

Land Freight Transport along the Belt and Road: State-to-State and Investor-State Disputes

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Abstract: Road and rail (land) freight transport play a quintessential role in European and Eastern China logistics. The Belt and Road Initiative (BRI) and other multilateral development and infrastructure initiatives are consolidating Europe-China land freight corridors, as well as land freight routes that link China to other countries in Asia. This article analyzes the nature of the State-to-State disputes and the investor-State disputes that may arise in relation with these land freight transport infrastructure projects. State-to-State disputes related to the current developments in land freight transport potentially include disputes related to the liberalization of transport services, as well as State-to-State investment disputes related to road and rail transport infrastructure. Many of the investment disputes that may eventually arise out of the Belt and Road (B&R) land transport infrastructure projects may be resolved through Investor-State dispute settlement (ISDS) mechanisms.

Keywords: Belt and Road (B&R) State-to-State Disputes, Road and Rail (Land) Freight Transport, WTO Dispute-Settlement, Trade-in-Services Liberalization, Freight Services Liberalization, Belt and Road (B&R) Investor-State Disputes

I. INTRODUCTION

Maritime freight is and will continue to be the predominant mode of transport in the goods' modal split at a global scale; it is "the lifeblood of the World economy".¹ At a regional scale, road and rail (land) transport is already crucial. Land transport plays a quintessential role in continental logistics in Europe: in 2021, maritime transport accounted for 67.9% of total freight transport, followed

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¹ WTO Council for Trade in Services, Maritime Transport Services, S/C/W/315, 2010, p. 2.

by road (24.6%) and rail (5.4%) transport.² The role of land freight transport in Western China has also increased, and its importance in global supply chains will keep growing.

Development banks, funds and institutions at every level of governance are well aware of the potential of land freight transport to help diversify global supply chains and logistics and they support the funding, construction, upgrading and refurbishing of land transport infrastructure. The Belt and Road Initiative (BRI) outstands among the initiatives that are fostering land freight transport infrastructure in our days. This article will first identify the overland routes that are being created, upgraded and refurbished under the BRI.

Within the Belt and Road (B&R) dispute-resolution system, there are the following categories of disputes: i) State-to-State disputes, ii) investor-State disputes, and iii) commercial disputes.³ A great number of B&R land freight transport disputes belong to the third category. B&R land freight transport disputes which are outside the scope of this article can be defined as commercial disputes that may arise out of, or in relation with, land freight transport contracts or other transport documents along the road and rail routes that are key to the BRI (Europe-China corridors and the regional routes that link China to other Asian countries).

The object of this article is to analyze the nature of the State-to-State disputes and the investor-State disputes that may arise in relation with B&R land freight transport infrastructure projects. State-to-State disputes related to the

2 Eurostat, Freight Transport Statistics: Modal Split, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Freight_transport_statistics_modal_split#Modal_split_in_the_EU (Last Visited on August 30, 2023). Note that the share of road and rail transport is much higher for intra-EU freight.

3 At a pioneering conference that was held in 2016 — when the International Academy of the Belt and Road (IABR) was launched in Hong Kong — Wang Guiguo and other authors proposed the classification of B&R disputes into: i) disputes among public law persons — notably governments or their administrations, ii) disputes between a private-law person and a public-law person, and iii) disputes among private law persons or public law persons acting on a commercial basis. Wang Guiguo et al., *Dispute Resolution Mechanism for the Belt and Road Initiative*, Springer, 2020, p. 1. Other classifications have been proposed, but all of them are relatively similar. Wang Jiangyu, for instance, classifies B&R disputes into i) State-to-state, ii) transactional (commercial disputes), and iii) international trade and investment disputes in the B&R area. Wang Jiangyu, Dispute-settlement in the Belt and Road Initiative: Progress, Issues and Future Research Agenda, *The Chinese Journal of Comparative Law*, Vol. 8, No. 1, 2020, pp. 7-10. Another remarkable conference on B&R dispute resolution took place at the National University of Singapore, Faculty of Law, in November, 2019, under the name “Dispute Settlement in the Belt and Road Initiative”. Shan Wenhua et al., *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020.

B&R land freight transport include those related to land freight transport services liberalization within the World Trade Organization (WTO), as well as State-to-State investment disputes related to B&R land freight transport infrastructure. Investor-State dispute settlement (ISDS) mechanisms may also be utilized for the resolution of investment disputes, depending on the features of the case.

II. THE RECUPERATION OF LAND FREIGHT TRANSPORT ROUTES AND THE CREATION OF NEW ONES

Along the ancient Silk Roads, land transport was carried out across the old continents: Europe, Asia and parts of Africa. The heyday of maritime trade that came along with the discovery of the American continent came along with the decay of transcontinental land transport. Relatively inefficient land transport became a hindrance to global trade. In times of the great spice trading routes and the first wave of globalization led by the Iberian peoples, the price of spices coming from the West Indies to the port of Lisbon used to double as these spices reached the markets of Toledo, in the interior of Castile, Spain, after onerous land transport.⁴

Throughout contemporary history, land transport made possible major geopolitical regional changes in the newly discovered continents, such as the conquest of the West of the United States of America and the control of the Australian territory. However, since the modern ages, transcontinental trading routes became increasingly maritime ones. In the 19th and 20th Centuries, maritime transport infrastructure and engineering projects, such as the Suez Canal and the Panama Canal, enabled the creation of contemporary transcontinental maritime trading routes. It is still to be seen whether contemporary land transport infrastructure in our days will result in a new paradigm in global logistics.

The BRI and other infrastructure initiatives in different parts of the world can potentially transform the dynamics of land freight transport services. In 2014, the construction of the China-Russia-Canada-America high-speed train was discussed, which would have permitted the creation of land freight transport

⁴ John Huxtable Elliot, *La España Imperial: 1469-1716* [*Imperial Spain: 1469-1716*], Vicens Vives, 1972, pp. 124-125.

routes between Asia and North America.⁵ This project has, at least so far, not become a reality. However, inland routes linking Asia and Europe, as well as regional Asian routes, are being improved and refurbished as part of the BRI and other infrastructure initiatives. The recovery of old overland routes, and the development of new ones make the resolution of land freight transport disputes more important than ever since the decay of the old Silk Roads.

Not long ago, in 2010, a WTO report number S/C/W/324 described the bottlenecks on cross-border road freight transport in the following terms: “the majority of cross-border land transport [...] measured in value, takes place within Europe, Asia and North America. The main flows occur intra-regions, given that two of the three main inter-regional links (Asia-North America, and Europe-North America) are not possible by land-based routes, and hence maritime transport dominates. For the third (Asia-Europe), road transport is possible, but very limited at present, with the majority of goods again being shipped by sea”. “Trips between Europe and Asia tend to be occasional, highly complex (because of the numerous border crossing), over very long distances”.⁶

Trade in goods is predominantly carried out by sea.⁷ Maritime transport will continue to lead the modal split of freight transport, but the upgrading of land freight transport infrastructure is a priority for the development and policy banks in Europe, China, India, Japan, Russia and Turkey, as well as in other Middle Eastern, Central Asian and South-East Asian countries. International Financial Institutions (IFIs) also award great importance to land freight transport, including the World Bank’s International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB), and the Asian Infrastructure Investment Bank (AIIB).

Not only the European Union and China, but also other countries, such as India, Turkey and Russia, are well aware of the positive impact that better land

5 Jonathan Kaiman, Chinese Experts “in Discussion” over Building High-speed Beijing-US Railway: “China-Russia-Canada-America Line” Would Run for 13,000 Km across Siberia and Pass under Bering Strait through 200 Km Tunnel, *The Guardian*, May 8, 2014. <https://www.theguardian.com/world/2014/may/08/chinese-experts-discussions-high-speed-beijing-american-railway> (Last Visited on September 12, 2023).

6 WTO Council for Trade in Services, Road Freight Transport Services, S/C/W/324, 2010, pp. 4 & 10-13.

7 According to UNCTAD, “more than 80 per cent of world merchandise trade by volume is carried by sea”. UNCTAD, 2020 Review of Maritime Transport, Geneva, 2020, p. 20.

transport and connectivity can have on their economies.⁸ The Center for Strategic and International Studies (CSIS), a think tank, launched the Reconnecting Asia database, which tracks infrastructure projects (with an emphasis on land transport and energy infrastructure) financed by major Asian economies and Europe, as well as International Financial Institutions (IFIs).⁹ The main idea behind this project is that land routes had great importance in the ancient world, and their revival may have a major geostrategic impact.

By March, 2021, 14,002 infrastructure projects had been tracked within the Reconnecting Asia database. Energy infrastructure projects have the largest presence within this database, but projects related to railways, roads, bridges and motorways are also plentiful. 812 projects being tracked were related to rail infrastructure, 1,545 projects related to road infrastructure, and 157 projects related to other dry ports and logistical infrastructure that can support land transport. The BRI outstands among these initiatives that aim at fostering over-land connectivity across Asia and towards Europe.

The institutional interest in developing land freight transport infrastructure serves two main objectives. First, transport infrastructure fosters economic growth and development. The current frontiers for the improvement of global logistics and supply chains can be largely found in the need to build and upgrade land transport infrastructure. Second, a modal shift towards land transport, and notably towards rail transport, can have a positive effect towards achieving decarbonization of the global economy, and can contribute to reducing the vulnerability of global supply chains to the effects of climate change by diversifying risks. Sustainable, efficient and resilient freight transport is key to fostering the objectives of the main global governance initiatives currently supported by the United Nations, i.e., the 2030 Agenda for Sustainable Development and the Paris Climate Change Agreement.¹⁰

⁸ See for instance, European Commission, Connecting Europe Facility 2021-2027 Adopted, <https://ec.europa.eu/inea/en/news-events/newsroom/agreement-2021-2027-connecting-europe-facility> (Last Visited on July 12, 2021).

⁹ Reconnecting Asia, Project Overview, <http://2017.beltandroadforum.org/english/n100/2017/0410/c22-45.html> (Last Visited on September 12, 2023).

¹⁰ UNCTAD, Urgent Need for Climate Adaptation in Transport, Say Experts, https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2063&Sitemap_x0020_Taxonomy=UNCTAD%20Home;#1721;#Transport;#1788;#Transport%20Policy%20and%20Legislation;#2170;#Transport,%20Climate%20Change%20and%20Maritime%20Transport;#2197;#Transport,%20Climate%20Change%20Impacts%20and%20Adaptation;#1450;#Technology%20and%20Logistics (Last Visited on September 12, 2020).

A. Land Freight Transport Infrastructure along the Silk Road Economic Belt

Land and multimodal transport are a clear priority within the development of the B&R. The BRI Vision and Action clearly states that: “we should focus on the key passageways, junctions and projects, and give priority to linking up un-connected road sections, removing transport bottlenecks, advancing road safety facilities and traffic management facilities and equipment, and improving road network connectivity. We should build a unified coordination mechanism for whole-course transportation, increase connectivity of customs clearance, re-loading and multimodal transport between countries, and gradually formulate compatible standard transport rules, so as to realize international transport facilitation”.¹¹

The specific funding mechanism created for the BRI is the Silk Road Fund, but projects related to the new Silk Roads may also receive funds from other sources, namely Chinese development banks and multilateral IFIs. The economic vector of the BRI is supported by a variety of financial instruments, most of which are clearly a continuation of China’s economic diplomacy, such as the China Export-Import Bank and the National Development Bank. These two banks, together with the State Administration of Foreign Exchange (SAFE) and the China Investment Corporation are among the main holders of the Silk Road Fund. State-owned commercial banks, such as Bank of China, Industrial and Commercial Bank of China and Construction Bank of China, are major funders of the B&R projects.¹² Other sources for funding infrastructure projects along the new Silk Roads are relatively new, such as the Asian Infrastructure Investment Bank (AIIB) and, with a smaller presence, the BRICS’s New Development Bank (NDB).

The “Reconnecting Asia” database was utilized in order to identify the B&R land freight transport infrastructure projects. The first challenge in order

11 Belt and Road Forum for International Cooperation, *Full Text: Vision and Actions on Jointly Building Belt and Road*, <http://2017.beltandroadforum.org/english/n100/2017/0410/c22-45.html> (Last Visited on September 12, 2023).

12 The World Bank, *Public Procurement in the Belt and Road Initiative* (English), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/143241544213097139/Public-Procurement-in-the-Belt-and-Road-Initiative> (Last Visited on September 12, 2023).

to select the B&R land freight transport infrastructure projects is that land freight transport infrastructure projects that started before the BRI was launched are often fully aligned with the objectives of this initiative, although they formally do not belong to the BRI. Furthermore, when a project has various phases, it may be the case that the older stages are not formally part of the BRI, whereas the most recent ones are formally considered to be part of the BRI. Against this background, the criteria adopted was to include the projects that started before the BRI was launched, provided that they contribute to the development of this initiative.

The second difficulty in selecting infrastructure projects related to the BRI derives from the fact that most of them have various sources of funding. Including exclusively the projects that receive funding from the Silk Road Fund would not reflect the real dimension of the BRI. The criterion adopted was to include any land freight transport project that received funding from Chinese policy or development banks, as well as from IFIs in which China is the leading funder.

Projects exclusively funded by the AIIB have been included, since China is its major shareholder, holding more than 26% of the capital.¹³ Projects exclusively funded by the ADB were not included.¹⁴ However, projects funded by the ADB together with Chinese banks or financial institutions led by China, have been included. Following these criteria, three different lists containing the B&R rail, road and other logistical transport infrastructure projects, respectively, were prepared.

Out of 1,545 road infrastructure projects tracked in the Reconnecting Asia database, a total of 233 projects are either part of the BRI or receive funding from Chinese financial institutions. 71 of these infrastructure projects are located in China, 45 in South-East Asia, 55 in South Asia, 36 in Central Asia, 24 in Europe, 7 in the Middle East and 2 in East Asia. In South-East Asia, there are 26 projects in Cambodia, 9 in Indonesia, 5 in Laos, 3 in the Philippines, one in Thailand and one in Vietnam. In South Asia, there are 31 projects in Pakistan,

13 Its second largest shareholder, India, does not reach 8% shareholding.

14 Since China, with 7% of its capital, is not the main funder. Japan is the ADB's leading funder, with 15% shareholding.

14 in Bangladesh, 7 in Sri Lanka, 1 in India, 1 in Nepal and 1 in Maldives. In Central Asia, there are 12 projects in Kazakhstan, 11 in Kyrgyzstan, 5 in Tajikistan, 4 in Mongolia, 3 in Russia and 1 in Georgia. In Europe, there are 10 projects in Serbia, 4 in Macedonia, 3 in Montenegro, 3 in Belarus, 2 in Bosnia and Herzegovina, 1 in Croatia and 1 in Albania. In the Middle East, there are 5 projects in Saudi Arabia, 1 in Turkey and 1 in Qatar. In East-Asia, there are 2 projects under way in the Democratic People's Republic of Korea.

A total of 812 projects in the database created by the CSIS are related to the construction, reconstruction or upgradation of rail infrastructure, out of which 130 are B&R projects or receive funding from banks and other financial institutions led by China. 45 of these rail infrastructure projects are located in China, 19 in South-East Asia, 22 in South Asia, 30 in Central Asia, 19 in Europe, 12 in the Middle East. In South-East Asia, there are 5 projects in Indonesia, 4 in Thailand, 3 in Malaysia, 3 in Myanmar, 2 in Cambodia, 1 in Laos and 1 in Vietnam. In South Asia, there are 9 projects in Bangladesh, 7 in Pakistan, 3 in Nepal, 2 in India and 1 in Sri Lanka. In Central Asia, there are 9 projects in Tajikistan, 7 in Afghanistan, 5 in Russia, 4 in Mongolia, 2 in Uzbekistan, 1 in Kyrgyzstan, 1 in Kazakhstan and 1 in Turkmenistan. In Europe, there are 5 projects in Serbia, 3 in Belarus, 2 in Hungary, 2 in Croatia, 2 in Bulgaria, 1 in Ukraine, 1 in Austria, 1 in Bosnia and Herzegovina, 1 in Montenegro and 1 in Slovakia. In the Middle East, there are 6 projects in Iran, 3 in Saudi Arabia and 2 in Turkey and 1 in Iraq.

In the CSIS database, 156 projects are classified as infrastructure projects that support intermodal (multimodal) transport, out of which 33 projects have China-led institutions among their funders or are part of a Chinese policy. 19 of these projects are located in China, 4 in South-East Asia, 2 in South Asia, 1 in Central Asia, 7 in Europe, 1 in the Middle East and 1 in East Asia. In South-East Asia, there is 1 project under way in Myanmar, 1 in Cambodia, 1 in Indonesia and 1 in Brunei. In South Asia, there is 1 project under way in Pakistan and 1 in Sri Lanka. In Central Asia, there is 1 project under way in Kazakhstan. In Europe, there are 3 projects in Serbia, 2 in Belarus, 1 in Estonia and 1 in Hungary. In the Middle East, there is 1 project under way in Oman. In East Asia, there is 1 project in the Republic of Korea.

B. Regional and Transcontinental Land Freight Transport Routes along the Silk Road Economic Belt

Observing the B&R land freight transport infrastructure projects mentioned above, it may seem that the B&R land freight transport routes are exclusively regional ones along Asia. And most projects are located in China's neighboring countries because these regions present the biggest infrastructure bottlenecks.¹⁵ The B&R infrastructure projects do not only develop regional overland routes in Asia, but also contribute to the consolidation and creation of transcontinental overland routes (corridors) connecting China and Europe.

Regional land transport routes are primarily those that connect China to South East Asia, South Asia and the Korean Peninsula. Regional routes are often part of bilateral or regional economic corridors, such as the China-Pakistan Economic Corridor, the Bangladesh-China-India-Myanmar (BCIM) Economic Corridor and the China-Indo-China Peninsula Economic Corridor (CICPEC). Some regional land transport routes launched by international organizations also receive the support of China. Such is the case with projects launched by the ADB, such as the ones under the Greater Mekong Sub-region (GMS) and the South Asia Sub-regional Economic Cooperation (SASEC). China also supports projects launched under the auspices of the Association of South-East Asian Nations (ASEAN), such as the Singapore-Kunming Rail Link.

The BRI also contributes to refurbishing and upgrading land freight transport corridors.¹⁶ So far, two major corridors link the East to the West by rail.

¹⁵ Contemporary land freight transport infrastructure was first developed in Europe and expanded to other regions along with the first industrial revolution.

¹⁶ In recent decades, the international community has realized the economic and social potential of developing overland corridors to link Europe and Asia. In 2002, in view of the rapid growth of merchandise trade between Europe and East Asia, the United Nations Economic Commission for Europe (UNECE) and the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) launched the Euro-Asian Transport Links (EATL). This project had three phases. In Phase I of this project, which lasted until 2007, an Expert Group was created in order to identify priority rail and road routes between Europe and Asia. In Phase II of this project (from 2008 to 2013) the Expert Group identified nine Eurasian rail corridors and another nine road corridors that link Europe and Asia. Phase III of the EATL started in 2013 and ended in 2017. It focused on making EATL overland links operational. In order to achieve this, it dealt with financing of infrastructure and "facilitating and removing physical and administrative bottlenecks when crossing borders in overland transport between Europe and Asia". UNECE, Trade: Euro-Asian Links, <https://unece.org/about-us-31> (Last Visited on January 19, 2021).

One is the trans-Siberian route from China to Europe, which can be made shorter by connectivity through the territories of Kazakhstan (trans-Siberian Kazakh route) or Mongolia (trans-Siberian Mongolian route). The other major corridor links Pakistan, Iran and Turkey, and may be extended to Europe and China.¹⁷

Other B&R projects aim at diversifying these corridors by creating new interconnections. Various infrastructure initiatives aim at diversifying the trans-Siberian route. Such is the case with the Development of the Transport System of Russia 2010-2020 initiative, the Moscow-Beijing Railway Initiative, the Mongolia-China-Russia Trilateral Economic Corridor and the Northern Railway Links of Economic Corridor.

The Khorgos dry port is a clear example of how new infrastructure can contribute to the recovery and upgradation of ancient overland trading routes. Khorgos dry port was constructed on the border between China and Kazakhstan, since the city of Khorgos had great importance along the trading routes of the old Silk Roads. Khorgos International Centre for Cross-border Cooperation has already become the biggest land port in Central Asia and a key logistical center for the region. This sort of new infrastructure enables the modal diversification of freight transport. Goods can reach Europe in 15 days from Khorgos dry port, providing an alternative that is faster than maritime routes and cheaper than air routes. However, the volume of goods handled in Khorgos is still not comparable to that of the biggest Chinese and international ports.¹⁸

B&R projects also contribute to the creation of new transcontinental routes among which the following outstand: the International Transit Corridor “Western Europe – Western China”, the East-West Economic Corridor, the Central Asia Regional Economic Cooperation Program (CAREC), the China – Kyrgyzstan – Tajikistan – Afghanistan – Iran Railway (Five Nation Railway), the Russia – Kazakhstan – Kyrgyzstan – Tajikistan Railway, and the Trans-Asian Railway.

The world’s longest land routes are the ones that go from China to Europe.

17 These corridors were identified in a study published by the Intergovernmental Organization for International Carriage by Rail (OTIF) in 2016. Dariia Galushko, Study on Corridors, OTIF, 2016, pp. 4-6.

18 These projects also create synergies with the development strategies of Central Asian nations through initiatives such as the Khorgos-Eastern Gates Special Economic Zone. Roza Nurgozhayeva, Rule-making, Rule-taking or Rule-rejecting under the Belt and Road Initiative: A Central Asian Perspective, *The Chinese Journal of Comparative Law*, Vol. 8, No. 1, 2020, pp. 264-271.

The so-called “silk road train” has been operating between the cities of Yiwu and Madrid since 2014. With a length of 13,052 km, it was considered the world’s longest rail route, going through inland China, Kazakhstan, Russia, Belarus, Poland, Germany, France and Spain. However, the arrival at Madrid in August, 2020, of a freight train that had left Yiwu twenty days before has beaten the world’s record, since this route reached up to 14,133 km.¹⁹ The Madrid – Yiwu train is an example of new overland freight routes that link cities that had never been directly connected.

These infrastructure projects are consolidating Europe-China land freight corridors, as well as land freight transport routes that link China to other Asian countries. These projects, along with the new freight routes that they enable, may give rise to State-to-State and investor-State disputes.

III. LAND TRANSPORT AND STATE-TO-STATE DISPUTES

Two sorts of B&R State-to-State disputes related to the B&R land freight transport projects will be addressed hereunder: WTO disputes related to land transport services and State-to-State investment disputes. The choice of these sorts of State-to-State disputes takes into consideration the fact that the BRI is, first and foremost, an economic initiative. Other sorts of State-to-State disputes have been intentionally left outside the scope of this article, including the State-to-State disputes that may arise within the institutional framework of international organizations that operate in the field of land transport.

Such is the case of the State-to-State disputes that may arise under the institutional framework of the Intergovernmental Organization for International Carriage by Rail (OTIF). According to Article 28 of the Convention Concerning International Carriage by Rail as modified by the Vilnius Protocol of June 3, 1999, (COTIF). COTIF arbitration is available for the resolution of “disputes between Member States arising from the interpretation or application of the Convention, as well as disputes between Member States and the Organization

¹⁹ El tren que batió el récord mundial y tenía su destino final en Madrid [The Train that Broke the World Record with Destination to Madrid], *El País* (Madrid’s Regional Supplement), March 21, 2021, p. 3. <https://el-pais.com/espana/madrid/2021-03-21/el-tren-que-batio-un-record-mundial-y-tenia-su-destino-final-en-madrid.html> (Last Visited on September 12, 2023).

arising from the interpretation or application of the Protocol on Privileges and Immunities”.²⁰

Transport is carried out through spaces over which States either exercise sovereignty — such as land territory, the column of air above it and the territorial seas, or enjoy certain limited sovereign competences — such as on the high seas and the column of air above it. The utilization of some of these spaces for transportation may eventually give rise to State-to-State disputes that will need to be resolved under general Public International Law.

Whereas maritime and air transport only require ports and mobile equipment, land transport also requires road and rail networks. State-to-State maritime and air disputes may derive directly from the utilization of maritime and air spaces, whereas State-to-State land disputes are unlikely to arise in relation to the utilization of another country’s territory for the purpose of transportation. The International Court of Justice (ICJ)’s case on the Right of Passage over Indian Territory is a rare example of a dispute involving the right of some sort of utilization of another country’s territory. However, this case referred to the right of passage, not to the utilization of India’s territory for the purposes of contemporary road and/or rail transport.

The utilization of a country’s territory is intrinsically linked to the sovereign rights of a State: Public International Law is not intrusive concerning the utilization of a country’s overland territory. In general Public International Law, there is no right of passage over a country’s territory, like the ICJ declared in the case concerning the right of passage over Indian territory.²¹ There is also no right to access a country’s road and rail network under general Public International Law. However, the agreements on the liberalization of land transport services may potentially give rise to State-to-State disputes, as will be addressed in the following section.

20 OTIF, COTIF 1999: Convention Concerning International Carriage by Rail, Unofficial Consolidated Version, https://otif.org/fileadmin/new/3-Reference-Text/3A-COTIF99/COTIF_1999_01_03_2019_corrected_31.07.2019_en.pdf (Last Visited on August 17, 2021). Arbitration could also be utilized for the resolution of commercial disputes among the parties to rail transport contracts under Article 28(2) COTIF 1999. However, this mechanism is rarely utilized, to the extent that it has been referred to as being “just law in the books”. Erik Evtimov, *European and International Rail Transport Law*, Editions Weblaw, Bern, 2020, p. 177.

21 International Court of Justice, *Right of Passage over Indian Territory (Portugal v. India)*, <https://www.icj-cij.org/en/case/32> (Last Visited on August 22, 2022).

Are State-to-State disputes truly B&R disputes?

The State-to-State disputes mentioned above have a clear economic element, and therefore they can be more easily identified as B&R disputes. It could be argued that only State-to-State disputes in the field of international economic law can be qualified as State-to-State B&R disputes. There is an ongoing debate on whether State-to-State disputes involving general Public International Law are *stricto sensu* B&R disputes or not. At least some State-to-State disputes related to the traditional fields of general Public International Law, such as maritime disputes, are often considered to be part of the B&R dispute-resolution system.²²

Whether a State-to-State dispute receives the tag of being a “B&R dispute” or not, it does not truly affect the means available to resolve them. Although specific instruments have been created for the resolution of B&R disputes,²³ the B&R dispute-resolution system is, to a large extent, what Chaisse and Kirkwood have called “invisible Silk Roads”, that is, a set of legal instruments applicable to the BRI, even when these have not been created specifically under the BRI’s institutional framework.²⁴

22 See for instance: Natalie Klein, The Belt and Road Initiative and the Potential for Dispute Settlement under the UN Convention on the Law of the Sea, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, pp. 209-232. Zou Keyuan, Peaceful Resolution of Maritime Disputes and the UN Convention on the Law of the Sea, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, pp. 233-250. Jia Bingbing, Unsaid Rules of UNCLOS: Essential Elements for Its Proper Interpretation? In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, pp. 252-279. Wang Jiangyu, China and International Dispute Settlement Implications of the South China Sea Arbitration, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, pp. 280-316.

23 The nature of disputes that may arise out of or in relation with the B&R is extremely wide. Disputes may be related to trade in goods, trade in services, investments protection, intellectual property, taxation, competition law, public procurement, corporate law, securities, bankruptcy issues and all sorts of commercial contracts. Each sort of cross-border economic dispute has specific features that require different dispute resolution mechanisms. The B&R dispute-resolution system needs to be prepared for the resolution of disputes related to different aspects of international economic governance and cross-border economic transactions. The B&R dispute-resolution system includes new dispute-resolution fora, specifically designed to meet the needs of the B&R, such as the China International Commercial Court (CICC). Besides, a number of dispute-resolution institutions, such as the International Chamber of Commerce (ICC), have launched B&R dispute-resolution strategies to foster their suitability to resolve disputes related to the B&R. In any case, the most suitable dispute-resolution methods for each sort of B&R dispute is not necessarily the one specifically created for the B&R, but rather the one that best serves the efficient resolution of the disputes that may arise.

24 Julien Chaisse and Jamieson Kirkwood, Chinese Puzzle: Anatomy of the (Invisible) Belt and Road Investment Treaty, *Journal of International Economic Law*, Vol. 23, 2020, pp. 245-269.

As ICJ Judge James Crawford has expressed: “the Belt and Road will operate through, rather than aiming to replace, existing international law frameworks of cooperation and economic integration”.²⁵ The primary legal framework for the resolution of State-to-State differences is the United Nations Charter. Chapter VI on the pacific settlement of disputes, consolidates the principle according to which the parties to any dispute shall seek a solution by any peaceful means of their own choice.

The ICJ is the most widely recognized dispute resolution forum to resolve State-to-State disputes.²⁶ Its institutional position within the United Nations system makes it the best dispute resolution mechanism to deal with issues related to sovereignty that has ever existed in Public International Law. The Permanent Court of Arbitration (PCA) is also in a good position to resolve eventual B&R State-to-State disputes, since most countries along the B&R are parties to the PCA.²⁷

China fully adheres to contemporary international law as a means for the settlement of State-to-State disputes. In the words of ICJ Judge Xue Hanqin, it has been “voluntarily accepted and enriched by the shared values [...] for peace, equality and mutual respect in international relations”.²⁸ Within the global framework provided by contemporary Public International Law, China has tried to promote the Five Principles of Peaceful Coexistence, first enshrined in the Panchsheel Treaty of 1954, as the basis for the avoidance and resolution of

25 James Crawford, China and the Development of an International Dispute Resolution Mechanism for the Belt and Road Construction, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, p. 15.

26 *Ibid.*, p. 20.

27 *Ibid.*, p. 17.

28 China’s attitude towards international law has considerably evolved since the consolidation of the Chinese Communist Party in the government of China. Right after the proclamation of the People’s Republic of China in 1949, the official position was one of “critical rejection and positive construction”. On the one hand, the CPC criticized, following Marxist-Leninist theory, the system that had led to the Opium Wars and contributed to the weakness of Chinese power through unequal treaties. On the other hand, China realized that contemporary international law, after the entry into force of the United Nations Charter and the independence of Asian and African nations, upholds universal values such as the peaceful resolution of disputes, which constitute the least common denominator for peaceful international relations. Xue Hanqin, Chinese Contemporary Perspectives on International Law History, Culture and International Law, *Collected Courses of The Hague Academy of International Law*, Vol. 355, 2012, pp. 57-66.

disputes, notably in Asia.²⁹

The adherence, not only of China, but of Asian nations in general to the general principles of Public International Law in the resolution of State-to-State disputes was a major issue at the Third Biennial Conference of the Asian Society of International Law that took place in Beijing in 2011 under the name “Asia and International Law: A New Era”.³⁰

ICJ Judge Shi Jiuyong emphasized the continuity, of contemporary Public International Law by Asian nations for the resolution of State-to-State disputes, stating also that: “there can be no doubt that Asian countries should cherish and uphold respect for fundamental human rights, governance, economic liberalization, globalization on the international level, in making concrete contributions to these areas. Asia must keep in mind that these ideas must be promoted on the basis of the purposes and principles of the United Nations Charter and the five principles of peaceful coexistence. Asian States must also seek to ensure the development of an international system of governance based on these ideals with the underlying values that are truly common to all civilizations, cultures and religions of the World and firmly oppose any mentality of superiority of any one particular value system”.³¹

Beyond the ongoing debate concerning which State-to-State disputes can rightfully be called B&R disputes, this article will focus on two sorts of State-to-State disputes that are clearly related to B&R land freight transport. The next section will address disputes related to the liberalization of transportation services, which may primarily arise within the institutional framework of the World Trade Organization (WTO). The following section will deal with the resolution of investment disputes related to B&R land freight transport infrastructure, including State-to-State and investor-State disputes.

29 These five principles include: mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal governance, balanced mutual benefit and peaceful coexistence. A major vector for spreading these five principles has consisted of referencing them in joint communiqués on the establishment of diplomatic relations with China. *Ibid.*, pp. 66-74.

30 At the opening of this conference, ICJ Judge Hisashi Owada clarified that we have, indeed, entered into “a new era, without a question mark. The question is: what kind of law is going to bring this context? How is this new era going to be?” Hisashi Owada, Shi Jiuyong et al., *Asia and International Law: A New Era*, The Third Biennial Conference of the Asian Society of International Law, Beijing, 2011.

31 *Ibid.*

IV. LAND TRANSPORT DISPUTES UNDER THE WTO

State-to-State trade disputes in the field of land transport include both disputes concerning freedom of transit and disputes concerning the liberalization of land freight transport services.³² WTO disputes are those that are settled through the WTO dispute settlement system, that is, those falling within the scope of the agreements listed in Appendix 1 of the WTO Dispute Settlement Understanding (DSU).³³ In relation to traffic in transit, there have been two cases: DS512 — *Measures Concerning Traffic in Transit (Ukraine vs. Russian Federation)*, and DS532 — *Measures Concerning the Importation and Transit of Certain Ukrainian Products (also Ukraine vs. Russian Federation)*.³⁴ However, there have been no disputes so far concerning bilateral and multilateral agreements on land freight transport services.³⁵

In DS512, Ukraine denounced bans and restrictions by the Russian

32 Freedom of transit is contained both in Article V of GATT and in the 2013 Trade Facilitation Agreement. Concerning GATT Article V, see: WTO, Article V: Freedom of Transit, https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art5_gatt47.pdf (Last Visited on October 30, 2022); WTO, Analytical Index: GATT 1994 Article V Jurisprudence, https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art5_jur.pdf (Last Visited on October 30, 2022); UNECE, Trade Facilitation Implementation Guide: Article V of GATT, <https://tfig.unece.org/contents/gatt-v.html> (Last Visited on October 30, 2022); UNECE, Trade Facilitation Implementation Guide: TIR Convention, <https://tfig.unece.org/contents/TIR-convention.htm> (Last Visited on October 30, 2022). Concerning the 2013 Trade Facilitation Agreement, see: WTO, Trade Facilitation, https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm (Last Visited on October 30, 2022); UNCTAD, Chapter 11 Freedom of Transit, https://unctad.org/system/files/non-official-document/wto-technical-note_ch11a11_en.pdf (Last Visited on October 30, 2022); UNECE, WTO Agreement on Trade Facilitation, https://tfig.unece.org/contents/WTO_Agreement.htm (Last Visited on October 30, 2022).

33 WTO, Introduction to the WTO Dispute Settlement System: Substantive Scope of the Dispute Settlement System, https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c1s5p1_e.htm (Last Visited on July 9, 2021).

34 There is no specific category either for “transport services” or for “land transport services” in the WTO cases search engine. The results of the category “all services” do not show any result related to transport services either. Concerning disputes on freedom of transit, see: WTO, DS512 — *Russia: Measures Concerning Traffic in Transit*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm (Last Visited on October 10, 2022); WTO, DS532 — *Russia: Measures Concerning the Importation and Transit of Certain Ukrainian Products*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds532_e.htm (Last Visited on October 10, 2022).

35 Besides, there has been a dispute related to the purchase of “railway equipment parts”, which does not *stricto sensu* fall within the definition of either “disputes concerning freedom of transit” or “disputes concerning the liberalization of land freight transport services”. WTO, DS499 — *Russia: Measures Affecting the Importation of Railway Equipment and Parts Thereof*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds499_e.htm (Last Visited on August 17, 2022).

Federation on traffic in transit by road and rail going from Ukraine to Central Asian countries such as Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan and Uzbekistan. The Panel Report adopted on April 26, 2019, admitted Russia's argument that there was an "emergency in international relations" in the terms of Article XXI(b)(iii) of the GATT, 1994. Had this exception not been recognized, the panel may have had to recognize the violation by the Russian Federation of Article V(2) of the GATT 1994 and of certain commitments made by Russia on its Working Party Report. In DS532 Ukraine asked for consultations with the Russian Federation concerning traffic in transit of specific goods, including beer and other beverages, confectionary products and wallpapers and other wall coverings.

In order to ascertain the potential for disputes concerning the liberalization of land freight transport services, it is essential to understand the dynamics of the liberalization of road and rail transport services. The present section will first address the liberalization of freight transport services in general in order to better explain how the liberalization of land transport services is operated. Understanding the liberalization of transport services in other modes is necessary in order to understand the liberalization of road and rail transport services.

A. Freight Transport and Trade in Services Liberalization

Better infrastructure and new land freight transport routes are not the only reason why the resolution of land freight transport disputes is and will be increasingly important. As land freight transport services further liberalize, the size and efficiency of these services markets will improve. Trade in transport services constitutes already a huge market, and there is still great potential for liberalization and growth, especially in land transport.

Trade in services liberalization is precisely among the BRI Vision and Action priorities for cooperation: "We should expand trading areas, improve trade structure, explore new growth areas of trade, and promote trade balance. [...] A service trade support system should be set up to consolidate and expand conventional trade, and efforts to develop modern service trade should be strengthened".³⁶

³⁶ *Supra* n. 11.

In 2019, the value of China's exports of transport services represented 16.3% of its total exports of services (for the European Union it reached 17%, 10.7% for the USA, 15.3% for Japan, 9.9% for India and 16.7% for Brazil). That same year, China's imports of transport services represented 21.1% of its total imports of services (for the European Union it represented 17.1%, 19% for the USA, 19.3% for Japan, 38% for India and 17.1% for Brazil).³⁷ Trade in transport services is primarily carried out in the arena of maritime and air transport services, as can be seen in the tables 1 and 2. For most economies, there is no disaggregate statistical information on trade in land transport services. Trade in land transport services is very low for most countries. A notable exception is the European Union's trade in road transport services, which is a result of successful regional liberalization of transport services.

Table 1: Percentage of the Value of Exported Transport Services over Total Exported Services

	EU	USA	China	Japan	India	Brazil
Total	17%	10.7%	16.3%	15.3%	9.9%	16.7%
Maritime	5.8%	2.1%	10.1%	11.2%	6.5%	13.5%
Air	5.2%	8%	5%	4.1%	3%	2.1%
Rail	0.4%	-	-	-	-	-
Road	4%	-	-	-	-	-
Inland Waterway	0.1%	-	-	-	-	-
Pipeline	0.2%	-	-	-	-	-
Other Transport Services	0.7%	0.5%	-	0.1%	0.3%	0.7%

Table 2: Percentage of the Value of Imported Transport Services over Total Imported Services

	EU	USA	China	Japan	India	Brazil
Total	17.7%	19%	21.1%	19.3%	38%	17.1%
Maritime	5.3%	5.8%	13.4%	14%	17.7%	10.6%
Air	4.9%	12.6%	6.1%	5.2%	19.6%	6.1%
Rail	0.5%	-	-	-	-	-
Road	5%	-	-	-	-	-
Inland Waterway	0.1%	-	-	-	-	-
Pipeline	0.2%	-	-	-	-	-
Other Transport Services	1.1%	0.6%	-	0.1%	0.7%	0.3%

37 All statistical data in this section was obtained from: WTO, Integrated Trade Intelligence Portal: Services – Statistics, <http://i-tip.wto.org/services/> (Last Visited on June 2, 2021). Available data is for services in categories 11.A (Maritime Transport Services), 11.C (Air Transport Services), 11.E (Rail Transport Services) and 11.F (Road Transport Services). There is no specific data available for freight transportation within each mode of transport (such as 11.E.b and 11.F.b).

Transport services, and freight transport services in particular, are the object of liberalization negotiations both within the multilateral framework of the WTO and through regional trade agreements. So far, liberalization has been more successful at a regional scale. Liberalization of freight transport services in Europe clearly outstands, but there is also a clear trend towards liberalization in regional agreements, especially in the Asia-Pacific region.

Most recent Regional Trade Agreements (RTAs) include liberalization commitments on transport services, according to the RTAs' search tool for the WTO Integrated Trade Intelligence Portal. A total of 181 commitments in road transport services, 171 in maritime transport services, 163 in rail transport services, 149 in air transport services, 145 in inland waterways services and 144 in pipeline transport services were tracked by the June 6, 2021. Even a cutting-edge mode of transport, such as space transport, has been the object of 129 commitments in RTAs. In fact, the vast majority of RTAs contain commitments in all, or in nearly all modes, of transport.³⁸

Liberalization of transport services at a multilateral scale is making progress under the new services negotiations that started in the year of 2000.³⁹ However, the negotiations for each mode of transport have reached dissimilar degrees of success. Under the ongoing negotiations of the Doha Round, WTO members "individually or in groups" identified objectives in the fields of maritime transport services, air transport services, "other transport services" and "logistics services".⁴⁰ The General Agreement on Trade in Services (GATS) accession schedules of 44 WTO members contain commitments on maritime freight transportation, while 40 GATS accession schedules contain commitments on

38 WTO, Integrated Trade Intelligence Portal: Services – RTAs Commitments, <http://i-tip.wto.org/services/ReportResults.aspx> (Last Visited on June 6, 2021). Note that the RTAs' tool displays two-digit sectors, such as 11.E for rail transport services and 11.F for road transport services. However, three-digit sectors are not displayed, such as 11.E.b for freight rail transport services.

39 On trade in services liberalization, see: Shi Jingxia, *International Law on Trade in Services*, UIBE Teaching Materials, 2016. Unlike the General Agreement on Tariffs and Trade (GATT), which functions on a "negative list" basis, liberalization of services under the GATS is carried out on a "positive list" basis, that is, commitments concerning the liberalization of services are exclusively the ones specified in a WTO member's schedule. GATS commitments may affect four different modes: i) cross-border supply, ii) consumption abroad, iii) commercial presence, and iv) presence of natural persons.

40 WTO Council for Trade in Services, TN/S/23 Special Session of the Council for Trade in Services, 2005, pp. 19-20.

rail freight transportation.⁴¹ Meanwhile, only 17 GATS schedules contain commitments on road freight transportation and as few as two GATS schedules contain commitments on air freight transportation.⁴² China's schedule contains commitments on maritime and land transportation services.

Among the different modes of transport, maritime transportation services have reached a remarkable degree of liberalization. A "maritime model schedule" is often used as a basis for the negotiations. The requests of the WTO members that promote the liberalization of maritime services concern "the elimination of cargo reservations, of restrictions on foreign equity participation and on the right to establish a commercial presence both for international freight transport and for maritime auxiliary services". These members "call for additional commitments on access to/use of port services and multimodal transport services as well as for the elimination of most-favoured-nation (MFN) exemptions".⁴³ Chinese Mainland, Hong Kong SAR and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu are active negotiators in the field of maritime transport services.⁴⁴

The multilateral liberalization of air transport services finds restrictions derived from the Annex on Air Transport Services to GATS, which excludes "the largest part of air transport services: traffic rights and services directly related to traffic". However, air transport services are regularly submitted to review by the Council of Trade in Services.⁴⁵ Liberalization of air transport services

41 Note that a WTO member may coincide with a State, a group of States or part of a State. For instance, the EU at 25 States and Hong Kong SAR have concluded their own GATS schedule.

42 GATS commitments displayed by the Integrated Trade Intelligence Portal also refer to the United Nations Central Product Classification. In the case of rail freight transportation (11.E.b), most commitments concern Central Product Classification items 71121 (transportation of frozen or refrigerated goods), 71122 (transportation of bulk liquid or gases) and 71123 (transportation of containerized freight). In the case of road freight transportation (11.F.b), most commitments concern Central Product Classification items related to "other land transport services": 71231 (transportation of frozen or refrigerated goods), 71232 (transportation of bulk liquid or gases), 71233 (transportation of containerized freight) and 71234 (transportation of furniture). WTO, Integrated Trade Intelligence Portal: Services - GATS Commitments, <https://i-tip.wto.org/services/Search.aspx> (Last Visited on June 5, 2021).

43 WTO, Services Sector by Sector: Maritime Transport, https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_maritime_e.htm (Last Visited on July 6, 2021).

44 WTO, TN/S/W/11 Joint Statement on the Negotiations on Maritime Transport Services, 2003.

45 The first review took place from 2000 to 2003. The second one opened in September, 2005. WTO, Services Sector by Sector: Air Transport Services, https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_air_e.htm (Last Visited on July 6, 2021).

primarily takes place through Air Services Agreements (ASAs). The Quantitative Air Services Agreement Review (QUASAR) is the database on air transport liberalization and can be visualized using the Air Service Agreements Projector.⁴⁶

B. Land Transport Services Liberalization

Land transport services are covered by the GATS.⁴⁷ The most complete liberalization of rail freight transport services so far has been carried out in Europe. Both national and international rail freight transport services in the European Union are completely liberalized since 2007.⁴⁸ Liberalization of the rail freight services market in the EU was carried out on the basis of access rights to the rail transport infrastructure, which is a natural monopoly. The European notion of “access to the network” has been the most successful liberalization tool in this field.⁴⁹ However, the liberalization of rail freight transport services at a multilateral level has not yet reached a comparable degree of success. At a global scale, initiatives to liberalize rail freight transport have often been carried out on the basis of government procurement.⁵⁰

The transnational liberalization regime of road transport services presents important similarities to that of air transport services. The main difference lies in the fact that road transport is fully covered by the GATS, whereas air transport is substantively excluded through the abovementioned Annex on Air Transport Services. Commitments in the GATS schedules concerning road

46 QUASAR utilizes two sources of information: The World Air Services Agreements (WASA) database of the International Civil Aviation Organization (ICAO) and traffic data provided by the International Air Transport Association (IATA). WTO, S/C/W/270/Add.1 Second Review of the Air Transport Annex Developments in the Air Transport Sector (Part Two) Quantitative Air Services Agreement Review (QUASAR), Vol. 1, 2006.

47 WTO, Services Sector by Sector: Land Transport Services, https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_land_e.htm (Last Visited on July 6, 2021).

48 European Commission, Mobility and Transport: Rail Market, https://ec.europa.eu/transport/modes/rail/market_en (Last Visited on June 10, 2021).

49 This model for the liberalization of services has been used for the liberalization of other services in the European Union, such as telecommunications services.

50 Liberalization of rail transport services finds its origins in Directive 91/440/EEC on the development of the Community's railways, Directive 95/18/EC on the licensing of railway undertakings and Directive 95/19/EC on the allocation of railway infrastructure capacity and the charging of infrastructure fees. Before complete liberalization was reached, “freightways” and “freeways” or associations of European rail companies were established. WTO Council for Trade in Services, Land Transport Services Part II: Rail Transport Services, S/C/W/61, 1998, pp. 6-9.

transport services have been increasing steadily.⁵¹ Along with GATS negotiations, the liberalization of road freight transport services is carried out on the basis of regional and bilateral agreements.⁵² “The road transport regime is made up of thousands of bilateral agreements which split the traffic between the two parties to the exclusion of all others [...] and provide a quantitative framework by annually establishing quotas for the number of authorized journeys”.⁵³

After the Second World War, there were analogous attempts to reform and develop both transnational air transport and transnational road transport. The Chicago Convention on International Civil Aviation was signed in 1944, even before the war ended. The governance of international civil aviation is primarily carried out through the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations that has reached universal scope. The creation of a transnational road transport regime, comparable to that of civil aviation, was aimed at, but this could only be achieved at a European regional scale. The Conference on Security and Cooperation in Europe (CSCE) declared in 1975 that “the participating States [...] express their intention to encourage the development of international inland transport of passengers and goods as well as the possibilities of adequate participation in such transport on the basis of reciprocal advantage”.⁵⁴

WTO Report No. S/C/W/324 summarizes the dynamics of bilateral road agreements in the following terms: “Except in the case of adjacent countries where only a single agreement is involved, road traffic rights always result from a combination of several bilateral agreements, on account of the existence of transit quotas and triangular traffic quotas. [...] The full utilization of bilateral quotas in the relations between two non-adjacent countries depends, [...] on the availability of transit quotas in the intervening transit countries. [...] The transit quotas are not necessarily the same for the two countries located

51 In contrast with the current high volume and level of commitments in the GATS schedules, in 1998, there were only 23 commitments for transportation of other freight, 27 for frozen and refrigerated goods, 27 for containers and 26 for furniture (removals) included in members' schedules. WTO Council for Trade in Services, Land Transport Services Part I: Generalities and Road Transport 12, S/C/W/60, 1998, p. 16.

52 *Supra* n. 6, pp. 21-38.

53 *Ibid.*, p. 21.

54 *Ibid.*, p. 22.

at the ends of the chain. [...] In fact, each of the countries at the ends of the chain negotiates its transit quotas individually with each of the intermediate countries”.⁵⁵

The systematic mapping of bilateral road transport agreements is not as detailed as the QUASAR. The List of Bilateral Road Agreements (LIBRA) is a project to compile these agreements, having collected 600 already, launched by the WTO, the International Transport Forum (ITF), the World Bank and the International Road Transport Union (IRU).⁵⁶ The ITF estimates that “for the 43 States participating in the European Conference of Ministers of Transport (ECMT) the number of bilateral agreements amounts to about 1,400, that is about 20 agreements per Member State of the European Union and 30 to 35 agreements for the other States. It is not possible to give a precise figure for the number of agreements in other geographical areas, such as Latin America, Asia and Africa for lack of accurate data, but the total for these areas is surely in excess of a thousand agreements”.⁵⁷

China has signed a plurality of bilateral and multilateral road transport agreements.⁵⁸ China has signed bilateral agreements with its neighbors in Central Asia (Kazakhstan, Uzbekistan, Kirgizstan and Tajikistan), Northeast Asia (Mongolia, Russia and the Democratic People’s Republic of Korea) and South-east and South Asia (Pakistan, Nepal, Vietnam and Laos). China is also a party to multilateral road transport agreements. The most recent one, of 2014, operates among the members of Shanghai Cooperation Organization. There are two other agreements among Central Asian countries: a 1995 agreement between China, Pakistan, Kazakhstan and Kyrgyzstan and a 1998 agreement between China, Kyrgyzstan and Uzbekistan. The GMS six countries agreement of 2002 includes China, Cambodia, Laos, Myanmar, Thailand and Vietnam.

By 2010, when the WTO Report No. S/C/W/324 was concluded, several

⁵⁵ *Ibid.*, p. 26.

⁵⁶ World Trade Organization, Services by Sector: Land Transport, https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_land_e.htm (Last Visited on June 16, 2021).

⁵⁷ *Supra* n. 6, pp. 21-22.

⁵⁸ A Report of the International Road Transport Union (IRU) on road transport in China published in 2009, identified a series of bilateral and multilateral road transport agreements, as well as their content. IRU, Road Transport in the People’s Republic of China, Geneva, 2009, pp. 48-53. See also: UNESCAP, Handbook on Cross-Border Transport along the Asian Highway Network, Bangkok, 2017, pp. 45-73.

routes in which transnational road freight was “prohibited or severely restricted” were identified, some of which clearly affect to the development of road transport along the B&R. Absence of road traffic was noted along various parts of the land borders of China, such as those with Kyrgyzstan and with Afghanistan. Traffic with compulsory trans-shipment was identified along China’s borders with Pakistan and Kazakhstan. Other restrictions also affect the development of road transport directly, such as the compulsory trans-shipment at the Afghan borders with Turkmenistan, Tajikistan, Uzbekistan, Iran and Pakistan (for Afghan vehicles only).⁵⁹

Inefficiencies in the road transport services market largely derive from the functioning of the bilateral agreements. This issue was synthesized in the WTO Report No. S/C/W/324 in the following terms: “Bilateral quotas are always fixed at the same level for both parties. Accordingly, it often happens that, when the two flags are not equally competitive, the quota allocated to the more competitive flag is exhausted before the end of the year. In these circumstances, the country that has exhausted its quota tries to obtain an additional quota from its partner. If it is unable to do so or if the additional quota is exhausted in its turn, the goods can still be carried, either by the less competitive flag or outside the framework of the bilaterally established road transport quotas, [that is, either] [...] by other modes of transport [or] [...] by road, by carriers of a third country that has not yet exhausted its bilateral quotas with the country of destination and its transit quotas with potential transit countries”.⁶⁰

Efficiency in the road transport services market has progressively increased, thanks to multilateral agreements. “There are very few regional agreements, possibly no more than seven, relaxing or abolishing the bilateral system of road quotas”.⁶¹ A multilateral quota system was created in 1973 by the European Conference of Ministers of Transport.⁶² Road freight transport multilateral liberalization agreements have also been concluded within the Andean Community (Bolivia, Colombia, Ecuador and Peru), the Black Sea Economic Cooperation Organization and the North American Free Trade Agreement (NAFTA).⁶³

⁵⁹ Improvements may have been achieved since 2010. *Supra* n. 6, p. 39.

⁶⁰ *Ibid.*, p. 26.

⁶¹ *Ibid.*, pp. 33-34.

⁶² *Ibid.*, p. 35.

⁶³ *Ibid.*, pp. 37-38.

The multilateral agreements with more direct impact on the development of the B&R regional Asian routes is the ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST), signed in 2009.⁶⁴ In order to further improve the efficiency of transnational road transport, proposals were raised within UNECE “to align bilateral agreements on international road transport with the mandatory rules of multilateral instruments governing international transit”.⁶⁵ The ECMT model bilateral agreement may serve as a basis for multilateral liberalization of road transport services.⁶⁶

The liberalization of transportation services follows different schemes for each mode of transport and the degree of liberalization achieved for each mode diverges considerably. The consolidation of markets services is precisely one of the objectives of the BRI. The resolution of land transport disputes will be increasingly important due both to the creation of new land transport routes, and to the progressive liberalization of transportation services.

V. LAND TRANSPORT INFRASTRUCTURE AND B&R INVESTMENT DISPUTES

B&R investments abroad in the field of land transport infrastructure are the continuation of the “going out” policy, which promotes foreign direct investments from China. These investments are legally protected under Chinese investment treaties, such as Bilateral Investment Treaties (BITs), investment chapter within Foreign Trade Agreements (FTAs) and Regional Trade Agreements (RTAs). The standards of protection in investment treaties concluded by China seem to be progressively evolving from those of a capital-importing country to those of a capital-exporting country. However, different generations of Chinese investments treaties, with diverse degrees of legal protection for foreign direct investments, currently coexist.⁶⁷

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, p. 33.

⁶⁶ *Ibid.*, p. 31.

⁶⁷ Alejandro García Jiménez, *On the Settlement of Investment Disputes between China and Latin America*, *China Legal Science*, Vol. 5, No. 2, 2017, pp. 34-62.

Land freight transport infrastructure projects, mentioned in Section II above, aim at consolidating Europe-China land freight transport corridors as well as new land freight transport routes linking China to other Asian countries. So far, the differences that may have emerged between Chinese investors and the countries that have received investments in land transport infrastructure have not required the utilization of third-party adjudication. In the current context of reform of ISDS, the position that China will adopt for the resolution of B&R investment disputes can largely contribute to shaping the future investment disputes.⁶⁸

A. Land Freight Transport and State-to-State Investment Disputes

According to Vattel's fiction, the offense to the subject of a State may be interpreted as an offense to that State. Traditionally, under general Public International Law, a State may exercise the diplomatic protection of its nationals abroad. However, Article 27 of the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (i.e., the Washington Convention) restricts the role of diplomatic protection in the resolution of investment disputes among contracting States. The increase in the number of ratifications of the Washington Convention has led to a generalized trend towards dealing with investment disputes from the perspective of investor-State disputes.⁶⁹

However, there is still no fully universal multilateral governance system in the field of investor-State disputes that could serve to resolve all B&R

68 Although it is still undetermined how B&R investor-State disputes will be addressed, Sornarajah seems to believe that China is most likely going to adopt a "realist" approach to the resolution of B&R investor-State disputes rather than a "romantic vision" or soft-approach. Muthucumaraswamy Sornarajah, Chinese Investment Treaties in the Belt and Road Initiative Area, *The Chinese Journal of Comparative Law*, Vol. 8, No. 1, 2020, pp. 57 & 67-78.

69 The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (also known as the Washington Convention of 1965) had 164 signatories and 155 contracting States by June 2021. United Nations Treaty Series, Status of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, <https://treaties.un.org/pages/showDetails.aspx?objid=080000028012a925> (Last Visited on May 12, 2023). See also: International Centre for the Settlement of Investment Disputes, Database of ICSID Member States, <https://icsid.worldbank.org/about/member-states/database-of-member-states> (Last Visited on July 9, 2021).

investor-State disputes.⁷⁰ The International Centre for the Settlement of Investment Disputes (ICSID), created by the Washington Convention of 1966, is the multilateral mechanism in the field of investment disputes with the widest geographical scope. Nevertheless, the Washington Convention has not reached full universality: States that are key within the global economy, such as Brazil, South Africa, India, the Republic of Korea and the United Kingdom are not parties to this Convention.⁷¹

The previous section, which describes the B&R land transport infrastructure projects, enables us to understand the wide variety of investment disputes related to the B&R land transport infrastructure projects that may arise. Some large recipients of the B&R transport infrastructure projects, such as Vietnam, Laos and Myanmar, have not signed the Washington Convention. Others, such as Russia and Thailand have signed the Washington Convention but never ratified it. If disputes eventually arise in relation to these infrastructure projects, there is scope for resolving them as State-to-State investment disputes, although each case will have to be analyzed on a case-by-case basis.

Other large beneficiaries of the B&R transport infrastructure projects, such as Pakistan, Kazakhstan and Cambodia are parties to the Washington Convention and, if disputes ever emerged related to the B&R land transport infrastructure projects in these countries, they are likely to be settled through investor-State arbitration.

70 As Yang Guohua has argued, “the lack of a multilateral framework of investment rules, itself a problem in the development of the world economy [...], is affecting the expansion of trade”. In order to integrate investment rules into a multilateral system, this author has proposed the creation of a World Investment and Trade Organization (WITO). Such an international organization could be built upon the WTO and may include areas in which the Doha round is facing impasse and may find the support of G20 members, notably China. Regional Trade Agreements — most remarkably, the text of the Trans-Pacific Partnership (TPP) — could serve as an inspiration to advance such multilateral negotiations. Yang Guohua, *Why Don't We Have a WITO? G20, TPP and WTO*, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, pp. 78-95.

71 ICSID may administer investor-State disputes not falling within the scope of the Washington Convention under ICSID Additional Facility. In any case, this system is far from having reached a degree of universality comparable, for instance, to that of the World Trade Organization. International Centre for the Settlement of Investment Disputes, ICSID Additional Facility Rules, <https://icsid.worldbank.org/resources/rules-and-regulations/additional-facility-rules/overview> (Last Visited on July 13, 2021). International Center for Settlement of Investment Disputes, Member States, <https://icsid.worldbank.org/about/member-states> (Last Visited on November 27, 2021).

B. Land Freight Transport Infrastructure and B&R Investor-State Disputes

Investor-State disputes may potentially arise out of or in relation with the land freight transport infrastructure projects that are being built, upgraded or refurbished, enabling Europe-China land corridors, as well as regional land routes that link China to other Asian countries. ISDS may be used to resolve the disputes that eventually arise out of or in relation with the construction, upgradation and refurbishing of the B&R infrastructure. ISDS has been a major concern for China for many years and there have been attempts to promote ISDS before Alternative Dispute Resolution (ADR) institutions in Chinese Mainland.⁷²

The presence of China and Chinese investors in disputes under ICSID is still low compared to that of other major capital exporters in the Europe and North America. Chinese nationals have acted as claimants in seven cases and China has acted as the respondent in five ICSID cases so far, but the numbers are increasing steadily. Meanwhile, nationals from the United States, the Netherlands and the United Kingdom have acted as claimants in 164, 95 and 81 cases respectively. China and Chinese nationals have participated in a similar number of ICSID cases as other Asian capital exporters. For instance, Japanese parties have acted as claimants in five ICSID cases, whereas nationals of the Republic of Korea have acted as claimants four times and the Republic of Korea has acted as respondent on four occasions.⁷³

⁷² See the conference on Investor-State Dispute Resolution that was held at UIBE Law School on the May 16, 2016 titled “ISDS Mechanism: Reform, Improvements and China’s Position”, <http://law.uibe.edu.cn/xwzx/xzhd/81303.htm> (Last Visited on July 16, 2021). In 2017, the China Council for the Promotion of International Trade adopted the CIETAC International Investment Arbitration Rules, <http://www.cietac.org/index.php?m=Page&a=index&id=390&I=en> (Last Visited on July 15, 2021).

⁷³ Among the 12 cases in which Chinese nationals have acted as claimants, five have been concluded: i) *Tza Yap Shum v. Republic of Peru*, ii) *Standard Chartered Bank (Hong Kong) Company of China, Limited v. Tanzania Electric Supply Company Limited*, iii) *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium*, iv) *Beijing Urban Construction Group Co. Ltd. V. Republic of Yemen*, v) *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania*. Two ICSID cases involving Chinese claimants are pending: vi) *Sanum Investments Limited v. Lao People’s Democratic Republic*, and vii) *Fengzhen Min v. Republic of Korea*. China has acted as a respondent in five cases — two of which have been concluded: viii) *Ekran Berhad (Malaysia / Israel) v. China*, ix) *Ansung Housing Co. Ltd. (Republic of Korea) v. China*, x) *Hela Schwarz GmbH (Germany) v. China*, xi) *Macro Trading Co., Ltd. (Japan) v. China*, xii) *Goh Chin Soon (Singapore) v. China*. International Centre for the Settlement of Investment Disputes, ICSID Cases Database, <https://icsid.worldbank.org/cases/case-database> (Last Visited on May 19, 2021).

ICSID Secretary General, Meg Kinnear, has synthesized the relation of the ICSID and the B&R in the following terms: “It is likely that a number of disputes will arise under the OBOR [sic.] initiative given its cross-border character and extensive reach. Some of these will fall under the ICSID jurisdiction based on the underlying contract, treaty or law. The Centre is well suited to provide the necessary legal service”.⁷⁴

Investor-States disputes may also be settled outside the ICSID system. Impartiality and dispute resolution expertise are major assets that some international organizations possess for the resolution of B&R investor-State disputes. Being composed of representatives of 121 contracting States, the PCA is more likely to resist pressures from either private or public institutions, as Hugo Siblesz, Secretary General of the PCA, has argued. Another important advantage that this international organization offers is that it enjoys the immunities granted in its headquarters agreement.⁷⁵

The main multilateral proposals for the reform of ISDS are being discussed within the ICSID, the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Commission on International Trade Law (UNCITRAL) Working Group-III.⁷⁶ The ISDS reforms from within the ICSID are being addressed through the amendment of ICSID Rules and the drafting of a Code of Conduct for adjudicators. The main issues that are being considered include: i) reducing the time and cost of the arbitration, ii) regulating third-party funding and security for costs, iii) fostering transparency, and iv) including new dispute settlement mechanisms (revising the Mediation Rules, the Fact-finding Rules and administering cases under the UNCITRAL Arbitration Rules and *ad hoc* arbitrations).

The key issues of the draft ICSID Code of Conduct include the regulations

⁷⁴ Meg Kinnear, ICSID and the Evolution of ISDS, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, pp. 99-103.

⁷⁵ Furthermore, according to the agreement between the PCA and the Netherlands, the courts of the seat of arbitration, and not the Dutch courts, are to exercise judicial supervision over the arbitration proceedings.

Hugo Siblesz, The Role of International Organizations in Fostering Legitimacy in Dispute Resolution, In Peter Quayle and Xuan Gao (Eds.), *International Organizations and the Promotion of Effective Dispute Resolution: 2019 AI-IB Yearbook of International Law*, Brill, 2019, pp. 77-83.

⁷⁶ The main current initiatives for the reform of the ISDS were discussed in the conference organized by the New York University and the Centre for International Law of the National University of Singapore on the week of June 14, 2021.

for disclosure of past cases and the avoidance of double-hatting, as well as increasing the diversity of arbitrators so that real freedom of choice of the arbitrators is guaranteed.⁷⁷ Furthermore, the promotion of transparency on investment arbitration within the ICSID complements, but does not substitute, the efforts to increase the number of ratifications of the United Nations Convention in Transparency in Treaty-based Investor-State Arbitration (i.e., the Mauritius Convention).⁷⁸

The reform of the ISDS from within the UNCTAD focuses on assisting countries to revise their investment treaties, with an emphasis on promoting the right to regulate and sustainable development. The UNCTAD assists countries in drafting their model BIT and in revising their BIT network.⁷⁹ The UNCITRAL Working Group-III also addresses key aspects of the ISDS reform. The first objective is to improve the outcome of decisions in terms of consistency, coherence and predictability. Second, the UNCITRAL also aims at fostering the diversity of arbitrators, having noted that some nationalities are underrepresented, notably those that are part of the ASEAN. Third, the cost and the duration of proceedings should be kept under reasonable limits. And fourth, procedural balance should be enhanced.⁸⁰

Shen Wei has argued that most BITs in force between China and countries along the B&R include relatively low standards of protection and are therefore not enough to protect the B&R investments abroad.⁸¹ Instead of updating BITs, this author has proposed the creation of a multilateral B&R-based investment

77 Based on an oral intervention of Meg Kinnear, Secretary General of ICSID and Vice-President of the World Bank Group: Meg Kinnear, Panel 1 of the conference held on June 14, 2021. CIL — USALI Conference on Investment Law Reform: The View from Asia, <https://cil.nus.edu.sg/event/cil-usali-investment-law-reform-conference-2021/> (Last Visited on June 14, 2021).

78 United Nations Commission on International Trade Law, United Nations Convention on Transparency in Treaty-based Investor-State Arbitration Done in 2014 in New York, <https://uncitral.un.org/en/texts/arbitration/conventions/transparency> (Last Visited on July 15, 2021).

79 Hamed El-Kadi, Panel 1 of the conference held on June 14, 2021: CIL — USALI Conference on Investment Law Reform: The View from Asia, <https://cil.nus.edu.sg/event/cil-usali-investment-law-reform-conference-2021/> (Last Visited on June 14, 2021).

80 Jansen Calamita, Panel 1 of the conference held on June 14, 2021: CIL — USALI Conference on Investment Law Reform: The View from Asia, <https://cil.nus.edu.sg/event/cil-usali-investment-law-reform-conference-2021/> (Last Visited on June 14, 2021).

81 Shen Wei, Tackling Political Risks through Treatization along the Belt and Road: A Minilateral Solution, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the "Belt and Road Initiative"*, Cambridge University Press, 2020, p. 147.

treaty, that is, to “formulate a mega-regional investment agreement that covers all B&R member states”.⁸² However, the B&R, as has been so far designed, lacks a multilateral treaty, which is a major impediment in the creation of a multilateral B&R dispute resolution system.

The closest to such a “mega-regional investment agreement” may be the RCEP, even if it does not cover all countries that have signed the B&R agreements. Furthermore, so far, RCEP does not provide for specific ISDS, although already-existing investment treaties among the parties to RCEP can continue to be used as basis for ISDS claims.⁸³

Some authors have proposed the creation of a so-called Multilateral Investment Dispute Resolution (MIDR) system. MIDR would have an investment committee, a permanent annulment committee and a list of arbitrators. Wang Peng suggests that: “it would be desirable if [...] the EU and China could work together to promote the institutionalization of ISDS mechanisms”.⁸⁴ The MIDR may be created under the auspices of the ICSID, taking advantage of the experience of this institution. Other institutions that may potentially host the MIDR include the WTO, the IMF and the Asian Infrastructure Investment Bank (AIIB).

Ideally, a truly global mechanism for the resolution of investor-State disputes should integrate all the major economies of the world. The AIIB may be a good candidate for hosting the MIDR and could potentially play a major role in the resolution of B&R investor-State disputes.⁸⁵ Most of the world’s major economies are already members of the AIIB, including some of the main abseesees within the ICSID (Brazil, India, Russia and the United Kingdom). Among the major economies of the World, only the United States of America

82 Shen Wei, *The Belt and Road Initiative, Expropriation and Investor Protection under BITs*, In *International Governance and the Rule of Law in China under the Belt and Road Initiative*, Cambridge University Press, 2018, p. 161.

83 Michael Ewing-Chow and Junianto James Losari, *The RCEP Investment Chapter: A State-to-State WTO Style System for Now*, <http://arbitrationblog.kluwerarbitration.com/2020/12/08/the-rcep-investment-chapter-a-state-to-state-wto-style-system-for-now/> (Last Visited on July 16, 2021).

84 Wang Peng, *Multilateral Reform of Investor-State Dispute Resolution Mechanism: A Balance between Public Legitimacy Management and Private Efficiency Refinement*, In Shan Wenhua et al. (Eds.), *China and International Dispute Resolution in the Context of the “Belt and Road Initiative”*, Cambridge University Press, 2020, p. 180.

85 The resolution of investment disputes is a major concern for the AIIB, which devoted its 2019 yearbook to exploring this issue. Peter Quayle and Xuan Gao, *Introduction: International Organizations and the Promotion of Effective Dispute Resolution*, In Peter Quayle and Xuan Gao (Eds.), *International Organizations and the Promotion of Effective Dispute Resolution: 2019 AIIB Yearbook of International Law*, Brill, 2019, pp. 1-3.

and Japan have not joined the AIIB.⁸⁶

The proposals for increasing the role of the AIIB in the resolution of investor-State disputes are plentiful. Locknie Hsu, for instance, has also proposed the creation of dispute boards within the AIIB, which could be used in order to avoid or prevent disputes and/or the escalation of differences. This proposal has been inspired by the Singaporean experience of creating an Infrastructure Asia Office and publishing a Singapore Infrastructure Dispute Management Protocol.⁸⁷

The proposals for reform are plentiful and the position that China will adopt can contribute to shaping the initiatives to reform the ISDS and the governance of investment disputes. There is considerable consensus that China is cautiously observing the development of multilateral initiatives before fully adhering to a given model of reform.⁸⁸ In any case, it seems to be the case that China would support a multilateral system of appeals for ISDS awards.⁸⁹

VI. CONCLUSIONS

The BRI is contributing to the construction, upgrading and refurbishing of land transport infrastructure, most notably in Western China and in China's neighboring countries, consolidating Europe-China land corridors and regional road and rail routes that link China to other Asian countries. The main kinds of State-to-State disputes related to land transport include controversies related to the liberalization of road and rail freight transport services and the investment disputes that may arise out of or in relation with the construction of land transport infrastructure projects. These projects may also give rise to investor-State disputes.

⁸⁶ Asian Infrastructure Investment Bank, AIIB Members and Prospective Members, <https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html> (Last Visited on July 14, 2021).

⁸⁷ Locknie Hsu, The Role of International Organizations in Promoting Effective Dispute Resolution in the 21st Century, In Peter Quayle and Xuan Gao (Eds.), *International Organizations and the Promotion of Effective Dispute Resolution: 2019 AIIB Yearbook of International Law*, Brill, 2019, pp. 95-96.

⁸⁸ Heng Wang et al., Panel 3 of the conference held on June 16, 2021: CIL — USALI Conference on Investment Law Reform: The View from Asia, <https://cil.nus.edu.sg/event/cil-usali-investment-law-reform-conference-2021/> (Last Visited on June 16, 2021).

⁸⁹ Chi Manjiao, Panel 1 of the conference held on June 14, 2021: CIL — USALI Conference on Investment Law Reform: The View from Asia, <https://cil.nus.edu.sg/event/cil-usali-investment-law-reform-conference-2021/> (Last Visited on June 14, 2021).

Greater liberalization of services is a major objective of the BRI. Since the beginning of the 21st Century, the liberalization of transport services has been making steady advancements through GATS schedules within the multi-lateral framework of the WTO, as well as through regional and bilateral agreements. Freedom of transit, contained in Article V of the GATT, has also been the cause of recent advancements, along with Chapter 11 of the WTO Agreement on Trade Facilitation.

So far, there has been no dispute under the DSU of the WTO concerning the liberalization of land freight transport services. However, there have been two cases concerning the freedom of transit, namely DS512 and DS532. In both of these cases Ukraine has acted as claimant and the Russian Federation as respondent. As road and rail freight transport services further liberalize and infrastructure enables new land freight transport routes and reduces the bottlenecks in land freight transport, disputes concerning not only freedom of transit, but also WTO commitments on the liberalization of land transport services, are increasingly likely to take place.

Some large recipients of the B&R land transport infrastructure projects, such as Vietnam, Laos and Myanmar, have not signed the Washington Convention. Others, such as Russia and Thailand, have signed the Washington Convention but never ratified it. If disputes eventually arise in relation to these infrastructure projects, there is scope for resolving them as State-to-State investment disputes, although each case will have to be analyzed on a case-by-case basis.

Other large beneficiaries of the B&R transport infrastructure projects, such as Pakistan, Kazakhstan and Cambodia, are parties to the Washington Convention and, if disputes ever emerged related to the B&R land transport infrastructure projects in these countries, they are likely to be settled through investor-State arbitration. The presence of China and Chinese investors in disputes under the ICSID is still low compared to other major capital exporters of Europe and North America, but it is quite similar to that of other Asian capital exporters, such as Japan and the Republic of Korea. It is too early to know whether Chinese investors will utilize the ICSID arbitration more often in the years to come, as well as which model for the reform of ISDS China will eventually support.