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Towards the harmonization of the legal systems of the states members of “One Belt One Road” initiative

Abstract

More then 150 countries from Europe, Asia, Africa and Latin America are connected through „One Belt One Road“ (OBOR) Initiative which implies policy coordination (construction of large infrastructure facilities), trade and investment facilitation, financial integration (coordinated monetary policy and bilateral financial cooperation) and people to people policy (cultural exchange). This significantly increases the volume of cross-border transactions and development in the field of electronic commerce, migration and tourism. Comprehensive cooperation has set up the legal framework through the improvement of policies and laws, the establishment of legal infrastructure and the settlement of legal disputes mechanism. Thus the president of the Supreme People’s Court of China announced in 2018 the establishment of an International Commercial Court, consisting of three tribunals in Xi’an, Shenzhen and Beijing, for mediation, arbitration and litigation. The contribution of this author’s work is in the detailed analysis of existing international treaties binding for the States Members of OBOR Initiative, including the ones between China and Serbia, and the new legal mechanism

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established in order to institutionalize the cooperation in the area of the rights for all participants in the trade and investment agreements (*eg.* new tendencies in the development of arbitration law). The author emphasises that all investors in the world prefer the country they are entering to be resistant to corruption, with the rule of law observed and having an objective judiciary system capable to act. At the same time, this also gives the chance that, apart from the rights of investors, the rights of employees to be improved and thus generally upgrade the standards of the rule of law on which democracy basicaly stands.

Key words

China International Commercial Court, legal infrastructure, investment, settlement of disputes, "one stop" dispute resolution mechanism, OBOR Initiative

1. Introduction

Since one decade of the launching the big Chinese project by China's President Xi Jinping during his Central Asia tour in September 2013, which firstly included "Economic Belt of the New Silk Road" and then "21 Century of Maritime Silk Road", globally named "One Belt One Road" Initiative (OBOR), great developments have been achieved.

With the aims of reviving the Old Silk Trading Road to boost trade and economic growth, as of January 2023, 151 countries from Europa, Asia, Africa and Latin America were listed as having signed up to the Initiative, connecting through the infrastructure, trade and cultural network, with abbreviation "Belt and Road" Initiative (Countries of the Belt and Road Initiative, 2022).

In light of the "Tramp protectionism" which had been spreading all out the world since U.S. President Donald Trump coming to the power in 2017, and especially the tariff-trade competiton betwen United States and China which began in 2018, followed by COVID-19 pandemic (2020)

and Ukraine war (2022), the question is how to create a stable, fair, transparent and convenient rule of law in international business environment, provide services and protection for OBOR concept. This paper is divided in three parts: the first one is focusing on the diversity of constitutional, legal and regulatory systems of OBOR countries and analysis of existing international treaties, which are adhered to by the Member States of the Initiative; the second part is relating to Serbian-Chinese treaty in the field of investment; and the third part is the research of the new legal mechanisms – establishing the China International Commercial Court (CICC). At the end, there is conclusion about the possiblity of buliding an institutionalizing cooperation in the field of rights which contributes, in the ultimate line, to human progress.

Highlighting the harmonization, one has to consider the efforts of the international community in the field of unification of the rules faciliating the international trade. Both Serbia and China actively participate in this process. For example, both states are members of New York Convection on Recognition and Enforcement of Foreign Arbitration Awards (NYC); likewise, both countries are signatories of Conventions offered to the states and business community worldwide by UNCITRAL, aimed at improving legal framework for the facilitation of international trade and investment on the multilateral level. China and Serbia have the Agreement Concerning the Reciprocal Encouragement and Protection of Investments ("BIT") signed in 1995 (entered into force 1996). This BIT is stimulating the promotion of not only the direct investments activities, but generally the commercial arrangements between the business entities of both countries as well.

OBOR Initative is commercial and geopolitical project to enhance international status of China and to export the products of its excess capacity and cooperate with the other countries in all domains. One dimension of the Initiative, that has received less public and media attention over the past ten years, relates to legal and regulatory matters. The member countries of OBOR Initiative apply most of the achievements of the world's major legal systems. Over the past 40 years China undergone through the large–scale process of the economic reform followed by the modernization of the legal system. China has turned to bilateral investment treaties to protect its outward investors from liability under foreign law and in total has 145 BITs, including one with Serbia (1995) and countries from OBOR Initiative (Bilateral Investment Treaties China BITs, 2023). The Western Balkan countries have established cooperation with China and Eastern European countries in 2012 through the "16+1" Initiative;[2] the cooperation has been continued within OBOR Initiative, relating not only to the economic matters, but to broad field

[2] Through the policy "16+1" forged in Warsaw 2012 („12 Measures for Promoting Friendly Cooperation with 16 Central and Eastern European Countries"), China started a series of short-term and medium-term measures to improve economic relations with this region. Greece joined China's initiative in 2019, which

of cooperation, including issues of law and justice. For that purpose, China established in 2018 the international tribunal named China International Commercial Court (CICC) for the settlement of trade disputes, which should advance the rule of law generally on the international level (Simić, 2018: 378-380).

As the CICC began to operate, certain legal matters concerning the functioning of the court like judiciary (which disputes are qualified as disputes under OBOR), enforcement of arbitral awards and judgments (according to China's interpretation of NYC, investor-state awards are not enforceable through this Convention), procedure (to what extent such Court follows Chinese procedural law or an internationalised version of the new international courts in Dubai – United Arab Emirates, Singapore, Kazakhstan, France, Netherlands), international judges and lawyers (China's Judges' Law and People's Court Organization Law don't allow foreign judges in Chinese courts, also, foreign lawyers are currently not allowed to handle cases in Chinese courts), language (Chinese and English) and credibility of CICC, will be discussed in this paper. The author will use the method of document analysis of the valid binding international treaties and the documents of the newly opened CICC, comparative method and case studies.

2. Various legal system of "One Belt One Road" states

The diversity of constitutional, legal and regulatory systems of OBOR countries is the major issue for international coordination, consistency and cooperation. By 2018, out of the total number of 75 countries that signed OBOR initiative, 52 countries apply the civil law system (based on the concept that originates from the 1804 Napoleonic Civil Code), known as "continental law", 14 countries apply Anglo-Saxon legal system (the law created by judicial precedents, *i.e.* the decisions of the higher courts are valid as a law for lower courts as well as for future cases of the same court), and 8 countries apply the Islamic Sharia Law; also, 15 countries belong to the former Soviet Union region and 17 countries are members of the European Union (Holloway, 2018). Now, the remaining of OBOR countries can be classified in these legally systems.

Some developing countries do not have a sufficiently built and strong constitutional, legal and regulatory infrastructure, the legal systems of others are largely incomplete and incompetent to be able to respond to the requirement of high level coordination needed for the success of OBOR Initiative. The overcoming these obstacles will contribute to the creation of a transnational legal order that will in turn promote the rule of law at the international level; this goal could be achieved by joint efforts

became "1+17". The Baltic States, Lithuania (2021), Latvia and Estonia (2022) withdrawn from Initiative "17+1", and now the format is "14+1".

in securing strong legal services in economies within OBOR Initiative. The basis for this are the agreements signed by the member states.

2.1. The principal international agreements related to OBOR Initiative

By 2018, China concluded Judicial Assistance Treaties dealing with Enforcement of Foreign Judgments with 23 countries member of OBOR Initiative (Holloway, 2018). The 2021 Conference Summary is landmark judicial policy issued by China's Supreme People's Court to provide a detailed guideline for Chinese courts and to review foreign judgment-related applications. „It enables an ever greater number of foreign judgments to be enforced in China, by making substantial improvements on both the issues of 'threshold' (whether foreign judgments from certain jurisdictions are enforceable) and 'criteria' (whether the specific judgment, in an application before Chinese courts, can be enforced). The Conference Summary significantly lowers the threshold by liberalizing the reciprocity test, while providing a much clearer standard for Chinese judges to examine applications for recognition and enforcement of foreign judgments. The existence of a 'treaty or reciprocity' remains to be the threshold (precondition) for Chinese courts to review applications. The new reciprocity criteria include three tests, namely, de jure reciprocity, reciprocal understanding or consensus, and reciprocal commitment without exception, which also coincide with possible outreaches of legislative, judicial, and administrative branches. Chinese courts need to examine, on a case-by-case basis, the existence of reciprocity, on which the Supreme People's Court has the final say" (Dr Meng, Dr Guodong, 2022).

The Hague Convention on Choice of Court Agreements (2005) has currently 30 contracting member states; the aim of this Convention is to ensure the effectiveness of the choice of court of parties to international commercial transactions. Out of the total number, 16 of the contracting states are part of OBOR Initiative. Ukraine (2016) and China (2017) signed but didn't ratify the Hague Convention, while Montenegro ratified it 2018.

The New York Convention has been signed by 73 countries out of member states of OBOR Initiative, including all the countries of former Yugoslavia, and among the last ones are Maldives (2019), Ethiopia (2020), Iraq (2021), Turkmenistan (2022), and Timor-Leste (2023), while the remaining Republic of Yemen, has not signed the Convention yet.

Bilateral Investment Treaties *i.e.* agreements establishing the terms and conditions for private investment by nationals and companies of one state in another state (agreements on the protection and promotion of investments) have been signed by 64 out of countries of OBOR Initiative with China. An investment dispute is a dispute between an investor and a state in which it has investments. A private-level dispute is raised to the level of a dispute with the state when a foreign investor considers

that the state has damaged its investment by its actions or omissions. The BITs signed by 62 countries provides for the settlement of the investment disputes before arbitration, BITs of 51 countries envisage judical settlement, while others have an alternative option. BIT valid between China and Serbia was signed in 1995.

Since the first BIT that China signed with Sweden in 1982, to the early 1990s, the dispute settlement clauses most often provided investors with limited recourse to international arbitration against the host state. At that time, capital exporting countries in Western Europe and Southeast Asia were mostly China's counterparties.

Through the ownership structure of state-owned companies, or as an investor in private companies, the Chinese state is the most important business partner in the country and abroad (Milošević, 2019: 144). The National People's Congress of China adopted the new Foreign Investment Law on March 15, 2019, and came into effect on January 1, 2020. It includes "pre-establishment national treatment and negative list" management system, which is intended to create an environment where all foreign investment will be treated in the same manner as domestic investments, other than foreign investments into industries that are listed in the "Market Access by Foreign Investors special Administrative Measures" – Negative List. This is the List of industries into which foreign investment is either prohibited or restricted, and contains restrictions or prohibitions on foreign investment in 33 sectors (The new Foreign Investment Law, 2019). The Foreign Investment Negative List has gradually been reduced, to 31 items in 2021: in the vehicle manufacturing area, both the restriction on foreign stake for the manufacturing of passenger vehicles and the limitation on the maximum number of joint ventures manufacturing; the prohibition on investment in the manufacturing of satellite television broadcast ground receiving facilities and critical components has also been removed (China Foreign Investment Law The 2022 Negative List, 2023).

The current economic environment caused by COVID-19 pandemic and Ukraine war, including the consequences of the U.S. protectionism and tariff-trade competiton between U.S. and China, as well as differences between U.S. and EU and their influence on the world trade and economy, and fact that private sector in China participates with 84% out of the total country' GDP, pose the question how to create a stable, fair, transparent and convenient rule of law for international business; this is also important for OBOR concept.

3. Bilateral investment treaty between Serbia and China

Serbia is the first Central and Eastern European country which has established a comprehensive strategic partnership with China, as well as among the first one that has joined OBOR Initiative.

Serbia and China have the Agreement Concerning the Reciprocal Encouragement and Protection of Investments (herein BIT). This BIT is valid in relations between the Republic of Serbia and People's Republic of China as Serbia is successor of all BITs concluded by Federal Republic of Yugoslavia.[3] This BIT is stimulating the promotion of not only the direct investments activities, but generally the commercial arrangements between the business entities of both countries as well. The BIT is one of among 53 BIT's that Serbia has with other states, but is considered as one of the most prominent and important for Serbian economy as a whole.

The main features of the BIT are following:

BIT between China and Serbia defines the protected investment very broadly.[4] The term "investment" means "every kind of assets" invested by investor of one state in the territory of the other contracting state. This general definition is further qualified by enumeration, as the example, of the several forms of the investments protected under the BIT; thus, the term "investment" includes (1) movable, immovable and other property rights (mortgages and pledges), (2) shares, stocks, bonds and any other participation in companies, (3) claims to money or to any other performance having an economic value, (4) copyrights, industrial property, know-how and goodwill, (5) concessions, including concessions to search for, or, cultivate, extract or exploit natural resources.

The term "investor" in case of China covers any natural person who has nationality of that state, and in case of Serbia the term includes any natural person who has its nationality having residence in its territory. The term "investor" also includes legal persons having seat at the territory of the contracting party, constituted in accordance with the laws of that party.[5]

Under the BIT, each contracting party is obliged to encourage the investors of the other party to make investment in its territory and admit such investment in accordance with its laws and regulations.[6] This general obligation is further particularized by several standards of protection, guarantees to foreign investors and duties of the host country. The BIT, firstly, contains the "most favoured nation" clause.[7] It is, also, directly specified by the BIT that investors of either contracting party shall enjoy full protection and security in the territory of the other contracting

[3] Agreement between the Government of the People's Republic of China and the Government of the Federal Republic of Yugoslavia Concerning the Reciprocal Encouragement and Protection of Investments was signed on 18 December 1995 and entered into force on 13 September 1996.

[4] BIT, Article 1, Paragraph 1.

[5] BIT, Article 1, Paragraph 2.

[6] BIT, Article 2, Paragraph 1.

[7] BIT, in the Aticle 3, Paragraph 1 provides: „Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investment or returns of any third State".

party and shall be accorded the fair and equitable treatment[8] (this "fair and equitable treatment" standard is developed and interpreted in the international practice and theory of the investments disputes to include several other standards such as standard of "legitimate expectations"); the variations of that guarantee is the stipulation that either contracting party shall, to the extent possible, accord treatment in accordance with the provisions of its laws to the investors of the other contracting party, the same as that accorded to its own investors ("national treatment" clause).[9] The BIT also contains the guarantee that the host country shall not subject the investments from the other contracting party to expropriation or other measures having equivalent to expropriation, except for a public purpose related to internal need of that contracting party and against reasonable compensation (BIT contains outlines for determination of such compensation), to be made without undue delay, effectively realizable and freely transferable.[10] The BIT encompasses several other duties and guarantees that one contracting party should provide to the investors of the other party, such as securing the facilities for obtaining visa and working permit to a national of the other country in connection with the activities associated with the investment,[11] the guarantee of transfer of returns (profit, dividends, capital gains and other income) from the investment, repatriation of the capital (proceeds from a total or partial liquidation of an investment), and transfer of royalties and fees.[12] This guarantee of transfer also covers the assistance in transferring earnings of a national of the other contracting party who works in connection with and investment in territory of the contracting party.[13]

Specific form of encouragement and protection of the investment under the BIT is the possibility of the investor from one contracting party to directly sue the host state for infringement of its investment;[14] this feature of the BIT makes possible to "upgrade" the dispute concerning the violation of a genuinely private investment and/or commercial transaction to the level of dispute with the host state (in so called "investment dispute" the investor has the burden of proof that his investment is violated by the act or omission of the host state or its subdivision). The BIT introduces the six months negotiation phase in case of the dispute between the investor and the host state.[15] If the solution cannot be found through negotiations, either party may submit the dispute for

[8] BIT, Article 2, Paragraph 3.
[9] BIT, Article 3, Paragraph 2.
[10] BIT, Article 4.
[11] BIT, Article 2, Paragraph 2.
[12] BIT, Article 6, Paragraph 1.
[13] BIT, Article 6, Paragraph 2.
[14] BIT, Article 9.
[15] BIT, Article 9, Paragraphs 1 and 2.

settlement by the court of the host state.[16] Only disputes involving the amount of compensation for expropriation may be submitted to the International Center for Settlement of Investment Disputes (ICSID)[17] established by the Washington Convention for Settlement of Investment Disputes between the states and nationals of other states, and operating under the auspices of the World Bank.[18] While the elements of the BIT between China and Serbia are similar to BITs that Serbia has with the other states, the provisions regulating the jurisdictions for settlement of investment disputes significantly differs from the features of the other BITs. Namely, other BITs provide for settlement by arbitration of the investment dispute arising out or in connection with all possible violations of the investments, while the BIT between China and Serbia envisages the avoidance of jurisdiction of host state courts only in case of disputes related to compensation in case of expropriation.

Unofficial statistics show that no investment dispute under BIT has been recorded.

4. The new legal mechanisms – establishing the China International Commercial Court

One very important characteristic of forming business friendly environment in China is formation of special International Commercial Court (herein CICC) for the settlement of disputes between foreign and local business entities. The aim is to provide more powerful judicial services and protections for the purpose of the implementation of OBOR Initiative and the policy of promoting advanced and convenient trades and investments and the establishment of an open global economy.

At the Silk Road International Forum of Judicial Cooperation on 26 September 2017, Mr. Liu Guinxiang, Judge of the Supreme Peoples Court of China announced the plan of setting up an International Commercial Court in China. The President of the Supreme People's Court (SPC) announced in January 2018 that it will establish an international commercial tribunal consisting of three courts in Xi'an (for commercial disputes along the "Economic Belt of the New Silk Road", a land-based route that runs China's western part through Central Asia towards Europe and Middle East), Shenzhen (for cases arising on the "21st Century of Maritime Silk Road", a sea route that links China's coastal parts to Europe and Africa through the South China Sea and the Indian Ocean, South Pacific and the Arctic), and Beijing (as the headquarters of OBOR court). The decision was adopted at the 1743rd meeting of the Adjudica-

[16] BIT, Article 9, Paragraph 2.

[17] BIT, Article 9, Paragraph 3.

[18] Both Serbia and China are signatories of Washington Convention.

tion Committee of the Supreme People's Court on June 25, 2018, effective from July 1, 2018.[19]

The Supreme People's Court (SPC) established the International Commercial Court which is a permanent adjudication organ of the Supreme People's Court (Provisions of the Supreme People's Court, 2018: Article 1).

The aim is "to try international commercial cases fairly and timely in accordance with the law, protect the lawful rights and interests of the Chinese and foreign parties equally, create a stable, fair, transparent and convenient rule of law international business environment, provide services and protection for the 'Belt and Road' construction, according to the law on Organization of the People's Courts of the People's Republic of China, the Civil Procedure Law of the PRC and other laws, in light of judicial practice. Provisions concerning issues related to the establishment of the International Commercial Court of Supreme People's Court are set out" (Provisions of the Supreme People's Court, 2018).

In the Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court (Provisions) stated that the CICC accepts the following cases: 1) first instance international commercial cases in which the parties have chosen the jurisdiction of the Supreme People's Court according to Article 34 of the Civil Procedure Law, with an amount in dispute of at least 300,000,000 Chinese yuan (Article 2.1); 2) first instance international commercial cases which are subject to the jurisdiction of the higher people's courts who nonetheless consider that the cases should be tried by SPC for which permission has been obtained (Article 2.2); first instance international commercial cases that have a nationwide significant impact (Article 2.3); cases involving application for preservation measure in arbitration, for setting aside or enforcement of international commercial arbitration awards according to Article 14 of the Provisions (Article 2.4); other international commercial cases that the SPC considers appropriate to be tried by the CICC (Article 2.5). The commercial case in one of the following situations can be regarded as an international commercial case under the Provisions: – one or both parties are foreigners, stateless persons, foreign etnerprises or other organizations; – one or both parties have their habitual residence outside the teritory of the China; – the object in dispute is outside the territory of China; – legal facts that create,

[19] SPC established the First International Commercial Court (ICC) in Shenzhen Municipality (Guangdong Province) and the Second International Commercial Court in Xi'an Municipality (Shaanxi Province) in order to entertain cross-border commercial disputes, and set up an expert committee to serve as its dispute resolution think tank after the central leadership approved a guideline on establishing the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions. The Fourth Civil Division of the SPC is responsible for coordinating and supervising the work of the two international commercial courts (Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions, 2018).

change, or terminate the commercial relationship have taken place outside the territory of China (Article 3).[20]

Judges of the International Commercial Court shall be selected and appointed by the Supreme People's Court from the senior judges who are experienced in trial work, familiar with international treaties, international usages, and international trade and investment practices, and capable of using Chinese and English as the working languages (Article 4).

Article 2 of the Law of the People's Republic of China on Lawyers defines the lawyer as a "professional who has acquired a lawyer's practice certificate pursuant to law and is authorized or designated to provide the parties with legal services (mediation or arbitration)."[21] National Judicial Examination is only available to Chinese citizens. It means that eventually permitting foreign attorneys to represent their clients before the courts may require either continued tolerance of marginal cases (as it stipulated in the China International Economic and Trade Arbitration Commission Arbitration Rules where party may be represented by its authorized Chinese and/or foreign representatives in handling matters relating to the arbitration in the CIETAC Rules)[22], or legislative reforms.

In the situation when International Commercial Court applies foreign law in settling a case, it may establish law in the following ways: selected by the parties, provided by the legal experts from China or abroad, provided by the institutions rendering law finding services, provided by the member of the International Commercial Expert Committee, provided by the central authority of the other contracting party that has entered into a judicial assistance treaty with China, suggested by the Chinese Embassy or Consulate in the relevant country or by other country diplomatic mission in China, and other suitable methods to find applicable foreign law (Article 8). The very important is the fact that materials and expert opinions on foreign law provided in one or more of the previous mentioned ways shall be presenting during the hearing in accordance with the law and the parties shall be afforded a full opportunity to be heard. In Article 10 stated that "audio-visual transmission technology and other

[20] Under the 1994 Law, arbitrations in China fall within one of three categories: foreign-related, foreign, and domestic; foreign-related arbitration means civil cases involving foreign elements; foreign arbitration is arbitral dispute that meets the requirements to be foreign-related and is seated outside of China; domestic arbitrations are all those proceedings that are not foreign or foreign-related. Due to those differences, some of the authors claim that „the Chinese authorities have also been content to retain a bifurcated or 'dual-track' approach to domestic versus foreign and foreign-related disputes" (Mollengarden, 2019; 79).

[21] From 2020, not only judges, prosecutors, lawyers and clerks need to take the exam, but also individuals who conduct administrative adjudications or reviews, as well as legal consultants and arbitrators. It is decided that the national judicial examination system should be revised into a unified national legal professional qualification examination system. The reform is expected to improve the professional standard of legal practitioners in China.

[22] Article 76 of the new Arbitration Rules of the China International Economic and Trade Arbitration Commission (CIETAC), 2015.

information networking methods may be applied by the International Commercial Court in the investigation and taking of evidence as well as the organization of cross examination.

China will provide a more market-oriented, law-based and internationalized business environment for foreign companies, and remain a promising investment destination for businesses from Germany, Australia and the rest of the world (China to provide more market-oriented, law-based, internationalized business environment for foreign companies, 2022).

4.1. Procedural Rules for the China International Commercial Court (CICC)

The SPC is gradually building the infrastructure for the CICC. An important part of it was put into place in December 2018, when the SPC issued the Procedural Rules for the China International Commercial Court of the Supreme People's Court (Procedural Rules for the China International Commercial Court of the Supreme People's Court – For Trial Implementation, 2018).

In order to facilitate the parties' resolutions of disputes through the China International Commercial Court**,** the Procedural Rules are formulated in accordance with the Civil Procedure Law of the China, the Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the CICC, other laws and judicial interpretations. The Court respects the autonomy of the parties and protects equality and other legitimate rights and interests of Chinese and foreign parties and safeguards the full exercise of the procedural rights of Chinese and foreign parties. For bringing an action to the Court, the claimant shall submit a statement of claim and an agreement in writing selecting the jurisdiction of the SPC, the First International Commercial Court and the Second International Commercial Court. Upon receiving the documents submitted by the claimant, the Court shall issue a receipt in electronic or paper form, which records the date of receipt. The CICC shall accept the case if the SPC decides that it should be adjudicated by the CICC.

The CICC emphasizes the importance of mediation and promotes the concept of a „one-stop" dispute resolution mechanism through integration with the leading foreign-related mediation organizations within China.

The Case Management Offices of CICC shall convene a case management conference with the parties within seven working days from the date of the service of the litigation documents on the respondent's answer where the parties should decide on the pretrial mediation run by expert members (Procedural Rules, 2018: Chapter 4). If the parties reach a mediation settlement agreement after the mediation conducted by the expert members or by an international commercial mediation institution, the Office of the International Commercial Expert Committee or the international commercial mediation institution shall submit the

mediation settlement agreement and the relevant case materials to the Case Management Offices. This body issues a mediation document after review of the documents in accordance with the law. The CICC may issue an award on the basis of the settlement upon the parties' request. If the parties fail to reach a mediation settlement agreement, the Case Management Offices shall officially accept the case and determine the time schedule for the litigation procedures. Support for dispute resolution by Arbitration is also envisaged (Procedural rules, 2018: Chapter 7) in an international commercial case, in which the amount in dispute exceeds 300,000,000 Chinese yuan, where international commercial arbitration institution shall submit the application to the CICC. The Court will accept the case after review and adjudicate the case in accordance with laws. When a party applies to the CICC for setting aside or enforcement of an arbitration award made by an international commercial arbitration institution in an international commercial case in which the amount in dispute exceeds 300,000,000 Chinese yuan, (43,680,837.00 US$), the party shall submit an application letter, accompanied with the original arbitration award or mediation document. The CICC shall accept the case after review and adjudicate the case in accordance with the laws. The SPC shall interpret the rules (Procedural Rules, 2018: Chapter 8). When China ratifies the Hague Choice of Court Convention – which guarantees the recognition and enforcement of judgments from other Contracting States subject to a limited number of exceptions, it will substantially improve the enforceability of OBOR awards.

4.2. China International Commercial Court in practice

Since 2015, the SPC has taken measures to strengthen the hearings of OBOR related cases. Statistics released by the Supreme People's Court showed that Chinese courts at all levels ruled on about 200000 foreign-related disputes between 2013 and 2017, with OBOR related cases main component (The Supreme People's Court vows better legal service for BRI related cases, 2019).

In April 2018, the Hong Kong International Arbitration Centre (HKIAC) set up a "Belt and Road Advisory Committee" and launched an online resource centre to support OBOR related business opportunities. Since then, the HKIAC has handled 362 cases involving OBOR jurisdiction with one third of cases involving a party from the China and the party from other OBOR country.

Since the official establishment of the CICC on June 29, 2018, the SPC has formulated Procedural Rules for the CICC, Working Rules of the International Commercial Expert Committee, Rules of the "One-stop" Diversified International Commercial Dispute Resolution Mechanism, marking thus a good start and the smooth operation of the CICC. By the end of 2018, the CICC had accepted several cases involving parties from

Japan, Italy, Thailand, etc. Some cases have already entered pretrial procedures. We will present one such example.

The First International Commercial Court of the Supreme People's Court of China held a public hearing in Shenzhen (May 31, 2019) concerning the product liability dispute between Guangdong Bencao Medicine Group Co. Ltd. and the respondent Bruschettini S.R.L. domiciled in Genoa, Italy.[23] The First International Commercial Court accepted this case in accordance with the Civil Procedure Law of the People's Republic of China, the Provisions and the Procedural Rules for the CICC and relevant judicial interpretations. This case is heard by a collegial panel of five CICC. Previously, the collegial panel has held a pretrial conference on April 29, 2019 during which the panel explained the "one-stop" dispute resolution mechanism and related Rules of the CICC to both parties and the parties determined relevant procedural matters. The hearing lasted for over 3 hours, and the parties fully debated on the following three issues: 1) whether Bruschettini is obliged to recall the "Bacteria solutes" in dispute; if yes, whether Bruschettini constitutes inaction to recall the "Bacteria solutes" in dispute; 2) whether Bencao's waiver of claim for damages against Bruschettini agreed in the Exclusive Distribution Agreement and its Annex between Bencao and the non-party Aprontech can be excluded; 3) whether Bruschettini shall compensate for Bencao's loss and how the amount of loss should be determined. The court hearing has received extensive public attention. More than 40 people including representatives of the National People's Congress attended the hearing (The First International Commercial Court of the Supreme People's Court Holds its First Public Hearing, 2019).

The SPC confirmed that the First ICC has accepted the following cases: a) unjust enrichment disputes between Asia optical Co., Ltd., Dongguan Sintai Optical Co., Ltd. and Japan Fuji Photo Film Co., Ltd., Fujifilm (China) Investment Co., Ltd., Shenzhen branch of Fujifilm (China) Investment Co., Ltd., and Fujifilm Opt-Electronics (Shenzhen) Co., Ltd.; b) product liability disputes between Guangdong Herbal Pharmacy Co., Ltd. and Italy Bruschettini S.R.L.; c) confirmation of the validity of an arbitration agreement in a dispute between British Virgin Islands Yunyu Co., Ltd. and Shenzhen Zhongyuancheng Commercial Investment Holdings Co., Ltd.; d) confirmation of the validity of an arbitration agreement in a dispute between Beijing HK CTS International Hotel Management Co., Ltd., Shenzhen Weijing Jinghua Hotel Co., Ltd. and Shenzhen Zhongyuancheng Commercial Investment Holdings Co., Ltd.; e) confirmation of the validity of an arbitration agreement in a dispute between British Virgin Islands Xinjin Co., Ltd. and Shenzhen Zhongyuancheng Commercial Investment Holdings Co., Ltd.

The Second ICC has accepted the following cases: a) a dispute regarding the distribution of company profits between Yingte Biopharmacy

[23] [the case number is (2019) Zui GaoFaShangChu No.1]

Holdings Co., Ltd. and Red Bull Vitamin Drink Co., Ltd.; b) a dispute regarding the confirmation of a qualification as shareholder between Thailand Reignwood International (Group) Co., Ltd. and Red Bull Vitamin Drink Co., Ltd., Red Bull Vitamin Drink (Thailand) Co., Ltd.; c) disputes regarding the responsibility for damaging the company's interests between Global Market Holdings Co., Ltd and Xu Xinxiong, Red Bull Vitamin Drink Co., Ltd.; and d) disputes regarding the responsibility for damaging the company's interests between Yingte Biopharmacy Holdings Co., Ltd. and Yan Bin, Red Bull Vitamin Drink Co., Ltd.

In the Red Bull Cases, the CICC asked about the parties' willingness to have their dispute mediated by the CICC Expert Committee. The parties had initially opted for mediation by the Expert Committee, but eventually the case moved on to the CICC court proceedings because one party gave up on mediation.

These four cases accepted by the Second ICC were initially accepted by the Beijing Higher People's Court. The SPC considered that these four cases were first-instance international commercial cases that shall be heard by the CICC because of their "significant impact, their model character, their complexity, the high interests at stake and the great concerns they pose for society". In addition, the SPC decided that these four cases shall be jointly heard by the Second ICC due to their relevancy. These four cases were accepted by the Second ICC based on the jurisdiction stipulated in Article 2.3 (nationwide significant impact) and Article 2.5 (other international cases) of the Provisions (New Developments of the PRC Intl. Commercial Court, Cheng, Neuhaus, 2019: 7).

These first two cases heard at the CICC were not specifically related to any Belt and Road projects, they are still of significant importance to illustrate how the CICC handles its cases to ensure smooth conduct of the trial, the role that the CICC plays in mediation, and how the CICC can provide efficient resolution of international commercial disputes (China's International Commercial Courts hear first cases, 2019).

4.3. Oneline legal services

A "one-stop" service for resolving international commercial disputes opened in 2021 is designed to meet the new demands of the online era and provide fast, convenient and low-cost legal services. Five international commercial arbitration institutions and two international mediation centers are among the first group of participating institutions accessible through the platform, including the China International Economic and Trade Arbitration Commission and the Shanghai Commercial Mediation Center. In its annual work report released in March 2021, the SPC said that it has intensified efforts to resolve international commercial disputes, with 55 legal professionals from 25 countries invited to serve as experts at its international commercial courts to ensure the high-quality

development of the Belt and Road Initiative (One-stop Commercial Dispute Service Goes Online, 2021). China has not stopped trying to resolve international commercial litigation cases even though the COVID-19 pandemic created difficulties for litigation at home and abroad, as well as for trials involving foreign nationals.

With continuing reform and opening up program started at the late 1970s and the construction of OBOR Initiative, China's economic ties with the other countries have intensived, thus the demand for effective and timely resolution of international commercial disputes has increased. The establishment of the CICC confirms: a) the development of the international rule of law; b) protection of the legal rights and interests of Chinese and foreign parties; c) creation a stable, impartial, transparent and predictable business environment under the rule of law; d) protection the concept of OBOR Initiative; e) building fair, professional, convenient and cost-effective international commercial dispute resolution mechanism. All of this should be based on the rules of the World Trade Organization and international legal conventions binding for the states members of OBOR Initiative.

5. Conclusion

The harmonization of the legal systems of the states members of OBOR Initiative is the new area of close cooperation among them. It emerged from the need to form legal infrastructure and disputes resolution mechanism in the framework of the growing economic cooperation over the last 10 years, since OBOR Initiative was launched.

In that vein, the China International Commercial Court was established in 2018 which created a multilateral dispute resolution method that is accessible for all states members of OBOR Initiative. The three courts in Xi'an, Shenzhen and Beijing provide an international commercial dispute resolution mechanism that integrates litigation, mediation and arbitration for the parties to resolve disputes fairly, efficiently, conveniently, economically – "one stop" dispute resolution mechanism. This is innovative measure that adheres to the principle of diversifying dispute resolution methods, giving a reasonable time limit for the mediation, and providing the rules that, if the mediation fails, a trial should be consecutively scheduled in time thus preventing the problem of extensive dispute resolution.

This legal service derived from the facts that China, through its long history, preferred consensual dispute resolution mechanism (mediation and consultation) rather then going to the litigation, and that Chinese investors are increasingly exposed to international dispute resolution mechanisms (World Bank's International Centre for Settlement of Investment Disputes or International Chamber of Commerce for International Commercial Arbitrations); one of the goals is to bring back China

related disputes into the territory of China. The CICC is the beginning of the comprehensive harmonization of the law in the states members of OBOR Initiative in the way that states members of the European Union have done. Some states members of OBOR Initiative are criticized for not being democratic in terms of West standards (market economy, rule of law and freedom of media), so this is an opportunity to correct such allegations and continue to modernize its laws to reflect the changing global economy. Because of that, there are needs to upgrade the CICC and secure viability in implementation of the new legal infrastructure in order not to be considered as having "Chinese characteristics", but to be regarded as being in accordance with the world legal standards aimed at protecting both Chinese and foreign partner's legal rights and interests, creating a stable, fair and transparent business environment with rule of law standards applied. This Court is the part of continuation of China' trade liberalisation started over 40 years ago, based on the liberal principles of multilateral negotiations, free trade, global economic competition and denouncing protectionism what have provided powerful incentives for cooperation among states on a regional basis.

The new legal infrastructure is the way to complete multidimensional cooperation among the states members of OBOR Initiative which is important development for Serbia as well as other Western Balkans countries.

The aim of this paper is to underline, through the analyzes of new features of China dispute mechanisme for international transactions (considered as inovative in the international level), the necessity of unification and harmonization of business law in all aspects, as the main prerequisite for development of trade and, consequently the improvement of human rights in general.

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