Geopolitics Quarterly, Volume: 20, Special Issue, Winter 2024 Scopus

PP 183-209

An Analysis of the Impact of China's Belt and Road Initiative towards Malaysia

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Received: 20/09/2024 Accepted: 02/12/2024

Abstract

International trade regulations are often perceived with the labels of security and stability. World Trade Organization (WTO) being the main organization in this globe to regulate and facilitate affairs of international trade has established a stable system for its member states to deal with trades being done between them. Malaysia and China are both member states of the WTO, and these two countries had a long history of trade relationship to date, and the Belt and Road Initiative (BRI) would signify as the latest proof of the business relationship between China and Malaysia Through years of progress, Malaysia has become an important partner of China in Belt and Road cooperation and has achieved fruitful results in economic and trade cooperation. Even though the BRI is still rapidly developing till today, looking at this initiative on the legal side, actually there is no law ever enacted in line to handle legal issues born from the initiative specifically, which there are two reasons contributing to such matter generally, namely BRI's lack of basis in public international law and the difference in legal systems of BRI participating countries. As such, this doctrinal study will use a qualitative method to look into the legal issues of BRI through three aspects, namely: (i) institutional issues; (ii) dispute resolution; and (iii) criminal issues, beside discussing the impact of BRI towards Malaysia from an economic perspective.

Keywords: Belt and Road Initiative; Malaysia; International Trade.

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1. Introduction

International trade regulations are often perceived with the labels of security and stability. Normally, both consumers and manufacturers would have the common sense that they would be profited from dependable supply and more extensive scope of the finished products,parts, raw materials, and services they use. Producers as well as exporters would also be profited in the sense that they would be able to continue accessing overseas markets. Henceforth, the global market would gain higher wealth besides promoting peace as well. It is known that in the World Trade Organization (WTO), decisions are typically reached by agreement among all member states and endorsed by those states' parliaments. However, some states which are known to be economically developed , particularly the so-called QUAD countries such as the United States, Canada, Japan, and the European Union, sometimes make crucial decisions in secret sessions with no participation from other WTO members.

The WTO offers a dispute resolution procedure to deal with trade disputes which subsist among its member states, where such procedure would put its focus on the interpretation of agreements and responsibilities, beside ensuring that the member states' trade policies are compliant WTO's regulations. Generally, conflicts between political or military forces are less likely to break out as a result. Such an approach would bring the effect of reducing trade barriers through negotiations done with member states, which in effect also reducing any other sort of obstructions existing between individuals and trading economies. This approach by the WTO would also signify the fact that a big majority of the world's trading economies had conducted negotiations and entered into agreements which were later ratified in their respective parliaments. This kind of procedure would be famously known as the multilateral trading system, whereby agreements as such would give birth to the legal skeleton for international trade. To make it short, agreements born out of negotiations between state members would ensure vital trade rights for WTO's member states. Furthermore, such a dispute resolution and negotiation mechanism would also act as a strong thrust for member states to keep up with predictable and transparent trade policies so that every party involved would benefit from it, because the agreements achieved would provide a solid and welcoming structure to help the business activities of exporters, importers, and products and services providers. The agreements offer a secure and open framework to support the business activities of

producers of products and services, exporters, and importers, with an aim to elevate the living standard of member states.

The WTO's regulations are in fact born from agreements negotiated among its member states, which the current set of regulation was initially the outcome of the Uruguay Round negotiations conducted from year 1986 to 1994. Through the Uruguay Round negotiations, an important modification to the initial General Agreement on Tariffs and Trade (GATT) was made, which it had lain out new regulations to deal with intellectual property and service trade and also new procedures for dispute resolution. These agreements establish the rights and duties of WTO members and allow them to run a nondiscriminatory trade system. The fair and consistent treatment of each member's exports in the markets of the other members is assured.

The WTO permits nations to claim against one another of breaking WTO rules by challenging their laws and regulations. A panel of three trade bureaucrat will decide the cases.WTO tribunals function behind closed doors. Hearings, briefs, and other information are all kept private. Even though a state legislation is being contested, only national governments are permitted to take part. No external appeals exist. Following the issuance of a final WTO decision, losing nations are given a set amount of time to execute one of three options: reform their legal framework to comply with WTO criteria, make a payment of compensation to the winning nation, or suffer non-negotiable trade restrictions.(A Citizen's Guide to the World Trade Organization: Everything You Need to Know to Fight For Fair Trade - Public Citizen, 1999) There are now 161 Member nations in the World Trade Organisation (WTO). Trade has always been important to Malaysia's economy. Strategically situated in the Straits of Malacca which is a significant waterway connecting the Pacific Ocean, which is South China Sea, to the east and the Indian Ocean, Andaman Sea, to the west. Malaysia is gifted with an excellent geographical location which enables it to become a golden spot of international trade. Malaysia is aware of the cruciality of foreign connections and commerce are to the continued growth and prosperity of the country. Due to its heavy reliance on international commerce, Malaysia has liberalized its trade policy and placed a strong focus on regional and bilateral trade agreements. With that, Malaysia joined the GATT on 24 October 1957 and took part in the Uruguay Round, making it one of the founding members of the WTO from 1 January 1995, which replaced the GATT.

Malaysia has benefited as a member of the WTO from the open and predictable trade environment that the WTO provides, which helps Malaysia's economy expand and flourish. In addition to benefiting from non-discriminatory treatment given to Malaysian exports of goods and services, a lower level of trade barriers in foreign markets and expanded opportunities in markets have helped Malaysia's trade to flourish. Malaysia's Ministry of International Trade and Industry (MITI) had also integrated and streamlined the country's active participation in the WTO under its management. Industries in Malaysia have access to trade remedies based on the WTO against unfair trade practices.

11 December 2001 marks the date when China became a member state of the WTO, after 15 years of difficult negotiation, which was a significant development for both China and the global trade system. China's impressive progress toward integration into the international trade system reached a turning point with its accession to the WTO. China stands to gain most from this tactical choice to join the WTO. China has had impressive economic and trade development as a result of joining the WTO and implementing trade liberalization to open up its domestic market. China has steadily been included into the international trade system and has grown to be a significant player in the WTO's agenda-setting and decision-making processes thanks to significant improvements in economic performance and policy change. However, it is more significant to note that the accession of China to the WTO has given trading partners confidence in China's commitment to adhering to international rules(Li and Tu,2018).

All WTO members have gained advantages from China's accession to the organization since its accession had indeed enlarged the market to a seizable scale for all the member states. The amount of international trade has then increased greatly ever since China became a member of the WTO, especially trade between developing countries growing most significantly. The WTO's inclusion of developing countries was significantly impacted by China's accession. For example, Vietnam and Russia joined the WTO in 2007 and 2012 respectively, after China's accession. The WTO becomes more inclusive, representative, and legitimate by the active participation of China in negotiations conducted in the organization and continuing backing for the legitimate positions of the least-developed nations, such as the African, Caribbean, and Pacific Group of States. As of 29 July 2016, there were 164

members of the WTO, up from 143 prior to China's accession. The majority of the "newly acceded members" are developing countries(Li and Tu,2018).

China's "Belt and Road" initiative (or also known as BRI) is an ambitious effort to create two new trade routes that will link China to the rest of the world ever since 2013. The BRI is a relatively recent term. It was first termed as two distinct projects, then as the "One Belt, One Road" projects, and finally as the Belt and Road Initiative. Through years of progress, Malaysia has become an important partner of China in Belt and Road cooperation and has achieved fruitful results in economic and trade cooperation. Even though the BRI is still rapidly developing till today, looking at this initiative on the legal side, actually there is no law ever enacted in line to handle legal issues born from the initiative specifically, which there are two reasons contributing to such matter generally. First, this is because the BRI is lacking a basis in public international law(Wolff,2020), which it is said that the BRI does not form any formal agreement under the WTO, nor the initiative is governed by a specific legal framework like the General Agreement on Tariffs and Trade (GATT). Instead, a network of bilateral investment or trade agreements was involved by China and BRI states, but it is said that the agreements do not provide specific elements of the BRI as their basis were not built on the initiative itself(Wolff,2020). In fact, the so called "bilateral agreements" were signed by China with its partner countries many years ago, or were Memorandum Of Understandings (MOUs) that do not show the intention of China to cooperate with the BRI states strongly.(Yu,2021) Anyhow, this does not mean that the BRI does not have a valid legal basis, but rather it could be said that the BRI would require a stronger basis in terms of its internationality and also clearer legislation to show the feasibility of BRI to be implemented.

Another reason which contributes to the problem of BRI not having a centralized legal framework would be the difference in legal systems of the participating countries. Taking the ASEAN region as example, six countries that are deemed to be the fastest-emerging markets with greatest investment opportunities in South East Asia are Malaysia, Thailand, Myanmar, Indonesia, Vietnam and Philippines.(The Belt and Road Initiative in ASEAN, 2021) Out of the six countries' legal systems, two of them are applying the Common Law system (namely Malaysia and Myanmar), another two of them are applying the Civil Law system (namely Thailand and Vietnam), and the rest are applying a hybrid system of law (namely Indonesia and Philippines).

In simpler terms, these legal systems differ in the way that Common Law is based on the precedence system which often applies established decisions in the past, while Civil Law is based on latest enactments which are a result of several systems purported for different fields of applications, be it clearly defined or not, being applied side by side, cumulatively or interactively (Hamzah,2018). It should be mentioned that countries which apply hybrid systems of law have also applied laws other than Common Law or Civil Law, for example Shariah Law and also customary laws. As for China, which is the main country for BRI, it mainly applies Civil Law in its mainland area while applying Common Law in Hong Kong and Civil Law in Taiwan and Macau. As such, it could be said that China applies a hybrid system of law in an overall view. Therefore, the difference in BRI countries' legal system would cause conflicts in law and eventually poses a great challenge to resolve BRI issues under a single common ground. To quote an example, it is common for contracts, be it domestic or international, to include Force Majeure clauses in them to guide the contractual parties in circumstances where a contract has to be frustrated due to the happening of an event which causes the parties not being able to further perform their obligations. However, when it comes to the meaning of such a term, the Civil Law and Common Law hold different views on it. Under Civil Law, the Force Majeure clause is only allowed to be invoked by three cumulative requirements, which are the event: (i) must be external, (ii) unforeseeable and (iii) irresistible. The element of unforeseeability would refer to the surprise and abnormality of the event, while the element of irresistibility would refer to the performance, where it must be permanently impossible to perform the contract. On the other side, the Common Law would determine whether the Force Majeure clause is invokable or not based on the concept of "impossibility" or "frustration of purpose" (Althabhawi and et al,2024), which Force Majeure does not have a precisely defined meaning under Common Law. As such, it can be seen that the Civil Law has a stricter interpretation towards Force Majeure, while the Common Law would allow a broader interpretation to it. Another difference for Force Majeure under Civil Law and Common Law would be the effect of it. Under Civil Law, Force Majeure would only cause liability on the party which caused the fault if it is successfully invoked, while Force Majeure would affect the whole contract and lead to the contract's termination if it is successfully invoked under Common Law (Althabhawi and et al,2024).

It is undeniable that the BRI has achieved international success which brought mutual trade benefits to its participating countries. However, it is also undeniable that the BRI contain its cons too alongside its pros, especially on the legal side. In this article, the legal issues of BRI would be discussed through three aspects, namely: (i) institutional issues; (ii) dispute resolution; and (iii) criminal issues.

2. Methodology

The methodology opted for this research article would be qualitative research. A doctrinal approach will be adopted as it appropriate to this sort of studies (Althabhawi and Kashef Al-Ghetaa,2023; Khalid and Rahman,2023) in which it is subjective in nature and the focus would be put on the issues of BRI in general and the way it causes impact to Malaysia from a legal perspective (Sukumaran and et al,2023). In order to collect data for this research article, treaties and official documents from different countries would be opted as the primary source of data, while local and international journals, articles and online news portals and websites would be opted as the secondary source of data (Althabhawi and et al,2023; Dazulhisham and et al, 2023) the mode of research would be library research, and the mode of data analyzation would be critical analysis and comparative approach which is often used in legal studies (Althabhawi and Zainol,2013; Adil Kashef Al-Ghetaa and et al,2023).

3. The Impact of the Belt and Road Initiative on Malaysia in the Year 2023

The comprehensive strategic partnership that has been established between China and Malaysia has just celebrated its 10th anniversary in 2023. The two countries have a long history of friendship and their relationship has always been at the forefront of regional countries. The two countries share similar ideas, interests and cultures. The Chinese Ambassador to Malaysia has indicated that bilateral trade between China and Malaysia reached a record high of US$203.6 billion in 2022.

Figure (1): China Import in thousand US$ for all Products Malaysia between 2016 and 2020

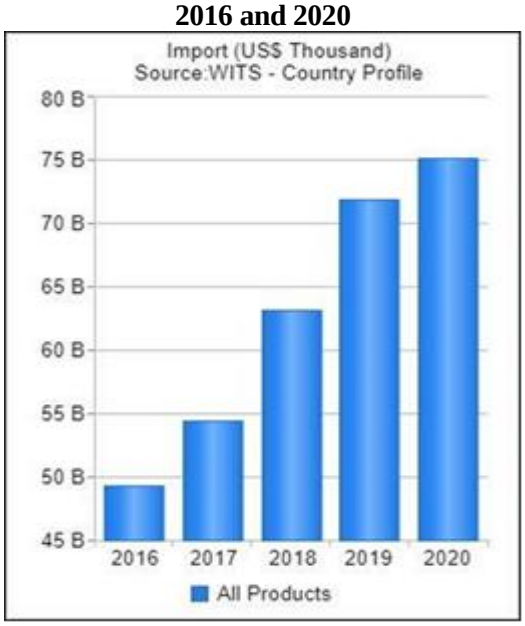
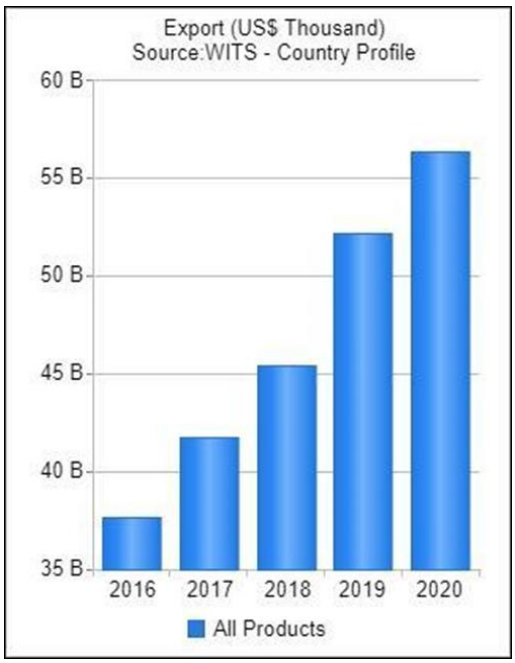


Figure (2): China Export in thousand US$ for all products Malaysia between 2016 and 2020



As can be seen from the graph, China's imports and exports of all products to Malaysia have shown a clear upward trend. This has led to closer cooperation and strengthened trade relations between the two countries.

Malaysian Prime Minister Anwar Ibrahim's first visit to China since taking office is expected to open a new chapter in the history of bilateral relations. As Prime Minister Anwar said at the Boao Forum for Asia on 1 April, Malaysia will strengthen cooperation with China on the Belt and Road Initiative and expand economic cooperation in emerging areas such as green development and the digital economy.

Over the past few years, under the strategic leadership of the leaders of China and Malaysia, there has been a deepening of cooperation between China and Malaysia in a number of areas, including the economy and trade, science and technology, culture, and other fields. This cooperation has yielded fruitful results. Malaysia also hopes that through cooperation with China, it can attract more high-tech investment that is conducive to green development and promotes economic and social development. At the same time, Malaysia also hopes that China can drive the revitalisation of the regional economy. By 2023, China and Malaysia will have reached a considerable number of trade agreements, as follows.

The first is the China-Malaysia 'Two Countries, Two Parks' cooperation. The Malaysia-China (Guangxi) Investment Forum and the 10th anniversary celebration of the China-Malaysia 'Two Countries, Two Parks' were held online and offline. During the forum, companies from both countries signed 11 agreements, including an agreement to jointly build a key logistics hub in the New Western Land and Sea Corridor between Guangxi Qinzhou Port and Malaysia's Kuantan Port. There are a number of other agreements, including cross-border logistics cooperation projects, such as the China-Malaysia Kuantan Industrial Park to operate cold chain logistics. Construction of the Zhongmao Qinzhou Industrial Zone commenced in April 2012, with the commencement of operations at the Malaysia-China Kuantan Industrial Park occurring in February 2013. Accordingly, a new cooperation model of "two parks in two countries" has been established. To date, the total development area of the China-Malaysia Qinzhou Industrial Park has reached 25 square kilometers, with more than 200 signed projects and an agreed investment of more than RMB 190 billion. The Kuantan Industrial Park covers an area of 9 square kilometers with an agreed investment of over 40 billion yuan. The

Kuantan Industrial Park has created nearly 20,000 jobs for Malaysia and increased the annual throughput of the Port of Kuantan by 10 million tons. Over the past ten years, the industrial park has achieved fruitful results and promoted trade cooperation between China and Malaysia.

The second initiative is Alipay, which promotes the development of local mobile payments in Malaysia. To attract Chinese tourists to Malaysia, the Alipay payment system was officially launched in Malaysia, allowing Chinese tourists to shop in Malaysian stores without carrying cash. This has attracted more Chinese outbound tourists and led to the continued prosperity of Malaysia's tourism market. In July 2017, Ant Gold and Touch 'n Go, a subsidiary of Malaysia's CIMB Bank, jointly announced the creation of a "Malaysian version of Alipay", which is based on the financial model of China's Alipay and aims to provide convenient and secure payment services to local users. The Touch 'n Go e-wallet is expected to have a profound impact on the way locals pay and live their lives. According to statistics, millions of Malaysians use this payment method every day to make electronic payments at retail outlets, car parks and on public transport. The new e-wallet will provide users with a more convenient and faster payment method that can be operated using only a mobile phone.

The third is the country's Economic Report 2017-2018. In Kuala Lumpur, the Prime Minister of Malaysia launched the country's Economic Report 2017-2018. According to the report, the Belt and Road Initiative is expected to create opportunities for businesses to develop and promote financial development in Malaysia. The Belt and Road Initiative will facilitate the opening of new markets, expand the sale of local products and services, and attract foreign investment. In addition, the Belt and Road Initiative will improve logistics services, increase the financing efficiency, create a large number of jobs in various sectors and promote cultural exchanges. Together, these factors facilitate the integration of economic resources and the coordination of economic policies, thereby promoting common development.

In 2016, Malaysia engaged in a substantial volume of trade with countries and regions along the Belt and Road, with total trade reaching a value of over MYR850 billion. As previously indicated in the aforementioned paper, there is a possibility that Malaysia's trade volume will continue to increase in conjunction with the advancement of the Belt and Road Initiative and the expansion of trade.

The report observed that the Belt and Road Initiative will continue to sustain

the China-ASEAN Free Trade Area (FTA) and build upon it in order to further advance regional integration and facilitate connectivity. Malaysia's manufacturing industries, including electronic and electrical equipment, chemicals, steel, medical equipment and automobiles, have the potential to cooperate with Chinese companies. Similarly, the services sector has much room for cooperation in areas such as logistics, tourism and healthcare.

The report notes that China-Malaysia trade cooperation under the Belt and Road Initiative has had a positive impact on all sectors in Malaysia, boosting the country's economic development.

It is expected that the ongoing cooperation between China and Malaysia will continue to maintain a stable and healthy development. During the visit of the Chinese State Councilor and Foreign Minister to Malaysia in July this year, China and Malaysia agreed to work together to build a China-Malaysia community of shared future (China, Malaysia Economic and Trade Cooperation Reach New Highs,2022).

China will continue to encourage Chinese enterprises to invest further in Malaysia, thereby further promoting Malaysia's economic development and facilitating industrial upgrading. The Chinese people have chosen Malaysia for a number of reasons, including the country's stable political environment, strategic geopolitical location, modern and well-connected infrastructure and good legal system. In addition, the good people-to-people relationship between the two peoples is another factor that attracts Chinese investors to Malaysia.

Table (1): Malaysia top 5 Export and Import Partners

Malaysia top 5 Export and Import partners

Market	Trade (US$ Mil)	Partner share(%)
China	37,879	16.18
Singapore	33,816	14.45
United States	25,984	11.10
Hong Kong, China	16,217	6.93
Japan	14,883	6.36

China has been Malaysia's most important trading partner for a considerable period of time (see table above). In 2023, the China-Malaysia Comprehensive Strategic Partnership (CSPP) marked its 10th anniversary, while in 2024, the bilateral diplomatic relations between China and Malaysia will reach their 50th anniversary. In light of this, the Chinese Ambassador suggested that China and Malaysia work together to develop a blueprint for future China-Malaysia cooperation. He suggested that the two countries should strengthen cooperation at government, political party, social organization and intergovernmental levels to carry out joint activities in various fields ("China-Malaysia Trade, Investments Buck Trend to Achieve New Growth,"2023).

4. Underlying Legal Issues of Belt and Road Initiative and how Malaysia is affected from IT

4-1.Institutional Issues

In fact, the so called "bilateral agreements" mentioned in front were signed by China with its partner countries were deemed outdated as they were signed even before the BRI was initiated in 2013, or were Memorandum of Understandings (MoUs) which was said to have failed in showing the intention of China to cooperate with the BRI states strongly (Yu,2021).

As being reported by the official website of BRI, China has already signed 205 cooperation documents, or in other words, MoUs with 171 countries and international organisation as of February 2021(Portal, Belt and Road,2021). The latest official update from China's Ministry of Commerce in 2016 has shown that there were 104 countries which has signed Bilateral Investment Treaties (BITs) with China, but there were no BITs signed after 2013, and it should be noted that most of the 104 countries are participants of the BRI. As such, this would signify that all the currently available BITs between China and the BRI states are not aimed for this initiative's implementation, and now it could be said that only the MoUs signed could be regarded as documents signifying agreements between China and the BRI states. However, the MoUs under the BRI are often perceived as "soft law" which are considered as "a quasi-legal instrument that doesn't carry any legally binding force, or who's legally binding force is weaker than that of traditional laws and regulations"(Dahlan and Dahlan,2018). To quote an example, referring to the Memorandum of Understanding Between the United Nations Environment Programme and Ministry of Environmental Protection of the People's Republic of China on Building a Green "Belt and Road" enacted in 2016, it is stated in Article 3.2(b) that the objectives of that MoU would be achieved

through the execution of an independent legal instrument between the MoU's parties to characterize and perform any ensuing activities, projects and programmes. This means that the MoU alone would not be able to have legal effect unless it is paired with other available legislations to be executed. In simpler words, these MoUs under BRI are not legally binding China nor the participating countries or organizations. Therefore, this had stirred doubts which questioned China's intention to propose and implement this trade initiative, and such doubts are later debated as proofs showing the initiative not being transparent and lacked viability to be continued implemented longer (Yu,2021).

Basically, the fact that BRI's MoUs are lacking provisions which show their legally-binding effect would cause three sub-issues. First of all, projects undertaken to be carried out under BRI might be rendered unsettled. Since the provisions inside the MoUs do not show that they would legally bind the governments of the participating countries, plus the fact that majority of the BRI projects are being suggested and promoted by party leaders, thus the implementation of the projects in fact would largely depend on the leaders' willingness and intention. When hardships arises while implementing the MoUs, these party leaders would opt to resolve them through individual efforts instead of resorting to dispute-settlement procedures. Such a mechanism would actually portray BRI as a temporary policy rather than a long term strategy. In addition, it would pose a challenge when the BRI projects are implemented over an extended period of time and exacerbated by changes in the governments' leaders, and there is risk whereby new government leaders would not support the ongoing BRI projects (Yu,2021).

Secondly, confidence level on the BRI would be reduced as the MoUs do not provide detailed substantive and procedural rules for dispute settlement. It is without doubt that BRI projects are indeed carried out for long terms which the projects would be subjected to political, legal, and cultural circumstances which are complex and varied. Since countries joining the BRI would somehow expect themselves involving in disputes, it is also important to create provisions which are effective enough to resolve disputes between participating countries as there might be circumstances whereby a dispute is unable to be solved without reference to relevant provisions contained in an MoU. Anyhow, this sub-issue would be explained further in the second issue.

Thirdly, the decision of China insisting to enact MoUs for the BRI project

might raise questions about its reluctance to participate in regional agreements and further fueling allegations of the BRI being a development strategy that China promotes in targeted areas to further its political ambitions. For instance, China has yet to become a party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) while some of the BRI participating states are parties to it, for example Malaysia, Singapore and Vietnam. Two of the main goals of BRI which are unimpeded trade and financial integration(Belt and Road Initiative Quick Info - Green Belt and Road Initiative Center, n.d.) is said to possibly overlap the CPTPP. Basically, the CPTPP includes challenging obligations to open up markets for trade in products, services, investments, labour mobility, and government procurement. The CPTPP additionally lays out clear guidelines that help with establishing an environment that is reliable, straightforward, and fair for trading in CPTPP markets by including specific chapters which highlights vital topics such as technical trade barriers, customs administration and government-owned enterprises. It is also worth mentioning that the agreement had also included topics like environmental protection and labour rights in its chapters to keep CPTPP members from not fulfilling their obligation to increase trade or investment, which these chapters would be carried out by dispute resolution. Additional chapters in CPTPP addresses small and medium-sized businesses, regulatory coherence, and economic cooperation among CPTPP countries in trade-related technical areas (CPTPP Explained, n.d.). These clearly show that the regulations in CPTPP are transparent rule-oriented, which is different from BRI's MoUs which are relatively not transparent and not rule-oriented.

It is undoubted that Malaysia has always been an active participant of BRI ever since the initiative was launched in 2013, where Malaysia's participance could been seen starting in November 2016 when former Prime Minister, Dato' Sri Haji Mohammad Najib had signed 14 MoUs of economic deals worth RM143.64 billion during his official visit to China at that time (Lee, 2016). However, some of the Chinese-backed projects which are ongoing today were in fact initiated before BRI's launching. While megaprojects such as the 'Malaysia-China Kuantan Industrial Park and Port' (MCKIP) project and the 'Bandar Malaysia' project were often considered projects under the BRI, they were all launched way before 2013, but MoUs for these projects were signed after the projects' launching. For example, the first MoU for the MCKIP project was signed on June 2012 between China's Ministry of

Commerce and Malaysia's Ministry of International Trade and Industry(Governments of China and Malaysia Signed the Malaysia-China Kuantan Industrial Park Cooperation Agreement,2012), and the project was launched in February 2013 (BRI was launched on September,2013). When Malaysia had requested China to identify which of these projects comes under the BRI in 2018, China had failed to do so (Malgeri,2019). Even though there were more MoUs signed for this project by MCKIP with other parties, for example banks from China and also Malaysia afterwards, the very first MoU was deemed to be the basis for this project. As such, two questions have arised: (i) is the MoU applicable in post-BRI times given that it was enacted pre-BRI? (ii) which MoU should be referred and applied if dispute arises between China and Malaysia for this project ?

Also, looking at the BIT entered by China and Malaysia, there was only one BIT available, which was the Agreement Between the Government of the People's Republic of China and the Government of Malaysia Concerning the Reciprocal Encouragement and Protection of Investments enacted (also known as China-Malaysia BIT) enacted pre-BRI in 1988. The treaty is said to coexist with the ASEAN - China Investment Agreement enacted in 2009 which purports to encourage investment streams and create a liberal, facilitative, straightforward and competitive investment regime in ASEAN and China. First, looking at Article 7 of the China-Malaysia BIT, it is stated that the Tribunal while rendering an award in a dispute settlement between China and Malaysia should mention its legal basis and interpret it, if there is such request from any party in the dispute. This shows that the BIT does not have a fixed legal basis as it is up to the parties' interpretation, and as such confusion of which country's law should be applied would occur. Next, it is explained by Article 12 that the China-Malaysia BIT is applicable on investments made in either Contracting Party's region before, as well as after the treaty enters into force. Nevertheless, the 2009 investment agreement in its Article 3 states that the terms of the agreement tie no party in regards to any conduct or event which occurred or any circumstance that stopped existing prior to this agreement's entry-into-force date . Since contents of both the treaty and agreement are mostly the same and both are applicable on Malaysia and China, the difference in applicability of the agreements before enactment of them would cause issues as to which agreement is applicable to solve investment issues between Malaysia and China.

In the condition that no specific law is enacted for the BRI, it is important to improve on the existing law between China and Malaysia so that it could serve its purpose at all times and cater the needs of BRI as well.

4-2.Dispute Resolution

This session's focus will be on the legal matter of dispute settlement in relation to the Belt and Road Initiative. The techniques and procedures used to settle disagreements, conflicts, or disputes between parties are referred to as dispute resolution. The process of resolving disputes begins with a third party playing a mostly non-intrusive role in the conflict and giving a conclusion. The third party is asked to provide a decision that addresses the parties' issues after providing their conclusion. In general, mediation, arbitration, and litigation are among the methods of dispute settlement that are available.

4-3.Type of Dispute Resolution

First and foremost, the least formal way to resolve a dispute is through negotiation. Helping parties come to an agreement on their own is the aim of negotiation. In order to come to a consensus, the parties may decide to involve an impartial third party in their negotiations. The negotiation's conclusion is often not binding, but parties may bring legal action to settle their disputes and get an enforceable agreement. The second type of dispute resolution is mediation. Through the process of mediation, a neutral third party, usually a trained mediator will assist parties in conflict in reaching a resolution. When compared to negotiation, mediation is typically more formal. By comparison, arbitration is a more formal process than mediation. After mediation, parties may still file a lawsuit to resolve their disputes and get an enforceable judgment, even though the mediation's resolution is not legally binding. The next type of dispute resolution is arbitration. Although arbitration is less formal than a traditional trial, it is one of the most formal forms of dispute resolution. Parties must abide by the specified rules in an arbitration agreement. Normally, arbitration is often conducted by qualified arbitrators (one or a panel) serving as "judges."

4-4.China International Commercial Court (CICC)

The relevant entity for resolving issues pertaining to the Belt and Road Initiative is the China International Commercial Court (CICC). The CICC was established by the Supreme People's Court of China (SPC) to handle cases pertaining to foreign trade. Establishing an international business environment that is stable, equitable, transparent, and simple to do in

accordance with the law is the aim of the CICC. Equal protection for the legal rights and interests of Chinese and international parties is another of its goals. In the provinces of Guangdong and Shaanxi, respectively, are the First and Second International Commercial Courts located (A Brief Introduction of China International Commercial Court, n.d.).

Figure (3): The First International Commercial Court and the Second International Commercial Court

The Fourth Civil Division of SPC is in charge of coordinating and supervising the two global commercial courts. The CICC was founded by the Supreme People's Court as a permanent adjudication body to settle issues involving foreign business. Three judges or more form a collegial panel to evaluate cases handled by the CICC. The "First Instance being Final" principle is used by the CICC. It means that the CICC's decisions and judgements have legal effect, they are conclusive and enforceable against the parties. According to Article 34 of the Civil Procedure Law, the CICC has jurisdiction over business disputes involving at least 300,000,000 Chinese Yuan. The matter that the Supreme People's Court determines is suitable for the CICC to try will also be heard by the International Commercial Court (A Brief Introduction of China International Commercial Court, n.d.).

The absence of a standard conflict resolution system in the Belt and Road Initiative has been noted in various studies, which contend that the establishment of a special dispute resolution mechanism for the initiative is

important (Hu and Huang,2018). As a result, China's most recent effort to address this proposal is the establishment of the CICC. The CICC mechanism, however, has to be improved in the future due to its inherent limitations (Yu,2021). A conflict will have a variety of resolutions or approaches depending on its type. Accurately identifying the various kinds of conflicts and their features is a key component of resolving trade disputes internationally under the "Belt and Road Initiative". The Chinese government's decision to establish two multinational business courts raises concerns about their efficiency.

Since CICC's decisions are final, and there is no appeals process, hence the system functions more like an arbitration process than a judicial process. Since the rulings and conclusions made by the CICC are not actual arbitral awards, they cannot be enforced under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). The lack of an appeals procedure hinders the parties from pursuing additional domestic legal remedies. On the contrary, due to the challenges related to the international recognition and application of judgements, it will be extremely challenging to enforce judgements and decisions outside of China. Only the domestic legal system can be used to carry out the judgements and rulings rendered by the CICC (Yu,2021).

The CICC is an inappropriate dispute-settlement tool for resolving issues related to the Belt and Road Initiative since its primary weakness is that it is merely a domestic court system based on domestic law. The bilateral or multilateral agreements do not really establish CICC as an international commercial court or arbitration panel (Yu,2021).

4-5.Three aspects of Dispute in the Road and Belt Initiative

Three types of disputes are dealt with in the Road and Belt Initiative, namely, disputes pertaining to international trade between states, disputes involving investments between investors and the state; and non-state issues involving individuals.China has reached over 3000 bilateral and multilateral agreements with the countries that make up the "Belt and Road". The World Trade Organization (WTO) resolves disputes amongst its members in the countries that make up the "Belt and Road" (Ren,2019).

4-5-1.Disputes Pertaining to International Trade between States

In terms of modern international trade, the WTO's dispute settlement procedure is the most efficient. The WTO dispute settlement mechanism cannot be used directly due to the subject and dispute limits. First of all, The

"Belt and Road" includes 133 countries, of which 22 are not WTO members. The WTO's dispute settlement mechanism cannot therefore be used to address disputes involving these countries' international trade. When it comes to international trade disputes that are not covered by the regulations of the WTO, the WTO dispute resolution mechanism cannot be applied (Ren,2019). Because trade policies and measures other than those included in the GATT and GATS schedules are not subject to adjustments to WTO principles, conflicts pertaining to international trade cannot be settled through the dispute resolution mechanism administered by the WTO (Ren,2019). Apart from that, the Belt and Road Initiative often involves bilateral or multilateral agreements with countries that do not fall under the framework of the WTO. Certain agreements may not directly fall under the purview of WTO rules and responsibilities, making it challenging for the WTO dispute settlement procedure to resolve disputes in those circumstances. The WTO can indirectly resolve some Belt and Road related problems. For instance, if a member nation claims that a particular Belt and Road project violates WTO rules, such as offering unfair subsidies or discriminating against foreign companies, they may be able to file a trade dispute with the WTO if the project involves the trade in goods or services that are covered by WTO agreements.

In other words, the legal systems of the Belt and Road member nations vary, and this variation may result in different understandings and interpretations of the norms and regulations for the conflicts that arise in these systems. However, most judges in the CICC are only familiar with Chinese law, which restricts them from efficiently resolving all Belt and Road problems (Yu, 2021).

4-5-2.Disputes Involving Investments between Investors and the State

According to Wang ((Wang,2016), When a state's government and non-state entities, such as natural persons, legal entities, and other economic organizations, disagree about something, they can resolve it through the state-investor investment dispute mechanism, which follows the steps specified in the Investment Treaty. The "Belt and Road" Initiative's "infrastructure" construction project is moving forward quickly, which could lead to potential conflicts arising from multinational project contracting and investment practices like built-operate-transfer. As a result, these are the most urgent disputes that need to be resolved at this time. The bilateral contracts that were signed in the 1980s, 1990s, and early 21st century make up the Bilateral

Investment Treaty (Ren,2016). Due to the mutually conflicting dispute resolution procedures stated in the agreement, particularly in the dispute settlement clauses, the "Belt and Road" international legal system cannot be constructed, nor can China's overseas investment practices be unified. The Bilateral Investment Treaty specifies that the jurisdiction of the ICSID is derived from the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. However, it highlights that not all countries along the "Belt and Road" initiative are covered, leading to an uneven presence. This results in inconsistent and uncoordinated rulings, as well as difficulties in enforcing arbitral awards (Wang,2016). It is therefore inappropriate to emphasize the application of ICSID dispute jurisdiction and its procedures for resolving disputes for this reason (Ren,2019).

4-5-3.Non-State Issues Involving Individuals

The promotion and prompt implementation of non-governmental and intergovernmental mediation bodies and mechanisms can be foreseen under the "Belt and Road" Initiative. The world community has praised mediation as an "Oriental Value" and "Oriental Treasure."China's "Belt and Road" initiative highlights the potential benefits of mediation in advancing traditional Chinese culture and aligning it with current dispute resolution practices (Wang,2016).

It's worth mentioning that resolving international disputes involves a range of approaches, including negotiation, mediation, arbitration, or litigation in domestic or international courts. The type of disagreement, the parties' preferences, and the agreements or legal frameworks that already exist between the parties' respective countries all play a role in determining which dispute resolution procedure is best.

4-6.Dispute Resolution between Malaysia and China

It's important to note that there are several methods for settling international conflicts, including negotiation, mediation, arbitration, and litigation in local or international courts. The parties' preferences, the nature of the dispute, and any existing treaties or legal frameworks between the parties all play a role in determining the best dispute resolution procedure.

As of 24 October 1957, Malaysia is a member of the GATT, it joined the WTO on 1 January 1995. Since Malaysia is a WTO member, any disputes arising from the implementation of the Belt and Road Initiative cannot be settled through the WTO dispute settlement mechanism with respect to

international trade disputes that are not subject to WTO rules. Therefore, the China International Commercial Court (CICC) provides an additional dispute resolution option. But another problem occurs because the main weakness of the CICC is that it is only a domestic court system based on domestic law, which renders it unsuitable as a platform for settling disputes related to the Belt and Road Initiative. Due to their disparate legal systems, China and Malaysia may have differing ideas on what laws and regulations apply to certain situations involving the Belt and Road Initiative. However, since most CICC judges are primarily familiar with Chinese law, they might not be able to adequately resolve every issue pertaining to Malaysia and China's Belt and Road.

Not only that, the Belt and Road Initiative is a vast infrastructure and development project involving numerous countries and encompassing various aspects, including political, economic, and social dimensions. The CICC may not have jurisdiction over disputes resulting from the Belt and Road Initiative since they frequently involve complicated intergovernmental agreements, financing arrangements, and geopolitical factors.

The rationale behind the People's Republic of China's proposal of the Belt and Road Initiative at the international level is to enhance trade collaboration among countries globally and to facilitate connectivity between them. Such exchanges and cooperation facilitate adaptation to the globalization of the world economy, enabling countries to work together for the future of humanity. Malaysia has also joined the Belt and Road Initiative and established closer trade relations with China. In summary, the Belt and Road Initiative has facilitated greater economic development opportunities for countries across the globe. Nevertheless, the Belt and Road Initiative is not without its challenges and obstacles, including those related to crime and human rights issues.

In a number of Belt and Road construction schemes, mining operations and manufacturing industries in countries in Africa, Europe, the Middle East, Asia, the Pacific, Latin America and the Caribbean, citizens of host countries have been subjected to fraudulent practices that have left them indebted to their employers. These practices include arbitrary withholding or retention of wages, contractual irregularities and other forms of exploitation. There are also cases of confiscation of travel documents and identity cards, forced overtime and penalties for absenteeism. Furthermore, reports have emerged of

intimidation and entrapment, denial of access to vital medical services, poor working and living conditions, physical violence, restrictions on freedom of movement and communication, and reprisals for reporting abuses.

A large proportion of the BRI workforce are Chinese workers sent overseas specifically to work on these projects. This has led to two main problems: (1) resentment: local residents in host countries often harbor resentment towards Chinese workers, who they perceive as taking away their job opportunities; and (2) vulnerability: The presence of Chinese workers in a foreign country with dubious legal status makes them highly vulnerable to abusive and exploitative practices, leading to unsafe working conditions. CLW's research reveals a pattern of systematic violations of Chinese workers' rights in the context of BRI-related projects. CLW's research has revealed a pattern of systematic violations of Chinese workers' rights in BRI-related projects. The violations described above have resulted in workers suffering long-term psychological, economic and, in many cases, physical harm, including permanent injuries.

Those who do escape are often at the mercy of their original immigration authorities, who are not always adequately trained to receive or monitor victims of trafficking. All countries should be able to pursue development opportunities without compromising respect for human rights. Countries interested in, or currently engaged in, BRIC cooperation must ensure that their citizens, Chinese nationals and other migrant workers are protected from trafficking.

The International Labor Organization defines vulnerability abuse as the exploitation of workers in vulnerable situations. For example, they have limited means of earning a living, do not know the local language or laws, and have religious affiliations. The ILO also defines forced labor as the failure of an employer to honor verbal or written promises made to a worker. Restrictions on movement are also considered an important indicator of forced labor. According to the ILO, victims of forced labor are often isolated in remote areas with no access to the outside world. Forced belabor may be subjected to physical or sexual violence for a variety of reasons, including as a method of labor control or discipline. The International Labor Organization (ILO) has observed that individuals subjected to forced labor may encounter intimidation and obstacles when they seek to voice their concerns about their working conditions or to leave their employment. In addition to the aforementioned difficulties, other common forms of exploitation include

recourse to immigration authorities, loss of benefits or housing or land, dismissal of family members, further deterioration of working conditions and withdrawal of benefits such as the right to leave the workplace. The International Labor Organization has also noted that the withholding of important identity or other special documents is also a manifestation of forced labor if the worker is unable to obtain them on demand or feels unable to leave the workplace without risking significant loss. Workers may feel compelled to remain with an unscrupulous employer while waiting for a debt to be repaid. The International Labor Organization (ILO) posits that individuals subjected to forced labor may be compelled to work in order to repay debts incurred as a result of their enslavement, which may take the form of salary advances, loans to cover transport costs, daily living expenses and other costs. Research suggests that debt bondage is a common practice in the BRI system.

However, it is the responsibility of the host government to ensure that recovery channels and contracts are monitored to prevent citizens from being misled and exploited. If the BRIC design program uses raw labor, it is incumbent on the government to increase physical inspections of BRIC sites to understand working conditions and to look for indicators of forced labor, particularly withholding of documents. These inspections must be frequent and unannounced to prevent design managers from covering up their abuses. In addition, these inspections must use victim-centered interviews to help prevent retaliation against workers.

It is also important that States ensure that Chinese nationals and other migrant workers feel comfortable reporting abuses against them, rather than being repatriated for visa violations. This can be achieved through outreach and awareness-raising activities in key areas identified by the BRICs, as well as training for immigration authorities. However, where cases of forced labor are identified, states must be prepared to receive and protect the victims, whether through shelter services, medical care or other means. It is also important that affected countries recognize the need for vigilance not only at the site of a BRI project, but also in the surrounding communities. There have been reports of an increase in cases of sex trafficking, forcing children into hazardous work, and exploitative marriages with elements of coitus and forced labor in some of the areas where BRI construction systems are located. The fact that residents of pre-existing communities have to be relocated to

make way for BRI systems, and that there is often little or no timely compensation for those who lose their homes, is a serious vulnerability issue.
Without a broader focus on these issues, countries cannot safely or ethically benefit from the portfolio system of the BRICS initiative. Moreover, the backlash goes beyond structural issues. The transnational community is paying less and less attention to the elimination of forced labor in GSCs and is making policy and investment decisions less and less on the basis of the elimination of forced labor. However, the state is not the only actor in this process; to effectively address the challenges associated with forced labor in BRI systems, governments need to work with a strong civil society that includes temple associations, direct service providers, watchdog groups, survivors and non-governmental associations that provide spiritual care.
In light of these challenges, it is imperative that the countries involved in the Belt and Road Initiative collaborate to identify effective solutions. One country's efforts were not enough to eradicate these problems, and all countries must work together. While economic development is a laudable goal, it is imperative that the promotion of economic development in a country does not come at the expense of the basic human rights of its citizens and the moral principles of its society. In order for countries to benefit economically from the Belt and Road Initiative, it is necessary to consider a number of additional factors.

5. Conclusion

The tenth anniversary of China and Malaysia's comprehensive strategic cooperative agreement falls in 2023. China and Malaysia have become closer cooperation and become better trading partners by establishing a lot of trade cooperation including the Belt and Road Initiative (BRI). It was stated that the Belt and Road Initiative will assist Malaysia open up new markets, increase sales of domestic goods and services, and bring in foreign investment, all of which would present enormous commercial potential for the country's economy.
Looking at the BRI from a legal perspective in the year 2023, it continues to develop quickly to this day. However, there has never been a legislation established especially to address legal issues arising from the initiative, which is due to two factors that contribute to the issue generally.First, this is due to the BRI's lack of a foundation in public international law; it is said that the initiative isn't regulated by a formal agreement under the WTO nor by a specialised legal framework like the General Agreement on Tariffs and Trade

(GATT). Another reason for the absence of a centralized legal framework in the BRI is the differences in the legal systems of the member states.

There are 3 underlying legal issues of BRI, namely, instututional issues, dispute resolution, and criminal issues. Instututional issues concerns about the Memorandum Of Understandings (MoUs) which do not provide detailed substantive and procedural rules for dispute settlement. The dispute resolution issue demonstrates that trade policies and actions that are not subject to WTO criteria cannot be resolved through the WTO dispute settlement mechanism. Last but not least, criminal issue concerns about forced labour and exploitation of labours that violates human right.

6. Acknowledgement

The authors would like to acknowledge Al-Mustaqbal University in Iraq for the financial support of this research.

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