Zealand MoA, Para. V.

and (b) they are not even supposed to be legally binding. Third, at this stage, the purpose of these non-legally binding MoUs is to define the framework for future diplomatic talks. Increasingly, China's economic partners may realize that this is a typical Chinese style in leading international negotiations: China set up the room (the framework), while all its partners may be invited to work together to design the interior details. That is, even in a China-led project, China wishes to be seen as willing to sharing the rule-making power with other countries to "jointly" develop everything, although they might have already subtly influenced by the framework established by a piping China.

## **Concluding Remarks**

The intergovernmental approach for cooperation adopted by China under the BRI, as evidenced in the rather abstract normative documents and dialogue mechanisms, has sent signals to the world about China's philosophy for international cooperation. The philosophy seeks, first of all, to be seen to pursue cooperation for mutual benefits and win-win results under the principles of "wide consultation, joint contribution and shared benefits". Bearing the attributes of mutual trust, openness and inclusiveness, the Chinese approach ostensibly suggests that it takes into account the interests of all parties involved, and will write rules jointly with other parties. Needless to say, this appears to be in stark contrast with how the United States dominates international cooperation.

China's partnership-based, relational approach in ordering bilateral, regional and global economic cooperation may offer an alternative governance model in international relations. Ideally, it features a dominate power which controls the direction of cooperation but is willing to share the power (and responsibility) with other stakeholders to achieve mutual benefits, a system in which the participants do not have to surrender sovereignty as much as they have to do in the America-led liberal international order, and regional economic integration achieved through infrastructure-driven connectivity and an investment-led development model.

However, the aforesaid Chinese approach may be a simple and even naïve "romantic" vision of the story.<sup>39</sup> In reality, it is also possible that a realism-driven China may use the BRI to "lure" other countries to support China's hidden agenda of pursuing dominance in the disguise of equal cooperation and mutual benefits. Although a lot of things under the BRI is really happening, its scope is undefined, future is unclear, and the true objectives of China, the driving hand behind it, are hard to verify. The only thing it is clear at this stage is that the BRI cannot be framed through the established lens of the conventional geopolitical strategy

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<sup>39</sup> See Muthucumaraswamy Sornarajah and Jiangyu Wang, "China, India, and International Law: A Justice Based Vision between the Romantic and Realist Perceptions", *Asian Journal of International Law* (2019) 1-34. The two authors proposed a new analytical framework which views the impact of the rise of China and India through two lenses: the romantic vision and the realist vision. The parties may pursue idealism-based cooperation for mutual trust, benefits and global justice in the romantic vision, but will compete, as rivals, for trade and investment opportunities, resources, influence and leadership of the region and the world in the realist vision.

and the international legal order, and we have to wait to see what will eventually happen in the already incredibly dynamic BRI process.