

**MAKING FRIENDS THROUGH QUARREL:
CHINESE INVESTOR-STATE DISPUTE SETTLEMENT
AS RELATIONAL FOREIGN POLICY**

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AUTHOR'S DECLARATION

I, the undersigned, **Sofia Mancini**, candidate for the BA degree in Philosophy, Politics, and Economics, declare herewith that the present thesis titled “Making Friends Through Quarrel: Chinese Investor-State Dispute Settlement as Relational Foreign Policy” is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.

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ABSTRACT

Historically, China has not resorted to official investor-state dispute settlement (ISDS) mechanisms for solving most of its investment disputes, favoring alternative means of dispute resolution such as negotiation. Yet, over the past two decades, its participation in the ISDS system has risen slightly, and some expect this trend to intensify as the Belt and Road Initiative (BRI) expands. China has maintained an ambiguous and open approach in formal negotiations on the future of the ISDS system. Concurrently, it has expanded its capabilities for international investment dispute settlement with provisions of domestic, regional, and global scope. In agreement with a growing body of academic literature recognizing the foreign policy relevance of international investment arbitration, this analysis considers China's ISDS practices and position on ISDS reform as an instrument of foreign policy, which as such is integrated in the country's grand strategy. In light of this, I make use of Qin Yaqing's Relational Theory of World Politics and of existing theoretical analyses of the practice of arbitration in China to conduct a preliminary IR-informed analysis. I find that China will not necessarily converge with Western countries on its use of formal ISDS mechanisms, even as the BRI evolves. Instead, I suggest that Chinese ideas and practices regarding dispute settlement will significantly shape ISDS in the future, as the magnitude of the BRI may establish them in practice regardless of their visibility in UN-facilitated negotiations. Moreover, contextualizing China's ISDS in its grand strategy may contribute to a better understanding of it, aiding related diplomacy and policy design.

Keywords: China, investor-state dispute settlement, Relational Theory, foreign policy, grand strategy.

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LIST OF ABBREVIATIONS

BRI	Belt and Road Initiative
CAJAC	China-Africa Joint Arbitration Center
CCP	Chinese Communist Party
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
FDI	foreign direct investment
ICS	investment court system
IR	international relations
ISDS	investor-state dispute settlement
med-arb¹	the practice of employing both mediation and arbitration in the same dispute
UNCITRAL	United Nations Commission on International Trade Law
WGIII	(United Nations Commission on International Trade Law) Working Group III
WTO	World Trade Organization

¹ Author's note: sometimes "med-arb" and "arb-med" are distinguished based on whether mediation is attempted before or after the start of arbitral proceedings. In this thesis, "med-arb" refers to any circumstance where both mediation and arbitration are used in a single case.

INTRODUCTION

China's geographic, demographic, and economic heft and the increasingly central position it has come to occupy in the international system have gained it increasing attention in the study of international relations (IR). The COVID-19 pandemic has confirmed that China's actions on the global stage have profound implications for the rest of the world, which makes understanding its leaders' strategic thinking and policy choices an indispensable task².

International investment law scholarship has followed this shift, especially in view of the uptick China has seen in both incoming and outgoing foreign direct investment (FDI) since its accession to the World Trade Organization (WTO) in 2001. But it was not until more recently, when China's relevance as a source of FDI became more evident, that the study of investor-state dispute settlement (ISDS) began to catch up, with some expecting China to play a significant role in the way this system will evolve³. These economic and political shifts have even been interpreted as quickly turning China into "the world's most impactful geopolitical player today for investor-state dispute settlement"⁴, especially given that China's initiatives in

² Elizabeth Economy, "Xi Jinping's New World Order," *Foreign Affairs*, December 9, 2021, <https://www.foreignaffairs.com/china/xi-jinpings-new-world-order#>; Wang Jisi, "China's Search for a Grand Strategy: A Rising Great Power Finds Its Way," *Foreign Affairs* 90, no. 2 (2011): 68–69.

³ See for example Hao Yayezi and Ignacio de la Rasilla, "China and International Adjudication—Picking Up Steam?," *Journal of International Dispute Settlement* 12, no. 4 (2021): 637–68, <https://doi.org/10.1093/jnlids/idab015>; Shen Wei, "Current Landscape and Puzzling Issues," in *Decoding Chinese Bilateral Investment Treaties* (Cambridge University Press, 2021), <https://doi.org/10.1017/9781108867146.001>; Cai Congyan and Wang Yifei, "Introduction," in *The BRICS in the New International Legal Order on Investment: Reformers or Disruptors*, ed. Cai Congyan et al. (BRILL, 2020); Matthias Vanhüllebusch, "China's International Investment Strategy: Towards a Relational Normativity," *The Journal of World Investment & Trade* 21, no. 6 (2020): 921–37, <https://doi.org/10.1163/22119000-12340179>; Chen Huiping, "China's Innovative ISDS Mechanisms and Their Implications," *AJIL Unbound* 112 (2018): 207–11; Diane Desierto, "China as a Global ISDS Power," *Investment Claims*, August 24, 2018, <https://oxia.ouplaw.com/page/715>; Stephan Wilske, "Significant Differences in International Arbitration in the 'East' and the 'West': Myth, Reality, or Lost in Globalization?," in *Legal Thoughts Between the East and the West in the Multilevel Legal Order*, ed. Lo Chang-fa et al., Economics, Law, and Institutions in Asia Pacific (Springer, 2016), <https://link.springer.com/book/10.1007/978-981-10-1995-1>; Yu Hong-Lin, "A Bad Compromise Is Better Than A Good Lawsuit: Mutual Influences Between the East and the West on Mediation," in *Legal Thoughts Between the East and the West in the Multilevel Legal Order*, ed. Chang-fa Lo et al., Economics, Law, and Institutions in Asia Pacific (Springer, 2016), <https://link.springer.com/book/10.1007/978-981-10-1995-1>.

⁴ Desierto, "China as a Global ISDS Power."

this field often also fulfill the interests and gain the approval of several other governments⁵. Yet, and despite a growing body of academic literature recognizing the foreign policy relevance of international investment arbitration⁶, not much inquiry has been conducted on China's ISDS practices and reform stance as part of its foreign policy. In this thesis, I take an IR approach to situate the way China conducts ISDS and its official positions on ISDS reform in the country's "grand strategy", a concept introduced by international relations scholar Wang Jisi⁷ in a now-seminal 2011 article⁸ which refers to the coherent set of policies allowing China to protect its core interests and attain its national objectives. I turn to Qin Yaqing's Relational Theory of World Politics and to existing theoretical analyses of the practice of arbitration in China to examine China's ISDS behavior in an IR light. I examine China's recommendations in the United Nations Commission in International Trade Law (UNCITRAL)'s Working Group III (WGIII) as an illustration of the position its government officially takes on the question of ISDS reform. I then focus on the Belt and Road Initiative (BRI) as a concrete example of Chinese actors' practice of ISDS, as this project is not only "the centerpiece of China's foreign policy and international economic strategy"⁹, but also the legal framing of most of China's FDI projects.

My analysis yields the following results. I find that the stance China adopts in multilateral negotiations on the future of ISDS as well as the way it practices ISDS in the context of the BRI reflect the relational philosophy that characterizes its international relations. I also find that China's actions actively shape global ISDS in its own image, in line with the Chinese

⁵ Chen, "China's Innovative ISDS Mechanisms."

⁶ See for example Hao and de la Rasilla, "China and International Adjudication"; Vanhullebusch, "China's International Investment Strategy"; Chen, "China's Innovative ISDS Mechanisms"; Desierto, "China as a Global ISDS Power."

⁷ *Author's note: in this work I have written Chinese names with surname first and non-Chinese and mixed names with forename first, except for the first author listed in bibliography entries.*

⁸ Wang, "China's Search for a Grand Strategy."

⁹ Michael M. Du, "China's 'One Belt, One Road' Initiative: Context, Focus, Institutions, and Implications," *The Chinese Journal of Global Governance* 2, no. 1 (2016): 31, <https://doi.org/10.1163/23525207-12340014>.

Communist Party (CCP)'s explicit objective of "lead[ing] the reform of the global governance system"¹⁰. I suggest that this will have a significant impact on the future of ISDS, especially given that China is in the process of putting its proposed reforms into practice in the BRI. I also suggest that contextualizing China's ISDS in its grand strategy may fill some gaps in our understanding of it, such as its behavior in negotiations at the UN and on bilateral treaties.

The interdisciplinary approach linking IR and ISDS is a relatively new one, and more research is needed before it consolidates into an established research area¹¹. Moreover, relating small-scale developments to large-scale concepts always presents some difficulties: theory and practice seldom coincide and the latter tends to escape and outgrow the former, especially when, as in this case, the reality examined is present and still unfolding. Nonetheless, contextualizing China's ISDS in its grand strategy and in the IR philosophy that underlies it can help negotiators and practitioners alike better understand this aspect of Chinese policy and calibrate their interactions accordingly.

In the next section, I elucidate the concept of China's grand strategy, explain Qin Yaqing's Relational Theory of World Politics, and consider existing theoretical analyses of the practice of arbitration in China. I clarify their relevance for the object of this thesis and reference how Relational Theory has been employed to study Chinese foreign policy and economic governance, especially FDI and ISDS. In the following section, I first provide background on investor-state dispute settlement and China's place in it, then lay out China's official stance on the reform of the ISDS system and its practical policies concerning it. I connect these to the principles of grand strategy and Relational Theory. The concluding section summarizes the thesis' findings, offers preliminary projections regarding China's future engagement with ISDS

¹⁰ Bates Gill, "Leadership," in *Daring to Struggle* (Oxford University Press, 2022), 139, <https://www.oup.com.au/books/others/9780197545645-daring-to-struggle>.

¹¹ Vanhullebusch, "China's International Investment Strategy," 929-934.

and the evolution of the broader ISDS system, and identifies avenues for further scholarly inquiry.

GRAND STRATEGY, RELATIONAL THEORY, AND ARBITRATION

I begin this chapter by elucidating the notion of “Chinese grand strategy”. As this concept invites us to consider Chinese policy holistically and in view of China’s national objectives, it proves a helpful approach for locating Chinese ISDS in its foreign policy. Next, I explain the role Relational Theory of World Politics plays in China’s grand strategy and consider the way in which the core principles of this theory have been applied to the practice of arbitration in China, laying the theoretical foundation for the IR-informed analysis of Chinese ISDS I will conduct in the following section.

China’s Grand Strategy

The concept of “grand strategy”, as articulated by Wang Jisi, is founded upon the identification of a set of core national interests, the external forces threatening them, and the policy responses needed to safeguard them¹². In 2011, Wang wrote that even though the Chinese government had not included explicit references to a comprehensive grand strategy in its official documents, its foreign and defense policies had been “remarkably consistent and reasonably well coordinated with the country’s domestic priorities”¹³, which already at the time were clearly listed as being “state sovereignty, national security, territorial integrity and national

¹² Wang, “China’s Search for a Grand Strategy,” 68.

¹³ Ibid.

reunification, China's political system established by the Constitution and overall social stability, and the basic safeguards for ensuring sustainable economic and social development"¹⁴.

Fourteen years on, the picture is even clearer. Since taking on the role of Party General Secretary in 2012, Xi Jinping has steered Chinese diplomacy from the "low profile" kept by his predecessors into a "new era" marked by a significantly more assertive stance¹⁵. In the "new era", on top of safeguarding its national interests, China is meant to preserve its sovereignty in internal affairs, maintain territorial integrity, keep developing socially and economically, "move closer to center stage" in international affairs, and lead the "global community of shared future" in a reformed international system¹⁶. On that matter, Xi has been explicit about the fact that as China becomes more relevant in international affairs, the patterns of global governance should shift in its direction. To make that happen, China will "take an active part in leading the reform of the global governance system" by offering "Chinese wisdom and a Chinese approach to solving the problems facing mankind"¹⁷. Finally, by becoming "a global leader in terms of composite national strength and international influence"¹⁸, China first seeks to "lay the foundation for a future where [it] will win the initiative and have the dominant position", and then eventually realize the "Dream of National Rejuvenation"; explained simply, "the Chinese Dream is to make the country strong"¹⁹. These objectives coincide with those of the CCP and

¹⁴ Information Office of the State Council, "China's Peaceful Development," The State Council of the People's Republic of China, September 6, 2011, https://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284646.htm.

¹⁵ Luis Tomé, "The BRI in Xi's China 'Grand Strategy': An Instrument to Restore Chinese Centrality in a New Era," in *The Palgrave Handbook of Globalization with Chinese Characteristics*, ed. Paulo Alfonso B. Duarte et al. (Palgrave Macmillan, 2023), 71, <https://doi.org/10.1007/978-981-19-6700-9>. See also Gill, "Leadership." For an analysis of China's rise to leadership in international affairs during Xi Jinping's tenure.

¹⁶ Tomé, "The BRI in Xi's China 'Grand Strategy'," 85.

¹⁷ Gill, "Leadership," 139.

¹⁸ Xi Jinping, "Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era," October 18, 2017, http://www.xinhuanet.com/english/download/Xi_Jinping%27s_report_at_19th_CPC_National_Congress.pdf.

¹⁹ Information Office of the State Council, "China's Military Strategy," The State Council of the People's Republic of China, May 27, 2015, https://english.www.gov.cn/archive/white_paper/2015/05/27/content_281475115610833.htm.

are framed as only being achievable under its leadership, so preserving the party's power is crucial in this process²⁰.

Xi has not only spelled out what China's objectives are, but also how to attain them. In the words of the Chinese government, "President Xi Jinping has considered China's responsibilities from a global perspective, and proposed the vision of a global community of shared future and the Belt and Road Initiative"²¹. The BRI advances the CCP's objectives in manifold ways, crossing through interests and policy areas. It promotes economic growth by providing endless investment opportunities for Chinese companies and offering them an output for their industrial overcapacity, as well as by attracting FDI and strengthening China's economic ties with other countries and regions. This helps the development of China's poorest regions and sustains domestic social and political order. The BRI also allows China to diversify its energy supply and routes, bolster the use of the renminbi, reduce the country's reliance on foreign currency reserves, and increase its geopolitical influence²². As Tomé summarizes, it "provides Beijing with great opportunities to produce common rules, promote alternative norms, and socialize ideas among countries and regions along the Silk Road and, ultimately, promote Chinese soft power"²³. All these benefits also act as counterbalance to American containment strategies: Wang Jisi himself wrote in 2018 that "the BRI is not merely a 'Marching West' strategy to advance China's geostrategic interests in Eurasia, but also a geostrategic rebalance to the US' 'Pivot to Asia'"²⁴.

²⁰ Tomé, "The BRI in Xi's China 'Grand Strategy'," 69.

²¹ Information Office of the State Council of the People's Republic of China, "China's International Development Cooperation in the New Era," Information Office of the State Council of the People's Republic of China, January 10, 2021, https://english.www.gov.cn/archive/whitepaper/202101/10/content_WS5ffa6bbbc6d0f72576943922.html.

²² Tomé, "The BRI in Xi's China 'Grand Strategy'," 73-74.

²³ Ibid, 79.

²⁴ Cited in *ibid*, 82.

Xi has also made it clear what it is that China opposes. “The law of the jungle, power politics and hegemonism”²⁵ have no place in the “new era”, nor do “unilateralism and protectionism”²⁶, “the cold-war and zero-sum mentality”, and “bossing around and meddling in others’ internal affairs”²⁷ – all expressions which allude to the USA and sometimes more generally to NATO and “the West”.

China’s core interests, the external forces that can hinder them, and the policies needed to attain and protect them are therefore not as hard to identify today as they were before Xi Jinping’s tenure as CCP General Secretary. The fact that the Chinese government may not have complete control down to the details of each BRI project and that Chinese companies may act in ways that are more aligned with their search for profit than with the Party’s official guidelines²⁸ does not erase the many ways in which the BRI advances China’s national interests. Flexibility, heterogeneity, decentralization, and even fragmentation²⁹ and ambiguity³⁰ are not weaknesses of the BRI (even though they may have their downsides): they are essential characteristics that allow such a vast project to exist.

²⁵ Information Office of the State Council of the People’s Republic of China, “China and the World in the New Era,” Information Office of the State Council of the People’s Republic of China, September 27, 2019, https://english.www.gov.cn/archive/whitepaper/201909/27/content_WS5d8d80f9c6d0bcf8c4c142ef.html.

²⁶ “Beijing Declaration-Toward an Even Stronger China-Africa Community with a Shared Future,” The 2018 Beijing Summit of The Forum on China-Africa Cooperation, September 12, 2018, https://focacsummit.mfa.gov.cn/eng/hyqk_1/201809/t20180912_5858593.htm.

²⁷ Xi Jinping, “Pulling Together Through Adversity and Toward a Shared Future for All,” Embassy of the People’s Republic of China in Malaysia, April 20, 2021, https://my.china-embassy.gov.cn/eng/zgxw/202104/t20210420_8919315.htm.

²⁸ Benjamin Barton, “The Belt and Road Initiative at Ten (2013–2023): A Crucial Juncture for China’s Infrastructure Geopolitics,” in *Reimagining the Silk Roads*, 1st ed. (Routledge, 2024), 301-302.

²⁹ *Ibid.*, 301.

³⁰ Carmen Amado Mendes and Wang Xuheng, “The Belt and Road Initiative in Global Governance: Impact on the International World Order,” in *The Palgrave Handbook of Globalization with Chinese Characteristics*, ed. Paulo Alfonso B. Duarte et al. (Palgrave Macmillan, 2023), 112, <https://doi.org/10.1007/978-981-19-6700-9>.

Relational Theory of World Politics and International Arbitration

As this thesis intends to show, even when controversies do arise from BRI projects³¹, China is increasingly better equipped to handle them in ways that protect the country's image and are in line with its discourse and aims. In this view, China's ISDS practice and reform efforts are not a sphere independent from the country's foreign policy strategy, but its part and parcel, and Chinese theories of international relations may thus provide a useful framework for analyzing them. Here I take into consideration Qin Yaqing's Relational Theory of World Politics to this end. Qin is a highly influential figure in Chinese IR scholarship, so his ideas hold significant weight in foreign policy circles and simultaneously reflect the perspectives of Chinese leaders and incorporate their preferences³².

Qin introduces Relational Theory as an "Eastern" integration of IR theory which distinguishes itself for being grounded in Confucian values, emerging from a distinctly Chinese conception of the world as a complex network of relationships between actors, and for its objective of preserving global harmony. He contrasts this to more traditional "Western" IR theory, which he claims is based on Enlightenment ideals of rationality, stems from a predominantly American understanding of the world as a collection of individual actors, and is centered on addressing unavoidable conflict. Relational Theory prioritizes *guanxi* ("relationships" or "personal connections") over individual actors as its primary unit of analysis. Qin describes Confucian principles as being deeply rooted in Chinese society³³ and explains that in such a community, *guanxi* is established and reinforced through cycles of *renqing* ("human feelings"), which can arise not only from material exchanges, but also from non-material elements such as kindness

³¹ Barton, "The Belt and Road Initiative at Ten," 302-303.

³² Ho Tze Ern, "The Relational-Turn in International Relations Theory: Bringing Chinese Ideas into Mainstream International Relations Scholarship," *American Journal of Chinese Studies* 26, no. 2 (2019): 92.

³³ Qin Yaqing, "A Relational Theory of World Politics," *International Studies Review* 18, no. 1 (2016): 33-47, <https://doi.org/10.1093/isr/viv031>.

and rhetoric. Such relationships provide actors with access to each other's resources and are governed by the norm of reciprocity. Therefore, an actor's relational power is assessed not by their own means, but by their capacity to forge, sustain, and manipulate close relationships that provide access to additional resources³⁴.

Relational Theory can serve as a theoretical lens to understand the international dimension of China's grand strategy. Especially when it comes to foreign policy, Xi Jinping places great importance on ideology, morality, and nationalistic expressions of Chinese uniqueness. Kevin Rudd wrote in 2022 that "under Xi, ideology drives policy more often than the other way around"³⁵, and Wang Jianwei describes him as "committed to introducing idealistic and moralistic elements" into a foreign policy already "colored by his idealistic and moralistic impulse"³⁶. Wang attributes this to the fact that Xi sees China and talks about it as a "big country" that has a moral responsibility to pursue justice and not exclusively economic interest³⁷, unlike his three predecessors who instead "dispensed with theory", as Deng Xiaoping put it in 1981, and pursued economic modernization in a more narrow, pragmatic, and market-centered way³⁸. The nationalism in Xi's foreign policy style finds expression in the increasingly numerous and assertive claims by Chinese diplomats and leadership presenting China as the source of an alternative global order called "the Community of Shared Future for Mankind". Founded on Confucian-derived principles such as harmony, friendship, and cooperation, the Community is not simply a conglomerate of allies, but an idealistic vision of the future that presupposes a "new kind of international relations" different from the one that has been

³⁴ Joshua Eisenman, "Locating Africa in China's Community of Shared Future for Mankind: A Relational Approach," *Journal of International Development* 35, no. 1 (2023): 75, <https://doi.org/10.1002/jid.3674>.

³⁵ Kevin Rudd, "The World According to Xi Jinping," *Foreign Affairs*, October 10, 2022, <https://www.foreignaffairs.com/china/world-according-xi-jinping-china-ideologue-kevin-rudd>.

³⁶ Wang Jianwei, "Xi Jinping's 'Major Country Diplomacy': A Paradigm Shift?," *Journal of Contemporary China* 28, no. 115 (2019): 20, <https://doi.org/10.1080/10670564.2018.1497907>.

³⁷ Ibid.

³⁸ Ibid, 19-20.

practiced so far³⁹. In this line, Xi Jinping's diplomatic approach has been described within China as "transcend[ing] the traditional Western theories of international relations for the past 300 years"⁴⁰. In examining Chinese relations with African countries, Eisenman notes a striking resemblance between the Community of Shared Future and the Confucian ideal of a (Sinocentric) society preserved in its natural state of harmony by abidance to Confucian moral values and norms⁴¹.

Communism remains China's official ideology, but it was largely sidelined in scholarly analysis of Chinese foreign policy in recent decades⁴² as it did not align well with the realist-mercantilist strategies of previous leaders⁴³. With ideology regaining prominence in the CCP, theories cantered on Communism still appear inadequate, and a different theoretical framework is needed that takes into account the considerable nationalistic elements the CCP has introduced in its discourse and policy. In this view, Relational Theory answers all the demands of Chinese foreign policy under Xi. It is presented as an original Chinese framework and an alternative to Western theories of international relations and it is rooted in the same Confucian values the CCP incorporates in its discourse. From the outset, these values carry significant moral weight, as their function is to maintain societal order and prevent chaos and immorality.

It is not only scholars outside of China that substitute Communism with relationality. Qin himself, when illustrating his theory, recounts that during the 1960s China extended material assistance to several African countries "to gain the reputation as a friend in need through its solidarity", and that the backing of these nations was later crucial in the admission of the People's Republic of China to the United Nations in 1971⁴⁴. As Eisenman rightly notes, this

³⁹ Ibid, 17.

⁴⁰ Ibid.

⁴¹ Eisenman, "Locating Africa."

⁴² Rudd, "The World According to Xi Jinping."

⁴³ Wang, "Xi Jinping's 'Major Country Diplomacy,'" 43.

⁴⁴ Qin, "Relational Theory," 42.

portrayal of events as a cycle of *renqing* contrasts with the Communist ideals Maoist China invoked at the time to justify their support for African revolutionaries in their struggle for independence⁴⁵.

In addition to these theoretical advantages, its versatility makes relationality a particularly effective foundation for policy strategy, as it provides enough room for maneuver and can integrate various, even seemingly contradictory approaches. In this way, the CCP is able to implement a successful foreign policy strategy that meets its material interests – which may include actions similar to those taken by Western governments – while also claiming to “transcend Western theories of international relations” and operate according to a different paradigm.

Relational Theory has been widely employed to analyze China’s international relations, including its behavior in relation to foreign aid and FDI⁴⁶. Its application in the field of international law has been more contained, but Matthias Vanhüllebusch has begun to move in this direction with multiple studies where he employs a “Theory on the Relational Normativity

⁴⁵ Eisenman, “Locating Africa,” 68.

⁴⁶ For specific applications of Relational Theory to FDI and foreign aid, see Eisenman, “Locating Africa.” and Marina Rudyak, “‘We Help Them, and They Help Us’: Reciprocity and Relationality in Chinese Aid to Africa,” *Journal of International Development* 35, no. 4 (2023): 583–99, <https://doi.org/10.1002/jid.3699>. For analyses concentrating on China’s relations with African countries, see Eisenman, “Locating Africa” and Rudyak, “‘We Help Them, and They Help Us’” as well as Ilaria Carrozza and Lina Benabdallah, “South–South Knowledge Production and Hegemony: Searching for Africa in Chinese Theories of IR,” *International Studies Review* 24, no. 1 (2022): viab063, <https://doi.org/10.1093/isr/viab063>; Lina Benabdallah, *Shaping the Future of Power: Knowledge Production and Network-Building in China-Africa Relations* (University of Michigan Press, 2020), <https://doi.org/10.3998/mpub.10194365>; Lina Benabdallah, “Power or Influence? Making Sense of China’s Evolving Party-to-Party Diplomacy in Africa,” *African Studies Quarterly* 19, nos. 3 & 4 (2020): 95–114. For theoretical analyses, see Shih Chih-yu, “Re-Worlding China: Notorious Tianxia, Critical Relationality,” *E-International Relations*, September 2, 2020, <https://www.e-ir.info/2020/09/02/re-worlding-china-notorious-tianxia-critical-relationality/>; Shih Chih-yu et al., *China and International Theory: The Balance of Relationships* (Routledge, 2019), <https://doi.org/10.4324/9780429423130>; Emilian Kavalski, “Guanxi or What Is the Chinese for Relational Theory of World Politics,” *International Relations of the Asia-Pacific* 18, no. 3 (2018): 397–420, <https://doi.org/10.1093/irap/lcy008>; Astrid H M Nordin and Graham M Smith, “Reintroducing Friendship to International Relations: Relational Ontologies from China to the West,” *International Relations of the Asia-Pacific* 18, no. 3 (2018): 369–96, <https://doi.org/10.1093/irap/lcy011>. For a historical analysis, see Brantly Womack, “A Unique Path of Political Development: The Confucian Dialectic of Domestic and International Interaction in the History of the Communist Party of China,” *Journal of Contemporary China* 31, no. 137 (2022): 693–708, <https://doi.org/10.1080/10670564.2021.2010862>.

of International Law” across various domains of international law⁴⁷. This newly proposed theory is meant to bridge two academic fields by integrating the classical epistemological frameworks of international law scholarship with Chinese IR concepts derived from Qin’s Relational Theory.

Notwithstanding the infrequent use of Relational Theory in international law scholarship, analyses of the Chinese approach to arbitration abound, often applying to their own discipline the same cultural principles Qin applies to IR. For instance, Nigel N. T. Li and Angela Y. Lin highlight the “pervasive influence” Confucianism has exerted over dispute settlement in China. They write that “although the Western idea of international arbitration has taken root in Chinese societies, modern arbitration is still influenced by the [Confucian] tradition, making arbitrators act as mediators and Guanxi (關係) important in appointment of arbitrators”⁴⁸. They point out that while in the classical, Western-influenced view arbitration and mediation are distinct and the same person may not perform both in the same dispute, this principle is not necessarily observed in China, where traditionally these two methods were not clearly separated. In fact, the employment of both mediation and arbitration to solve the same dispute (“med-arb”) is a common practice in China, and the same person may often fulfill the role of mediator and arbitrator, switching roles when needed⁴⁹. Li and Lin also draw a link between the important normative weight of the concept of *guanxi* in Confucian tradition and the way parties to a

⁴⁷ Vanhüllebusch, “China’s International Investment Strategy”; Matthias Vanhüllebusch, “Global Governance, Conflict and China,” in *Global Governance, Conflict and China*, vol. 2, Chinese Perspectives on Human Rights and Good Governance (Brill Nijhoff, 2018), <https://brill.com/display/title/35897>; Matthias Vanhüllebusch, “China’s Development Banks in Asia: A Human Rights Perspective,” in *Contemporary Issues in Human Rights Law: Europe and Asia*, ed. Yumiko Nakanishi (Springer, 2018), https://doi.org/10.1007/978-981-10-6129-5_10; Matthias Vanhüllebusch, “China’s Air Defence Identification Zone: Towards the Crystallization of a New International Custom,” in *Asian Yearbook of International Law, Volume 22 (2016)* (Brill Nijhoff, 2018), https://doi.org/10.1163/9789004379633_014.

⁴⁸ Nigel N.T. Li and Angela Y. Lin, “How Confucianism Asserts Itself in Modern ADR Development in East Asia: A Revisit,” 507, in *Legal Thoughts Between the East and the West in the Multilevel Legal Order*, ed. Chang-fa Lo et al., Economics, Law, and Institutions in Asia Pacific (Springer, 2016), <https://link.springer.com/book/10.1007/978-981-10-1995-1>.

⁴⁹ Ibid, 511.

dispute tend to appoint arbitrators who have some type of relationship to them. They explain that if an arbitrator has *guanxi* with the disputants, he or she is able to make a more appropriate decision which takes the relevant social norms into account⁵⁰. They contrast this to the “hard-core notion” typical of the Western world that judicial functions are there “to see justice done neutrally and independently, free of influence from Guanxi(關係)”⁵¹.

China spans over a vast territory whose histories stretch back thousands of years. As a result, to quote Wang Guiguo, “it is extremely difficult, if not impossible, even to define what the traditional Chinese culture is or to precisely identify those writings that could be considered to be essential parts of it, let alone examine in detail their substance”⁵². Nonetheless, scholarly analysis, at least in IR and international law, tends to center “Chinese culture” on Confucianism, or at least on a certain expression of it, with Taoism and Buddhism at the margins. This is likely not independent from the emergence in China in the past 30 years of government-endorsed “strong forces” encouraging a resumption of the study of Confucianism⁵³. Notwithstanding this complexity, Wang explains that in China “[traditional Chinese culture’s] impact on the decision making and human behaviors is instantly and constantly felt despite the fact that the study of traditional Chinese culture was interrupted and neglected for some time in contemporary Chinese history”. He also expects the influence of thus defined “traditional Chinese culture” to increase as its study is resumed⁵⁴.

⁵⁰ Ibid, 515-516.

⁵¹ Ibid, 512.

⁵² Wang Guiguo, “The New Haven School of Legal Theory from the Perspective of Traditional Chinese Culture,” *Asia Pacific Law Review* 20, no. 2 (2012): 212, <https://doi.org/10.1080/10192557.2012.11788261>.

⁵³ Ibid.

⁵⁴ Ibid.

CHINA AND INVESTOR-STATE DISPUTE SETTLEMENT

Having laid the theoretical foundation for my analysis in the previous section, I begin this chapter by providing some background on the investor-state dispute settlement system and China's place in it. I then examine China's official stance on ISDS reform and Chinese actors' practice of ISDS in light of China's grand strategy and the principles of Relational Theory.

The Investor-State Dispute Settlement System

When a company based in one country invests in a project taking place in a different country, disputes may arise between the investor and the host government, for example due to legislative changes affecting the project or civil opposition to the investment. In such instances, the investor may initiate legal proceedings against the host state. Such cases are typically filed under an international investment agreement concluded between the involved states; most often, this is a bilateral investment treaty, though other legal instruments such as free trade agreements are also used⁵⁵. Most of these cases are handled in one of four institutions: the International Center for Settlement of Investment Disputes, based in Washington (which administers most cases); the Permanent Court of Arbitration, based in The Hague; the Arbitration Institute of the Stockholm Chamber of Commerce; and the International Court of Arbitration of the International Chamber of Commerce, based in Paris⁵⁶.

This legal architecture, comprising treaties, agreements, and specialized investment tribunals, lays the foundation of the investor-state dispute settlement system. This system took on its current form in the middle of the last century, when international agreements (and especially

⁵⁵ Shen, "Current Landscape," 1.

⁵⁶ Chen, "China's Innovative ISDS Mechanisms."

bilateral investment treaties) aimed at protecting foreign investors from ill treatment by host states started coming into force. With time, these agreements have become an essential source of reassurance for investors about the “quality” of the investment climate in a host country, while their absence has come to signal “danger” and excessive risk⁵⁷.

In the past 20 years, the ISDS system has become increasingly contested, as the vague wording of several key clauses present in virtually all international investment agreements has led to overreach by investors and an inconsistent pattern of arbitral awards. This, in turn, has damaged host states’ ability to regulate in the public interest, as even provisions aimed at domestic economic and social development could become the object of a foreign investor’s lawsuit⁵⁸. Several national governments as well as international organizations have taken initiatives to address these shortcomings. For instance, the USA and India have revised their model bilateral treaties; Ecuador, South Africa, and Indonesia have terminated their treaties or let them expire without renewing them⁵⁹; the EU has integrated in its recent agreements a two-tier investment court system (ICS), which it considers a first step towards the establishment of a fixed multilateral investment court⁶⁰. Realizing the need for multilateral reform efforts, the United Nations Commission on International Trade Law’s Working Group III took up ISDS reform as the main objective of its work in 2017⁶¹ and the WTO has been hosting discussions to reform its own dispute settlement procedures since 2022⁶².

⁵⁷ Begaiym Esenkulova, “Investment Protection and Sustainable Development in International Investment Agreements: Building Bridges Instead of Walls,” 205-206, in *World Trade and Local Public Interest: Trade Liberalization and National Regulatory Sovereignty*, ed. Csongor István Nagy (Springer International Publishing, 2020), https://doi.org/10.1007/978-3-030-41920-2_12.

⁵⁸ Ibid, 206-208.

⁵⁹ Ibid, 206-207.

⁶⁰ Du Ming, “Explaining China’s Approach to Investor-State Dispute Settlement Reform: A Contextual Perspective,” *European Law Journal* 28, nos. 4–6 (2022): 288, <https://doi.org/10.1111/eulj.12468>.

⁶¹ “Working Group III: Investor-State Dispute Settlement Reform,” United Nations Commission On International Trade Law, accessed December 10, 2025, https://uncitral.un.org/en/working_groups/3/investor-state.

⁶² “WTO | Dispute Settlement Reform,” World Trade Organization, accessed December 10, 2025, https://www.wto.org/english/tratop_e/dispu_e/dsr_e.htm.

Investor-State Dispute Settlement and China

Historically, China has engaged little with formal ISDS mechanisms despite its significant role both as a receiver and as a source of foreign direct investment. Typically, investment disputes involving Chinese parties were resolved through mediation and negotiation rather than formal arbitration. However, the last 10 years have witnessed a slight increase in Chinese participation in ISDS proceedings, both as a respondent and a claimant⁶³, and many expect this trend to intensify as the BRI expands⁶⁴.

Several explanations were offered for China's absence from ISDS, most of which cite either cultural or policy reasons⁶⁵. Foreign investors may accommodate the Chinese government's preference for settling disputes informally, fearing that a claim in court would damage their relationship with it and jeopardize their business. At the same time, China's investment treaties tend to be quite restrictive on what claims can be submitted to an arbitral tribunal⁶⁶. This reflects the cautious, gradual, and flexible approach the country has taken to Western-based international institutions, oscillating between a drive to endorse and defend multilateralism and a preoccupation with preserving autonomy on internal affairs. In fact, China's increasing presence in investor-state tribunals is concomitant with its broader trend of increasing but selective engagement with international adjudicative institutions⁶⁷.

⁶³ Hao and de la Rasilla, "China and International Adjudication," 653.

⁶⁴ See for example Rafael T. Boza and D. Carolina Plaza, "Chinese Participation in the Investor-State Dispute Settlement System," *ITA in Review*, 2024, <http://itainreview.org/articles/2024/vol6/issue1/chinese-participation-in-the-investor-state-dispute.html>; Du, "Explaining China's Approach"; Wang and Wang, "China's Bilateral Investment Treaties"; Desierto, "China as a Global ISDS Power."

⁶⁵ Du, "Explaining China's Approach," 286, 291-292; Shen, "Current Landscape," 10-11.

⁶⁶ Du, "Explaining China's Approach," 292.

⁶⁷ Hao and de la Rasilla, "China and International Adjudication."

China's UNCITRAL WGIII proposal

China's formal proposal to UNCITRAL WGIII, which was submitted in 2019, includes five recommendations which can be broadly summarized as follows. First, it recommends creating a permanent multilateral appellate mechanism. This echoes China's supportive stance on the reestablishment of the WTO's appeals facility, a *piece de resistance* of its calls for multilateralism in global governance and of its critique of the United States' conduct in international fora. Second, the proposal supports retaining the right of parties to appoint arbitrators at the first-instance stage of arbitral proceedings, arguing that in addition to being a widespread practice in international arbitration, this helps solve the complex issues ISDS usually involves and reinforces investors' confidence in the tribunals. Third, the proposal suggests that arbitrators be knowledgeable in the fields of public international law and international economic law and that the rules regarding their conflicts of interest be better defined; arbitrators should also come from more diverse cultural backgrounds (especially from developing countries) in order for them to be more culturally aware. Fourth, it supports pursuing alternative means of dispute settlement and giving them a prominent role in ISDS reform, for example by introducing a mandatory pre-arbitration consultation procedure. Fifth, it recommends regulating third-party funding⁶⁸.

Both the third and fourth proposal echo China's self-positioning in international fora as a promoter of the interests of developing countries. The special emphasis⁶⁹ placed on party-appointed arbitrators and alternative dispute settlement methods becomes easier to understand when considering that these are also key elements of the Confucian tradition of dispute settlement and common practices in China⁷⁰. Together with the emphasis on diversity and

⁶⁸ Du, "Explaining China's Approach," 284-287, 298-299.

⁶⁹ Ibid, 298.

⁷⁰ Li and Lin, "How Confucianism Asserts Itself."

cultural awareness, these two proposals also make space for Chinese cultural norms to begin shaping ISDS; these may be some of the several examples of “Chinese wisdom” Chinese diplomats contribute to global governance reforms. Indeed, as he examines China’s position in WGIII, Du highlights that “China’s contribution to global ISDS dialogue should not be viewed as an isolated event. It is part of a bigger trend of China’s active participation in global economic governance” aimed at “transforming institutions and norms in ways that will reflect Beijing’s values and priorities”⁷¹.

In practice, for the most part the proposal does not specify how its provisions should be implemented, nor has the Chinese delegation indicated which other suggestions it is willing to support. Rather, their input in the UNCITRAL negotiations has remained at the level of broad guidelines, and as a result China’s approach to ISDS reform has been described as “an open, flexible, and evolving process”⁷². Though it is not the only one to adopt a flexible stance in WGIII⁷³, China’s strategy in the negotiations mirrors the one it has employed in its engagement with international adjudicative institutions in particular and international organizations in general⁷⁴. As a result, China’s position in the UNCITRAL negotiations remains somewhat ambiguous⁷⁵. Scholars tend to categorize ISDS reform stances as either incrementalist, systemic reformist, or paradigm shifter, and China does not fit neatly into any of these categories⁷⁶.

One example of incrementalist stance is illustrated by the dispute settlement provisions contained in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). On the one hand, the CPTPP defines more clearly concepts such as fair and equitable treatment and indirect expropriation in an attempt to avoid challenges to non-discriminatory

⁷¹ Du, “Explaining China’s Approach,” 283.

⁷² Ibid, 289.

⁷³ Ibid.

⁷⁴ Hao and de la Rasilla, “China and International Adjudication.”

⁷⁵ Du, “Explaining China’s Approach,” 281.

⁷⁶ Ibid, 289.

legislation aimed at the public welfare; it also restricts the types of claims that can be subject to review by arbitral tribunals and imposes a stricter code of conduct on arbitrators to avoid conflicts of interests. These provisions address some common legitimacy concerns about ISDS. On the other hand, in alignment with the status quo, the CPTPP does not aspire at instituting any kind of appellate body and allows investors to bring a claim to an international arbitral tribunal without first recurring to domestic courts⁷⁷.

China applied for membership in the CPTPP in 2021, but has also made it clear that the “comprehensive” ISDS reform it envisions goes beyond the provisions contained there⁷⁸. At the same time, China does not seem to agree to the EU’s investment court system plan, the most prominent among proposals advocating for systemic reform, despite the many points of contact between the ICS and China’s position. Both the EU and China criticize the inconsistency of arbitral awards in the present system and the lack of a mechanism to correct errors. They also support reinforcing arbitrators’ code of conduct to avoid conflicts of interest and including more alternative means of dispute resolution in ISDS. The ICS addresses these concerns by instituting a standing mechanism with fixed adjudicators and a built-in appellate body, modeled on the WTO dispute settlement system, of which both the EU and China are strong supporters. China’s principal point of contention with the ICS proposal is probably its restriction of parties’ appointment of arbitrators at the first-instance stage of proceedings, which gives a hint as to how much China prioritizes this subject⁷⁹. In line with its discourse in favor of multilateralism, China also does not call for the complete abolition of the ISDS system advocated for by paradigm shifter countries such as Brazil and South Africa⁸⁰.

⁷⁷ Ibid, 287-288.

⁷⁸ Ibid, 282.

⁷⁹ Ibid, 298-299.

⁸⁰ Ibid, 289.

China's practice of ISDS and its approach to the legal architecture of the BRI

Concurrently, China has also expanded its own capabilities for investor-state dispute settlement with initiatives at the domestic, regional, and global level. In a move that seems to have earned the support of the national government, arbitral institutions of standing as high as the Shenzhen Court of International Arbitration and the China International Economic Trade Commission updated their rules to administer foreign investment disputes in 2016 and 2017 respectively. Soon after, in 2018, the Supreme People's Court officially set up the China International Commercial Court in Shenzhen and Xi'an, whose jurisdiction was soon expanded from exclusively encompassing BRI disputes to including other kinds of cases as well⁸¹. Internationally, China has built centers and founded organizations that can provide an array of investor-state dispute resolution services, such as the China-Africa Joint Arbitration Center (CAJAC)⁸², the International Commercial Dispute Prevention and Settlement Organization⁸³, and the International Organization for Mediation⁸⁴.

These newly founded institutions illustrate neatly how China sees ISDS. The International Commercial Court takes a distinctive "one-stop" approach to dispute resolution that uniquely integrates mediation, arbitration, and litigation⁸⁵. The CAJAC "has the mandate and jurisdiction to administer alternative resolution mechanisms for international trade and commercial disputes arising between China and African countries"⁸⁶. Taking a closer look, it is evident that

⁸¹ Chen, "China's Innovative ISDS Mechanisms."

⁸² Charlene Ferns and Siphokazi Kayana, "CAJAC: Potential New Rules for Arbitration Proceedings between Africa and China," CMS Legal, July 23, 2024, <https://cms.law/en/int/publication/cms-international-disputes-digest-2024-summer-edition/cajac-potential-new-rules-for-arbitration-proceedings-between-africa-and-china>.

⁸³ Hao and de la Rasilla, "China and International Adjudication," 658.

⁸⁴ "Foreign Ministry Spokesperson Mao Ning's Regular Press Conference on May 20, 2025," Botschaft der Volksrepublik China in der Bundesrepublik Deutschland, May 20, 2025, https://de.china-embassy.gov.cn/det/fyrth/202505/t20250520_11629199.htm.

⁸⁵ Hao and de la Rasilla, "China and International Adjudication," 657.

⁸⁶ Ferns and Kayana, "CAJAC."

CAJAC's *modus operandi* incorporates many of the concerns voiced by China in its WGIII proposal: in addition to the focus on alternative resolution methods, parties to a dispute can select their own arbitrators from a committee of practitioners who are not only experienced in international arbitration, but also in Chinese and African arbitration systems and cultural norms and practices⁸⁷. The importance given to alternative dispute settlement practices in the International Commercial Dispute Prevention and Settlement Organization is evident from its establishment as "a diversified dispute settlement mechanism featuring a synergetic use of litigation, mediation, and arbitration"⁸⁸. The fact that the International Organization for Mediation, an intergovernmental council dedicated exclusively to mediation, will be able to handle disputes between investors and states⁸⁹ speaks for itself on the importance China accords to mediation in ISDS.

In addition to breaking the monopoly of existing Western-based institutions, these new mechanisms also serve as trial runs for China's proposed reforms and advance these reforms in practice, given that the ISDS of the future will likely include elements of several of the current proposals⁹⁰. Indeed, the envisioned product of WGIII is a multilateral instrument that allows states the discretion of selecting which reforms to adopt and which treaties to apply them to⁹¹; at the same time, the way disputes are settled now – especially in a context as extensive as the BRI – sets practical norms and customs which are likely to remain after the conclusion of the UNCITRAL negotiations⁹², if not shape them while they happen. If on the surface establishing so many platforms to promote its own vision of ISDS may seem at odds with China's oft-stated

⁸⁷ "Chinese Africa Joint Arbitration Center: A Solution to Trade Disputes between Africa and China," *The Arbitration Brief*, February 11, 2019, <https://the-arbitration-brief.com/2019/02/11/chinese-africa-joint-arbitration-center-a-solution-to-trade-disputes-between-africa-and-china%ef%bb%bf/>.

⁸⁸ Zhang Jian, "International Commercial Dispute Prevention and Settlement Organization: A Quick Overview," *China Justice Observer*, October 15, 2020, <https://www.chinajusticeobserver.com/a/thing-about-international-commercial-dispute-prevention-and-settlement-organization>.

⁸⁹ Botschaft der Volksrepublik China in der Bundesrepublik Deutschland, "Press Conference."

⁹⁰ Du, "Explaining China's Approach," 296.

⁹¹ *Ibid*, 299.

⁹² Desierto, "China as a Global ISDS Power."

preference for multilateral reform, this reflects a broader tension underlying much of Chinese foreign policy. In Du's words, "China oscillates between the idealistic vision that all differences between countries could be settled by consultation and negotiation and the realistic vision that it should act proactively, sometimes even unilaterally, to shape global norms"⁹³.

As previously explained, mixing mediation and arbitration and a general preference for non-adversarial means of dispute settlement are common practice in China and rooted in age-old cultural norms. They are also compatible with the rhetoric of "friendship" and non-hostility China adopts in its foreign relations, in line with the principles of relational governance (which are also borrowed from the same cultural norms). At the same time, the integration of alternatives to arbitration in ISDS is met with great interest outside of China, especially in developing countries which find themselves unsatisfied with the current court-based system but do not necessarily have the means to set up alternative institutions⁹⁴. This is once again in line with China's self-positioning as a "friend" promoting the interests of developing countries in global governance, but it also mirrors a general approach to international institutions characterized by "selective adaptation" and "selective innovation"⁹⁵.

It is important to note that in themselves, appreciation for alternative means of dispute settlement, the idea to incorporate them more in ISDS, and even the practice of med-arb are not unique to China nor necessarily an original idea. In fact, judicial mediation is also a long-standing tradition in other civil law jurisdictions such as Germany and Austria, sometimes even with characteristics similar to Chinese med-arb⁹⁶. Institutions such as the International Center

⁹³ Du, "Explaining China's Approach," 296.

⁹⁴ Shen, "Current Landscape," 11.

⁹⁵ Heng Wang, "The Rcep and Its Investment Rules: Learning from Past Chinese Ftas," *The Chinese Journal of Global Governance* 3, no. 2 (2017): 160–81, <https://doi.org/10.1163/23525207-12340026>; Hao and de la Rasilla, "China and International Adjudication."

⁹⁶ Joshua Karton, "Beyond the 'Harmonious Confucian': International Commercial Arbitration and the Impact of Chinese Cultural Values," 530-531, 535, in *Legal Thoughts Between the East and the West in the Multilevel Legal Order*, ed. Chang-fa Lo et al., Economics, Law, and Institutions in Asia Pacific (Springer, 2016), <https://link.springer.com/book/10.1007/978-981-10-1995-1>.

for Settlement of Investment Disputes and UNCITRAL have developed mediation and conciliation procedures which are now included in more and more investment agreements⁹⁷, and even some national institutions in Western common law jurisdictions have drawn close to allowing practices resembling med-arb⁹⁸. This is understandable, as such methods are less time- and cost-intensive than arbitration and their non-adversarial character allows parties to maintain long-term cooperative relationships, as several submissions at WGIII underline⁹⁹. However, unlike with other countries, China's preference for including alternative means of dispute settlement in ISDS is not only supported by investors' and the government's usual dispute settlement practice. It also fits well in a broader discourse about cooperation, harmony, the importance of personal relationships, and the merits of traditional Chinese culture (however defined) which the CCP advances in all areas of global governance.

The very legal structure of the Belt and Road Initiative reflects the principles of relational governance and China's strategy of "selective innovation". The legal basis of nearly all BRI projects consists of non-binding memoranda of understanding rather than bilateral treaties, and these documents usually do not contain any binding ISDS clauses. On the one hand, this is a design feature of the BRI that maximizes its flexibility, allowing it to adapt to varying local circumstances, legal systems, levels of development, and rule-of-law and cultural backgrounds¹⁰⁰. On the other hand, as IR scholars engaging with Relational Theory have noted, this striking absence of formal institutions aligns with a tendency to "informalize" not only dispute resolution, but international relations in general, moving them from a network of legal

⁹⁷ Du, "Explaining China's Approach," 287.

⁹⁸ Karton, "Beyond the 'Harmonious Confucian'," 537-538.

⁹⁹ Du, "Explaining China's Approach," 286-287.

¹⁰⁰ Hao and de la Rasilla, "China and International Adjudication," 654-655.

documents and obligations settled in formal environments to a network of personal relations and obligations settled informally¹⁰¹.

¹⁰¹ Eisenman, “Locating Africa,” 74. *Author’s note: while informal meetings do occur in international organizations, they still take place in the institutional environment, and ultimately, decisions made informally must be formalized within the institutional framework. As Eisenman explains in his cited article, relational governance does away with formal procedures altogether.*

FINDINGS AND CONCLUSION

This thesis has begun to locate China's investor-state dispute settlement reform proposals and practice in the grand strategy that encompasses the CCP's policy choices. As the Belt and Road Initiative has unfolded, China has appeared in formal ISDS mechanisms from which it had previously remained distant, and many have predicted that this trend will persist¹⁰². While this is true, China's increased engagement with Western-based ISDS institutions should not be read as unconditional support for them, nor should this trend be interpreted as bringing China in convergence with other countries in the way it utilizes these mechanisms. Rather, a pattern of "selective adaptation" followed by "selective innovation" can be observed in China's relationship with ISDS, in line with the strategy it has employed in other global governance institutions¹⁰³. This is even more evident in ISDS than in other fields as the existing system is highly contested and presently undergoing reform; this shifting terrain provides fertile ground for China to enact the global governance reforms that are such a core element of its grand strategy.

I find that the stance China adopts in multilateral negotiations in the future of ISDS as well as the way it practices ISDS in the context of the BRI reflect the relational philosophy that is characteristic of its international relations. As a result, they move this aspect of global governance closer to China and promote China's view of what the world should look like. This does not only involve introducing new ways to settle disputes, but also changing the way current methods are used and conceived of. Regardless of how vocal or detailed China is in WGIII, this countermodel will have a significant impact on the way international investment law will evolve

¹⁰² See for example Boza and Plaza, "Chinese Participation"; Du, "Explaining China's Approach"; Heng Wang and Lu Wang, "China's Bilateral Investment Treaties," in *Handbook of International Investment Law and Policy* (Springer, Singapore, 2021), https://doi.org/10.1007/978-981-13-3615-7_37; Desierto, "China as a Global ISDS Power."

¹⁰³ Wang, "The Rcep and Its Investment Rules."; Hao and de la Rasilla, "China and International Adjudication."

in the future, if nothing else because the temporal, spatial, and economic vastness of the BRI may establish it in practice¹⁰⁴ and even potentially shape the negotiations as they take place.

Contextualizing China's ISDS in its grand strategy potentially fills some gaps in our understanding of the former. For instance, it provides an additional explanation as to why China not only has not commented on the EU's ICS proposal in WGIII, but has also likely blocked it at the bilateral level during the EU-China negotiations on the Comprehensive Agreement on Investment, despite the ICS addressing many of China's concerns regarding ISDS and despite China having compromised on some of these same concerns with its application to the CPTPP.

My analysis suggests that ultimately, the future of ISDS will be decided not only in UNCITRAL, but also in the CCP, and it will be founded not only on Western principles of global governance, but also on Chinese ones. As others have noted¹⁰⁵, a likely scenario for the future of ISDS is a "multipolar" landscape where different organizations, methods, and philosophies coexist, exert influence on each other, and possibly compete.

In general, studies contextualizing China's approach to international investment law in its grand strategy are few, and only a portion of them explicitly adopts an IR perspective. Yet, given the all-encompassing nature of grand strategy and the increasing foreign policy relevance of international investment law, such analyses would be beneficial to both fields. This type of research can be general or it can be applied to specific instances, such as WGIII, the EU-China Comprehensive Agreement on Investment, or individual disputes. Different IR theories can be taken into consideration in addition to or in place of Relational Theory. Moreover, while the scope of this thesis did not allow a detailed analysis of the way the CCP operationalizes

¹⁰⁴ Desierto, "China as a Global ISDS Power."

¹⁰⁵ Du, "Explaining China's Approach," 296, 300; Cai and Wang, "Introduction"; Felipe Hees and Enrique Choer Moraes, "Investment Facilitation and the Contribution of the Brazilian Approach to the Reform of the Investment Treaty Regime," in *The BRICS in the New International Legal Order on Investment: Reformers or Disruptors*, ed. Congyan Cai et al. (BRILL, 2020); Vanhüllebusch, "China's International Investment Strategy"; Chen, "China's Innovative ISDS Mechanisms"; Wilske, "Significant Differences"; Yu, "A Bad Compromise."

relational governance at different levels and of how Chinese companies fit – or do not fit – the government’s agenda, understanding these complexities and how they affect ISDS is crucial to tracing the present and future development of dispute settlement in the BRI. Finally, given that Chinese investments sometimes take place in contexts where domestic conflicts are at play, it would be interesting to examine whether China’s relational approach to FDI (and to ISDS, in case disputes arise) affects the development of domestic conflicts in host countries.

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