

# Dynamic Belt and Road Initiative and the Global South's Approach to Sustainability

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## Abstract

When discussing China's Belt and Road Initiative (BRI), mainstream scholarship adopts the narrative of grand strategy, which assumes the existence of a predetermined and top-down plan as well as China's determination to implement it according to its interests and vision. This article, with its focus on sustainability, challenges this narrative and draws attention to the indeterminate features of the BRI. It proposes an alternative interpretation that considers the BRI as a dynamic field that facilitates the emergence of the Global South's approach to international law. It argues that the countries of the Global South can be regrouped as a symbolic region by their proximity in the global distribution of economic and environmental goods, with its identity defined by common history with international law, and necessary solidarity in the pursuit of the cause of liberation. This article then compares the BRI with the previous projects of the Global South and identifies a vagueness of commitment, lack of coordination mechanism, and flexibility as their key features. Further substantiated by two case studies, it contends that the formulation of rules is determined by strategic interactions between States and different non-State actors in a given location according to local realities.

**Keywords:** Third World Approaches to International Law; the Global South; the Belt and Road Initiative

## A. Introduction

On his tour of Kazakhstan and Indonesia in 2013, the Chinese President, Xi Jinping, announced an ambitious development project consisting of “[the] Silk Road Economic Belt” to link China with South East Asia, South Asia, Central Asia, Russia, and Europe by land, and “[the] 21st century Maritime Silk Road”, a sea route connecting China’s coastal regions with South East and South Asia, the South Pacific, the Middle East, and Eastern Africa, all the way to Europe.<sup>1</sup> Originally known as *One Belt, One Road* because of its composition, this project is now more commonly called the Belt and Road Initiative (BRI). With around 140 countries joining the BRI,<sup>2</sup> it has become the priority of Chinese diplomacy and one of the most debated topics in international studies.<sup>3</sup>

The mainstream mediatic, political, and even scholarly discourses either present it as the greatest and most efficient development project ever that will lead us to a brave new world without American hegemony,<sup>4</sup> or as a Trojan horse that invites Chinese colonial power under the guise of prosperity.<sup>5</sup> Both narratives assume that the BRI is a well-designed economic and diplomatic project and that the Chinese government has both the determination and capacity to impose its vision on the other partner States.<sup>6</sup> These assumptions are in line with the modern view of law that presupposes the distinction between the center, where consensus is reached and decisions are made, and the peripheries where

<sup>1</sup> European Bank for Reconstruction and Development, ‘Belt and Road Initiative’, available at <https://www.ebrd.com/what-we-do/belt-and-road/overview.html> (last visited 05 September 2022).

<sup>2</sup> Green Belt and Road Initiative Center, ‘Countries of the Belt and Road Initiative’, available at <https://green-bri.org/countries-of-the-belt-and-road-initiative-bri/> (last visited 05 September 2022).

<sup>3</sup> A. Bhattacharya, ‘Conceptualizing the Silk Road Initiative in China’s Periphery Policy’, 33 *East Asia* (2016) 4, 309, 310; W. Fasslabend, ‘The Silk Road: a Political Marking Concept for World Dominance’, 14 *European View* (2015) 2, 293, 294; F. Leverett & B. Wu, ‘The New Silk Road and China’s Evolving Grand Strategy’, 77 *The China Journal* (2016) 110, 111.

<sup>4</sup> L. Benabdallah, ‘Contesting the International Order by Integrating it: The Case of China’s Belt and Road Initiative’, 40 *Third World Quarterly* (2019) 1, 92, 96-97; Bhattacharya, *supra* note 3, 325.

<sup>5</sup> Fasslabend, *supra* note 3, 296; T. Miller, *China’s Asian Dream: Empire Building Along the New Silk Road*, 2nd ed. (2019), 15.

<sup>6</sup> J. Wang, ‘China’s Governance Approach to the Belt and Road Initiative: Partnership, Relations, and Law’, NUS Law Working Paper 2019/005, 3; M. Clarke, ‘The Belt and Road Initiative: China’s New Grand Strategy?’ *Asia Policy* (2017) 24, 71, 72.

orders are received and obeyed.<sup>7</sup> However, they tend to cloud the plasticity of any institutional framework and undermine the endless strategic interactions between agents at all levels.

The objective of this article is to propose a new research agenda. With specific attention to sustainability, our key argument is that the BRI can be made sustainable through ongoing dispersed legal and judicial practices that involve the Chinese government, investors, central and local governments of host countries, and local communities in the Global South. Instead of qualifying the BRI as sustainable or unsustainable, we propose to regard it as a dynamic framework, a temporary configuration of the deeds of stakeholders, a structure that is stable in each given moment within which actors engage while also susceptible to being shaped and reshaped by constant engagements. The BRI so understood serves as a platform that allows the Global South to frame and experiment with its own approach to sustainable development.

This article is structured as follows: Section B briefly summarizes the state of scholarship on the BRI and argues that the available literature presupposes the BRI as a grand strategy while overlooking local dynamics. In Section C, we then reframe the BRI under the lens of a regional approach, as an alternative to global sustainability based on the realities of the Global South. By documenting a series of disputes between Chinese and foreign stakeholders on environmental issues, Section D discusses both the existence of a well-designed plan and China's ability to implement it unilaterally, and it envisages a new understanding of the BRI as a dynamic framework.

## B. The Grand Strategy Narrative

### I. (Un)sustainability of the BRI?

China has advocated the BRI as an alternative to the neoliberal, hegemonic, and unsustainable world order built on the premises of markets and democracy.<sup>8</sup> In this narrative, the BRI promotes cross-national cooperation via policy communication, transportation connectivity, trade facilitation, monetary

<sup>7</sup> This view is predominant in contemporary legal positivism, exemplified by the separation between primary and secondary rules, ordinary citizens, and law's officers. See H. Hart, *The Concept of Law* (1994).

<sup>8</sup> Y. He, 'Belt & Road vs. Liberal Order', *China-US Focus* (22 May 2017), available at <https://www.chinausfocus.com/foreign-policy/-belt--road-vs-liberal-order> (last visited 05 September 2022).

circulation, and people-to-people interactions.<sup>9</sup> By inheriting the spirit of peace and cooperation, openness and inclusiveness, mutual learning and reciprocity,<sup>10</sup> the BRI will provide means in terms of economics, commerce, technology, and finance to form “win-win” partnerships and a “community of shared destiny” with its neighbors.<sup>11</sup> Moreover, a commitment to sustainability has been specially stated in that “China’s [BRI] must be green and sustainable”<sup>12</sup>, with the goal of “realiz[ing] diversified, independent, balanced and sustainable development in [BRI] countries”.<sup>13</sup>

However, skepticism about China’s commitment to sustainability is widespread.<sup>14</sup> Negative environmental impacts are documented when coal-fired power plants, heavily polluting factories, oil and gas pipes, and infrastructure are built in the name of the BRI.<sup>15</sup> Take its impact on climate change mitigation as an example: according to the International Institute of Green Finance’s report

<sup>9</sup> Ministry of Foreign Affairs of the PRC, ‘President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt With Central Asian Countries’ (7 September 2013), available at [https://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/xjpfwzysiesgjtfhshzzfh\\_665686/t1076334.shtml](https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesgjtfhshzzfh_665686/t1076334.shtml) (last visited 05 September 2022).

<sup>10</sup> ‘Full Text of President Xi’s Speech at Opening of Belt and Road Forum’, Xinhua News (14 May 2017), available at [http://www.xinhuanet.com/english/2017-05/14/c\\_136282982.htm](http://www.xinhuanet.com/english/2017-05/14/c_136282982.htm) (last visited 05 September 2022).

<sup>11</sup> ASEAN-China Centre, ‘Speech by Chinese President Xi Jinping to Indonesian Parliament’ (3 October 2013), available at [http://www.asean-china-center.org/english/2013-10/03/c\\_133062675.htm](http://www.asean-china-center.org/english/2013-10/03/c_133062675.htm) (last visited 11 June 2021); Ministry of Foreign Affairs of the PRC, ‘Xi Jinping: Let the Sense of Community of Common Destiny Take Deep Root in Neighboring Countries’ (25 October 2013), available at [https://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/wjbz\\_663308/activities\\_663312/t1093870.shtml](https://www.fmprc.gov.cn/mfa_eng/wjb_663304/wjbz_663308/activities_663312/t1093870.shtml) (last visited 05 September 2022).

<sup>12</sup> B. Goh & C. Cadell, ‘China’s Xi Says Belt and Road Must Be Green, Sustainable’, Reuters (25 April 2019), available at <https://www.reuters.com/article/us-china-silkroad-idUSKCN1S104I> (last visited 05 September 2022).

<sup>13</sup> Belt and Road Portal, ‘Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road’ (2015), available at <https://eng.yidaiyilu.gov.cn/qwyw/qwfb/1084.htm> (last visited 05 September 2022).

<sup>14</sup> A. Kalinin *et al.*, *Chinese Grand Strategy in the Eurasian Heartland. Belt and Road Initiative in Russia, Belarus, Central Asia and the Caucasus* (2019), 63-66; T. P. Cavanna, ‘Unlocking the Gates of Eurasia: China’s Belt and Road Initiative and its Implications for U.S. Grand Strategy’, 2 *Texas National Security Review* (2019) 3, 10, 18; J. Hurley, S. Morris & G. Portelance, ‘Examining the Debt Implications of the Belt and Road Initiative From a Policy Perspective’, *CGD Policy Paper* (2018) 121; S. Shieh *et al.*, ‘Understanding and Mitigating Social Risks to Sustainable Development in China’s BRI’, *ODI report* (2021), 13-51.

<sup>15</sup> Kalinin *et al.*, *supra* note 14, 65; Shieh *et al.*, *supra* note 14, 5.

on China's investment in the BRI in 2020, though investments in fossil fuels have slowly dropped from their peak in 2015, they still constitute the majority of the BRI's energy investments.<sup>16</sup> Critics also questioned the BRI's long-term sustainability because of the debt burden, economic concerns, and social risks the BRI has introduced.<sup>17</sup> Economically, the massive loans extended to host States might result in a "debt trap"<sup>18</sup>, which will cause an unfavorable degree of dependency on the creditor.<sup>19</sup> Increasing debt and incapacity to assume such debt jeopardize some BRI projects, such as the renegotiation of East Coast Rail Link project between Malaysia and China<sup>20</sup> or the cancellation of Sierra Leone's Mamamah airport.<sup>21</sup> Many observers are further concerned about other social issues, including corruption,<sup>22</sup> labor conditions,<sup>23</sup> and cultural and linguistic disparities.<sup>24</sup>

## II. The BRI as a Grand Strategy

The unsustainable dimensions of the current BRI projects cast a shadow over its future. However, debate over the sustainable or unsustainable nature of the BRI presupposes that it has an essence, a predetermined agenda. Indeed, current scholarship may propose opposite accounts of the BRI, but opposing camps share the assumption of a grand strategy. Analysts who hold optimistic outlooks about the BRI constantly refer to it as "an economic grand strategy"<sup>25</sup>, or a grand strategy "in pursuit of [China's] decades-long goal of returning to

<sup>16</sup> C. Nedopil Wang, *China's Investments in the Belt and Road Initiative (BRI) in 2020* (2021), 9-10.

<sup>17</sup> Kalinin *et al.*, *supra* note 14, 63-66.

<sup>18</sup> Cavanna, *supra* note 14, 18.

<sup>19</sup> Hurley, Morris & Portelance, *supra* note 14, 2.

<sup>20</sup> T. Mitchell & A. Woodhouse, 'Malaysia Renegotiated China-backed Rail Project to Avoid \$ 5bn Fee', *Financial Times* (15 April 2019), available at <https://www.ft.com/content/660ce336-5f38-11e9-b285-3acd5d43599e> (last visited 05 September 2022).

<sup>21</sup> 'Mamamah Airport: Sierra Leone Cancels China-Funded Project', *BBC* (10 October 2018), available at <https://www.bbc.com/news/world-africa-45809810> (last visited 05 September 2022).

<sup>22</sup> Cavanna, *supra* note 14, 18.

<sup>23</sup> M. Azeem, 'Theoretical Challenges to TWAIL With the Rise of China: Labor Conditions Under Chinese Investment in Pakistan', 20 *Oregon Review of International Law* (2019) 2, 395, 405-407.

<sup>24</sup> Shieh *et al.*, *supra* note 14, 27.

<sup>25</sup> A. Kratz, 'One Belt, One Road: What's in it for China's Economic Players?', in European Council on Foreign Relations (eds), *"One Belt, One Road": China's Great Leap Outward* (2015), 8, 8.

great-power status”,<sup>26</sup> which is “non-threatening and non-revisionist”.<sup>27</sup> At the other end of the spectrum, authors raise concerns about economic expansionism or China’s ambition to substitute the liberal democratic world order with its undemocratic hegemony under the cover of the BRI.<sup>28</sup>

The dictionary definition of *grand strategy* provided by Edward Luttwak and Paul van Hooft refers to “the highest level of national statecraft that establishes how States, or other political units, prioritize and mobilize [...] military, diplomatic, political, economic, and other sources of power to ensure what they perceive as their interests”,<sup>29</sup> and it is often used in the context of the BRI.<sup>30</sup> Meanwhile, Michael Clarke added that the BRI “constitutes an ‘intellectual architecture that gives form and structure to foreign policy’ and is ‘a purposeful and coherent set of ideas about what a nation seeks to accomplish in the world’”.<sup>31</sup> Therefore, the grand strategy narrative presumes that all the projects related to the BRI are orchestrated around a coherent, top-down plan and that China is capable of executing it.

The assumption of a coherent and top-down plan is illustrated by the efforts to interpret the BRI as a logical step in the continuous historical development of China’s policy. Looking backward, some experts regard the BRI as old wine in new bottles “... because many of the methods and projects that it encompasses existed before its launch”<sup>32</sup>. Authors have also noticed the continuity between the BRI and the precedent development strategies, namely the exploration of the Western China policy in the late 1990s, the *Going Out* investment plan for strategic assets in the 2000s, the growth-seeking infrastructure campaigns in

<sup>26</sup> Clarke, *supra* note 6, 72.

<sup>27</sup> A. Bondaz, ‘Rebalancing China’s geopolitics’, in European Council on Foreign Relations (eds), “*One Belt, One Road*”: *China’s Great Leap Outward* (2015), 6, 6.

<sup>28</sup> N. Rolland, ‘China’s Belt and Road Initiative: Underwhelming or Game-Changer?’, 40 *The Washington Quarterly* (2017) 1, 127, 136-137; Bhattacharya, *supra* note 3, 325; S. Yu, *Belt and Road Initiative: Defining China’s Grand Strategy and the Future World Order* (2018), 51-53.

<sup>29</sup> E. N. Luttwak, *The Grand Strategy of the Byzantine Empire* (2009), 409; P. van Hooft, ‘Grand Strategy’ (03 June 2019), available at <https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0218.xml> (last visited 05 September 2022).

<sup>30</sup> Kalinin *et al.*, *supra* note 14, 14-15; F. J. Leandro & P. A. Duarte, *The Belt and Road Initiative: An Old Archetype of a New Development Model* (2020), 7; Leverett & Wu, *supra* note 3, 112.

<sup>31</sup> Clarke, *supra* note 6, 75.

<sup>32</sup> Cavanna, *supra* note 14, 14.

1997 and 2008, and ‘peaceful rise’ rhetoric promoted in the mid-2000s.<sup>33</sup> Clarke argued that “[the] BRI did not spring fully formed from the mind of Xi but builds on the corpus of foreign and security policy concepts bequeathed by his successors”<sup>34</sup>. Bhattacharya also claimed that it “... is embedded in the periphery diplomacy that has influenced not only China’s foreign policy formulations but also the formation of Chinese state and polity”.<sup>35</sup> With the backing of experience from generations of political leaders, promoting the BRI was not a hasty decision, but rather one that “was arrived [...] after a thorough reassessment”.<sup>36</sup>

Looking forward, some authors underlined the instrumentality of the BRI in promoting China’s vision of global governance.<sup>37</sup> This vision, often symbolized by a “community of shared [destiny]” and the “China dream”<sup>38</sup>, is represented as rooted in the Confucian legal and political tradition.<sup>39</sup> Therefore, the unity of Chinese tradition further guarantees the coherence of the BRI. In this respect, the BRI is the country’s grand strategy because “it does indeed outline the broad lines or logics for [China’s engagement with the world.]”<sup>40</sup>

Regarding China’s ability to enforce unilateral implementation, academics either claimed that a set of measures has been taken to guarantee the BRI operates in accordance with its original plan or they examined China’s potential to promote the BRI’s development.<sup>41</sup> The formation of a Silk Road Fund (SRF) and the Asian Infrastructure Investment Bank (AIIB) is often cited as evidence of China’s concrete moves toward attaining BRI goals.<sup>42</sup> A comparison has become popular between the BRI and the United States’ grand strategy post-World War II, since the SRF, AIIB, and investment corridors are allegedly similar to the International Monetary Fund, the World Bank, and comparable policies in the

<sup>33</sup> Cavanna, *supra* note 14, 14-15; A. Ekman *et al.*, *Three Years of China’s New Silk Roads From Words to (Re)action?* (2017), 17-21.

<sup>34</sup> Clarke, *supra* note 6, 72.

<sup>35</sup> Bhattacharya, *supra* note 3, 322.

<sup>36</sup> *Ibid.*

<sup>37</sup> W. A. Callahan, ‘China’s “Asia Dream”: The Belt Road Initiative and the New Regional Order’, 1 *Asian Journal of Comparative Politics* (2016) 3, 226, 239.

<sup>38</sup> T. Fallon, ‘The New Silk Road: Xi Jinping’s Grand Strategy for Eurasia’, 37 *American Foreign Policy Interests* (2015) 3, 140, 141; Z. Zhang, ‘The Belt and Road Initiative: China’s New Geopolitical Strategy?’, 4 *China Quarterly of International Strategic Studies* (2018) 3, 327, 334.

<sup>39</sup> Zhang, *supra* note 38, 334; Yu, *supra* note 28, 7.

<sup>40</sup> Leandro & Duarte, *supra* note 30, 7.

<sup>41</sup> *Ibid.*, 5.

<sup>42</sup> Clarke, *supra* note 6, 75; Callahan, *supra* note 37, 236.

Marshall Plan.<sup>43</sup> Scholars consider these regional projects as a signal that the BRI is not hollow: “Real work[s] under the BRI can be seen”<sup>44</sup>.

Meanwhile, other scholars, being aware of the prematurity of assessing the accomplishment of the BRI’s goals in its early stages, focus their attention on the Chinese government’s potential and argue that China has the capacity to concretize the BRI as it has been designed for three reasons. First, key Chinese government agencies, such as the National Development and Reform Commission, who have developed detailed plans for specific aspects of the BRI,<sup>45</sup> remain central in coordinating the BRI’s implementation.<sup>46</sup> Second, China’s domestic infrastructure has helped develop the practical experience to realize the BRI.<sup>47</sup> Third, an authoritarian atmosphere promotes stability and continuity, making it easier for China to move through with its initiatives.<sup>48</sup>

The grand strategy narrative portrays China as the designer and driver of the BRI and places it at center of stage, at the price of putting all other actors in the periphery. The existing research agenda risks undermining the actions, reactions, and interactions of recipient countries, business entities, and other provincial or local players.<sup>49</sup> The disagreements and discontents manifested by local protests and struggles are noticed but merely regarded as proof of the hegemonic and unsustainable nature of the BRI or as the ‘risks’ that can be avoided or addressed by China.<sup>50</sup> Therefore, the sustainability of the BRI is borne on the shoulders of China alone.

The grand strategy narrative either romanticizes or diabolizes China’s position in the global pursuit of sustainability. At the same time, it ignores the agency of other actors and their capacity in agenda setting, misunderstanding the realities of making the international order via the BRI. Before concretizing

<sup>43</sup> Yu, *supra* note 28, 7.

<sup>44</sup> Callahan, *supra* note 37, 236.

<sup>45</sup> M. Beeson, ‘Goeconomics with Chinese Characteristics: the BRI and China’s Evolving Grand Strategy’, 6 *Economic and Political Studies* (2018) 3, 240, 249.

<sup>46</sup> *Ibid.*, 249; S. Heilmann & O. Melton, ‘The Reinvention of Development Planning in China, 1993-2012’, 39 *Modern China* (2013) 6, 580, 581-583.

<sup>47</sup> Beeson, *supra* note 45, 249.

<sup>48</sup> S. Kalathil, ‘China’s Eurasian Century? Political and Strategic Implications of the Belt and Road Initiative by Nadège Rolland (Review)’, 28 *Journal of Democracy* (2017) 4, 170, 174.

<sup>49</sup> Cavanna, *supra* note 14, 16.

<sup>50</sup> 李玉璧, 王兰: 《“一带一路”建设中的法律风险识别及应对策略》, 《国家行政学院学报》2017年第2期, 第77-81页。(Y. Li & L. Wang, ‘The Identification and Coping Strategies of Legal Risks in the Construction of “One Belt and One Road”’, 107 *Journal of CAG* (2017) 77, 77-81).

the opposition to the grand strategy narrative, we propose another reading of the BRI as a project of the Global South.

## C. BRI as a Regional Approach to the International Law of the Global South

### I. The Global South as a Region

Though President Xi announced that “the BRI is a public road open to all” at the opening ceremony of the *Boao Forum for Asia Annual Conference 2021*,<sup>51</sup> the great majority of BRI members are developing or underdeveloped countries. According to official statistics, 26 low-income countries and 39 lower middle-income countries have joined the initiative.<sup>52</sup> Most concrete projects related to the BRI are also envisaged in these countries. In contrast, developed countries tended to endorse the BRI as a concept, but not to identify specific projects.<sup>53</sup> For example, in the 2019 Memorandum of Understanding (MoU) between Italy and China, both States promised to “work together within the BRI to translate mutual complementary strengths into advantages for practical cooperation and sustainable growth”<sup>54</sup>, while materialization is still absent.<sup>55</sup> Therefore, the BRI is first and foremost a project of the Global South.

When discussing a *regional approach to international law*, scholars are aware that the scope of a *region* is not self-evident and they define the term in different ways. The definition that we find apposite was proposed by Samantha Besson in her intervention in the *colloque de rentrée 2020* at the Collège de

<sup>51</sup> ‘Xi Says BRI a Public Road Open to all, not Private Path’, Xinhua News (20 April 2021), available at [http://www.xinhuanet.com/english/2021-04/20/c\\_139892744.htm](http://www.xinhuanet.com/english/2021-04/20/c_139892744.htm) (last visited 05 September 2022).

<sup>52</sup> Green Belt and Road Initiative Center, *supra* note 2.

<sup>53</sup> D. Sacks, ‘Countries in China’s Belt and Road Initiative: Who’s in And Who’s Out’, Council on Foreign Relations (24 March 2021), available at <https://www.cfr.org/blog/countries-chinas-belt-and-road-initiative-whos-and-whos-out> (last visited 05 September 2022).

<sup>54</sup> *MoU Between the Government of the Italian Republic and The Government of the People’s Republic of China on Cooperation Within the Framework of the Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative*, March 2019, available at: [https://www.governo.it/sites/governo.it/files/Memorandum\\_Italia-Cina\\_EN.pdf](https://www.governo.it/sites/governo.it/files/Memorandum_Italia-Cina_EN.pdf) (last visited 05 September 2022).

<sup>55</sup> F. Ghiretti, ‘The Belt and Road in Italy: 2 Years Later’, *The Diplomat* (23 March 2021), available at <https://thediplomat.com/2021/03/the-belt-and-road-in-italy-2-years-later/> (last visited 05 September 2022).

France: this considers a region as jurisdictions connected by their proximity, identity, and solidarity.<sup>56</sup>

Proximity may primarily refer to the spatial relationship between locations, but it can also be used to measure the relative positions of States in the symbolic global order. Despite several infrastructure projects that concern European countries, the vast majority of the BRI-related investments or plans target Latin America, Central and South-Eastern Asia, and Africa.<sup>57</sup> Home to most of the economically less developed countries, these regions are commonly known as *the South*,<sup>58</sup> a term that, at the same time, indicates their latitude and symbolic position in the global economic order.<sup>59</sup> They are underdeveloped because “[their economic growth trajectories] are determined by foreign capital”<sup>60</sup>. They are only “producers of raw materials or to serve as repositories of cheap labor, and are thus denied the opportunity to market their resources in any way that competed with [developed States]”<sup>61</sup>.

The disadvantages of the Global South in the distribution of wealth among nations are easily translated into their suffering in terms of sustainability. If many States of the Global South attempted to nationalize their respective natural resource sectors and place the environment “... under the control of those who depend upon it instead of mortgaging it to distant owners and abusers”<sup>62</sup>, joining the international trade regime would mean that this control is gradually contracted to multinational enterprises whose headquarters are located in the

<sup>56</sup> ‘Le Droit International Des Civilisations Ou Comment Instituer Leur Concertation’ (2020), available at <https://www.youtube.com/watch?v=VZo03OwHaRE&t=1262s> (last visited 05 September 2022).

<sup>57</sup> China Global Investment Tracer, ‘Chinese Investments & Contracts in Belt and Road Initiatives (2005-2020)’, available at <https://www.aei.org/china-global-investment-tracker/> (last visited 05 September 2022).

<sup>58</sup> D. Nour & C. Raewyn, ‘The Global South’, 11 *Contexts* (2012) 12, 12; N. Lees, ‘The Brandt Line After Forty Years: The More North-South Relations Change, the More They Stay the Same’, 47 *Review of International Studies* (2021) 85, 85; J. Rigg, ‘The Global South’, in Global South Studies Center (eds), *Concepts of the Global South* (2012) 7.

<sup>59</sup> L. A. Duck, ‘The Global South Via the US South’, in Global South Studies Center (eds), *Concepts of the Global South* (2012), 5.

<sup>60</sup> L.S. Stavrianos, *Global Rift: The Third World Comes of Age* (1981), 39.

<sup>61</sup> A. Sajed, ‘From the Third World to the Global South’ (2020), available at <https://www.e-ir.info/2020/07/27/from-the-third-world-to-the-global-south/> (last visited 05 September 2022).

<sup>62</sup> K. Mickelson & U. Natarajan, ‘Reflections on Rhetoric and Rage: Bandung and Environmental Injustice’, in L. Eslava, M. Fakhri & V. Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (2017), 471.

Global North.<sup>63</sup> Even worse, Southern States will *race to the bottom*, adopting loose environmental and labor standards to lure foreign investors who are interested in moving their manufacturing from jurisdictions where regulations are strict.<sup>64</sup> For instance, the miraculous economic growth in China did not only turn this country into the world's factory but also the world's dumping ground.<sup>65</sup> In fear of an environmental catastrophe, environmentalists from the North accuse the emerging economies, such as India and China, of exploiting resources, destroying natural reserves, emitting conventional pollutants and greenhouse gases (GHGs), and call for the abandonment of the Common But Differentiated Principle.<sup>66</sup> "But emissions are emissions. You've just got to do the math."<sup>67</sup> said Todd Stern, the United States envoy for climate negotiation. The math also reveals that, according to the calculation of *Our World in Data*, the per capita CO2 emission of Americans in 2017 was more than 2.3 times that of Chinese – at 16.16 tons compared with 6.86 tons.<sup>68</sup> People of the Global South are both the authors and victims of pollution, ecological degradation, or adverse climate events. However, inequality can be so structural and fundamental that the cost of ecological transitions also disproportionately lands on the shoulders of vulnerable countries.<sup>69</sup> In sum, the Global South countries are situated lower in

<sup>63</sup> J. F. Rweyemamu, 'International Trade and the Developing Countries', 7 *The Journal of Modern African Studies* (1969) 203, 213.

<sup>64</sup> A. Chan & R. Ross, 'Racing to the Bottom: International Trade Without a Social Clause', 24 *Third World Quarterly* (2003), 1011; A. Prakash & M. Potoski, 'Racing to the Bottom? Trade, Environmental Governance, and ISO 14001', 50 *American Journal of Political Science* (2005) 350.

<sup>65</sup> K. de Freytas-Tamura, 'Plastics Pile Up as China Refuses to Take the West's Recycling', *The New York Times* (11 January 2018), available at <https://www.nytimes.com/2018/01/11/world/china-recyclables-ban.html> (last visited 05 September 2022).

<sup>66</sup> R. Watson *et al.* (eds), *The Truth Behind the Climate Pledges* (2019), 2-3.

<sup>67</sup> D. Samuelsohn, 'No 'Pass' for Developing Countries in Next Climate Treaty, Says U.S. Envoy', *The New York Times* (9 December 2009), available at <https://archive.nytimes.com/www.nytimes.com/gwire/2009/12/09/09greenwire-no-pass-for-developing-countries-in-next-clima-98557.html?pagewanted=print> (last visited 05 September 2022).

<sup>68</sup> H. Ritchie & M. Roser, 'China: Co2 Country Profile', available at <https://ourworldindata.org/co2/country/china> (last visited 6 July 2021); H. Ritchie & M. Roser, 'United States: Co2 Country Profile', available at <https://ourworldindata.org/co2/country/united-states> (last visited 05 September 2022).

<sup>69</sup> R. Eckersley, 'Responsibility for Climate Change as a Structural Injustice', in *The Oxford Handbook of Environmental Political Theory* (2016), 346-361; B. K. Sovacool, 'Countering a Corrupt Oil Boom: Energy Justice, Natural Resource Funds, and São Tomé e Príncipe's Oil Revenue Management Law', 55 *Environmental Science & Policy* (2016) 196, 197-199; L. Chancel & T. Piketty, 'Carbon and Inequality: From Kyoto to Paris' (2015), available

the hierarchy of the production and distribution of economic and environmental goods, and they are struggling to maintain economic growth while complying with the standards of sustainability that are also agreed upon in the North.<sup>70</sup> They are the humiliated and insulted.

The experience of humiliation and insult within international law is not new for the South. On the contrary, it has persisted ever since the Western perception of governmentality via international law and comparative law, was globalized<sup>71</sup> and it constitutes the essence of the identity of the South in regard to international law. From the Spanish and Portuguese conquerors in the Americas, all the way through the colonial agents in countless terrible events throughout Africa and North America during the 19th century, to the actions of Japanese troops at the Port Arthur massacre, “international law was in itself an instrument of the denial of recognition and of domination because it was based entirely on the fundamental discrimination between civilized and non-civilized States”<sup>72</sup>. Within the civilization narratives that defined, ordered, and distributed political power differently, the clash between the European and non-European worlds was seen “in terms of a conflict of cultures and cultural systems” during which “European military superiority left non-European societies no choice but to come to grips with the European standard of ‘civilization’”<sup>73</sup>. Their troops defeated in wars, sovereignty denied in the name of civilization, cultural and political identity stigmatized as backwardness, countries of the South that are largely also colonized were once subjugated to the *civilizing mission* of the North.<sup>74</sup>

After World War II, though, “many colonies overthrew the yoke of direct colonial rule [and] they quickly realized that political independence was

at <https://voxeu.org/article/carbon-and-inequality-kyoto-paris> (last visited 05 September 2022).

<sup>70</sup> M. A. Mustunsir, ‘Sustainability vs Economic Growth: a Third World Perspective’, 11 *World Journal of Entrepreneurship, Management and Sustainable Development* (2015) 312, 321.

<sup>71</sup> E. Jouannet, ‘Colonialisme Européen et Néo-Colonialisme Contemporain’, 6 *Baltic Yearbook of International Law Online* (2006) 49, 49-50; E. Jouannet, ‘Le Droit International de La Reconnaissance’, 13 *Revue générale du droit international public* (2012), 769, 770-772 [Reconnaissance]; D. Kennedy, ‘Three Globalizations of Law and Legal Thought: 1850-2000’, in A. Santos & D. Trubek (eds), *The New Law and Economic Development* (2006), 28-32.

<sup>72</sup> Jouannet, Reconnaissance, *supra* note 71, 770.

<sup>73</sup> G. W. Gong, *The Standard of Civilization in International Society* (1984), 98.

<sup>74</sup> M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (2004), 121–122.

largely illusory”<sup>75</sup>. “Third World States were still bonded politically, legally and economically to the West.”<sup>76</sup> Colonial history has had a significant impact on States’ formations, international trade patterns, and the structure of international organizations like the United Nations (UN). Within the process, international law operates as a tool that “... brings the uncivilized/aberrant/violent/backward/oppressed into the realm of civilization, the universal order”<sup>77</sup>. Today, as a century ago, the international legal order still subordinates the people and societies of the South to the conquest and domination of the North.<sup>78</sup> As colonialism has been, and still is, central to the formation and evolution of international law,<sup>79</sup> being victims of hegemony or imperialism is an essential element of the regional identity of the States of the South.

Hegemony and dominance are never free from resistance, and it is the awareness of past struggles that defines the South’s solidarity. These countries “... have suffered from imperialist or neo-colonial domination and are equal partners in the struggle to end international economic iniquities”<sup>80</sup>. Intellectuals, social activists, and politicians of the South have been aware that the common objective of liberation will not be achieved without solidarity.<sup>81</sup> Solidarity requires these countries to “... reach and maintain a common policy position on a given issue”<sup>82</sup>. Several initiatives were experimented with to give place to solidarity, such as hosting the *Bandung Conference*, developing the Non-aligned Movement (NAM), and attending as the Group of 77 (G77) before the UN that “... showed a fairly united front in proposing the New International Economic Order [...] and Global Negotiations [...]”<sup>83</sup>. Indeed, the identity and solidarity of Southern countries does not mean that it is easy to unite around a single project.<sup>84</sup> On the

<sup>75</sup> M. Mutua & A. Anghie, ‘What is TWAAIL?’, 94 *American Society of International Law* (2000), 31, 34.

<sup>76</sup> *Ibid.*

<sup>77</sup> A. Anghie, ‘The Evolution of International Law: Colonial and Postcolonial Realities’, 27 *Third World Quarterly* (2006) 739, 742 [Colonial and Postcolonial Realities].

<sup>78</sup> A. Anghie, ‘Francisco De Vitoria and the Colonial Origins of International Law’, 5 *Social and Legal Studies* (1996) 321, 333.

<sup>79</sup> Anghie, Colonial and Postcolonial Realities, *supra* note 77, 742; *Ibid.*

<sup>80</sup> Z. A. Bhutto, ‘The Third World: The Imperative of Unity’, 29 *Third Quarter* (1976), 3, 4.

<sup>81</sup> *Ibid.*; L. Eslava, M. Fakhri & V. Nesiah, ‘The Spirit of Bandung’, in L. Eslava, M. Fakhri & V. Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (2017), 6-7, 12-14.

<sup>82</sup> K. Lida, ‘Third World Solidarity: The Group of 77 in the UN General Assembly’, 42 *International Organization* (1988) 375, 376.

<sup>83</sup> *Ibid.*

<sup>84</sup> Eslava, Fakhri, Nesiah, *supra* note 81.

contrary, internal division is common.<sup>85</sup> Still, it is widely believed that the Third World can be an important voice in international relations only if it operates in unity.<sup>86</sup>

## II. Features of the Global South's Approach

Regrouped by their proximity, identity, and solidarity as a region, the States of the Global South would have the opportunity to envisage an alternative normative framework that would be free from universalist claims but more adaptive to their needs and realities. The theory and practice of the Third World approach to international law, from Bandung to Havana, has embodied the hopes and aspirations of many peoples. Numerous attempts have been made to translate this hope and aspiration into concrete outcomes, and we contend that these attempts can be better understood under the lens of a regional approach to international law.

Usually used interchangeably with the term “regional arrangement”<sup>87</sup>, “regional approach” refers to the formal consensus of a group of States in coordinating activities in the pursuit of a common goal.<sup>88</sup> Odermatt noticed that the emergence of a regional approach is, in itself, a reaction against the Eurocentric perception disguised under universalism: “[d]ifferent regions and countries, especially outside the West, have developed practices and views towards international law that show that international law is perceived and practiced differently in different parts of the world”<sup>89</sup>. As one symbolic region defined by proximity, identity, and solidarity, the Global South has a shared determination to resist the universal abstraction of international law in the post-colonial era and offer a more equitable and sustainable framework that is

<sup>85</sup> J. A. Graham, ‘The Non-Aligned Movement After the Havana Summit’, 34 *International Relations of Developing Countries* (1980) 153, 153, 160.

<sup>86</sup> H. Strydom, ‘The Non-Aligned Movement and the Reform of International Relations’, 11 *Max Planck Yearbook of United Nations Law* (2007), 1, 2; B. R. Tomlinson, ‘What Was the Third World?’, 38 *Journal of Contemporary History* (2003) 307, 309-313.

<sup>87</sup> See R. Moynihan & B. Magsig, ‘The Rising Role of Regional Approaches in International Water Law: Lessons from the UNECE Water Regime and Himalayan Asia for Strengthening Transboundary Water Cooperation’, 23 *The Review of European Comparative & International Environmental Law* (2014) 43, 44.

<sup>88</sup> *Ibid.*; R. Burchill, ‘Regional Approaches to International Humanitarian Law’, 41 *Victoria University of Wellington Law Review* (2010) 205, 209.

<sup>89</sup> J. Odermatt, ‘Regional Approaches to International Law’, 1 *Amicus Curiae* (2019) 108.

sensitive not only to the needs of the center States on the international stage but also to the peripheries, including those of various social groups.<sup>90</sup>

The *origin myth* of the Global South's approach can be traced to a landmark event, the *Bandung Conference*. In 1955, delegates from 29 States in Asia and Africa attended a conference held in the Indonesian city of Bandung.<sup>91</sup> In the context of the Cold War, for the first time the newly independent countries "... entered world politics as a collective of States"<sup>92</sup> and "... devoted attention to common problems of colonialism, economic development, and maintenance of peace"<sup>93</sup>. Makau Mutua regarded Bandung as "... the symbolic birthplace of Third World approach to international law"<sup>94</sup> as "Bandung marked the moment when the global decolonization and the advent of newly independent countries changed international law"<sup>95</sup>.

To better understand the legacy of Bandung, it is important to consider three outcomes. First, Bandung's final communique urged that all historically colonial States be admitted to the UN, forming a UN bloc.<sup>96</sup> The development of a UN bloc would bring together representatives from Third World countries and, to some extent, prevent the superpowers from subjugating them.<sup>97</sup> Second, ten principles adopted by the conference demonstrate the Third World's determination to promote peace and cooperation.<sup>98</sup> It expressly committed itself to a world order based on international law,<sup>99</sup> which played an historical role in the development of international law<sup>100</sup> by fully supporting people's self-

<sup>90</sup> See B. Chimni, 'Third World Approaches to International Law: A Manifesto', 8 *International Community Law Review* (2006) 3.

<sup>91</sup> Eslava, Fakhri, Nesiah, *supra* note 81.

<sup>92</sup> B. Rajagopal, 'International Law and Its Discontents: Rethinking the Global South', 106 *American Society of International Law* (2012) 176, 179.

<sup>93</sup> N. Park, 'The Third World as an International Legal System', 7 *Boston College Third World Law Journal* (1987) 37, 45-46.

<sup>94</sup> Mutua & Anghie, *supra* note 75, 31.

<sup>95</sup> M. Fakhri & K. Reynolds, 'The Bandung Conference' (2017), available at <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0150.xml?rskey=bGd3mg&result=1&q=bandung+#firstMatch> (last visited 05 September 2022).

<sup>96</sup> L. Segal, 'Vijay Prashad on the Idea of the Third World', 5 *A Journal on Social History and Literature in Latin America* (2008) 308, 312.

<sup>97</sup> Sajed, *supra* note 61, 2.

<sup>98</sup> S. Sucharitkul, 'Multi-Dimensional Concept of Human Rights in International Law', 62 *Notre Dame Law Review* (1987) 305, 309-310.

<sup>99</sup> Rajagopal, *supra* note 92, 179.

<sup>100</sup> Fakhri & Reynolds, *supra* note 95.

determination, fundamental human rights, and State sovereignty.<sup>101</sup> Third, from an economic perspective, Bandung raised an awareness of the need for economic cooperation among Third World nations, leading to the establishment of the *UN Conference on Trade and Development*.<sup>102</sup> It is an economic alternative for the developing States that differs from the dominant capital model.<sup>103</sup>

While the *Bandung Conference* did not establish any permanent organization, the spirit of it lives on in its successors, such as the NAM and the G77. In general, these two Third World associations are complementary.<sup>104</sup> The NAM initially concentrated on political issues, then shifted its interests more towards the economy, whereas the G77 focused on economic matters.<sup>105</sup> With the common goal of anti-colonialism and promoting development, both programs heightened the voice of the Third World on the international stage, which made significant contributions to international law. For instance, under the impetus of the NAM and the G77, the *Declaration on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States* were adopted by the UN General Assembly.<sup>106</sup> It is true that the NAM and the G77 may be trapped by serious strategic disagreement among member States<sup>107</sup> or the rise of local elites only pursuing their own interests.<sup>108</sup> Nonetheless, we cannot ignore the significance of the NAM and the G77 representing the Third World in international fora.

The aforementioned projects share some common characteristics that reveal certain realities of the alternative approach adopted by the Global South. First, as projects of the South, by the South, and for the South, their ideological programs are identical: decolonization, independence, and development.<sup>109</sup> Second, actors

<sup>101</sup> *Final Communiqué of the Asian-African conference of Bandung* (1955), available at [https://www.cvce.eu/en/obj/final\\_communique\\_of\\_the\\_asian\\_african\\_conference\\_of\\_bandung\\_24\\_april\\_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html](https://www.cvce.eu/en/obj/final_communique_of_the_asian_african_conference_of_bandung_24_april_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html) (last visited 05 September 2022).

<sup>102</sup> Park, *supra* note 93, 46.

<sup>103</sup> Sajed, *supra* note 61, 2.

<sup>104</sup> Park, *supra* note 93, 43.

<sup>105</sup> L. M. Luthi, 'The Non-Aligned Movement and the Cold War, 1961-1973', 18 *Journal of Cold War Studies* (2016) 98, 100.

<sup>106</sup> Tomlinson, *supra* note 86, 312-313; Park, *supra* note 93, 54; A. Chen, 'A Reflection on the South-South Coalition in the Last Half Century from the Perspective of International Economic Law-making', 7 *Journal of World Investment & Trade* (2006) 201, 204.

<sup>107</sup> Graham, *supra* note 85, 153; Segal, *supra* note 96, 313; Chen, *supra* note 106, 205.

<sup>108</sup> Chimni, *supra* note 90, 6-7.

<sup>109</sup> R. Stojanovic, 'The Emergence of the Non-Aligned Movement: A View from Belgrade', 13 *Case Western Reserve Journal of International Law* (1981) 443, 444-445; K. P. Sauvart,

with different or even conflicting interests from the South must coordinate their activities in an environment characterized by a lack of a centralized decision-making mechanism, fine-grained binding rules, and effective implementation measures.<sup>110</sup> Though the idea of institutionalization is appealing, demonstrated by the creation of the Non-Aligned Coordinating Bureau in the NAM and the South Coordination Commission in the G77, their internal structures are still loose.<sup>111</sup> Strong anti-bloc sentiment and concerns for superpower domination prevent the NAM and the G77 from having permanent headquarters<sup>112</sup> or other means of organized activities that are necessary for effective coordination.<sup>113</sup> The consensus on abstract ideological terms and the absence of a rigid coordination mechanism lead to a high degree of indeterminacy as the third characteristic of this regional approach. Constantly oscillating between the necessities of speaking with one voice and adapting to local economic and environmental realities, States may find large gaps in the forging of concrete solutions to coordination problems in South-South cooperation.<sup>114</sup>

The characteristics of these past or existing projects are also the realities of the BRI, *bon gré mal gré*. As mentioned above, the BRI primarily targets the South and the official discourse of China portrays it as a project that serves the needs and interests of the South by providing a framework for promoting the flow of capital, technology, and equipment into this region, therefore assisting their industrialization and urbanization.<sup>115</sup> However, the vocabulary used in the governmental documents and manifestos is vague and abstract, offering almost

<sup>110</sup> ‘The Early Days of the Group of 77’, available at <https://www.un.org/en/chronicle/article/early-days-group-77> (last visited 05 September 2022).

<sup>111</sup> Park, *supra* note 93, 48; J.J.G. Syatauw, ‘The Non-Aligned Movement at the Cross-Roads—the Jakarta Summit Adapting to the Post-Cold War Era’, in Ko Swan Sik *et al.* (eds), *Asian Yearbook of International Law* (1994) 130.

<sup>112</sup> M. Banerji, ‘Institutionalization of the Non-Aligned Movement’, 20 *International Studies* (1981) 549, 562; Park, *supra* note 93, 50-51; Chen, *supra* note 106, 206.

<sup>113</sup> S. I. Keethaponcalan, ‘Reshaping the Non-Aligned Movement: Challenges and Vision’, 3 *Bandung Journal of the Global South* (2016) 1, 3; R. Kochan, ‘Changing Emphasis in the Non-Aligned Movement’, 28 *The World Today* (1972) 501, 505.

<sup>114</sup> Park, *supra* note 93, 43.

<sup>115</sup> *Ibid.*, 51-52.

<sup>116</sup> ‘Success of China’s Belt and Road Initiative Depends on Deep Policy Reforms, Study Finds’, The World Bank (2019), available at <https://www.worldbank.org/en/news/press-release/2019/06/18/success-of-chinas-belt-road-initiative-depends-on-deep-policy-reforms-study-finds> (last visited 05 September 2022); ‘Developing Countries Become BRI’s Biggest Beneficiaries’, PR Newswire (25 April 2019), available at <https://www.prnewswire.com/news-releases/developing-countries-become-bris-biggest-beneficiaries-300838067.html> (last visited 05 September 2022).

no binding commitment or clearly defined goals.<sup>116</sup> States agree on values such as mutual respect, reciprocity, sustainability, autonomy, sovereignty, and the right to development,<sup>117</sup> while leaving the concrete measures of translating them into reality to be determined in future discussions.

Two contrasting perspectives of the BRI are evident. The mainstream narrative analogizes the BRI to the Marshall Plan: a well-thought, concrete plan to be implemented according to the vision and interests of China.<sup>118</sup> The alternative considers the BRI as the heir to the Bandung spirit and observes that the initiative "... was put forward as a broad, vague idea without a specific blueprint as its inception"<sup>119</sup>, and "... dependent upon an enthusiastic acceptance by China's neighbors"<sup>120</sup>.

Though the Marshall Plan analogy is well-received among many international relation experts and the general public, its credibility is undermined by a key misconception. According to the Foreign Assistance Act of 1948, the main components of the Marshall Plan are defined and clear, including standards for organizations set up to administer funds, advisory boards to monitor those organizations, as well as salaries and responsibilities for officials in charge of such organizations.<sup>121</sup> For the BRI, its core document, *Vision and Actions on Jointly Building the Silk Road Economic Belt and 21st Century Maritime Silk Road*, is full of vague rhetoric,<sup>122</sup> which "contains a number of generic proposals without delineating any concrete steps forward and is intermixed with various platitudes about cooperation and understanding"<sup>123</sup>. Observers of the BRI are struck by its

<sup>116</sup> Kalinin *et al.*, *supra* note 14, 16; Kalathil, *supra* note 48, 170.

<sup>117</sup> 'What Kind of Principles Should We Follow Under Belt and Road Initiative?', Xinhua News (June 16 2020), available at <https://en.imsilkroad.com/p/310483.html> (last visited 05 September 2022).

<sup>118</sup> D. Chen, 'China's "Marshall Plan" is Much More', *The Diplomat* (10 November 2014), available at <https://thediplomat.com/2014/11/chinas-marshall-plan-is-much-more/> (last visited 28 June 2021); E. Curran, 'China's Marshall Plan', *Bloomberg* (8 August 2016), available at <https://www.bloomberg.com/news/articles/2016-08-07/china-s-marshall-plan> (last visited 05 September 2022).

<sup>119</sup> J. Zeng, 'Narrating China's Belt and Road Initiative', 10 *Global Policy* (2019) 207, 208.

<sup>120</sup> Callahan, *supra* note 37, 3.

<sup>121</sup> 'One Belt, One Road, No Dice', *Geopolitical Futures* (12 January 2017) available at <https://geopoliticalfutures.com/one-belt-one-road-no-dice/> (last visited 28 June 2021); *Foreign Assistance Act of 1948*, available at [https://www.marshallfoundation.org/library/wp-content/uploads/sites/16/2014/06/Foreign\\_Assistance\\_Act\\_of\\_1948.pdf](https://www.marshallfoundation.org/library/wp-content/uploads/sites/16/2014/06/Foreign_Assistance_Act_of_1948.pdf) (last visited 05 September 2022).

<sup>122</sup> Zhang, *supra* note 38, 329.

<sup>123</sup> One Belt, One Road, No Dice, *supra* note 121; *Action Plan on the Belt and Road Initiative*, available at <http://english.www.gov.cn/archive/publications/2015/03/30/>

preference for project papers and soft law;<sup>124</sup> practically all guiding documents refer to the BRI as informal and legally non-binding.<sup>125</sup> With the emergence of such documents as joint communiques, joint declarations, MoUs, and letters of intent,<sup>126</sup> the success of the BRI heavily depends upon active cooperation from all involved parties, not only China.<sup>127</sup> Scholars who endorse comparison tend to rely on institutions such as the AIIB to demonstrate the BRI's effective structure.<sup>128</sup> However, no centralized coordination body has been established. Various government departments' failure to come up with coherent planning,<sup>129</sup> increasing local rivalry,<sup>130</sup> and the unstable political climates among China's partners<sup>131</sup> all contribute to the BRI's fragmentation. Indeed, the employment of abstract ideological terms and the absence of a rigid coordination mechanism make the BRI more comparable to the Bandung spirit than the Marshall Plan.

## D. The BRI as a Dynamic Framework

### I. Making Local Actions Visible

Almost inevitably, the BRI, as with other projects of South-South cooperation, allows significant flexibility among actors, not only for China but also other State and non-State actors. If projects related to the BRI opened up

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<sup>124</sup> H. Wang, 'Divergence, Convergence or Crossvergence of Chinese and US Approaches to Regional Integration: Evolving Trajectories and Their Impactions', 10 *Tsinghua China Law Review* (2018) 150, 150; L. Zeng, 'Conceptual Analysis of China's Belt and Road Initiative: A Road Towards a Regional Community of Common Destiny', 15 *Chinese Journal of International Law* (2016) 3, para 64.

<sup>125</sup> H. Wang, 'China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability', 22 *Journal of International Economic Law* (2019) 1, 12 [China's Approach to the BRI].

<sup>126</sup> *Ibid.*

<sup>127</sup> P. Ferdinand, 'Westward ho — the China Dream and 'One belt, One road': Chinese Foreign Policy Under Xi Jinping', 92 *International Affairs* (2016) 4, 941, 956.

<sup>128</sup> Clarke, *supra* note 6, 75; Callahan, *supra* note 37, 11.

<sup>129</sup> Y. Hong, 'Motivation Behind China's 'One Belt, One Road' Initiatives and Establishment of the Asian Infrastructure Investment Bank', 26 *Journal of Contemporary China* (2017) 105, 353, 363.

<sup>130</sup> *Ibid.*; L. Jones & J. Zeng, 'Understanding China's "Belt and Road Initiative": Beyond "Grand Strategy" to a State Transformation Analysis', 40 *Third World Quarterly* (2019) 3, 1, 12.

<sup>131</sup> Hong, *supra* note 129, 367; G. Ran, 'Is China's Belt and Road Initiative Moving Towards a Silk Road Union?: A Legal and Policy Consideration', 6 *China & WTO Review* (2020) 1, 49, 63.

the space for the emergence of a new set of norms of international law, their creation relies on bilateral and loose cooperation arrangements, e.g., MoUs and statements of cooperation, which vary greatly depending on the partners and issues involved.<sup>132</sup> This fragmented, decentralized mechanism of rulemaking is further complicated by the variety of actors that range from States, provincial bureaucracies, territorial units, local communities, State-owned enterprises, and private businesses.<sup>133</sup>

Compared to the well-defined, rule-based approach to international order, the flexible and principle-based approach that emerges in the implementation of the BRI has both opportunities and challenges. Since China must discuss the terms of a bilateral agreement with each individual partner, the parties have more room for negotiation and, at least in theory, can reach arrangements that better reflect the economic, environmental, social, and political realities of the host countries, which is also one of the key benefits of the regional approach. Furthermore, loose arrangements allow the parties to adjust the terms of cooperation according to the evolution of situations. Meanwhile, it is also admitted that, without clear rights, duties, and responsibilities defined by binding legal provisions, State and non-State actors must navigate through considerable uncertainty. If national governments can handle this inconvenience by renegotiation, then subnational governments, business entities, and local communities may find that they must accept the results of negotiations in which they have no right to participate.

Having said that, non-State actors still have the means to protect their interests by translating the political commitments of States into concrete actions. Frictions over sustainability provide some examples. Until 2016, China was involved in 240 coal power projects related to the BRI.<sup>134</sup> Not only did these projects increase GHG emissions, they also raised local opposition due to the transformation of land use, air and water pollution, and poor labor conditions.<sup>135</sup>

<sup>132</sup> H. Wang, 'The Belt and Road Initiative Agreements: Characteristics, Rationale and Challenges', 20 *World Trade Review* (2020) 1, 2-5; Wang, China's Approach to the BRI, *supra* note 125, 16-17.

<sup>133</sup> Cavanna, *supra* note 14, 14; Jones & Zeng, *supra* note 130; Zeng, *supra* note 119.

<sup>134</sup> H. Feng, 'China's Belt and Road Initiative Still Pushing Coal', China Dialogue (12 May 2017), available at <https://chinadialogue.net/en/business/9785-china-s-belt-and-road-initiative-still-pushing-coal/> (last visited 05 September 2022).

<sup>135</sup> C. Blackwell, 'How Protest is Posing a Growing Threat to the BRI', in Oxford University Silk Road Society & the Green BRI Center (eds), *The Central Asia Way* (2021), 22-24, available at <https://green-bri.org/how-protest-is-posing-a-growing-threat-to-the-bri/> (last visited 05 September 2022).

In light of this growing criticism of the adverse environmental impacts of BRI-related projects, the Chinese Ministry of Ecology and Environment issued the *Guidance on Promoting a Green Belt and Road* in 2017.<sup>136</sup> Though this policy document does not prescribe any sanctions, local activists from different jurisdictions occasionally managed to tackle unsustainable projects through the instrumentality of the courts. For instance, residents in the historical town of Lamu convinced the Kenyan National Environmental Tribunal to halt the construction of a coal-fired power plant on the grounds of an insufficient environmental impact evaluation.<sup>137</sup> In Pakistan, coal field development and the construction of multiple coal-fired plants have been challenged before the Supreme Court in the name of future generations.<sup>138</sup> If these rare but high-profile lawsuits have caught scholarly attention,<sup>139</sup> opposition to BRI projects exist more widely in the form of protests, gatherings, and confrontations with local public authorities. Opposition could only be a sign of failure if the BRI were a well-defined strategy, as this would destabilize its predetermined and fixed route. Once the BRI's flexibility is acknowledged, those who oppose it will breathe new life into the BRI's long-term viability.

As a dynamic field, the BRI makes possible both the strategic interactions between actors and the temporary configuration of these interactions into law.<sup>140</sup> As with previous projects of international law for the Global South, ideological foundations and political commitments are expressed in a vague language where consensus is developed at conferences and summits. However, at the level of 'low politics', where economic and environmental costs and benefits are unevenly distributed, discontent, disagreements, resistance, confrontations, and collaborations take place on concrete and specific issues. Through these continuous and dispersed strategic interactions that nonetheless lack a centralized plan, various State and non-State actors defend, reject, interpret, and

<sup>136</sup> *Guidance on Promoting Green Belt and Road* (2017), available at [http://english.mee.gov.cn/Resources/Policies/policies/Frameworkp1/201706/t20170628\\_416864.shtml](http://english.mee.gov.cn/Resources/Policies/policies/Frameworkp1/201706/t20170628_416864.shtml) (last visited 05 September 2022).

<sup>137</sup> *Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd.*, (2019) National Environmental Tribunal, NET 196 of 2016.

<sup>138</sup> *Ali v. Federation of Pakistan*, (2016) The Supreme Court of Pakistan, Constitutional Petition No /I of 2016.

<sup>139</sup> S. Bogojević & M. Zou, 'Making Infrastructure "Visible" in Environmental Law: The Belt and Road Initiative and Climate Change Friction', 10 *Transnational Environmental Law* (2020) 1, 1, 15-19.

<sup>140</sup> P. Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field (With the Translator's Introduction)', 38 *Hastings Law Journal* (1987) 5, 805.

misinterpret the guiding principles proposed by leaders and the existing rules of international law, such as the *Paris Agreement*, for their own interests. They are the true (co)authors of the international law of the BRI, but none have the monopoly. To deny their roles is to deny their deeds and agency.

## II. Defeats of Coal-Fired Power Plant Projects in Bangladesh

The fate of coal-fired plants in which Chinese companies invested in Bangladesh can shed light on the sensitivity of BRI-related projects to the economic circumstances of the host countries. After 2014, coal was Bangladesh's main source of fuel to ensure their energy security<sup>141</sup> and the Bangladeshi government has shown a positive attitude toward coal-fired power plants in the long term.<sup>142</sup> Bangladesh's decision to build more coal-fired plants coincided with the announcement of the BRI and China's domestic industry restructuring drove Chinese companies in coal-related sectors to seek new markets abroad.<sup>143</sup> Around 2015, coal investment in the BRI reached its peak.<sup>144</sup> At almost the same time, Bangladesh was trapped in a domestic power crisis.<sup>145</sup> With the belief that coal could address its electricity shortage at an affordable price,<sup>146</sup> Bangladesh accepted the olive branch from Chinese investors; this has facilitated a large number of new power plants projects in Bangladesh.<sup>147</sup> It is not surprising,

<sup>141</sup> A. R. Rasel, '7 New Coal-fired Power Plants Planned', Bangladesh's First Internet Newspaper (14 December 2011), available at <https://bdnews24.com/bangladesh/2011/12/14/7-new-coal-fired-power-plants-planned> (last visited 05 September 2022).

<sup>142</sup> *Ibid.*

<sup>143</sup> E. Downs, *The China-Pakistan Economic Corridor Power Projects: Insights into Environmental and Debt Sustainability* (2019), 17-30; Bogojević & Zou, *supra* note 139, 16; Kratz, *supra* note 25, 9.

<sup>144</sup> Nedopil Wang, *supra* note 16, 9.

<sup>145</sup> M. A. Haque & J. Rahma, 'Power Crisis and Solution in Bangladesh', 45 *Bangladesh Journal of Scientific and Industrial Research* (2010) 2, 155,155; 'Wartsila Provides More Power Plants to Ease Electricity Shortage in Bangladesh', Power Engineering (20 September 2017), available at <https://www.power-eng.com/on-site-power/wartsila-provides-more-power-plants-to-ease-electricity-shortage-in-bangladesh/#gref> (last visited 05 September 2022).

<sup>146</sup> N. Karim, 'Bangladesh Looks to Cut Future Coal Use as Costs Rise', Reuters (7 August 2020), available at <https://www.reuters.com/article/us-bangladesh-energy-climatechange-trfn-idUSKCN25320C> (last visited 05 September 2022).

<sup>147</sup> D. Li & Y. Wang, 'Bangladesh May Suspend New Power Plant Approvals', China Dialogue (11 September 2019), available at <https://chinadialogue.net/en/energy/11512-bangladesh-may-suspend-new-power-plant-approvals/> (last visited 05 September 2022).

therefore, that Chinese companies became dominant in both the construction and investment of newly planned projects.<sup>148</sup>

At the outset, both governments seem to be fully committed to collaboration. In the 2016 MoU between China and Bangladesh, both parties outlined their cooperation on the construction of the Gazaria power station, worth \$433 million US.<sup>149</sup> Despite the introduction of a draft bill prohibiting the use of crop land for industrial purposes, the Gazaria project was given the green light by the Executive Committee of the National Economic Council of Bangladesh.<sup>150</sup> Some extreme violence followed, as was the case with the Banshkhali power station contracted between S. Alam Group and two Chinese companies. Confrontations between villagers who were concerned with the environmental impact and those who were attracted by employment opportunities resulted in police shootings, causing four deaths.<sup>151</sup> This violence did not, however, prevent the government from approving the project.<sup>152</sup>

Both the Gazaria and Banshkhali projects, alongside other coal-fired plants, now face cancellation.<sup>153</sup> In August 2020, Bangladesh's Minister of Power, Energy, and Mineral Resources announced that the country is planning to review the number of coal-based power plants, around 90% of which might be abandoned.<sup>154</sup> The Banshkhali project is on the cancellation list sent to the

<sup>148</sup> T. Baxter, 'Bangladesh May Ditch 90% of its Planned Coal Power', *China Dialogue* (27 August 2020), available at <https://chinadialogue.net/en/energy/bangladesh-may-ditch-planned-coal-power/> (last visited 05 September 2022).

<sup>149</sup> R. U. Mirdha, 'Beximco, Meghna Tie up With Chinese Investors for Power', *The Daily Star* (18 October 2016), available at <https://www.thedailystar.net/business/beximco-meghna-tie-chinese-investors-power-1300171> (last visited 05 September 2022).

<sup>150</sup> Global Energy Monitor, 'Gazaria Power Station', available at [https://www.gem.wiki/Gazaria\\_power\\_station\\_\(RPCL\)](https://www.gem.wiki/Gazaria_power_station_(RPCL)) (last visited 05 September 2022).

<sup>151</sup> P. Roy, 'Four Killed as Bangladesh Villagers Oppose Coal-Fired Power Plant', *China Dialogue* (18 April 2016), available at <https://chinadialogue.net/en/pollution/8838-four-killed-as-bangladesh-villagers-oppose-coal-fired-power-plant/> (last visited 05 September 2022).

<sup>152</sup> A. Muhammad, 'Scrap Projects of Destruction', *The Daily Star* (11 April 2016), available at <https://www.thedailystar.net/op-ed/politics/scrap-projects-destruction-1207177> (last visited 05 September 2022).

<sup>153</sup> Baxter, *supra* note 148.

<sup>154</sup> Karim, *supra* note 146; *Ibid.*

Prime Minister's office.<sup>155</sup> Bangladesh also requested the removal of the Gazaria plant from the agreed lists of investment projects.<sup>156</sup>

For the host country, its energy problem is shifting from power shortages to risking a surplus.<sup>157</sup> Bangladesh's dependence on imports of both equipment and coal makes it sensitive to the growing price of coal on the global market.<sup>158</sup> At the same time, power demand has dropped as Gross Domestic Product (GDP) growth could dive from a pre-COVID forecast of 7.4% to just 2.0%.<sup>159</sup> According to the Institute for Energy Economics and Financial Analysis (IEEFA), power system overcapacity problems and the rising cost of coal have put a significant financial strain on the Bangladesh Power Development Board,<sup>160</sup> prompting Bangladesh to reconsider those coal plants.<sup>161</sup> Turning from coal to other fossil fuels or renewables seems to be an economically rational choice.

On the other hand, the Chinese government also has incentives to withdraw from coal-related sectors. In the search for global leadership of climate governance in the post-Paris era,<sup>162</sup> China must not only reduce its domestic

<sup>155</sup> P. Roy, 'Future not Coal Power', *The Daily Star* (19 November 2020), <https://www.thedailystar.net/frontpage/news/future-not-coal-power-1997305> (last visited 05 September 2022).

<sup>156</sup> J. Chakma, '\$ 3.6b Chinese Loan Uncertain After Dhaka Drops Projects from Agreed List', *The Daily Star* (04 March 2021), available at <https://www.thedailystar.net/business/news/36b-chinese-loan-uncertain-after-dhaka-drops-projects-agreed-list-2054613> (last visited 05 September 2022).

<sup>157</sup> Li & Wang, *supra* note 147; M. A. Rahman, 'Pause in Approval to New Power Plants Likely', *The Financial Express* (5 May 2019), available at <https://thefinancialexpress.com.bd/trade/pause-in-approval-to-new-power-plants-likely-1557891145> (last visited 3 July 2021).

<sup>158</sup> Baxter, *supra* note 148.

<sup>159</sup> *Ibid.*

<sup>160</sup> IEEFA, 'Bangladesh's Power System Overcapacity Problem is Getting Worse' (20 January 2021), available at <https://ieefa.org/ieefa-bangladeshs-power-system-overcapacity-problem-is-getting-worse/> (last visited 05 September 2022); IEEFA, 'Bangladesh Power Review: Overcapacity, Capacity Payments, Subsidies and Tariffs Are Set to Rise Even Faster' (May 2020), available at [https://ieefa.org/wp-content/uploads/2020/05/Bangladesh-Power-Review\\_May-2020.pdf](https://ieefa.org/wp-content/uploads/2020/05/Bangladesh-Power-Review_May-2020.pdf) (last visited 05 September 2022).

<sup>161</sup> A. Siddique, 'Finances Force Bangladesh to Reconsider Coal Plants', *The Third Pole* (19 October 2020), available at <https://www.thethirdpole.net/en/energy/lack-of-finance-forces-bangladesh-to-consider-shelving-coal/> (last visited 05 September 2022).

<sup>162</sup> 'Xi Focus: China Injects Impetus into Global Climate Governance', *XinHua News* (30 October 2021), available at: [http://www.news.cn/english/2021-10/30/c\\_1310279723.htm](http://www.news.cn/english/2021-10/30/c_1310279723.htm) (last visited 10 February 2022); G. Chen, 'China' Quest for Global Climate Leadership', *East Asian Forum* (24 June 2021), available at: <https://www.eastasiaforum.org>.

GHG emissions but also limit outsourcing emissions with surplus productivity.<sup>163</sup> In 2021, Chinese President Xi announced before the UN General Assembly that China "... will not build new coal-fired power plants abroad"<sup>164</sup>. Retreating from Bangladesh's coal-power investments reflects the enthusiasm to shift focus from fossil fuels to renewable projects.<sup>165</sup>

Though the rationales behind the cancellation of BRI-related coal-fired plants in terms of realpolitik seem obvious, the role of social activism must not be ignored. There were constant protests against the Banshkhali project that allegedly affects 7,000 households, 70 mosques, 20 shelter houses, several schools, and numerous other public facilities.<sup>166</sup> Local discontent was provoked by land grabbing, a lack of transparency, environmental concerns, and delays in wage payments, and the clashes between the protestors and police forces have caused a dozen deaths.<sup>167</sup> 129 individuals and 74 organizations from 21 countries, including Bangladesh, wrote a letter to Chinese Minister of Commerce calling for the withdrawal of financial and technical support to the project.<sup>168</sup> In the case of the Gazaria plant, due to massive protests in the local communities, Rural Power Company Limited (RPCL), a Bangladeshi state-owned enterprise that was supposed to implement the project, decided to pull out.<sup>169</sup> The RPCL has written several letters to the Power Division proposing the removal of the

org/2021/06/24/chinas-quest-for-global-climate-leadership/ (last visited 05 September 2022).

<sup>163</sup> Benabdallah, *supra* note 4, 95.

<sup>164</sup> Y. Shi, 'China to Stop Building New Coal Power Projects Overseas', China Dialogue (22 September 2021), available at: <https://chinadialogue.net/en/energy/china-to-stop-building-new-coal-power-projects-overseas/> (last visited 05 September 2022).

<sup>165</sup> J. Han & C. N. Wang, 'China's Coal Investments Phase-out in BRI Countries-Bangladesh Case', Green Belt and Road Initiative Center (27 April 2021), available at <https://green-bri.org/chinas-coal-investments-phase-out-in-bri-countries-bangladesh-case/> (last visited 05 September 2022); 'Bangladesh Looks to Beijing to Speed its Solar Ambition', PV-Magazine (9 June 2020), available at <https://www.pv-magazine.com/2020/06/09/bangladesh-looks-to-beijing-to-speed-its-solar-ambition/> (last visited 05 September 2022).

<sup>166</sup> Roy, 'Future not Coal Power', *supra* note 155.

<sup>167</sup> *Ibid.*

<sup>168</sup> '129 Individuals, 74 Orgs Demand Stop to Banshkhali Coal Power Plant Project', The Daily Star (22 June 2021), available at <https://www.thedailystar.net/environment/news/129-individuals-74-orgs-demand-stop-banshkhali-coal-power-plant-project-2116033> (last visited 05 September 2022).

<sup>169</sup> M. M. Rahaman, 'Chinese Loans: Govt to Drop Coal Plant Project', The Financial Express (22 March 2020), available at <https://thefinancialexpress.com.bd/trade/chinese-loans-govt-to-drop-coal-plant-project-1584684501> (last visited 05 September 2022).

Gazaria project from the Chinese MoU.<sup>170</sup> In addition, some non-government organizations have also made suggestions to aid in the government's decision. Groups such as Transparency International Bangladesh and Waterkeepers Bangladesh are pushing for an alternative power sector development path that would radically expand renewables.<sup>171</sup> Such situations, in which the interests of host and invest countries, multinational business ambitions, and local aspirations are intertwined, are not unique in the BRI. As such, the BRI can no longer be considered a top-down monolithic strategy, but rather one that is co-shaped by actors in different positions.

### III. Civil Society Against Deforestation

Grassroots protests can play a vital role in forcing foreign investors to act in accordance with international law and to be held responsible for the damage caused by illegal projects. One of the recent eye-catching examples concerns the Atewa Forest case in Ghana. In early 2017, Ghana signed a MoU with China, under which China would finance \$2 billion US to help Ghana establish new infrastructure such as roads and hospitals.<sup>172</sup> In exchange, Ghana would repay the loans with bauxite, a sedimentary rock that contains aluminum and gallium.<sup>173</sup> The Ghanaian government claimed that local society would benefit from this deal. However, the execution of this deal had significant environmental and social impacts in some locations, including Atewa, which is not only earmarked as one of the main sources of bauxite but also contains three-quarters of all remaining upland rainforest in Ghana and serves as a vital water source for millions of Ghanaians.<sup>174</sup> Mining in Atewa would destroy habitat for numerous species of endangered mammals, as well as threaten the livelihoods of local communities that rely on cultivating cocoa, cassava, and plantain.<sup>175</sup>

The mining project has raised discontent among local residents. They have argued that deforestation will set off a chain reaction of negative consequences,

<sup>170</sup> *Ibid.*

<sup>171</sup> Baxter, *supra* note 148.

<sup>172</sup> N. Gbadamosi, 'Ghana High Court Considers NGO Case Against Bauxite Mine', China Dialogue (21 October 2020), available at <https://chinadialogue.net/en/nature/ghana-high-court-considers-ngo-case-against-bauxite-mine/> (last visited 05 September 2022).

<sup>173</sup> *Ibid.*

<sup>174</sup> Rainforest Trust, 'New Protection for West Africa's Imperiled Wildlife', available at <https://www.rainforesttrust.org/urgent-projects/new-protection-for-west-africas-imperiled-wildlife/> (last visited 05 September 2022).

<sup>175</sup> Gbadamosi, *supra* note 172.

such as a loss of biodiversity, loss of access to clean water, and the loss of climate amelioration services for the area, and their cause has attracted national and international attention.<sup>176</sup> Over the course of three years, local residents, along with civil society organizations typified by A Rocha Ghana, have taken a series of measures to persuade governments against the scheme. This has included marches, billboards, and an online petition with over 30,000 signatures.<sup>177</sup> A Rocha Ghana even filed a motion with the International Union for Conservation of Nature (IUCN) World Congress to stop all mining exploration inside the forest range,<sup>178</sup> which gained support from the IUCN in its resolution.<sup>179</sup>

The filing of a lawsuit brought their movement to a climax. In 2020, A Rocha Ghana, together with six other civil society organizations and four private citizens, filed a suit against the Attorney General at the Ghana High Court, claiming that bauxite mining in the Atewa Forest violates the right to life and dignity enshrined in Ghana's Constitution, as well as the right to a clean and healthy environment.<sup>180</sup>

As the case is pending, the people of Atewa have reason to believe that they can turn the achieve remedies through the lawsuit. Alongside the abovementioned Lamu case, the plaintiffs can also be inspired by the victory from the Rio Blanco case in Ecuador. On August 3, 2018, the Ecuadorian court ordered the suspension of all mining activities by a Chinese corporation in the highlands of Rio Blanco;<sup>181</sup> this ended a decade-long struggle between Ecuador's indigenous communities and foreign investors. It was the first time in Ecuadorean

<sup>176</sup> M. Sullemana, 'Ghana: Dismiss Atewa Forest Case Against Govt ... A-G to High Court', *AllAfrica* (22 September 2020), available at <https://allafrica.com/stories/202009230228.html> (last visited 05 September 2022).

<sup>177</sup> K. G. Asiedu, 'Ghanaian Activists Sue Government to Save Forest from Mine', *Reuters* (9 July 2020), available at <https://www.reuters.com/article/us-ghana-mining-environment-trfn-idUSKBN24930W> (last visited 05 September 2022).

<sup>178</sup> 'IUCN Members Pass Resolution Calling for Global Action to Save Atewa Forest in Ghana' (2020), available at <https://www.iucn.nl/en/news/iucn-members-pass-resolution-calling-for-global-action-to-save-atewa-forest-in-ghana/> (last visited 05 September 2022).

<sup>179</sup> IUCN, *Urgent Measures to Safeguard the Globally Important Atewa Forest*, WCC-2020-Res-087-EN, 2020.

<sup>180</sup> A Rocha Ghana, 'Gov't of Ghana Taken to Court Over Atewa' (3 July 2020), available at <https://ghana.arocha.org/news/govt-of-ghana-taken-to-court-over-atewa/> (last visited 05 September 2022).

<sup>181</sup> M. Picq, 'When the Impossible Happens: Historic Sentence Upholds Prior Consultation in Ecuador's Rio Blanco Case' (2018), available at <https://intercontinentalcry.org/historic-sentence-upholds-prior-consultation-in-ecuadors-rio-blanco-case/> (last visited 05 September 2022) [When the Impossible Happens].

history that the court upheld the indigenous right to prior consultation since Ecuador ratified the *International Labor Organization (ILO) convention 169* in 1989 and the *UN Declaration on the Rights of Indigenous Peoples* in 2007.<sup>182</sup> With death threats to nature defenders, \$18 million US in bribes to community leaders, and pressure from the central government,<sup>183</sup> the triumph in stopping this operational gold mine (which was expected to generate \$336 million US in tax revenues<sup>184</sup> for the government) did not come lightly. The battle with both government and transnational corporation was backed by a collective effort, as indigenous communities and related organizations across Ecuador supported the struggle.<sup>185</sup> Six *Amicus Curiae* from universities, scholars, and activists offered legal aid before the court.<sup>186</sup> Local media, such as *el Mercurio*, *Ondas Azuayas*, and *Vz del Tomebamba*, broadcast information about legal rights and potential environmental impacts relevant to the case for months, and they also made great contributions to amplify indigenous voices.<sup>187</sup> Resistance from multiple actors is not an obstacle to the BRI but a hope to make it more sustainable. The BRI, as a dynamic framework, embraces and even welcomes such opposition.

## E. Conclusion

To describe the BRI as a project of the Global South is not to say that it is intended to or will necessarily bring prosperity to the underdeveloped countries. On the contrary, there is a risk of duplicating the current hegemonic, neoliberal, and unsustainable world order. The indeterminate nature of the BRI as a dynamic field that allows for the experimentation and emergence of an approach of the Global South to international law must be recognized. As with previous projects of the Global South, the BRI commits only to abstract ideological principles, lacks a centralized coordination mechanism, and is flexible. Unlike previous projects, the BRI is materialized through numerous projects that actually

<sup>182</sup> M. Picq, 'Can the Law Prevail Over Chinese Investments in Ecuador?' (2018), available at <https://intercontinentalcry.org/can-the-law-prevail-over-chinese-investments-in-ecuador/> (last visited 05 September 2022).

<sup>183</sup> *Ibid.*

<sup>184</sup> Picq, 'When the Impossible Happens', *supra* note 181.

<sup>185</sup> N. Hui, 'How Local Communities Halted a Chinese-owned Gold Mine in Ecuador', *China Dialogue* (5 July 2019), available at <https://chinadialogue.net/en/business/11358-how-locals-halted-a-chinese-owned-gold-mine-in-ecuador/> (last visited 05 September 2022).

<sup>186</sup> Picq, 'When the Impossible Happens', *supra* note 181.

<sup>187</sup> *Ibid.*

affect the living conditions of citizens of the host States, employees of Chinese enterprises, and the natural environment. While it is almost impossible to reject the principles or spirit of the decolonization cause of past agendas, contesting the potential outcomes of the concrete projects related to the BRI is relatively straightforward.

Struggles in the name of social and environmental sustainability in Kenya, Pakistan, Ecuador, and Ghana are not isolated. Investments and projects related to the BRI are also contested elsewhere, including notably in Kazakhstan, where this notion was first made known. Since the development projects usually comprise large scale infrastructure, energy facilities, and factory construction, as well as mining, they involve the almost necessary transformation of landscape and human mobility. It is difficult to think of any such project that does not provoke opposition. Each individual project of the BRI is a field of contests, where the words “community of shared destiny” and the ambition for economic growth of the national government confronts the determination of local communities to preserve their livelihood and environment. On each occasion, actors determine and adjust their actions and strategies according to their needs and interests, temporary domestic and international circumstances, and their economic and political powers. On each occasion, abstract political commitments are translated through these interactions into legal rights and duties and, eventually, into concrete and material objects—dams, power plants, factories, forests vanished or preserved, and landscape transformed or protected. On each occasion, battles are lost and won. The arrangements may serve the interests of the local communities or those of the foreign investors, and the resolution of such contests may be sustainable or not. However, the outcome is never predetermined, and nothing is more misleading than thinking of the BRI as a grand design that can be imposed by China alone, regardless of local realities.