



**Center for Global & Strategic Studies**

**China's Progressive Thinking by Establishing  
International Courts to Address BRI Issues: Analysis  
and Future Impacts**

*Published on 9<sup>th</sup> March, 2018*



This paper analyzes China's move to set up arbitration courts to address Belt and Road Initiative (BRI) issues and its global impacts.

- **Concept:** Chinese state media announced the formation of arbitration courts to be based in Beijing, Xi'an and Shenzhen. These courts will directly work under the Supreme People's Court of China.

There are two categories comprising of these courts:

- The Xian Court will address the commercial disputes of land corridors. (The routes connect China with West Asia and Europe).
- The Shenzhen Court will address the contentions arising from Maritime Silk Road (The maritime route connects China with Southeast Asia, Africa and Europe).
- Beijing Court will serve as a headquarter.

The plan was approved at the second meeting of the 19th Central Committee of the Communist Party of China overseeing the reforms.

- **Need for the BRI Courts:** In the face of increased reluctance among Chinese state-owned enterprises to perform under the complicated foreign judicial structures, the idea of BRI courts was coined which facilitates the commercial and financial arbitration. The courts are expected to start very soon. The multi-billion dollar projects were expected to face delays if an expedited process for financial cases was not put in place. The criticism on the courts from some quarters is merely a figment of the malicious propaganda hatched by the adversaries who are sensing their stakes being rolled out by the Chinese rising influence across the globe. If the Singapore International Commercial Court can perform in its own jurisdiction to facilitate its clients regarding commercial aspects, then there is no ambiguity that China also holds the right to undertake steps to protect its investments.

- **Analogy with other Financial Courts:** One can draw the analogy of BRI courts with the International Commercial Court in Singapore and the International Finance Centre Courts in Dubai which covers their own subject related to financial arbitration. The purpose of the courts is to expedite the litigation process and facilitate the investors and stakeholders in the projects. The BRI courts seek to resolve all financial disputes under the auspices of the BRI to be settled in these courts. Hence, the phenomenon is not a new one but has already been executed by the similar entities in other countries.
- **While respecting their legal systems:** China has already announced that the legal service resources from China and abroad will be integrating to initiate a sound and robust commercial court to settle various financial disputes arising from BRI projects. The courts will transparently function according to settlement mechanism that may enable, both Chinese and foreign clients the right to just and law-based business regime.
- **Different legal systems, social and cultural backgrounds:** The mechanism to oversee the massive challenge of setting up the financial and commercial dispute mechanism is very difficult. However, it is necessary to undertake the smooth sailing of the projects involved in the CPEC. The main constraints to these courts arise from parallel legal and social systems prevailing in the participant countries having distinct cultural background. The real challenge will

fulfil most of the requirements. Hence, China aspires to build a system based on the respect for each country's benefit and respect for their legal systems.

- **Current Legal System is time consuming:** China realized that the ambitious BRI plan has to be completed on war footing with the help of its partner countries. However, the current system to manage the legal financial affairs was complicated, time consuming and costly, hence the decision to evolve a new mechanism was reached under the auspices of President Xi Jinping to eradicate these obstacles.
- **Best Practices of Western System:** The system has adopted best practices and laws from the Western countries while the English language is kept as a common language. This step will streamline the commercial court with international standards and the use of the common language will enable the foreign partners to efficiently litigate their point of views.
- **Capacity building:** The Chinese legal personnel and arbitrators are being sent on foreign attachments to work in international organizations for capacity building and to gain more experience international negotiations.

### Misperceptions about BRI

The following is a list of some narratives which are being attributed to the BRI courts:

- The critics are already framing different theoretical arguments in opposition to this move by Beijing. Their main concern lies in the presence of local courts

and international arbitration centers, which in their view, is fully capable of dealing with the intricacies of contractual issue.

- Another criticism is aimed at the lack of opportunities for legal expert community in partnering countries. The BRI courts composition in China may deny them, but the opportunity is to benefit from the BRI litigation procedures inside their own countries and understand its complexities. However, the convenience of the fast-tracked and dedicated courts will have positive impacts on the early completion of the projects, which is a fact often disregarded by the critics.
- Critics are of the view that an arbitration system under Supreme People's Court of China may be Sino-Centric and protect the interest of China domestically and also abroad. However, such suspicions are growing unfounded because China does not intend to pursue such an agenda, thus in that case, the trust in Chinese new model of economic opportunities will diminish. Most of the misperceptions are being fueled by the Western media with a one-point agenda to undermine the Chinese rise and global influence.
- Some critics have advocated the fallacious point of view that the BRI is already being negotiated heavily on Beijing's terms and conditions. The litigation of financial and commercial cases inside China may award an added advantage and the international enterprises will find it unfair and one-way. However, the fact China's BRI success will ultimately be attributed to its acceptance by the participant countries. Additionally, China is also conscious about the western

apprehensions regarding the main benefits towards China. Hence, Beijing is in no mood to make the BRI controversial. It seeks to integrate the countries through its vision of shared prosperity.

According to China's President Xi Jinping

**“BRI is meant to build not China's own backyard garden, but a garden shared by all countries.”**

### Conclusion

The Belt and Road Initiative is a transformational project which will integrate more than sixty countries through economic initiatives and maritime corridors. However, owing to the massive challenges faced by the investors in the backdrop of the BRI projects, it is expected that a wide range of legal issues will arise on its way. To better counter the prevailing challenges, China has initiated the BRI courts with the sole purpose to facilitate the clients in China and its foreign partners through expedited litigation process. This will actively fast-track the projects and denies any legal hurdles with dedicated and non-complicated court procedures. Some of the critics are fueling misperceptions regarding its China-centric image; however, most of the allegations are made by Western-backed media. The receding global influence by China is counter to the interest of various countries. Hence, one can expect some noise emanating from these segments but having less rationale. China seeks to share its prosperity with the world and espouses to attract the participation of maximum

partnering countries. Therefore, most of the criticism is unfounded and baseless and one has to wait for the courts to perform, in order to critically analyze its impacts.

