

China-Pakistan Economic Corridor: The Quest for a Dispute Resolution Mechanism

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Economic corridors have always been the focus of development projects in various regions and countries.^[1] They have played a significant role in fostering and connecting economic agents along geographical regions and also serve as a major source of connection among important economic nodes situated in urban landscapes.^[2] This paper aims to assess the impacts of “China Pakistan Economic Corridor” (CPEC) and the practicality of its dispute resolution mechanisms. The first part of this paper talks about the magnitude and scope of the Chinese investment through the “Belt-and-Road Initiative” (BRI), the second part explores the potential benefits from CPEC for Pakistan and China; and the last part analyses CPEC’s quest for a well-defined dispute resolution mechanism to resolve commercial or investment disputes under its purview.

1. Magnitude and Scope of Belt-and-Road Initiative

The BRI, also known as the “Silk Road Economic Belt” or the “Chinese Marshall Plan”, was initiated by Xi Jinping as a way of establishing a connection between China and Europe through trade and infrastructure development. It was initially proposed for the development of the Eurasian continent but has since been expanded to Southeast Asia, North Africa, and Latin America.^[3] The BRI potentially covers “55 percent of the world’s GNP, more than 70 percent of the population of the world, and 75 percent of energy reserves”.^[4]

The initiative consists of two components, the “Silk Road Economic Belt” and the “Maritime Silk Road”. The former originates from the province of Xi’an in Western China and continues to the Middle East, Russia and Europe through Central Asia while the latter is intended to go through the South China Sea to the ASEAN, Indian Ocean region, East Africa, the Red sea and the Mediterranean”.^[5] In order to finance this grandiose project, China has set up the “Silk Road Fund” which has invested approximately \$40 billion for infrastructure development in Central Asian

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region, the “Asian Infrastructure Investment Bank” (AIIB) or “Asian Development Project”, which has pledged \$100 billion for economic activities in Asia; and the New Development Bank which intends to provide \$100 billion investment for development projects.^[6]

This project is regarded as a big umbrella which covers various Chinese trade and overseas investment policies. The Belt and Road Initiative comprises of six unique and distinctive economic corridors which connect different regions or sub-regions to China including; (a) Bangladesh–China–India–Myanmar Economic Corridor, China–Central-Asia–West-Africa Economic Corridor, (c) China–Indo-China-Peninsula Economic Corridor, (d) China-Mongolia-Russia Economic Corridor, (e) China-Pakistan Economic Corridor, and lastly (f) New Eurasian Land Bridge Economic Corridor.^[7]

There are two main purposes of these BRI flagship projects: (a) To promote development and stability in these regions, and (b) To reduce China’s ‘Malacca Dilemma’^[8]. The Chinese rationale behind BRI is that by focusing on infrastructure construction in economically unstable regions like Pakistan, Middle East and Central Asia, they can improve the economic development which subsequently brings political stability and security^[9]. In China’s opinion, the underlying cause behind domestic and regional conflicts, instability, and terrorism is low economic development and, therefore, greater investment in infrastructure will help to resolve these issues. China is thus enhancing its power and influence in the international regime by providing fundamental and long-term solutions through economic development.^[10]

The BRI does not consist of any rigid international institutional structure or mechanism and lacks a regulatory structure consisting of any executive organs and a regional dispute settlement agency. The BRI-specific and BRI-related documents including bilateral documents or documents between states and international organizations, are more inclined towards using a soft-law approach with no legally binding obligations. The non-binding agreements show China’s intention to negotiate with other developing states through a less stringent structure or mechanism and a network of non-binding bilateral agreements.^[11] At the same time, these instruments rely upon certain established rules, including the “World Trade Organization (WTO) rules, Preferential Trade and Investment Agreements (PTIAs), Free Trade Agreements (FTAs), and Bilateral Investment Treaties

(BITs)”^[12]. In addition to the less-institutionalized structure, China has also adopted a “non-treaty-based approach” which means that there is no consistent wide treaty for BRI initiative or any other similar international law instrument or formal membership protocol relating to the same^[13]. This demonstrates the soft law approach preferred by the Chinese government which means that BRI-related documents are hortatory and ad hoc, “vary dramatically and [are] dependent on general cooperation agreements, general guiding principles, joint statements, MOUs, letter[s] of intent, initiatives and consensus”^[14]. These soft-law documents help the Chinese government to build trust through sharing information without considering concerns like treaty approval or amendments. Hence, the rationale behind the Chinese government’s flexible approach, loose institutional structure, and relative vagueness in the enforcement of various aspects of BRI means that China can maintain flexibility in the execution of the project which subsequently supports the diversity and effectiveness of this initiative^[15].

2. Potential Benefits of China-Pakistan Economic Corridor for Pakistan and China

CPEC was inaugurated in 2013 and is defined as a long-term initiative for economic integration and regionalization in the globalized world, based on agreements between the two states primarily focused on project financing. It is a part of a strategic geopolitical move by China in the South Asian region which not only promises economic benefits for both states but also enhances the strategic location of Pakistan in the region. The initiative also aims for Pakistan to provide support to its partner China in transforming it into a global phenomenon that will enable global peace and prosperity^[16]. Since the signing of \$4 billion MOUs between both countries, this initiative is considered as a game-changer due to its tremendous impacts on trade, market access and regional connectivity^[17]. CPEC has identified seven major areas for mutual cooperation between China and Pakistan: (I) “Connectivity which emphasizes on the construction of an integrated transport system and information network infrastructure; (II) Energy-related fields, (III) Trade and Industrial Parks, (IV) Agricultural development and poverty alleviation, (V) Tourism, (VI) Cooperation in areas concerning People’s livelihood and Non-governmental exchanges, and (VII) Financial Cooperation”^[18]. The Chinese government’s approach towards these development projects is “modus operandi” which means it is dependent on market operation, rules and international norms, providing a decisive role to the market for the distribution of resources^[19]. This “modus operandi”

or “market-based approach” results in long-term investment and economic activities that are dependent on commercial enterprises instead aid and loans. Under this plan, China will provide loans to its own companies to achieve the infrastructure development programmes mentioned in the Memorandum of Understanding between both states with regards to CPEC. The approach of the Chinese government, sponsoring trade instead of provision of direct aid to developing countries, is unique and different from the US approach of development assistance through which they have provided billions of dollars to Pakistan but did not initiate any substantial economic initiatives.

The economic corridor consists of the Eastern route and the Western route. The Eastern route, though 680 km longer than the Western route, passes through many commercial cities of Pakistan due to which it is considered as a safer route compared to the other options available^[20]. The Western route consists of 2442 km as compared to the eastern alignment which is more than 300 km^[21]. Initially, the Chinese government did not agree to the Western alignment for the project due to the security situation in the provinces of Khyber Pakhtunkhwa (KPK) and Balochistan but later, due to the criticisms of their respective governments and strong nationalist parties, the Federation decided to develop both the Eastern as well as Western route.^[22] Another route, termed the Central route, was considered in place of the Eastern or Western alignment, due to its connectivity with other region across the world but was deferred and no work is in progress^[23].

It is anticipated by Islamabad that CPEC will boost the state’s macro-economic indicators tremendously by improving the country’s infrastructure and energy sector. The fact that a considerable amount of CPEC investments are in the energy sector is a strong incentive for the Pakistani government, but the fruitful results of these energy projects and to what extent they will address the energy needs of the country remains to be seen^[24]. The CPEC initiative is also intended to give impetus to the modernization of our economy because it not only provides a transit route for raw materials but also promotes manufacturing capacities through the development of Special Economic Zones (SEZs). It also aims to provide a variety of economic activities and to create opportunities for small-scale entrepreneurs which will subsequently boost Pakistan’s underperforming economy. Most importantly, it is also anticipated that it will significantly

enhance foreign direct investment and technological innovations, which will generate a nationwide economic boost in urban as well as disadvantaged rural areas^[25].

The Chinese government has also stated that the successful implementation of SZEs in this initiative will build the confidence of foreign investors which will subsequently result in increase in the level of foreign direct investment^[26]. Therefore, it will not only gain the confidence of foreign investors but also convince local investors and entrepreneurs to invest in their own country rather than somewhere else. The Government of Pakistan has also stated that this economic corridor has the capacity to remove interregional conflicts and also eliminate structural or systematic disparities within the country^[27]. Furthermore, it has claimed that through this project the country will be able to place itself amongst top 25 global economies by 2025.^[28]

With regards to CPEC and how it is seen as a game-changer for China, due to which they have taken a risk to invest in the politically unstable and developing market of Pakistan, it must be acknowledged that Beijing expects that the successful execution of CPEC will subsequently result in diversification of new trade routes which will improve its slacking economy. With its huge potential for economic growth and broad market prospects, China has identified Pakistan not only as a partner in economic corridor but also as a substantial market for its products^[29]. Furthermore, the Chinese government also expects to get rid of their image as a producer of fast and cheap products by becoming the paramount manufacturing superpower. For this purpose, CPEC is regarded as a crucial market for upgrading the Chinese industry^[30]. China also expects that by providing an alternative route for energy and other raw materials, CPEC will ensure energy security and supplies of other resources which is a prerequisite for establishing the nation's self-sufficiency and indigenous innovation. In the same way, the involvement of Chinese government in projects like CPEC helps them to provide a new life to China's state-owned enterprises already experiencing debt burdens by gaining access to new and fresh capitals which otherwise have to face several non-performing loans^[31]. Furthermore, the financial flows into initiatives like CPEC would not only help the Chinese government to strengthen its development initiatives but can also enhance trust and faith in China's economy. This increase in confidence on Chinese economy is necessary to decrease financial outflows which has been considered a major threat to the Chinese economy for the past few years^[32].

Other than economic interest, Chinese investment in Pakistan is also driven by geostrategic, geopolitical, and security reasons due to which it is considered a game-changer for China as well. The potential benefits of the Chinese investment in the form of CPEC shows how important this initiative is for both countries and the implementation of this project without unnecessary delay would not have been possible without the establishment of an extensive dispute resolution mechanisms.

3. CPEC's quest for a Dispute Resolution Mechanism

One of the biggest concerns regarding CPEC within the legal fraternity is how commercial and investment conflicts in CPEC will be decided in the future. What are the grounds on the basis of which such disputes will be settled between two countries with such a strong bond? Would these disputes be decided by domestic courts in Pakistan or China, or would another alternative method like mediation and arbitration be used? Would these conflicts be resolved through an extensive dispute resolution mechanism developed for disputes under the CPEC framework? Analysts have mentioned that for all economic and commercial projects within and outside the border, a dispute resolution mechanism must be established in order to resolve the potential disputes.^[33]

3.1 International Commercial Courts

Since the initiation of this game-changer project, China has adopted various mechanisms for resolving disputes in other BRI-related countries. The establishment of an international commercial court is one possible dispute resolution method that can be adopted. China has introduced three commercial courts, named the “Belt and Road courts”, one in the province of Xi’an specifically for the “land-based Silk Road Economic Belt”, and another in Shenzhen exclusively for the “Maritime Silk Road” and lastly in Beijing which will serve as the headquarters. These courts provide litigation, arbitration and mediation services for all potential disputes which may arise under the BRI^[34]. The establishment of International commercial courts provides a lot of advantages. For instance, recourse to arbitration and mediation allows the parties to avoid litigation, where they have to bear the sluggish pace, minimal flexibility and substantial costs. Arbitration and mediation provide an opportunity to the contracting parties to have a substantial

amount of autonomy and also saves the costs and time of both parties. Lastly, it also provides an opportunity to save the business relationships of the parties through a non-adversarial approach.^[35]

The question that arises is how many BRI countries would decide to bring their disputes to these courts, especially when the Memorandums of Understanding signed by more than 70 countries of BRI also stipulates negotiations for resolving conflicts. However, if the consultations between China and other BRI countries fail then perhaps China would propose that these disputes be decided exclusively by these courts. If China adopts the same mechanism for CPEC, then the biggest challenge faced by the Chinese government is to reassure the Pakistani government about the authenticity or objectivity of these courts, being established in China. Moreover, if China has indicated a preference for an international commercial court providing “arbitration and mediation services”, can Pakistan also have an option to introduce these courts within its own jurisdiction? If so, what would be China’s terms and conditions in agreeing to such mechanisms? In both cases, whether the international commercial courts are in Pakistan or in China, integrity, independence and relevant experience of the individuals offering mediation and arbitration services must be amongst the key considerations of both parties.^[36]

3.2 Joint Arbitration Centers

Another feasible solution available for dispute resolution is the establishment of joint arbitration centers, similar to the ‘China Africa Joint Arbitration Centre’ established by China and South Africa in 2015, for resolving trade and investment disputes between both parties. The center was established both in South Africa as well as in China so that conflicts occurring in South Africa due to Chinese economic activities can be settled by the Johannesburg branch and those arising out of South African economic deals in China be resolved through the Shanghai branch. The basic rationale behind this joint arbitration center is to avoid the involvement of domestic courts, local arbitration institutions and international arbitration institutions. Thus, in order to resolve disputes of CPEC both countries China and Pakistan can develop a similar joint arbitration centers in both countries for disputes arising out of CPEC investment activities.^[37]

3.3 Mediation Centers for Dispute Resolution:

Another option which China is promoting for dispute resolutions is mediation. Although it is a relatively cheap and speedy option, its decisions are not legally binding on the parties involved in the dispute as they are in arbitration. This means that although parties are bound to attempt to mediate disputes, the decisions through the process would not be enforceable. International mediation is considered as the most feasible solution for commercial and investment purposes^[38]. However, the characteristic of contracts and decisions of mediation being non-enforceable may not be favorable to developing countries in most cases.

The question then is, what would be the most feasible solution for Pakistan in establishing a dispute resolution mechanism from the models discussed above. It must be kept in mind that Pakistan's lack of clear legal mechanisms under such agreements, has suffered a great loss historically, made evident from cases such as the *Reko Diq* case in which Pakistan had to bear a fine of 6 billion dollars by The "International Center for Settlement of Investment Disputes" (ICSID) of World Bank^[41]. It is indisputable that those mechanisms which give a higher bargaining position to one party over another cannot be regarded as a viable option. Analysts have stated that multi-tier dispute resolution clauses which include both collaborative methods (such as resolution and mediation) as well as adjudicative and binding methods (such as arbitration) would be most effective and feasible for both countries.^[39] Moreover, rather than using ad hoc mediation, a more feasible option is establishing a credible institution which would administer the mediation or arbitration proceedings by providing clearly established rules and procedures. Thus, Pakistan needs to have critical analysis of all possible options in order to be fully aware of the consequences and legal impacts of every mechanism before agreeing to any option because certainty, uniformity and efficiency of the mechanisms are critical for ensuring effective implementation of CPEC without unnecessary delay.^[40]

4. Conclusion

Through the massive infrastructure and trade advancements, CPEC is proving to be a mutually beneficial economic partnership for both Pakistan and China. It will not only help Pakistan in its quest to develop its local industries but will also open routes for China to exponentially increase its exports to other countries via Pakistan, such as Central Asia and countries in Africa,

exponentially boosting its economy. However, there is a compelling need for Pakistan to explore Alternative Dispute Resolution mechanisms. While all of the options discussed above have their own disadvantages, arbitration remains the strongest option of all. Therefore, Pakistan needs to consider that the authority is (a) autonomous under the constitution, (b) empowered to enact its rules and regulations, and (c) also comprises of the separate arbitration court system. A transparent arbitration system established by the Pakistani government will not only resolve disputes efficiently but will also boost the confidence of Foreign Direct Investors, paving a pathway for increased economic development in Pakistan.

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