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New Trends in Solving BRI-Related Disputes

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Key Points:

- China is working to reshape the global dispute settlement landscape by proposing an innovative and holistic approach to cross-border disputes.
- Along with the development of the Belt and Road Initiative, mutual economic relations between Chinese and foreign entrepreneurs are intensifying, which may result in the emergence of a greater number of disputes in the future.
- China endeavors to promote new institutions dedicated solely to BRI-related disputes. The reception and use of these entities remains uncertain as foreign parties tend to prefer to handle such disputes in neutral institutions.
- The Chinese approach to solving BRI-related disputes using specialized entities could work in the future if such institutions are sufficiently internationalized and provide high-quality services by respected international experts.

Introduction

In an era of globalization, China's President Xi Jinping launched the One Belt and One Road Initiative at the end of 2013, which was renamed the Belt and Road Initiative (BRI) in 2016. The BRI has two components: the first concerns the so-called "Silk Road Economic Belt" that exists along Western China and passes through Central Asia/Caucasus and South Asia and ends in Europe; the second refers to the "21st Century Maritime Silk Road," which runs from the Chinese eastern coast to Southeast Asia, Pakistan, Sri Lanka and ends in Eastern Africa.¹

Along with the development of the BRI, mutual economic relations between Chinese and foreign entrepreneurs are intensifying, which may result in the emergence of a greater number of disputes in the future. China has long placed a premium on the peaceful resolution of disputes and the basic method of resolution has traditionally been mediation. Mediation was a result of both

¹ Felix Heiduk & Alexandra Sakaki, *Introduction to the Special Issue – China's Belt and Road Initiative: The View from East Asia*, 36 EAST ASIA 94 (2019).

Confucian philosophy and social norms that disfavored confrontation and possible loss of “face” (*mianzi*). For these reasons, litigation was largely avoided.² In the modern period, China is deepening its relationship with foreign parties, but continues to advocate for the amicable settlement of disputes. This Research Brief outlines the new trends in emergence of specialized institutions providing dispute settlement services for BRI-related disputes.

Establishment of China-Africa Joint Arbitration Centres

The Chinese presence in Africa is growing as a result of Chinese investment in a number of African host countries.³ In addition to these South-South investments, there are new challenges in terms of resolving commercial disputes and, as a result, new mechanisms for dispute resolution have been introduced.⁴

Given the potential trade disputes that could arise in the future, the China-Africa Joint Arbitration Centre (CAJAC) was launched in 2015. It is widely regarded as a consensus on the necessity of building a joint dispute settlement mechanism between China and Africa. CAJAC can be defined as a number of arbitral centres which have been established to provide the most appropriate fora for disputes arising between nationals, legal entities and authorities associated with business conducted between Chinese and African parties.

The origins of CAJAC can be traced back to the Beijing Consensus signed in 2015 that aimed to develop a joint dispute resolution framework between China and Africa.⁵ The main objective of CAJAC is to ensure timely and cost-effective resolution of disputes. In the near term, each CAJAC centre is required to apply CAJAC rules ensuring that a uniform set of arbitration provisions relating to the procedures, recognition and enforcement of arbitral awards are used. However, in the long term, each centre will have its own arbitration rules.⁶ Given the establishment of such centres, they should be seen as alternatives to existing international institutions that provide arbitration services worldwide.

There are currently six CAJAC centres throughout the world (CAJAC Johannesburg, CAJAC Shanghai, CAJAC Beijing, CAJAC Nairobi, CAJAC Shenzhen, and CAJAC OHADA). According to CAJAC Rules, “the China Africa Joint Arbitration Centre (CAJAC) has been established at the instance of the Forum of China Africa Cooperation (FOCAC) to administer the resolution of international disputes arising between Chinese and African entities having the principal residence, place of business, nationality located in China or a country in Africa” (art. 1).⁷ It should be added that this institution provides a variety of dispute resolution

² Magdalena Łągiewska, *Arbitraż w Chinach – uwagi wstępne*, 17 *Gdańskie Studia Azji Wschodniej* 42-44 (2020); Gabrielle Kaufmann-Kohler & Fan Kun, *Integrating Mediation into Arbitration: Why It Works in China*, 25/4 *J. INT'L. ARB.* 480 (2008).

³ Xia Ying, *Chinese Investment in Africa: An Empirical Investigation of Trends, Dynamics, and Regulatory Challenges*, in *HANDBOOK OF INTERNATIONAL INVESTMENT LAW AND POLICY* (Julian Chaisse, Leila Choukroune & Sufian Jusoh, eds., 2020), https://doi.org/10.1007/978-981-13-5744-2_98-1, 2.

⁴ *Id.* at 23.

⁵ Francis Kariuki, *The Vision of Co-building China-Africa Joint Arbitration Centres in Different Legal Systems*, <http://kmco.co.ke/wp-content/uploads/2018/08/Co-building-China-Africa-Joint-Arbitration-Centres-in-Different-Legal-Systems.pdf>, 1.

⁶ Xia Ying, *supra* note 3, at 25.

⁷ *Zhong fei lianhe zhongcai zhongxin guize* (中非联合仲裁中心规则) [CAJAC Rules], https://cajacjhb.com/wp-content/uploads/2020/10/CAJAC_Rules_2020.pdf.

mechanisms, including mediation, conciliation and arbitration (art. 2 of CAJAC Rules).⁸

China's investment in Africa is growing steadily every year. Between 2003 and 2014, there has been a significant increase in the Chinese outbound investments in Africa, from US\$491 million to over US\$32.4 billion.⁹ In addition, Chinese President Xi Jinping has allocated US\$60 billion to finance African projects.¹⁰ President Xi has also forgiven loans from borrowers who were poorer African countries.¹¹ Despite these positive aspects, trade disputes remain an intractable problem.

China International Commercial Court: A Game-Changer in BRI-related Disputes?

The China International Commercial Court (中国最高人民法院国际商事法庭 or CICC) is another specialized institution that was launched by the Supreme People's Court of the PRC in July 2018, with a special focus on handling international commercial cases. Today, there are two International Commercial Tribunals: the first located in Shenzhen (Guandong province) and the second in Xi'an (Shaanxi province). It is worth adding that the CCIC has been established as a permanent platform for the litigation, arbitration, and mediation of international trade disputes.

Moreover, the decisions rendered by this court are final and binding on the parties involved.¹²

Some scholars point out that the CCIC is a true innovation, providing a “one-stop shop” for dispute resolution.¹³ This concept should be understood as a combination of litigation, arbitration and mediation, all useful in terms of solving BRI-related disputes.¹⁴ From a Western perspective, it seems to be an innovative solution; however, a combination of arbitration and mediation is deeply rooted in Chinese culture and has a certain philosophical background. Given the characteristics of the CICC, it is more similar to domestic courts rather than a full-fledged international tribunal dealing with trade disputes.¹⁵

The aforementioned examples of specialized institutions designated to resolve BRI-related disputes should be seen in view of Chinese efforts to enhance international dispute settlement and facilitate cross-border trade and investments along the BRI.

International Commercial Dispute Prevention and Settlement Organization: A New Legal Hub

The International Commercial Dispute Prevention and Settlement Organization (国际商事争端预防与解决组织 or ICDPASO) was launched by the

⁸ Ibid.

⁹ Princesse Mabiala, *Chinese Africa Joint Arbitration Center: A Solution to Trade Disputes between Africa and China*, THE ARBITRATION BRIEF (Feb. 11, 2019), <https://the-arbitration-brief.com/2019/02/11/chinese-africa-joint-arbitration-center-a-solution-to-trade-disputes-between-africa-and-china%E2%82%AC/>.

¹⁰ Filip Kaczmarek, *African Dimension of the Belt and Road Initiative*, 12 PRZEGLĄD STRATEGICZNY 154 (2019).

¹¹ Princesse Mabiala, *supra* note 9.

¹² Zhongguo zuigao renmin fayuan guoji shangshi fating (中国最高人民法院国际商事法庭) [China International Commercial Court], <http://cicc.court.gov.cn/html/1/218/19/141/index.html>.

¹³ Matthew Erie, *Update on the China International Commercial Court*, OPINIO JURIS (13.05.2019), <http://opiniojuris.org/2019/05/13/update-on-the-china-international-commercial-court%E2%82%AC/>.

¹⁴ Julien Chaisse & Xu Qian, *Conservative Innovation: The Ambiguities of the China International Commercial Court*, 115 AJIL UNBOUND 17 (2021).

¹⁵ See David Holloway, *The New Chinese International Commercial Court and the Future of Dispute Resolution in the Belt and Road Initiative*, in DISPUTE RESOLUTION IN CHINA, EUROPE AND WORLD (Lei Chen & André Janssen, eds., 2020). Ius Gentium: Comparative Perspectives on Law and Justice, vol 79, https://doi.org/10.1007/978-3-030-42974-4_3.

China Council for the Promotion of International Trade, with the cooperation of the China Chamber of International Commerce, in 2019.¹⁶ ICDPASO is a non-profit organization dedicated to the resolution of the full spectrum of international trade and investment disputes. To achieve this goal, this entity benefits from traditional dispute settlement mechanisms, but also adds “Chinese characteristics,” reflected in the promotion of negotiation and mediation mechanisms.¹⁷ In addition, it includes a dispute prevention mechanism. Taken together, we can say that this is a new approach to the settlement of international disputes. It is worth adding that the ICDPASO advocates for “the end of the dispute and resolution of divergence” and highlights the need for “harmony to come first” (以和为贵). Therefore, this international organization promotes mediation as an effective tool for dispute resolution.¹⁸

Conclusions

The foregoing innovations illustrate the emergence of a number of platforms for settling disputes resolution related to cross-border transactions and international investments. At the outset, CAJAC was launched as a response to potential conflicts between China and Africa with headquarters in Johannesburg and Shanghai. In the wake of these two CAJAC centres, three other centres were established, two of them on the territory of the People’s Republic of China.

Subsequently, China took further steps to attract foreign parties and persuade them that the existing “one-stop shop” within CCIC would be the best solution to BRI-related disputes. However, practice shows that this court operates principally as a typical national court. So additional action was taken by the Chinese authorities and, as a result, the ICDPASO was established.

In summary, China is working to reshape the global dispute settlement landscape and propose an innovative and holistic approach to cross-border disputes stemming from the BRI.¹⁹ In addition to the joint arbitration centres, China has supported the emergence of institutions dedicated to handling the entire range of BRI-related cases. Collectively, CAJAC, CICC, and ICDPASO represent new trends for settling such disputes. It is too early to understand whether they will dominate in resolving BRI-related disputes, but it is certainly worth watching how these institutions develop.

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¹⁶ See International Commercial Dispute Prevention and Settlement Organization, <http://en.icdpaso.org/content/2163>.

¹⁷ See Wang Guiguo & Rajesh Sharma, *The International Commercial Dispute Prevention and Settlement Organization: A Global Laboratory of Dispute Resolution with an Asian Flavor*, 115 AJIL OUTBOUND 22-27 (2021).

¹⁸ Jian Zhang 张建, *International Commercial Dispute Prevention and Settlement Organization: A Quick Overview*,

CHINA JUSTICE OBSERVER (OCT. 15, 2020), <https://www.chinajusticeobserver.com/a/thing-about-international-commercial-dispute-prevention-and-settlement-organization>.

¹⁹ See Matthew Erie, *The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution*, 60 VA. J. INT’L L. 295-296 (2020).