

United Nations

Economic and Social Commission for Asia and the Pacific

China's "Belt and Road" Initiative and Its Implications for Investment in the Region

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Outline

- A brief analysis of the B&R initiative: the historical development, geographical coverage, official statement and governance implications
- The existing international investment agreements among the B&R Countries
- Some outstanding issues relating to investment governance in the region
- How to improve the investment governance in the B&R countries

The B&R Initiative

- First raised by the Chinese President in 2013, during his visit to the two Asian Countries
- Originally aimed at establishing close economic relationship among the countries in the region. Entering the mainstay of social and legal discourse in recent years, esp. since 2015
- The various dimensions of the B&R Initiative: geographical (focusing on Asia region and South bloc), institutional (focusing on trade & Investment development), rules (non-traditional law-making)

China's official statement of the B&R Initiative

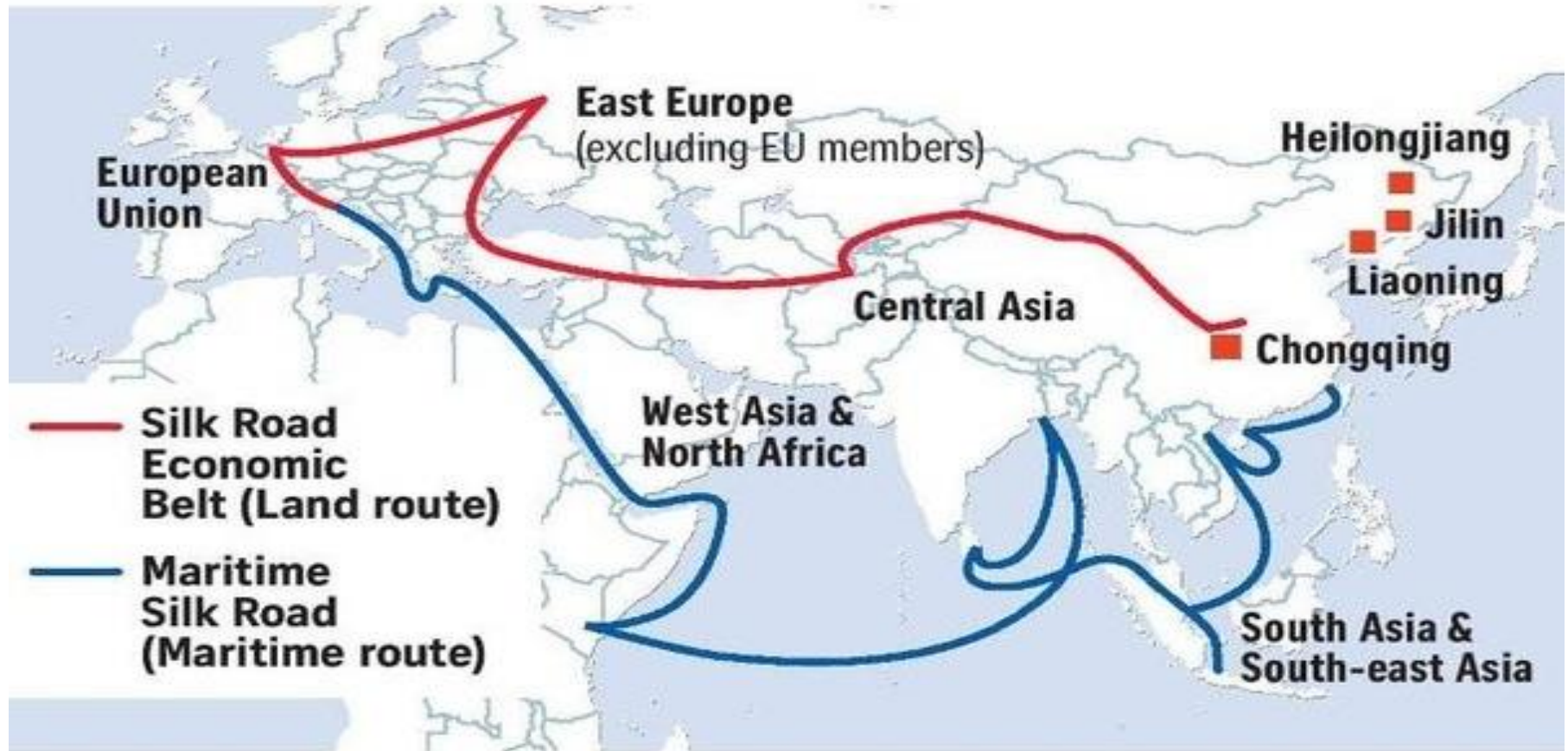
The Belt and Road run through the continents of Asia, Europe, and Africa, connecting the vibrant East Asia economic circle at one end and developed European economic circle at the other, and encompassing countries with huge potential for economic development. The Silk Road Economic Belt focuses on bringing together China, Central Asia, Russia and Europe (the Baltic); linking China with the Persian Gulf and the Mediterranean Sea through Central Asia and West Asia; and connecting China with Southeast Asia, South Asia and the Indian Ocean.

The 21st Century Maritime Silk Road is designed to go from China's coast to Europe through the South China Sea and the Indian Ocean in one route, and from China's coast through the South China Sea to the South Pacific in the other.

--- “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road” (jointly issued by MFA and MOFCOM of China)

The geographical OBOR Initiative

China's One Belt, One Road initiative



Source: BLOOMBERG STRAITS TIMES GRAPHICS

The investment flow of B&R countries

China's FDI Flows to Belt and Road Countries/Regions

	FDI Outflows			
	2014		2013	
	US billion	Share	US billion	Share
Total	13.66	100.0%	12.63 *	100.0%
Singapore	2.81	20.6%	2.03	16.1%
Indonesia	1.27	9.3%	1.56	12.4%
Laos	1.03	7.5%	0.78	6.2%
Pakistan	1.01	7.4%	0.16	1.3%
Thailand	0.84	6.1%	0.76	6.0%
United Arab Emirates	0.71	5.2%	0.30	2.3%
Russia	0.63	4.6%	1.02	8.1%
Iran	0.59	4.3%	0.75	5.9%
Malaysia	0.52	3.8%	0.62	4.9%
Mongolia	0.50	3.7%	0.39	3.1%
Cambodia	0.44	3.2%	0.50	4.0%
Myanmar	0.34	2.5%	0.48	3.8%
Vietnam	0.33	2.4%	0.48	3.8%
India	0.32	2.3%	0.15	1.2%
Philippines	0.23	1.6%	0.05	0.4%

The Institutional building of B&R--AIIB



Chinese BITs with B&R countries

- China has concluded over 140 BITs, more than 100 are now in effect.
- **East Asia** - BITs with ASEAN and all 10 member states; **South Asia**- BITs with 8 countries; **Central Asia** – BITs with all 5 countries; **Former USSR** – BITs with 7 countries; **Eastern Europe** –BITs with 16 countries; **Western Asia & North Africa** – BITs with 18 countries.
- Observations: (1) broad BIT coverage of B&R countries; (2) most BITs are concluded in the 1980s and 1990s, few in the new Millennium.

China's investment disputes in the region

- Giving the large number of BITs concluded between China and the B&R countries, and that Chinese outbound FDI is rapidly increasing, some ISA cases have been initiated.
- Ekran v. China (ICSID)
- Beijing Urban Construction v. Yemen (ICSID)
- Sanum v. Laos (ICSID)
- Heilongjiang v. Mongolia (PCA)

In the future, it is possible that more ISA cases will be initiated relying on Chinese BITs.

Some outstanding investment issues in region

- The B&R initiative remains largely open and political in nature, lacking sufficient legal certainty, as no legal framework in place.
- Investment is an important aspect of the B&R initiative. Domestic investment governance of the countries are not always friendly towards foreign investments.
- Many B&R countries, including China, are members of WTO and many regional trade agreements. China also maintains BITs with over 50 of these countries. There are some FTAs that cover these countries. Yet, Chinese BITs with these countries are fragmented and contents are different.
- Potential investment risks could be very high in some of these B&R countries. This necessitates the use of the ISDS mechanism.

Proposals for the future of the B&R initiative

- To “treatificate” the initiative? A framework treaty (lacking) and a comprehensive agreements system (lacking) thereunder (a FTA or even WTO-style?).
- To “organizationize” the initiative? Intensive institutional building towards the establishment of a formal international organization (an ASEAN or EU-style?)
- To “platformize” the initiative? Largely remain the current situation, provides a platform for regional governance without formal institutionalization (a G20 style?).
- Whatever future the initiative may have, it will have profound impact on regional investment governance.

Improving investment governance in the region

- On investment issues, there is no unified legal instruments for the B&R region. To facilitate investments, more IIAs need to be concluded at the regional levels. The existing efforts of China in RCEP seems insufficient.
- Improve and harmonization of national rules. Countries have inconsistent attitudes, laws and practices in investment governance, regarding admission, operation and dispute settlement.
- Enhance home state regulation of overseas investments. The divide between FDI-importing/exporting is profound. Necessary to ensure responsible investments.
- Improve the ISDS of the IIAs, some propose the establishment of a specialized investment/trade court system for the region. According to ICSID, many of the countries are now prone to investment disputes nowadays.

The End, Thank You
Q&A

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