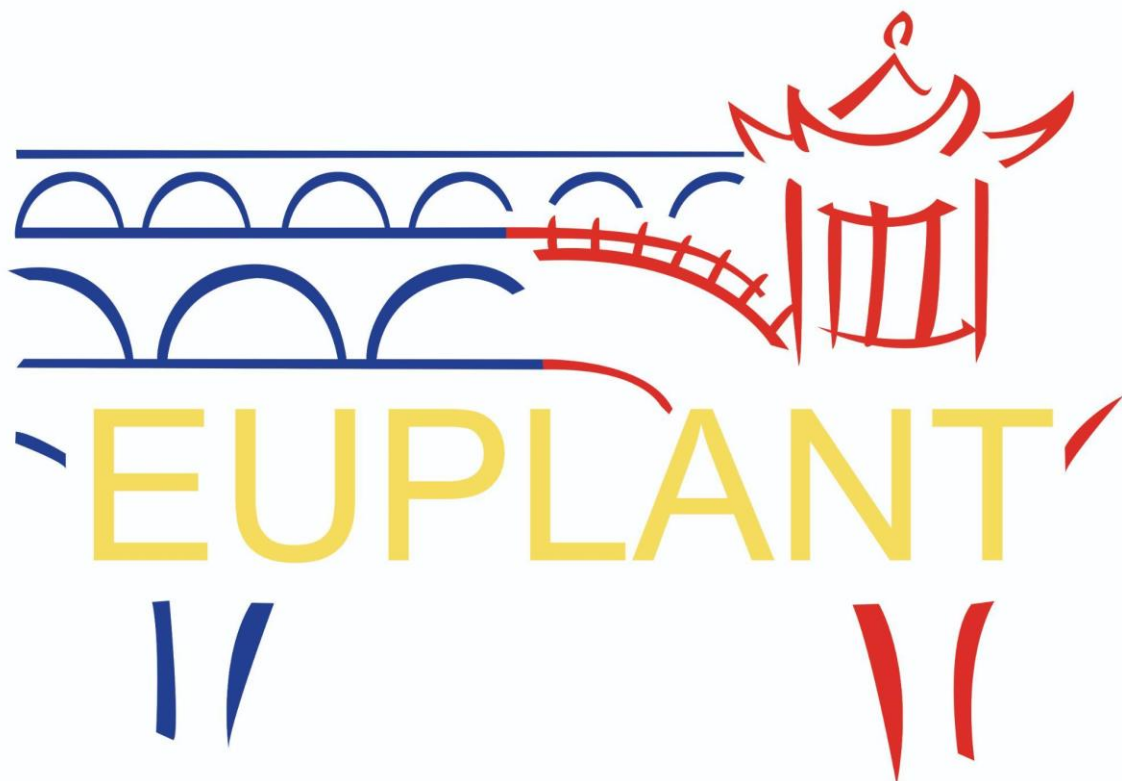


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## The Implications of China's Rise for Cosmopolitan Academic Citizenship



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# The Belt and Road Initiative: A New Landscape in Mapping the Changing Global Governance

## Abstract

The Belt and Road Initiative (BRI), which has been put forward since 2013, is often perceived as an ambition to export a “China Model” that promotes alternative global norms and standards to the currently prevailing Western ones. The presumption might be corroborated by the press release of the fifth plenary session of the 19th CPC Central Committee, where “promot(ing) the joint implementation of the Belt and Road Initiative towards a high quality development” and “actively participat(ing) in the reform of global governance” are put together as one of China’s future leading open policies. The BRI, while often suspected due to its unique and distinctive features compared to the Western benchmark, is regarded by China as a path towards the progressive reform of the current global governance based on traditional Chinese wisdom. We argue that, rather than proposing a “China Model” that would fill in the leadership vacuum left by the Western powers, China is experimenting a new approach to transnational cooperation, thus adding new elements to the changing landscape of the global governance.

## Keywords

Belt and Road Initiative, China, Transnational Cooperation

## Introduction<sup>1</sup>

The Belt and Road Initiative (BRI), which has been put forward since 2013, is often perceived as an ambition to export a “China Model” that promotes alternative global norms and standards to the currently prevailing Western ones.<sup>2</sup> The presumption might be corroborated by the press release of the fifth plenary session of the 19<sup>th</sup> CPC Central Committee, where “promot(ing) the joint implementation of the Belt and Road Initiative towards a high quality development” and “actively participat(ing) in the reform of global governance”<sup>3</sup> are put together as one of China’s future leading open policies. The BRI, while often suspected due to its unique and distinctive features compared to the Western benchmark, is regarded by China as a path towards the progressive reform of the current global governance based on traditional Chinese wisdom. We argue that, rather than proposing a “China Model”<sup>4</sup> that would fill in the leadership vacuum left by the Western powers, China is experimenting a new approach to transnational cooperation, thus adding new elements to the changing landscape of the global governance.

## China’s Pragmatic Use of Legal Tools for Implementing the BRI

The name of the BRI is coined to manifest its singularity: the initiative is neither a project nor premised upon a multilateral international legal instrument. The implementation of the BRI aims at neither creating an international organization with specific mandates nor building a regional alliance. It is a process of cooperation. The undefined geographic scope and priorities of the BRI characterize the flexible and open nature of the initiative. While cynics observe the BRI through the lens of geo-political or geo-economic strategy, countries alongside or covered by the “belt and road” are invited to cooperate on a voluntary basis for the progressive implementation of the initiative. The totally voluntary nature of cooperation distinguishes BRI from any regional trade and investment agreement such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that China has recently expressed its intention to join or the Regional Comprehensive Economic Partnership (RCEP) that China has officially signed on 15 November 2020. Besides, the Chinese government has extensively concluded intergovernmental agreements

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<sup>2</sup> See, for example, D. Tobin, ‘How Xi Jinping’s “New Era” Should Have Ended US’s Debate on Beijing’s Ambition’, Center for Strategic and International Studies (CSIS) (2020), available at <https://www.jstor.org/stable/resrep24771>, accessed on 27 November 2020. In a recent discussion on the issue of China and global governance to which this author participated, it is contended that the very premise of a liberal international order is increasingly contested both internally and externally, China, under a such context, supports but also challenges the established order and the global governance system in which it is embedded. See, M. Burnay, W. Muller, ‘China, Law and Global Governance: Power through Rules of Rule through Power?’, *Hague Yearbook of International Law*, Volume 31, 2018, Brill Nijhoof, 2021, pp. 9-14.

<sup>3</sup>The Press Release in Chinese is available at : <[http://www.xinhuanet.com/politics/2020-10/29/c\\_1126674147.htm](http://www.xinhuanet.com/politics/2020-10/29/c_1126674147.htm)>.

<sup>4</sup> See, for example, Q. Kong, M. Du, ‘Is the “Belt and Road” Initiative the Chinese Vision of Global Governance?’, in G. Martinico, X. Wu (eds.), *A Legal Analysis of the Belt and Road Initiative, Towards a New Silk Road*, Palgrave MacMillan, 2020, pp. 5-19.

with BRI countries and with some international organizations. Yet, most of them are not legally binding or are “of soft law nature”.<sup>5</sup> Those agreements build the foundation for policy coordination and for continuously broadening the international consensus on the BRI’s furtherance. At the same time, China has taken the approach of acclimatizing to the local context and managing its relations with the leadership on a bilateral basis. The flexibility in leading bilateral cooperation implies that “legal norms, *per se*, are not the primary basis for China to rely upon”.<sup>6</sup> The BRI lacks a clear and systematic legal framework as a useful tool of communication to clarify itself to the world. Consequently, countries who would traditionally rely on such legal framework as “a founding treaty” of the BRI in order to understand the political and economic implications of BRI will be disappointed and thus second guess China’s grand ambitions behind it.

Nevertheless, China’s emphasis on foreign diplomacy in pushing forward the BRI should not be misunderstood as a complete rejection of the legal rules. The BRI prioritizes infrastructure connectivity, and the financing of infrastructure projects is highly technical and complex, therefore, sophisticated and detailed legal rules and arrangements are required to provide a secure, reliable and predictable basis of operation. The activities of the Asian Infrastructure Investment Bank (AIIB) provide an example of how the China-led multilateral development bank, which is expected to alter the current global financial governance through the input of ‘Asian values’,<sup>7</sup> has to be receptive to and abide by the established international legal rules. For example, for the purpose of maintaining credit ratings, AIIB has mapped out “guidelines for the assessment, monitoring and control of the risk of legal or regulatory sanctions, financial loss or loss to reputation AIIB may suffer as a result of our failure to comply with laws, regulations, international standards and codes of conduct applicable to our banking activities”.<sup>8</sup> Moreover, Chinese infrastructure projects holders in need of blended financing have to abide by the established international legal rules, instead of making new rules based on the “China model”. Chinese enterprises are furthermore encouraged to strengthen the blended financing cooperation with multilateral development institutions, because of the positive political influence of multilateral institutions that helps projects to mitigate risks and increase credibility.<sup>9</sup> The cooperation with multilateral development institution, motivated by the need for blended financing, requires Chinese enterprises to negotiate with multilateral institutions and to eventually take in those universally practiced financial legal rules.<sup>10</sup> In addition, leaders of

<sup>5</sup> See, G. Martinico, ‘Comparative Law Reflections on the Use of Soft Law in the Belt and Road Initiative’, in Giuseppe Martinico, Xueyan WU (eds), *op. cit.*

<sup>6</sup> See, R. Nurgozhayeva, “Rule-Making, Rule-Taking or Rule-Rejecting under the Belt and Road Initiative: A Central Asian Perspective”, *The Chinese Journal of Comparative Law*, (2020) Vol. 8 No. 1 pp. 250-278, p.262.

<sup>7</sup> See, D. M. Ong, “The Asian Infrastructure Investment Bank: Bringing ‘Asian Values’ to Global Economic Governance”, *Journal of International Economic Law*, 2017, 20, pp. 535-560.

<sup>8</sup> 2019 AIIB Annual Report and Financials, p. 16.

<sup>9</sup> See, *Greenovation Hub: Investment and Financing Models, Challenges and Recommendations of renewable Energy Projects by Chinese Companies in the Belt and Road Countries*, January 2020, available at <https://www.ghub.org/en/bri-re-report/>, accessed on 23 April 2021.

<sup>10</sup> See, M. A. Carrai, “It Is Not the End of History: The Financing Institutions of the Belt and Road Initiative and the Bretton Woods System”, in J. Chaisse, J. Górski (eds.), *The Belt and Road Initiative, Law, Economic, and Politics*, Brill Nijhoff, 2018. The author argues that “the BRI related *International Developmental Financing Institutions* (IDFIS) are nested mostly in the current international legal system

the BRI countries have recently expressed their endorsement of the UN Sustainable Development Goals. For that purpose, the leaders are determined to sustain cooperation “in line with internationally agreed principles and obligations”; to “work together in line with our national legislation, regulatory frameworks, international obligations, applicable international norms and standards”, and called for “more international cooperation in line with our applicable respective obligations under international conventions, such as UN Convention against Corruption (UNCAC) and relevant bilateral treaties”.<sup>11</sup> The objective of building a green and sustainable Belt and Road, as it has been declared in the form of a coordination policy, will drive BRI countries including China to adjust their conduct to be in conformity with the international norms, thus generating a “BRI culture of compliance” in achieving the SDGs.<sup>12</sup>

Insofar as legal security is concerned, China has felt the necessity of building an efficient and trustworthy dispute settlement mechanism for dealing with foreign-related trials, drawing particular attention on the specialties of the cases related to BRI countries. China’s Supreme People’s Court (SPC) released in 2015 and 2019 two guidelines on the judicial service and guarantee that China’s court system should offer to the BRI. Those directives contain the SPC’s direction on the tasks and activities undertaken by all levels of judicial organs for serving the BRI’s furtherance. The main objective is to enhance the trustworthiness of China’s judiciary in settling the legal disputes related to BRI countries. According to the 2019 guidelines,<sup>13</sup> China’s courts should faithfully apply the international treaties and conventions binding on China, and respect international customs and commercial usages; on the other hand, Chinese legal texts and cases should be translated into foreign languages and well published in BRI countries in order to improve the understanding of Chinese legal practices by foreign subjects; the “one-stop” legal dispute settlement with the diversified available remedies that coordinate judicial settlement, mediation and arbitration, offered by the recently established China International Commercial Court (CICC), will be further promoted and extended. The 2019 guidelines show SPC’s support for the participation of Hongkong International Arbitration Center (HKIAC) to the one-stop legal dispute settlement as designed by CICC. Last but not least, foreign arbitration institutions may establish their branches and have their *arbitral situs* at Lingang area in Shanghai.<sup>14</sup> The above guidelines show SPC’s intention to improve

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and can contribute to some of its objectives, such as environmental protection, security and social sustainable development”, p. 111.

<sup>11</sup> Belt and Road Cooperation: Shaping a Brighter Shared Future, Joint Communiqué of the Leaders’ Roundtable of the 2nd Belt and Road Forum for International Cooperation, 27 April 2019, Beijing, China.

<sup>12</sup> One of the venues for increasing the environmental sustainability of the Belt and Road Initiative is the Belt and Road Initiative International Green Development Coalition (BRIGC or The Coalition). Launched in 2019, the Coalition is an open, inclusive and voluntary international network which brings together the environmental expertise of all partners to ensure that the Belt and Road brings long-term green and sustainable development to all concerned countries in support of the 2030 Agenda for Sustainable Development. See, <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/belt-and-road-initiative-international-green>.

<sup>13</sup> Supreme People’s Court, Guidelines for courts to provide enhanced judicial services and guarantees for Belt and Road construction (最高人民法院关于人民法院进一步为“一带一路”建设提供司法服务和保障的意见), 9 December 2019.

<sup>14</sup> It is argued that the BRI-related international arbitration practices will bring dynamics of change to the global framework for international arbitration. See, Ulla Liukkunen, ‘Chinese Context and Complexities – Comparative Law and Private International Law facing new Normativities in International

the international trustworthiness and openness of the Chinese judiciary, in light of both the competition and cooperation among different international and domestic dispute settlement institutions.<sup>15</sup> Yet, on the other side, SPC seems to over-emphasize the importance of settling the legal disputes arising from BRI projects within Chinese territory: SPC's sense of security is to a certain degree closely connected with its capacity of influence and even control over those judicial and arbitral practices, as well as over mediation. It is thus hard to thoroughly reject the assumption that the SPC is skeptical towards genuinely internationalizing the dispute settlement. The latter's multiple centers of gravity scatter over the world.

The above examples on the use of legal tools for implementing the BRI illustrate that law is not perceived as the "foundation" of the BRI. BRI is designed as a process of cooperation, instead of an immense edifice, that needs driving dynamism rather than a solid foundation. Experts who contended that "every time a regional or global power takes investments into its area of influence, it seeks to create an international law that applies to the protection of such investments" conclude however with uncertainty over whether China will follow the "US-led hegemonic system of investment, which remains largely intact today".<sup>16</sup> The necessary but still marginal role of law characterizes China's "maximized flexibility"<sup>17</sup> in leading the BRI that contrasts itself with the Western benchmark of the Rule of law.

#### **"China Model" vs. the Western Benchmark**

China has taken an ambivalent position concerning the role of law as a tool of governance. It is clear that China is investing in its institutional capacity to develop norms, yet there is a "lingering lack of clarity about the legal dimensions of the Belt and Road initiative".<sup>18</sup> In pushing forward the BRI whose core aim is increasing connectivity, China pragmatically relies on the function of policy, while at the same time resorting to legal tools when it is necessary and useful. Antoine Garapon's insightful observation sheds light on China's pragmatism: China deploys its BRI through infrastructure investment rather than through the transplantation of a legal culture, the imposition of law, or through the empowerment or the transmission of a specific model of society. China believes that the society of consumption may become similarly attractive to other countries. However, the BRI contains within itself the risk of keeping China away from the universally accepted norms and legal regulation. The very reason of such scenario is that China is still not a

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Commercial Arbitration', *Ius Comparatum* 1(2020) 254-287 [International Academy of Comparative Law: aidc-iacl.org]

<sup>15</sup> In terms of judicial cooperation, China has signed United Nations Convention on International Settlement Agreements resulting from Mediation ("Singapore Mediation Convention") on 7 August 2019. China also participated in the adoption of the 2019 HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. See : <<http://cicc.court.gov.cn/html/1/219/208/209/1303.html>>.

<sup>16</sup> See, M. Sornarajah, 'Chinese Investment Treaties in the Belt and Road Initiative Area', *The Chinese Journal of Comparative Law*, (2020) Vol. 8 No. 1, pp.56-57.

<sup>17</sup> See, H. Wang, "China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability", *Journal of International Economic Law*, 2019, 22, pp. 29–55, p.47.

<sup>18</sup> See, W. Muller, "The Power of Discourse, Doctrinal Implications of China's Normative Aspirations", *Hague Yearbook of International Law*, Volume 31, 2018, Brill Nijhoof, 2021, p.66.

State under the Rule of law.<sup>19</sup> In a broader perspective, China's conception and implementation of the rule of law "are significantly different from any existing legal system in the West or any paradigmatic 'Western rule of law ideal'"<sup>20</sup>. In brief, China's statist socialist rule of law is the key institutional factor which leads to skepticism and criticism from the West.

The overstated "China model" accompanies the concern over the tension and rivalry that the development of BRI will instigate. It has been well argued that "[l]ack of transparency is perhaps the defining trait of the BRI and the projects carried out under its umbrella"; "[t]he fact that China's state-owned enterprises play a major role in the BRI leads to the argument that China's state capitalism and its one-party political system may sit uneasily in a liberal-democratic world order".<sup>21</sup> Garapon also concluded that the weak reliance on law and the lack of autonomy and independence of the law and the market in relation to the politics characterize China as a post-democracy that challenges and competes with the current democracies.<sup>22</sup> Some other influential opinions underscored China's engagement as a 'prolonged struggle' over the current international order. The current one advocated by the Americans as a "rule-based international order" appears in fact to be "an order in which Americans make the rules". The question of how much 'renegotiation' of that order China will demand, and what emerges afterward, is wide open.<sup>23</sup>

There are different strands of thinking on how to alleviate the tension between the "China model" and the Western ideology. The "conformity" view argues that China has to bring its trade and investment under the BRI "into one scheme and take into consideration both international rules and institutional arrangement", and when China seriously address multilateralism and international law issues, China "needs to ensure that rule making and decision-making for the BRI should be conducted not by China alone but by an independent process without the domination of any one State".<sup>24</sup> The suggestion essentially argues for putting China's approach to global governance, as those practices relating to the BRI, in conformity with the Western benchmarks embedded in the currently prevailing international rules and institutions. Such a simplistic solution may be contested based on the criticism that international law is not neutral, and it can favor the powerful, justify aggression and carry an imperialist agenda.<sup>25</sup> The consequence of the above compliance rhetoric

<sup>19</sup> See, A. Garapon, Les « Nouvelles Routes de la Soie » : la voie chinoise de la mondialisation, available at <https://ihej.org/publications/les-nouvelles-routes-de-la-soie-la-voie-chinoise-de-la-mondialisation/>, last visit on 26 November 2020.

<sup>20</sup> See, R. Peerenboom, *China Modernizes, Threat to the West or Model for the Rest?*, Oxford University Press, 2007, p. 196.

<sup>21</sup> See, M. Baltensperger, U. Dadush, "The Belt and Road Turns Five", *Bruegel Policy Contribution*, Issue n°1, January 2019.

<sup>22</sup> See, A. Garapon, Les « Nouvelles Routes de la Soie » : la voie chinoise de la mondialisation, *op. cit.*

<sup>23</sup> See, S. Roggeveen, "China, America and the Thucydides Trap: An interview with Graham Allison": <https://www.lowyinstitute.org/the-interpreter/china-america-and-thucydides-interview-graham-allison>, (last visit on 30 November 2020).

<sup>24</sup> J. Chen, 'Tension and Rivalry: The "Belt and Road" Initiative, Global Governance, and International Law', *The Chinese Journal of Comparative Law*, (2020) Vol. 8 No. 1, pp.194, 195.

<sup>25</sup> See, B. A. Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century*, Oxford University Press, 2016.

would be maintaining the *status quo* of the current “universal” law’s domination, while a new hegemony replaces the old one with the structure of global governance unchanged.

A reconciliatory argument focuses on the Chinese traditional legal culture where law and morality play different but complementary roles in governing the Chinese society; the latter “places a greater value on trustworthiness, and does not have the same belief that markets in themselves can be left to enforce ethical outcomes”; that the difference between China’s tradition in dealing with law and that of the BRI countries warrants that the “continued convergence between legal systems is essential to the expansion of BRI activities”; and that the “[s]ustainability of the BR legal system will require that determining what can be achieved through consensus and long-term sustainable relationships, in the manner of Confucian *li* (礼), is given precedence, and that resort to formal penalties and prohibitions, in the manner of Confucian *fa* (法), is limited to those cases where *li* is genuinely impossible or ineffective”.<sup>26</sup> The above view following the comparative law approach is theoretically ideal. However, the legal pluralism that it advocates may find it politically difficult to reform the current international law, as the latter’s “international” nature is deeply questioned.<sup>27</sup> That is, if the creation, interpretation and application of international legal rules are influenced by the domestic laws of those powerful States, it remains open whether a pluralist approach implies that new rising power(s) will resist, compete with and thus finally replace the old ones. In other words, the reconciliatory view that sympathizes with China’s legal culture would support the argument that China as a rising power will fill in the gap of global governance created by the contemporary crises of the liberal international order. That is, China will defend the emergence of a low-cost version of the international order which may not be fully deprived of its liberal dimension, “but clearly goes against the systematic promotion of the values of democracy, human rights and the rule of law at both the national and international levels”.<sup>28</sup> The more sympathetic view contends that “the BRI has the potential for contributing the international rule of law if there is the political will”, whereas it also admitted that the rule of law is a contested concept, and “even if there is a political will to improve on the rule of law conditions along the Belt and Road, it might not be a rule of law in a narrow sense”<sup>29</sup>.

The pessimist view perceives rules-based global order as an illusion, contending that “[i]nternational law today is powerful against the powerless, and powerless against the powerful. As long as this is true, a rules-based global order will remain a fig leaf for the forcible pursuit of national interests”.<sup>30</sup> It follows that China’s rise as a new center of gravity of global affairs through

<sup>26</sup> See, N. Morris, ‘Developing a Sustainable Legal System for the Belt and Road Initiative’, in W. Shan et al. (eds.), *Normative Readings of the Belt and Road Initiative*, Springer International Publishing AG, 2018, pp.54, 55.

<sup>27</sup> See, A. Roberts, *Is International Law International?*, Oxford University Press, 2017.

<sup>28</sup> See, M. Burnay, ‘China and Global Governance: Towards a Low-Cost Global Legal Order?’, *Hague Yearbook of International Law*, Volume 31, 2018, Brill Nijhoof, 2021, p. 42.

<sup>29</sup> See, H. Andersen, ‘Rule of Law Gaps and the Chinese Belt and Road Initiative: Legal Certainty for International Businesses?’, in. Martinico, X. Wu (eds.), *op. cit.*

<sup>30</sup> See, B. Chellaney, ‘The Illusion of a Rules-Based Global Order’, available at <<https://www.project-syndicate.org/commentary/china-makes-mockery-of-international-law-by-brahma-chellaney-2019-12?barrier=accesspaylog#:~:text=International%20law%20today%20is%20powerful,forcible%20pursuit%20of%20national%20interests>>.



the furtherance of BRI will “reform” the current international law, but such reform would not only take place in China’s national interests,<sup>31</sup> but also “enhance and justify China’s rise”.<sup>32</sup> Likely, Jerome A. Cohen suggests that China “seems to be inching gradually toward a more innovative, broader approach that shapes international law in par with its growing political and economic power. [...] American endorsement of international law, in both theory and practice, will give the PRC an incentive to increasingly submit its own conduct to an evolving ‘rules-based order’”.<sup>33</sup> It is true that power relations among States is a dynamism of change to international law. However, power relations among States is more complex in reality than in theory, therefore, the impact of the changing power relation on the evolution of international law has to be examined through more concrete and empirical studies. The pessimist view attaches too much importance to States while ignoring the limit of such a statist approach to international law, and in a broader perspective, to the global governance to which participate multiple actors at all levels. In fact, any inquiry on the impact of China’s rise on the changes of international law, insofar as it implicitly equates power struggles among States with the essence of international law, is self-contained in the statist perspective: it overlooks the ‘empire of private law’ premised upon property, rather than sovereignty, that enables, structures, channels and opposes international power.<sup>34</sup> In addition, the statist or sovereigntist cognitive framework turns to be outdated against the “new global form of sovereignty” which is “composed of a series of national and supranational organisms united under a single logic of rule”,<sup>35</sup> i.e., a network of global powers beyond States. Furthermore, as Mireille Delmas-Marty envisages, the emergence of a constellation of public and private actors for preserving the global commons (“*biens communs*”) calls for a new form of governance aggregating, in lieu of separating, the Knowledge (experts), the Will (citizens), and the Power (states, regional, and international organizations, etc.).<sup>36</sup> In other words, nation-States are losing the traditional dominant position in the process of governing the world without a global government. Focus must also be shifted to new actors and the dynamism brought by them to the global governance.

#### Non-State Actors in the BRI and a new Dynamism of Global Governance

BRI is State-driven, yet, there is a wide spectrum of actors implementing the BRI. Among others, state-owned enterprises (SOEs) play a critical role. SOEs’ performance in the BRI and their

<sup>31</sup> See, C. Cai, ‘New Great Powers and International Law in the 21st Century’, *The European Journal of International Law*, Vol. 24 no. 3, 2013. The author concluded that new great powers, including China, are positioned in a manner that is both different and similar to the positioning of old great powers, in shaping and reshaping international law, at 795.

<sup>32</sup> See, C. Cai, *The Rise of China and International Law*, Oxford University Press, 2019, p.39. The author underscores that the current relationship between international law and the big powers differs from its past history in that international law “may impose more hurdles on China than it did to old great powers in history”.

<sup>33</sup> See, J. A. Cohen, ‘Law and Power in China’s International Relations’ (2019) 52 *NYU J Int’l L & Pol* 123, pp.164, 165.

<sup>34</sup> See, M. Koskeniemi, ‘Expanding Histories of International Law’ (2016) 56 *American Journal of Legal History* 104.

<sup>35</sup> See, M. Hardt, A. Negri, *Empire*, Harvard University Press, 2000, p. 12.

<sup>36</sup> See, M. Delmas-Marty, « Gouverner la mondialisation par le droit », *Revue européenne du droit*, September 2020, n°1, p. 9.

political, economic and social impacts draw wide attention. The SOEs' contribution to the BRI leads however to the skepticism that "China's state capitalism and its one-party political system may sit uneasily in a liberal-democratic world order".<sup>37</sup> The reality is more complex. The relationship between the State and SOEs shall not be simply defined in light of agency. SOEs enjoy autonomy and remain independent from governments in the legal sense. Yet, governments can effectively influence SOEs and other actors' investment conducts in the BRI countries by framing policies and policy orientations. For example, since 2007, China has pushed SOEs to the forefront of setting the standards for corporate social responsibility (CSR) practices both domestically and in their operations abroad.<sup>38</sup> A recent research shed light on the actual relationship between the State and other actors: while BRI is depicted as a State-Mobilized globalization (SMG) strategy, the unique feature of the "mobilization state" lies in the fact that "when Chinese leadership urged 'globalization' in the top-down mobilization and promotion of a nationalist strategy, the domestic audience – different State and capital actors – can do many different things".<sup>39</sup> The fragmentation between State and non-State actors including local governments, business entities (state-owned or not), may have some connection with the pragmatic use of the legal tools in the implementation of the BRI as described above. The vacuum left by State law may be filled by private actors' initiatives. For example, a recent empirical study on the Southeast Asia's Cross-Border Special Economic Zones<sup>40</sup> have also shown that the State is transforming its role by relaxing the control over transnational business activities.

On the other side, "the conduct of Chinese state-owned enterprises and private firms investing along the OBOR are likely to be subject to ever-increasing scrutiny".<sup>41</sup> For example, in terms of CSR, the government and Chinese companies has been increasingly making use of the ISO 26000 standards. "Although the government will remain the key driver of CSR development, the role of the general public will continue to grow in importance".<sup>42</sup> Chinese companies are the key players to deliver infrastructure projects for the BRI, their awareness and capacity of promoting equitable and sustainable development "are building up with increasing domestic and oversea pressure and

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<sup>37</sup> See, M. Baltensperger, U. Dadush, "The Belt and Road Turns Five, Bruegel Policy Contribution", Issue n°1 January 2019.

<sup>38</sup> State-owned Asset Supervision and Administration Commission of the State Council, Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities (关于中央企业履行社会责任的指导意见), promulgated on and effective since 29 December 2007. See, also, Ministry of Ecology and Environment, Ministry of Foreign Affairs, National Development and Reform Commission, Ministry of Commerce, Guidance on Promoting Green Belt and Road (关于推进绿色"一带一路"建设的指导意见), April 2017; Ministry of Ecology and Environment, *The Belt and Road Ecological and Environmental Cooperation Plan* ("一带一路"生态环境保护合作规划), May 2017.

<sup>39</sup> See, M. Ye, *The Belt Road and Beyond, State-Mobilized Globalization in China: 1998-2018*, Cambridge University Press, 2020, p. 13.

<sup>40</sup> See, C. Thame, "State Transformation and Uneven Development Across Southeast Asia's Cross-Border Special Economic Zones", *Journal of Political Science Review* 6, no. 1 (2020): 29–67.

<sup>41</sup> See, M. Zou, Labour Standards along "One Belt, One Road", in Lutz-Christian Wolff; Chao Xi; Jenny Chan (eds.), *Legal Dimensions of China's Belt and Road Initiative*, Wolters Kluwer, 2016, p.2.

<sup>42</sup> See, G. Tu, S. Chen, 'National Reports, China', in C. Kessedjian, H. Cantú Rivera (eds.), *Private International Law Aspects of Corporate Social Responsibility*, Springer, 2020, p.257.

incentives”.<sup>43</sup> To achieve the sustainable development goals (SDGs) in the BRI context, pooling together the efforts of China’s and host States’ policy guidance and regulation, the financial institutions’ green credit policy, as well as Chinese companies’ improvement in management and communication, becomes more than ever necessary. BRI thus provides a field of experimentation for the multi-stakeholder governance.

The statist view of BRI should be replaced by a new one that attaches importance to the actual contribution of non-State actors, mainly private actors. The bloc of actors implementing the BRI, as well as of their practices, form a new landscape for mapping the changing scenario of the global governance. More precise inquiries on the role of non-State actors can help to cure the myopia in observing the BRI’s influence on the global governance. Hardt and Negri have warned that “in the context of globalization, we can see that a new imperial formation is emerging that can function only through the collaboration of a variety of national, supranational, and nonnational powers”.<sup>44</sup> Non-State actors’ activities would have significant, if not determinant, influence on the question whether an imperial governance without Empire would emerge in future globalization.

## Conclusion

Nation-States remain important for global governance. Yet, human history has stepped out the age of empires,<sup>45</sup> and even the US as the biggest superpower has never been able to rule the world completely in its own will. China’s rise is still far from amounting to a Chinese hegemony. On one side, “China’s growing power is not as securely based as widely assumed, and China’s views are influenced by its interaction with the United States and its perception of American international law practice”.<sup>46</sup> On the other, China has suffered from the consequences of the parochialism of American cosmopolitanism.<sup>47</sup> It is then justifiable to argue that a rising China should not repeat the parochial attitude in following the US footprints. Furthermore, the increasing interdependence among nations highlights the fundamental flaw in equating international law with the struggle for national interests. Neither the absolute sovereigntist perspective of international law fits the globalizing world any longer, nor the universalism has ever achieved total domination as expected by hegemonistic powers. BRI offers China a critical opportunity to forge its own account of and strategy for global governance. China is developing its own ‘discourse power’. It is also true that China adopts a defensive attitude in criticizing the established norms yet with no clear alternative

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<sup>43</sup> See, X. Jiang, “Green Belt and Road Initiative Environmental and Social Standards: Will Chinese Companies Conform?”, S. Gong M. Leach, J. Gu (eds.), *The Belt and Road Initiative and the SDGs: Towards Equitable, Sustainable Development*, IDS Bulletin, Vol.50, No.4, December 2019, p.61.

<sup>44</sup> See, M. Hardt, A. Negri, *Commonwealth*, The Belknap Press of Harvard University Press, 2009, p. 233.

<sup>45</sup> This author embraces the broad definition of empire as “a form of political and economic power potentially encompassing influence and legal authority as well as military control over foreign populations, subject to different degrees of negotiation”. See, M. Koskenniemi, W. Rech, M. Jiménez Fonseca (eds.), *International Law and Empire, Historical Explanations*, Oxford University Press, 2017, pp. vii, viii.

<sup>46</sup> See, J. A. Cohen, “Law and Power in China’s International Relations”, *op. cit.*

<sup>47</sup> See, S. Moyn, “The Parochialism of American Cosmopolitanism”, available at <https://www.lawfareblog.com/parochialism-american-cosmopolitanism>, 15 September 2017.

model emerging.<sup>48</sup> However, this author contends that China's "pragmatism" in law may become the component of a larger body of "law in movement" (*droit en mouvement*)<sup>49</sup> that governs the changing and uncertain world. Global governance has no model to follow, nor a framework setting its limits or frontiers. Global governance is a fluid but not linear process. The multiple actors of global governance may share the same objectives of pursuing peace and prosperity, but compete among themselves with means of different wisdoms and plans. Yet, there is still the pitfall of confounding objectives and means, including harsh confrontations that would potentially lead to the cycling of hegemony through lawfare, like the case of US-China trade war where law is weaponized to achieve protectionist purposes.<sup>50</sup> In that sense, building consensus for cooperation through law and policy is still crucial to prevent the "race to the bottom".

Cynic opinions view BRI as China's geopolitical and geo-economic strategy in pursuit of exporting a "China model" that will replace the current international order in the long run. This article argues that China's BRI, with its distinctive features, may form a new pattern of governance (pragmatic use of law, crucial influence of government policies, variable roles of state-owned enterprises and private actors) that differs substantially from the Western one. While at a time where the current 'liberal' model of global governance, if any, is more and more questioned on its efficiency and legitimacy, China's BRI can be perceived as an experimentation on the process of global governance: a process that has neither foundation nor centers. The critical question is no longer how to contain competition among "models" in order to avoid the harsh confrontations and the consequential cycling of dominations or hegemonies. Rather, China's rise shall refresh the thinking on how to alter the cognitive framework to guide the coexistence, mutual reception, and complementarity as well. The alteration is now urged by the challenges of surging waves of disorder in the "ocean of globalization" (*l'océan de la mondialisation*).<sup>51</sup>

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<sup>48</sup> See, W. Muller, "The Power of Discourse, Doctrinal Implications of China's Normative Aspirations", *Hague Yearbook of International Law*, Volume 31, 2018, Brill Nijhoff, 2021, p.77.

<sup>49</sup> See, M. Delmas-Marty, « Gouverner la mondialisation par le droit », *op. cit.*

<sup>50</sup> See, M. A. Carrai, "The Rise of Screening Mechanisms in the Global North: Weaponizing the Law against China's Weaponized Investment", *The Chinese Journal of Comparative Law*, Volume 8, Issue 2, September 2020, pp. 351–383.

<sup>51</sup> See, M. Delmas-Marty, *Aux quatre vents du monde – Petit guide de navigation sur l'océan de la mondialisation*, Seuil, 2016.