
Exploring Public International Law Issues with Chinese Scholars – Part 4

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In collaboration with the China University of Political Science and Law



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Introduction

In June 2018 Chatham House and the China University of Political Science and Law (CUPL) held a two-day roundtable in Beijing on emerging issues of public international law. This was the fifth in a series of meetings exploring China and the international legal order. Our first three meetings focused on the rights of individuals in international law and were held at Chatham House in London in April 2014, at CUPL in Beijing in November 2014, and at the Graduate Institute in Geneva in March 2016. Summaries of these discussions are available on the Chatham House website.¹ Our fourth meeting was on the peaceful settlement of disputes, and was held at CUPL in Beijing in November 2016. That meeting resulted in the publication of a briefing paper which drew on some of the insights from the roundtable.²

All five roundtables were held in English under the Chatham House Rule. The specific objectives of these meetings are to:

- Create a platform for Chinese academics working on international law issues to present their thinking and exchange ideas with counterparts from outside China;
- Build stronger understanding within the wider international law community of intellectual debates taking place in China about the international law system and China's role within it; and
- Support networking between Chinese and non-Chinese academics working on international law issues.

Our fifth meeting, in Beijing, was co-hosted with CUPL and involved 28 participants, consisting of 19 Chinese participants (from six leading research institutions in Beijing and Shanghai) and nine non-Chinese participants (from eight leading research institutions in Australia, the Netherlands, the UK, Switzerland, Canada and Singapore). To ensure continuity while also expanding the expert network being built, the fifth meeting included a mix of participants from the first four meetings and some new participants.

China's ambitions to become an international law powerhouse

At the Communist Party of China (CPC)'s Fourth Plenum on the Rule of Law in 2014, the Chinese government set out its ambition for China to become an international law powerhouse. In a short but important passage, the CPC Central Committee called for China to '[s]trengthen foreign-related legal work' and '[v]igorously participate in the formulation of international norms, promote the handling of foreign-related economic and social affairs according to the law, strengthen our country's discourse power and influence in international legal affairs, and use legal methods to safeguard our country's sovereignty, security and development interests'.³

At the roundtable, participants discussed China's desire to participate in international law and its increasing confidence in doing so. Numerous examples of ways in which the Chinese government is strengthening its capacity in international law were noted. There was discussion of how China is looking

¹ Royal Institute of International Affairs (2014), *Exploring Public International Law and the Rights of Individuals with Chinese Scholars*, Roundtable Meeting Summary, 14–17 April 2014, https://www.chathamhouse.org/sites/default/files/field/field_document/20140414PublicInternationalLawChina.pdf; Royal Institute of International Affairs (2014), *Exploring Public International Law and the Rights of Individuals with Chinese Scholars – Part 2*, Roundtable Meeting Summary, 14–15 November 2014, <https://www.chathamhouse.org/event/chinese-approaches-public-international-law-and-rights-individuals-part-two>; Royal Institute of International Affairs (2016), *Exploring Public International Law and the Rights of Individuals with Chinese Scholars – Part 3*, Roundtable Meeting Summary, 5–6 March 2016, <https://www.chathamhouse.org/event/chinese-approaches-public-international-law-and-rights-individuals-part-three>.

² Moynihan, H. (2017), *China's Evolving Approach to International Dispute Settlement*, Chatham House Briefing, March 2017, <https://www.chathamhouse.org/publication/chinas-evolving-approach-international-dispute-settlement>.

³ An unofficial English translation of the Outcome Document is available at China Copyright and Media (2014), 'CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward', 30 October 2014, <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>.

to take greater ownership of international law and showcase itself as a venue for debates on international legal issues. These efforts include hosting more international law conferences on a range of issues (for example, a symposium on the international law of the sea at CUPL in March 2018, and a high-level ‘Conference on Legal Cooperation on the Belt and Road Initiative’ in July 2018); and attendance at international law moot competitions (for example, CUPL has for some time competed in the international criminal law moot competition in The Hague, and CUPL will be holding its first International Law of the Sea Moot Court Competition in 2018).

Further evidence of China’s increasingly assertive stance in international law comes from a 500-page critical study of the awards on jurisdiction and merits in the South China Sea arbitration. The study was published in May 2018 by the Chinese Society of International Law in the *Chinese Journal of International Law*, and sets out a robust criticism of each argument made against China in the arbitration. This was observed to be an interesting example of Chinese efforts at soft power, with articles by 70 academics working ‘under the supervision and leadership of the Foreign Ministry’.⁴

The meeting also revealed some ways in which the Chinese government is promoting the development of international law ‘with Chinese characteristics’ to reflect China’s positions and interests, and to achieve international recognition for the country. A number of references were made to two particular concepts that the Chinese government is increasingly promoting in its international discourse – the ‘shared future of mankind’ (人类命运共同体) and ‘mutual benefit’ (互利).⁵ These concepts arose in the roundtable discussions on human rights, the Arctic, and the Belt and Road Initiative (BRI). This reinforced the sense of the Chinese government wanting to put its own stamp on international rules, using new language that seeks to underline principles of cooperation, inclusivity, equality and a ‘win-win’ approach to international relations and international law. Participants noted that international relations and international law are becoming more plural – not only in terms of the variety of actors involved (which include states, corporates, academics, legal practitioners and civil society), but also, in an increasingly multipolar world, in terms of the ability of particular states to make their voices heard. This emerging landscape means that a greater diversity of backgrounds and beliefs are shaping perspectives on international law. A participant referred to the book *Is International Law International?* by Professor Anthea Roberts,⁶ which argues that international law has traditionally been dominated by Western institutions, courts, textbooks and lawyers. But now the community of international lawyers is changing, ‘and the era of Western-led international law appears to be giving way to an era of greater competition, and increased need for co-operation, among various Western and non-Western States’.⁷ This leads to an increasing need to understand the perspectives of states not traditionally at the forefront of the field. International law aims to accommodate all these voices and is trying to adapt to the emergence of new voices. It was observed that ...

... the real value of international law is as a way for states to discuss their differences. Our dialogue between Chinese and non-Chinese scholars is one way of doing that in a friendly and depoliticized environment.

Emerging areas of international law

The roundtable’s theme was the application of international law to new and emerging issues. This included issues where the law in question may not be new, but where the fields in which it is being applied will be relatively novel – whether this be the application of international law to cyber interference in the modern digital era, or the application of international human rights law (IHRL) principles to companies

⁴ The association between the publication of the study in an academic journal and the role of the Ministry of Foreign Affairs has been criticized by some. See Guilfoyle, D. (2018), ‘A new twist in the South China Sea Arbitration: The Chinese Society of International Law’s Critical Study’, EJIL Talk! blogpost, 25 May 2018, <https://www.ejiltalk.org/a-new-twist-in-the-south-china-sea-arbitration-the-chinese-society-of-international-laws-critical-study/>; and Guilfoyle, D. (2018), ‘Taking the party line on the South China Sea Arbitration’, EJIL Talk! blogpost, 28 May 2018, <https://www.ejiltalk.org/taking-the-party-line-on-the-south-china-sea-arbitration/>.

⁵ In January 2017, Chinese President Xi Jinping made a keynote speech at the UN Office in Geneva, entitled ‘Work Together to Build a Community with Shared Future for Mankind’.

⁶ Roberts, A. (2017), *Is International Law International?*, Oxford: Oxford University Press.

⁷ *Ibid.*, p. 13.

and their investment disputes. A number of participants noted that these are areas in which all states have an interest, in which non-state actors are also frequently involved, and in which all stakeholders are grappling with new challenges. Often, China feels more confident in asserting itself on these issues than it perhaps does in more established areas of international law, traditionally dominated by Western powers.⁸

The discussion recognized that these emerging areas generate much debate about whether existing international law can adapt to them, or whether new rules may be needed in some cases. Specific attention was paid to the following: IHRL, including business and human rights in BRI participant countries; dispute settlement with particular reference to the BRI; the international legal framework applicable to cyber operations; and the international law framework applicable to the Arctic.

China's engagement with the international human rights system

Participants discussed China's increasing involvement in IHRL processes at the UN. One participant outlined China's involvement in the process for strengthening UN treaty bodies, from the start of the reform process under Professor Philip Alston in 1988–2000 (during which China made no statement) through to the more recent proposals under the Dublin Process initiated by former UN Human Rights Commissioner Navi Pillay in 2011, in which China for the first time submitted a detailed position paper on 11 specific matters.⁹ In 2012, China also proposed a draft resolution in the General Assembly on the intergovernmental process for strengthening and enhancing the effective functioning of the UN human rights treaty bodies, and submitted a further position paper in 2016. It was observed that this increase in activity is emblematic of China's increasing participation in the UN human rights process over time.

One Chinese participant observed that the Chinese government nevertheless sometimes feels excluded from the process of strengthening the UN human rights treaty bodies, as if the process is the sole preserve of Western states and no one else should intervene:

That is not good for the process itself. It should be an open, transparent forum and everyone should have ownership, otherwise there will be no progress.

It was pointed out that China is increasing its human rights training within China and – contrary to some states – is keen to participate from within the system.¹⁰ Participants discussed a further example of China's increased assertiveness in the IHRL system, through its introduction in the UN Human Rights Council of a resolution which was adopted on 23 March 2018.¹¹ In that resolution, China called for 'mutually beneficial cooperation' among states to promote human rights, with 'the aim of building a community of shared future for human beings'.¹² Twenty-eight states voted in favour of the resolution, while 17 abstained (including Australia, Japan, Germany and the UK), and one (the US) voted against it.

It was noted that the resolution represents a more active positioning by China on human rights. The resolution – only the second that China has sponsored – shows China taking the lead and attracting co-sponsors. There was discussion as to whether China is promoting the concept of a 'shared future of mankind' as a preferred form of language to 'human rights'. China, in introducing the resolution, argued

⁸ See Wye, R. (2017), 'China Paves Its Way in New Areas of International Law', Chatham House Expert Comment, 31 March 2017, <https://www.chathamhouse.org/expert/comment/china-paves-its-way-new-areas-international-law>.

⁹ For details, see Office of the United Nations High Commissioner for Human Rights (OHCHR) (undated), 'Treaty Body Strengthening', <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>, with China's submission available at <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/StatesPartiesSubmissions.aspx>.

See also International Service for Human Rights (2013), 'Treaty Body Reform: The Dublin Process', 11 April 2013, <https://www.ishr.ch/news/treaty-body-reform-dublin-process>.

¹⁰ Since the roundtable, the US has withdrawn from the Human Rights Council (18 June 2018), arguing that it is biased against some states. See U.S. Department of State (2018), 'Remarks on the UN Human Rights Council', 19 June 2018, <https://www.state.gov/secretary/remarks/2018/06/283341.htm>.

¹¹ Resolution A/HRC/37/L.36, 37th session of the UN HRC, <http://undocs.org/A/HRC/37/L.36>.

¹² 'Preamble', Resolution A/HRC/37/L.36.

that this concept of mutually beneficial cooperation is found in the UN Charter.¹³ The resolution also stresses the importance of capacity-building and technical assistance. One non-Chinese participant noted that the language of the resolution is good, reaffirming as it does long-established principles of cooperation, universality, impartiality, objectivity and non-selectivity. At the same time, it was noted, there has been some concern that by giving international endorsement to China's 'community of shared future of mankind' concept, the UN Human Rights Council would signal its agreement with the approach to human rights discourse advocated by the Chinese government rather than with the established discourse.¹⁴ There is a related fear that using new language risks undermining or undoing the achievements and consensus built up over many years on the basis of the traditional and consistent language of human rights.

Participants discussed the factors driving China's desire to reframe the language of human rights resolutions. One Chinese participant noted that in China there is a sense that traditionally the language of human rights has been used to criticize China, and to humiliate it. This dates back to the practice of 'naming and shaming', at the UN Human Rights Commission, of countries with allegedly poor human rights records. The Commission was replaced in 2006 by the Human Rights Council and the peer review mechanism of the Universal Periodic Review. But there remains a sense of resentment within China about the way in which it is treated on 'human rights', a term which China associates with Western discourse. The language in the resolution is a means of giving China more of a voice, of making it feel more at ease, and of underlining that all states should have an equal voice.

On the other hand, it was noted that the language of human rights is very evident in China's National Human Rights Action Plan (NHRAP), three iterations of which have now been published.¹⁵ The action plan goes hand in hand with the Chinese Economic and Social Development Plan¹⁶ and is increasingly the subject of training courses in China.

A further point made in relation to the resolution tabled by China in the Human Rights Council was that some states and NGOs had expressed concerns about the text's apparent focus on 'state to state' obligations rather than on individuals.¹⁷ It was noted that the Chinese resolution provides for technical assistance but gives full autonomy to the government, which is problematic because ultimately human rights concern the rights of individuals. One participant suggested that a way to ensure that technical assistance is linked to the implementation of rights could be to draw inspiration from trade agreements. The World Trade Organization (WTO)'s Trade Facilitation Agreement, which entered into force on 22 February 2017,¹⁸ provides for three categories of obligations: (i) those that enter into force upon agreement; (ii) those entering into force after a transition period; and (iii) those entering into force after technical assistance.¹⁹ If this kind of implementation plan could be linked to the Chinese resolution, it would make the resolution more balanced. It was suggested that operative paragraph 5 of the resolution provides for a study on technical assistance, which might offer a second opportunity to build in additional detail on implementation and the accountability of states in this regard.

¹³ Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland (2018), 'Win-Win Cooperation for the Common Cause of Human Rights', 1 March 2018, http://www.china-un.ch/eng/dbtyw/rqrd_1/thsm/t1538784.htm.

¹⁴ For discussion of this, see Mitchell, R. (2018), 'Was the UN Human Rights Council Wrong to Back China's "Shared Future" Resolution?', EJIL Talk! blogpost, 10 April 2018, <https://www.ejiltalk.org/was-the-un-human-rights-council-wrong-to-back-chinas-shared-future-resolution/>.

¹⁵ Information Office of the State Council of the People's Republic of China (2016), 'National Human Rights Action Plan of China (2016-2020)', 29 September 2016, http://www.china.org.cn/government/whitepaper/node_7242095.htm.

¹⁶ Central Compilation & Translation Press, National Development and Reform Commission (2016), *The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China*, <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>.

¹⁷ Ibid.

¹⁸ World Trade Organization (undated), 'Agreement on Trade Facilitation', Article 14, https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm#art14.

¹⁹ Article 14 sets out the three categories of provisions.

Implementation of IHRL in Chinese domestic law

Participants discussed the fact that no provision in either the Chinese constitution or in other laws clarifies the relationship between international law and Chinese law relating to human rights. There is no explicit provision in Chinese law preventing courts from applying IHRL, but neither are Chinese courts explicitly authorized to do so. It was argued that this lack of clarity over the status of IHRL in the Chinese domestic system makes it harder for the courts themselves to take the initiative in invoking IHRL. It was noted that in the past, China has sometimes been criticized by UN human rights treaty bodies for not applying IHRL in its domestic courts. There is some precedent for IHRL, including the Convention against Torture and the Universal Declaration of Human Rights, to be referred to in Chinese courts, especially in criminal proceedings. But most of these references have been made by the individual parties, particularly by the accused and their legal counsel.

However, it was noted that recent evidence suggests that some Chinese courts are gradually starting to take into account certain IHRL treaties, in particular the Convention on the Rights of the Child (CRC). One of the participants noted that in an early core report to the UN treaty bodies, China itself suggested that IHRL could be invoked directly before Chinese courts. The Chinese government set up a database in 2012 which records all Chinese judgments online; it now consists of over 46 million documents.²⁰ By searching key words, it is possible to assess how many judgments refer to the CRC. So far, the CRC has been cited in 13 cases, with the relevant court citing the CRC in six cases (five criminal and one civil) and the references in other cases being mainly made by the individual parties to each case. The roundtable heard that the most commonly invoked article was Article 3(1), on the best interests of the child, but that several other rights were cited, including Article 2 (non-discrimination in the protection of the rights of the child) and Article 6 (the right to life of a child). These articles of the CRC were generally applied in parallel with Chinese domestic law, for example laws on inheritance and marriage, but in two cases the CRC was applied independently. In one case, the judge stated that since the CRC has come into force, it should take precedence over domestic law.

It was pointed out that the CRC has been invoked not only in Chinese courts but also in the context of administration and police cooperation. An example was cited of the Chinese police relying on the Optional Protocol to the CRC²¹ in two cases involving cooperation between the Chinese and British police, and of China surrendering two British nationals to the UK on this basis.

Overall, it was observed that so far the scope and number of applications by Chinese courts of human rights treaties are still very restricted. One Chinese participant argued that while we can expect Chinese courts to refer increasingly to the CRC in future, expectations are more conservative for other IHRL treaties. It was also noted that in China judgments are only binding on the parties to the legal proceedings in question. On the other hand, it was argued that the approach of some Chinese courts in applying the CRC is an encouraging development, and one likely to continue.

Business and human rights including in the context of the BRI

Participants discussed human rights and sustainable development in the context of China's BRI, a network of planned capital projects in transport, trade and other economic infrastructure in dozens of countries across Asia, Central Asia and beyond. It was noted that Chinese companies are now the second-biggest investors around the globe, with net outward investment exceeding US\$63 billion. This poses challenges in terms of human rights and sustainable development, especially since 85 per cent of Chinese outward investment is directed to developing countries. The sectors in which Chinese companies invest are also high-risk, such as manufacturing and information communications and technology, and the

²⁰ Database available at <http://wenshu.court.gov.cn>.

²¹ OHCHR (undated), 'Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict', <https://www.ohchr.org/EN/professionalinterest/Pages/OPACCRC.aspx>.

projects chosen often have significant impact on local communities, workers and the environment. It was pointed out that the regulatory environment is becoming more rigorous, with the EU and some other foreign investment partners pushing for the inclusion of higher standards on labour, the environment and sustainability in order to establish a ‘gold standard’ in their free-trade agreements (FTAs) and mega-regional trade agreements.²²

One participant noted an interesting shift in the profile of Chinese companies that invest abroad. Previously, these companies were mainly state-owned enterprises (SOEs). Now only half are SOEs, while the rest are privately owned. Whereas Chinese SOEs are regulated by the state, private companies have less guidance, are subject to less regulation, and may have less capacity to follow international and domestic standards. This may result in standards for the treatment of Chinese workers varying according to the type of entity employing them.

Nevertheless, one speaker noted that business and human rights in relation to the BRI is a hot topic in China at the moment, with a marked increase in education on the issue. CUPL is about to launch a course on business and human rights, and one of the roundtable participants provides training on human rights issues at several Chinese business schools to the managers of Chinese companies operating overseas. It was observed that this positive development at the same time creates a tension between Chinese companies active overseas, which are increasingly aware of human rights standards and are taking steps to manage them, and domestic companies operating in China, which seldom talk about these issues.

It was noted that in the past three years, the Chinese government has increasingly discussed international development issues using the language of the UN Sustainable Development Goals (SDGs)²³ rather than ‘international human rights’. It was observed that, as with the general discussion on human rights noted above, this shift in language may be because of the sensitivity of the language of human rights in China, at least as far as civil and political rights are concerned. One participant noted that the SDGs focus particularly on economic and social rights (for example, the goals of ending poverty and promoting health, education and work), and therefore map more comfortably on to China’s approach to human rights, under which the right to development itself is a human right and economic and social development is a precondition for other human rights.

One participant highlighted a recent joint report by the UN Development Programme and the Chinese Ministry of Commerce (MOFCOM) about Chinese overseas investment and sustainable development.²⁴ The report bridges the BRI and SDGs, arguing that Chinese multinational enterprises will play a key role in assisting in the implementation of the SDGs in BRI countries and regions. The report acknowledges the challenges as well as the opportunities associated with Chinese overseas investment, and the need to incorporate principles (including the SDGs) into practice.

One participant highlighted China’s April 2016 publication of a position paper on implementation of the 2030 Agenda for Sustainable Development,²⁵ together with China’s National Action Plan for Implementation of the 2030 Agenda for the SDGs.²⁶ China has selected three cities to demonstrate progress on the SDGs; one of the criteria is that the development scheme must be internationally

²² In May 2017, the EU refused to sign a joint statement on the BRI because the MoU did not include reference to transparency and sustainability.

²³ <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

²⁴ Chinese Academy of International Trade and Economic Cooperation, Research Centre of the State-owned Assets Supervision and Administration Commission of the State Council of the People’s Republic of China, and United Nations Development Programme China (2017), *2017 Report on the Sustainable Development of Chinese Enterprises Overseas*, <http://www.cn.undp.org/content/china/en/home/library/south-south-cooperation/2017-report-on-the-sustainable-development-of-chinese-enterprise.html>.

²⁵ Ministry of Foreign Affairs of the People’s Republic of China (2016), ‘China’s Position Paper on the Implementation of the 2030 Agenda for Sustainable Development’, 22 April 2016, http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1357701.shtml.

²⁶ Ministry of Foreign Affairs of the People’s Republic of China (2016), *China’s National Plan on Implementation of the 2030 Agenda for Sustainable Development*, September 2016, http://www.fmprc.gov.cn/web/ziliao_674904/zl_674979/dnzt_674981/qtzt/2030kcxzyc_686343/P020170414689023442403.pdf.

upscaleable. On the other hand, one participant argued that China's emphasis on the SDGs generally focuses more on SDGs relating to sustainable development and the environment and less on the human rights component. It was also observed that the UN Convention on the Rights of Migrant Workers is increasingly relevant to China, given the number of migrants coming into the country (for example from Myanmar) to provide cheap skilled labour, a trend that has given rise to human rights challenges. The Convention might be something for China to consider signing up to in the future.²⁷

Environmental and labour provisions in China's regional trade agreements

One participant argued that China historically did not pay much attention to environmental protection. The need for a more welcoming investment regime for Chinese businesses at home and abroad has been a key driver of China's shift in position, as environmental protections offer a means of lowering risk as well as earning what the participant described as a 'social licence' to carry out projects.²⁸

In its more recent regional trade agreements, China has shown increased willingness to include substantive environmental provisions. For example, its FTA with Singapore refers to the Sino-Singapore Tianjin Eco-city project, which will be the first intergovernmental eco-city in the world. Participants discussed how this FTA provides an interesting new model for environmental cooperation, with China contributing land, labour and raw materials, and Singapore supplying the technology and know-how.²⁹

It was also noted that China's most recent FTAs with Switzerland (2014) and South Korea (2015) include dedicated chapters on the environment. The Korean FTA also addresses the issue of enforcement, exhorting the parties not to 'fail to effectively enforce its environmental measures including laws and regulations, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties'. It was observed that this language is almost identical to the language used in Section 20.3.4 of the Trans-Pacific Partnership Agreement, which represents one of the highest standards on environmental provisions in FTAs. At the same time, one speaker noted that China is still reluctant to accept the environmental commitments as binding, legally enforceable obligations: neither the China-Switzerland FTA nor the China-South Korea FTA allows the application of the dispute settlement mechanism to the environmental chapter.

It was pointed out that China continues to maintain a cautious approach on the rights of workers. China has signed 26 conventions of the International Labour Organization, including four core conventions, but almost all are technical, with very few relating to governance. China lacks freedom of association, the right to organize and collective bargaining. China sends individual workers abroad, but it usually does so as part of a project (e.g. as construction workers). Moreover, the legal framework applied in these cases regulates agencies or contractors rather than the workers themselves. One participant highlighted the fact that China's trade agreements instead focus on labour cooperation, and that China has been increasingly pushing for labour mobility, including through labour export and cooperation clauses in its most recent FTAs. For example, China's FTAs with New Zealand and Australia include special chapters on the movement of natural persons, as well as special market access opportunities for jobs such as traditional Chinese medicine practitioners, Chinese martial arts coaches and Chinese chefs. Labour cooperation is now also incorporated in China's new FTAs with Peru, Chile and Switzerland.

²⁷ OHCHR (undated), 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families', <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx> (entered into force 1 July 2003). The Convention has been ratified by 51 states; it has not yet been signed or ratified by China.

²⁸ For further details, see Gao, H. (2017), 'China's evolving approach to environmental and labour provisions in regional trade agreements', International Centre for Trade and Sustainable Development, ICTSD Opinion, 25 August 2017, <https://www.ictsd.org/opinion/china-3>.

²⁹ Ibid.

Participants also discussed the need for businesses to act responsibly under pillar two of the UN's Guiding Principles on Business and Human Rights (UNGPs).³⁰ It was noted that Europe's new General Data Protection Regulation (GDPR), which came into force on 25 May 2018, adopts a human rights approach to privacy issues, rather than treating the issues as a consumer issue, and that given the extraterritorial dimension of the GDPR, this will have implications for Chinese companies.

International dispute settlement in the context of the BRI

Participants discussed potential mechanisms for the settlement of international disputes, including those that arise in relation to the BRI. One Chinese participant described the BRI as a Chinese version of global governance, and noted that the Chinese government is very aware of the risks that BRI projects entail, given that the countries involved often have an unstable political environment or poor judicial system:

The geopolitical conflicts, different legal systems and differing development of maturity of the rule of law in these countries suggest that disputes are inevitable in the course of initiative building.

It was noted that the BRI is still at a relatively early stage and that its nature is not yet fully clear, as it involves proposals for a range of different projects in terms of scale, complexity, value and partners. The disparate nature of the BRI raises conceptual and practical challenges when it comes to assessing the options for suitable dispute settlement mechanisms. The Chinese government is looking carefully at options including international courts, international arbitration, domestic arbitration and treaty-based international dispute settlement mechanisms.

Interstate disputes

One speaker noted that for **disputes between countries** arising from BRI projects, the most likely dispute settlement mechanism would be that specified under the relevant FTA. China's FTAs increasingly provide for the possibility of subjecting the dispute to international arbitration and/or the possibility of going to the WTO's dispute settlement mechanism if the subject matter of the dispute falls within the WTO's competence.³¹

Participants described the WTO's dispute settlement mechanism as the 'crown jewel' of the WTO. The mechanism consists of both ad hoc panels and a seven-member standing appeals chamber, which hears appeals from reports issued by panels in disputes brought by WTO members. The WTO's Appellate Body is unique and to date has worked very well, having issued over 145 reports, which are final and binding on the parties.

Participants discussed the crisis created by the US's blocking of new appointments to the Appellate Body since September 2017. The Appellate Body requires a quorum of four, with three in the divisions to hear an appeal, and the appointment system is staggered. It was pointed out that the current four members are already struggling with the workload, and their number will be reduced to one by December 2019 if there are no new appointments between now and then. One participant noted that the concerns of the US about the Appellate Body, while also procedural, are primarily systemic: that the Appellate Body is overreaching in its interpretation of WTO rules. One Chinese speaker suggested that in order to resolve this impasse, it will be necessary for all member states to engage in good-faith negotiations on the rules of interpretation. It was noted that China is taking an active position in resolving this difficult situation, in the hope that negotiations may provide an opportunity to revisit existing Appellate Body working rules with the aim of preserving, rather than dissolving, the WTO framework.

³⁰ OHCHR (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, New York and Geneva: United Nations, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

³¹ For further discussion, see Moynihan (2017), *China's Evolving Approach to International Dispute Settlement*.

Investor–investor disputes

For **disputes between investors** that arise in relation to BRI projects, one Chinese participant suggested that these would most likely continue to rely on existing mechanisms, including domestic courts and international arbitration tribunals. It was noted that in terms of Chinese courts, the Supreme People’s Court has issued several opinions on providing judicial services and guarantees in respect of the BRI, with a view to providing an effective court for disputes.³² In January 2018, China announced the establishment of new BRI commercial courts, and one Chinese participant observed that these would come into existence soon.³³

Participants discussed the fact that the market principle is likely to operate in terms of which courts investors choose for this kind of dispute, and it was suggested that Chinese courts will face significant competition from courts and tribunals in other jurisdictions. This is partly because of reputational issues – when investors are negotiating clauses on the jurisdiction for hearing disputes, they are currently likely, if given the choice, to prefer foreign courts to Chinese ones. It was noted that many investors do not trust the judicial systems in BRI host countries and therefore need an alternative venue for hearing disputes. It was observed that Singapore has attracted a lot of cases involving investor disputes around the region since it opened up as a dispute settlement centre a few years ago; other established centres are in New York, London and Dubai. It was suggested that states should do what they can to ensure that courts and tribunals within their jurisdiction provide easy access, are efficient and impartial, and provide judgments enforceable in various jurisdictions.

Investor–state disputes

It was pointed out that Chinese domestic courts are unable to decide on **investor–state disputes** because they apply the principle of sovereign immunity and therefore cannot hear cases involving the state. Investor–state disputes are more likely to be settled through international arbitration. The International Centre for the Settlement of Investment Disputes (ICSID) provides a forum for investor–state dispute settlement (ISDS) in most international investment treaties and in numerous investment laws and contracts. It has 153 states parties. But many BRI participant states, including Russia, Thailand and Brunei, are not parties to ICSID, which limits its availability.

It was also noted that there are various deficiencies in the current system for international arbitration, which in recent years has faced calls for reform from both states and civil society.³⁴ In particular, concerns have been raised that the provisions are vague, and that they can be used to restrict policymaking by states in important areas of public policy, such as healthcare and the environment. It was suggested by some participants that the system of ad hoc tribunals leads to fragmentation as arbitrators deal with a single case and then disappear, which leads to inconsistency in the application of standards. The cases of *CME v Czech Republic* and *Lauder v Czech Republic* were cited,³⁵ which involved the same facts in relation to two separate bilateral investment treaties, and in which the relevant tribunals reached completely different results on the same legal provision on the same facts.

³² Peking University Center for Legal Information (2015), ‘Several Opinions of the Supreme People’s Court on Providing Judicial Services and Safeguards for the Construction of the “Belt and Road” by People’s Courts [Effective]’, 16 June 2015, <http://en.pkulaw.cn/display.aspx?cgid=251003&lib=law>.

³³ For details, see Jones, W. (2018), ‘China announces new courts for resolving Belt and Road disputes’, Bryan Cave Leighton Paisner Expert Legal Insight, 22 March 2018, <https://www.blplaw.com/expert-legal-insights/articles/belt-and-road-insights-china-announces-new-courts-for-resolving-belt-and-road-disputes>. The courts have since come into existence: see Finder, S. (2018), ‘Comments on China’s international commercial courts’, Supreme People’s Court Monitor, blogpost, 9 July 2018, <https://supremepeoplescourtmonitor.com/>.

³⁴ States have been debating possible reform of ISDS in United Nations Commission on International Trade Law (UNCITRAL) working groups since November 2017. For a summary of the latest working group discussions, see Roberts, A. and Bouraoui, Z. (2018), ‘UNICTRAL and ISDS Reforms: Concerns about Consistency, Predictability and Correctness’, EJIL Talk! blogpost, 5 June 2018, <https://www.ejiltalk.org/uncitral-and-isds-reforms-concerns-about-consistency-predictability-and-correctness>.

³⁵ *CME Czech Republic B.V. (the Netherlands) v The Czech Republic*, <https://www.italaw.com/sites/default/files/case-documents/ita0178.pdf>; and *Lauder v Czech Republic*, <https://www.italaw.com/sites/default/files/case-documents/ita0451.pdf>.

It was observed that states are now working to try to reform the process. Some states (e.g. Venezuela, Ecuador and Bolivia) have pulled out of ICSID altogether; others (e.g. Australia) are refusing to include ISDS provisions in their new bilateral investment treaties. States are also trying to take power back in terms of the interpretation of these provisions. For example, in the Comprehensive Economic and Trade Agreement between the EU and Canada,³⁶ the parties defined ‘double treatment’ very carefully in an attempt to guide the tribunals.

The EU’s proposal for a permanent multilateral investment court was also raised.³⁷ Could there be a special BRI dispute settlement centre based on a multilateral agreement? This has been actively advocated in some quarters, but one Chinese participant stated that while it is feasible in theory, it is doubtful that it would work in practice:

The BRI, unlike mega-regional trade arrangements which operate under a multilateral treaty, is not necessarily rules-based, nor is it fixed in terms of the number of states that are involved.

It was observed that as a result of the embryonic and amorphous nature of the BRI, at least in its current form, it would be very difficult to establish by consensus an institution for dispute settlement. The BRI is not based on one single treaty but rather on a series of ad hoc agreements with a wide range of countries. Without consensus, there would not be legitimacy. In addition, some governments (including China’s) would be reluctant to hand over jurisdiction to a special tribunal.

One Chinese participant suggested that a more credible and practical option would be the creation of a new mechanism that imitated the role of ICSID within the World Bank. This could involve the establishment of a dispute settlement centre under the auspices of the Asian Infrastructure Investment Bank (AIIB) – an ‘Asian Centre for the Settlement of Investor Disputes (ACSID)’ – to deal with investor–state disputes. It was argued that this model would be fully consistent with the role of alternative dispute mechanisms, and that the aim of such an initiative would be to establish a dispute settlement mechanism universally acceptable to all states at the international level. It was also observed that the establishment of an international centre such as this one could help to overcome doubts about China’s potential dominance of a specialist dispute settlement mechanism. It would benefit from the strong reputation of the AIIB (whose standards would contribute to its international and independent nature), and – if designed properly – could overcome the existing deficiencies of ICSID. Proposals for the reform of ICSID currently include the idea of establishing an appellate chamber at ICSID, similar to the WTO’s Appellate Body. China is following the proposals closely. One Chinese participant observed that China would consider the idea of an appellate chamber if China were to create a new ISDS system for BRI disputes.

International law applicable to cyberspace

Cyberspace – in other words, the notional environment in which communication occurs over computer networks – is another domain in which international law is being applied to novel scenarios, and in which China sees an interest in exerting influence at a formative stage. Cyberspace poses fundamental challenges for the application of international law, as it crosses territorial boundaries and involves a multiplicity of actors including commercial entities and hackers. The anonymity on which cyberspace is built also raises difficult evidential and political issues in terms of how to attribute responsibility for unlawful acts committed in cyberspace.

³⁶ *Comprehensive Economic and Trade Agreement (CETA)*, http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf.

³⁷ European Commission (2017), ‘A Multilateral Investment Court’, factsheet by the European Commission on a multilateral investment court, http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156042.pdf.

It was observed that there are many different ways in which international law interfaces with the modern digital world, and that in order to analyse these properly it is necessary to ‘disentangle the cyber knot’. The various strands within this knot include the following:

- Cyber interference by one state in another’s activities, which may engage the principle of non-interference set out in the UN Charter (Article 2(7)).
- Common threats where non-state actors may bear responsibility instead of, or in addition to, state actors. These threats include cybercrime, financial fraud and cyberterrorism, and may engage cybercrime treaties such as the Budapest Convention as well as national security laws.
- Economic espionage in relation to technical products, which may engage intellectual property as well as national security issues.
- Data protection, which has both a human rights and a national security angle.

One participant questioned the extent to which these issues are actually new. Is there really a difference between a government attempting to influence another state online, and the British Council or Confucius Institute seeking influence within another state? Is there a difference in legal terms between the hacking of a nuclear reactor and the physical launching of a missile? What about e-commerce and conventional trade? It was argued that in many cases, at least as far as the law is concerned, the answer is likely to be no.

It was observed that the UN Group of Governmental Experts on Information Security (GGE)³⁸ agreed by consensus the applicability of international law to cyberspace, but that there remain significant differences between states over how international law is applied, including over the preferred method for identifying and developing international law in this area. At the latest meeting of the GGE in 2017, states failed to reach further agreement on applicable rules, and there is reluctance on the part of some states for that process to continue. Roundtable participants discussed potential mechanisms for making progress on the agreement of norms in the face of geopolitical tensions and a lack of political will – all challenges exacerbated by the Edward Snowden revelations about the activities of the US National Security Agency, by accusations of economic espionage, and by allegations of Russian interference in other states’ elections. A couple of participants suggested that given deep differences between states on the application of relevant rules, the best options for the moment lay in regional and bilateral initiatives.

One participant observed that agreement of relevant rules has been hampered by the fact that states have traditionally been silent on how international law applies to cyber operations. The development of cyber technologies can stray into highly sensitive areas, such as national security, that governments have been unwilling to comment on publicly or debate. But if states do not clarify the law on cyberspace, there is a risk of it being a grey area with blurred boundaries, which would be dangerous. One participant argued that the UK attorney general’s recent speech at Chatham House, on the UK’s position on ‘Cyber and International Law in the 21st Century’, was a welcome move in terms of transparency.³⁹

It was noted by one participant that China’s general approach to cyber issues is quite different from that of some Western states, at least at first glance. China considers that although existing international law such as the UN Charter applies to cyber operations, there is also a need for new rules, as reflected in the Sino-Russian Code of Conduct of 2011, which was updated in 2015.⁴⁰ Western states such as the US and

³⁸ The UN GGE was tasked by the UN General Assembly with studying threats in the sphere of information security and measures to address them, including rules of responsible behaviour by states. It adopted two reports in 2013 and 2015: United Nations Office for Disarmament Affairs (undated), ‘Developments in the field of information and telecommunications in the context of international security’, <https://www.un.org/disarmament/topics/informationsecurity/>.

³⁹ HM Government (2018), ‘Cyber and International Law in the 21st Century’, speech by Attorney General Jeremy Wright QC MP, 23 May 2018, <https://www.gov.uk/government/speeches/cyber-and-international-law-in-the-21st-century>.

⁴⁰ United Nations General Assembly 2015, 13 January 2015, ‘International code of conduct for information security’, A/69/723, <https://ccdcoe.org/sites/default/files/documents/UN-150113-CodeOfConduct.pdf>.

the UK, on the other hand, generally argue that existing international law suffices. China favours the concept of ‘cyber sovereignty’, i.e. state control of the internet within a state’s borders (as manifested in the Great Firewall).⁴¹ It was also observed that China tends to prefer a multilateral approach to the agreement of relevant rules (i.e. states negotiating between themselves on behalf of their citizens) rather than the multi-stakeholder approach generally favoured by Western states, which would involve all internet participants in the process, including non-state actors such as companies, individuals, civil society and academics.⁴²

One Chinese participant discussed the tension between freedom of expression and ‘cyber sovereignty’, under which states seek to control information security and the content of the internet. It was noted that the original Sino-Russian Code of Conduct of 2011 was rejected by Western states, which perceived it as establishing a strict national sovereignty model over the content of the law. The Code was revised in 2015, partly with the aim of narrowing the gap between Western and Sino-Russian approaches.

It was argued that in practice the concept of sovereignty is likely to be too general and vague to serve as a useful guiding function on cybersecurity issues. Sovereignty is indeterminate in nature, and states have different understandings of what it means. It will cover both states’ security interests and individuals’ interests, such as freedom of expression. States may affirm sovereignty for political reasons, but they generally also recognize the limits of assertions of sovereignty.

One participant questioned whether, in reality, there is such a gap between China and other states on the control of data. European states may support the idea that existing international law applies, but the EU is more interventionist than many states in terms of online processes. This is clear from the GDPR, which applies privacy standards to any company doing business with the EU, including companies not physically located in the EU. China’s control of cross-border data for national security reasons shares several features with the new US Cloud Act.⁴³ Each of these provisions aims to regulate data of foreign entities within the jurisdiction of the state or organization concerned. It was pointed out that there are therefore multiple standards in play on cross-flows of data, and that China’s National Security Act should be considered in this context. As one speaker argued:

Ultimately, the discourse on cyber sovereignty has to be fleshed out with precise legal rules, which will require international cooperation. It remains to be seen whether a global standard on data protection is possible.

International law and the Arctic

It was noted that the Arctic is a major area of interest for China, as reflected in the fact that the Chinese government published its first white paper on *China’s Arctic Policy* in January 2018.⁴⁴ The white paper includes a comprehensive account of the international law framework that China considers applicable to the Arctic.

In the white paper, China argues that it is a ‘near Arctic State’; one participant noted that this language is similar to the language of the UK government’s 2013 policy paper, *Adapting To Change: UK policy towards the Arctic*, in which the UK states that it is the Arctic’s nearest neighbour.⁴⁵ In the white paper, China argues that changes in the Arctic’s climate have global implications, including a direct impact on China’s own climate, ecological environment and economic interests. One participant argued that, as one

⁴¹ The Great Firewall is the combination of legislative actions and technologies enforced by China to regulate the internet domestically.

⁴² Reference was made to an article by Macak, K. and Huang, Z. (2017), ‘Towards the International Rule of Law in Cyberspace: Contrasting Chinese and Western Approaches’, *Chinese Journal of International Law*, 16(2) pp. 271–310.

⁴³ The Clarifying Lawful Overseas Use of Data (Cloud) Act, signed into law by President Donald Trump on 23 March 2018.

⁴⁴ The State Council Information Office of the People’s Republic of China (2018), *China’s Arctic Policy*, 26 January 2018 (first edition), http://english.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm.

⁴⁵ HM Government (2013), *Adapting To Change: UK policy towards the Arctic*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251216/Adapting_To_Change_UK_policy_towards_the_Arctic.pdf.

of the five permanent members of the UN Security Council, China has unique obligations to safeguard peace and security in the Arctic, including freedom of navigation and overflights, and an important role to play in addressing trans-regional and global issues relating to the Arctic.

It was pointed out that the white paper emphasizes that China will actively promote omni-dimensional cooperation on Arctic affairs, encouraging a pluralist approach, i.e. at global, regional and bilateral levels. One Chinese participant argued that sustainability and environmental protection are at the heart of China's participation in Arctic affairs: there should be a reasonable balance between utilization of the Arctic's resources (including shipping routes and exploration for oil, gas and minerals) and protection of the Arctic's climate, ecosystems and indigenous people. It was also argued that fears that China has military goals in the Arctic are unfounded and go against China's policy of a peaceful Arctic, as well as against the provisions in the UN Convention on the Law of the Sea (UNCLOS) that seas should be used exclusively for peaceful purposes.

One Chinese participant emphasized that China does not intend to overstep or challenge Arctic states' sovereign rights, nor does it intend to intervene in their affairs. At the same time, the speaker noted:

China has vital interests in the Arctic. It will not be absent in exercising legitimate rights and corresponding obligations, in line with international law.

Ultimately, it was observed that the white paper aims to strike a balance between China's need of the Arctic on the one hand and the Arctic's need of China on the other. China will be present, but will not overstep.

It was observed by one non-Chinese expert that the Chinese government white paper captures very well the international law framework that applies to the Arctic. Unlike Antarctica, there is no single treaty covering the Arctic. Instead, the relevant international law framework consists of a patchwork of treaties as well as customary international law and general principles of law. Relevant treaties under this regime, to which China is a party, include the UN Charter, UNCLOS and the Spitsbergen (or Svalbard) Treaty. Under the Spitsbergen Treaty, China established its first Arctic scientific research station, the Yellow River Station on Svalbard, in 2003.

It was observed that the Arctic's shipping routes are becoming more open with the melting of the ice. But commercial exploitation of the Arctic's resources could be a potential source of tension with Arctic states. One participant highlighted the fact that Canada, as a major Arctic state, argues that when the lines of the exclusive economic zones of Arctic states are drawn, most known natural resources fall within the jurisdiction of Arctic states. Very few areas are therefore available for resource extraction by non-Arctic states, but this of course assumes that non-Arctic states agree with how Arctic states have drawn their boundaries. It was pointed out that there are a number of disputes about sovereign rights between Arctic states, including overlaps between Russian and Norwegian continental shelf claims, and a long-running dispute between Canada and the US on whether the so-called North West Passage is indeed a passage or whether it forms part of Canada's internal waters. But so far, Arctic and non-Arctic states have generally worked together. One example was the assistance by Canada to a Chinese icebreaker, *Snowdragon*, in September 2017, which was the first time that a Chinese ship had circumnavigated the Arctic.⁴⁶

Arctic governance

It was noted that compared with the governance of Antarctica, governance of the Arctic is a much smaller and more recent affair. The Arctic Council was established only in 1996. It consists of eight Arctic states,

⁴⁶ Xinhua News Agency reported before *Snowdragon* set off from China that its research focused on marine biology, geology and environmental issues. Analysts have suggested that its purpose is also to test the feasibility of moving cargo on container ships across the melting Arctic seas from China to North America and Europe. See Tsuruoka, D. (2017), 'Chinese icebreaker enters Canada's Northwest passage', *Asia Times*, 31 August 2017, http://www.atimes.com/article/chinese-icebreaker-enters-canadas-northwest-passage/?fb_comment_id=1463433693735820_1463999240345932&cn-reloaded=1#f3fbd92ff7b75e6.

and has a narrow remit that does not include military or security matters. The Arctic Council also has 13 observer states, 13 NGOs and 13 intergovernmental and inter-parliamentary organizations. Of the six new observer states admitted in 2013, five were Asian, including China. Since its inception, the Arctic Council has not issued much hard law, instead promulgating loose frameworks of cooperation. But it has provided a forum for the negotiation of three legally binding agreements between the eight Arctic states.⁴⁷ Some of these agreements contain provisions that encourage involvement and coordination with non-member states.

It was noted that the Chinese government's white paper on China's Arctic policy uses the language of 'mutual benefit' and refers to China as 'a champion for the development of a community with a shared future for mankind',⁴⁸ echoing language that China is increasingly promulgating, including in its recent human rights resolution referred to above.⁴⁹ It was argued by one Chinese participant that international law could ensure the practice of 'win-win arrangements' in the Arctic, with China putting forward the development of new principles of international law through active engagement, including in governance of the Arctic.

Participants heard about various ways in which China proposes to become more involved in the governance of the Arctic. In November 2017, China, Japan and others worked with five Arctic Council states to reach an Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.⁵⁰ China also played a role in the formation of the Polar Code within the International Maritime Organization (IMO). The Code sets out mandatory requirements for vessels operating in Arctic waters.⁵¹ It was argued that China could promote the development of new rules meeting common interests, for example through the making of international treaties, or clarifying the meaning of vague content through state practice. Currently observers have very limited rights; a Chinese participant suggested that in future observers could usefully become involved in working groups to provide contributions in research fields. It was argued that China could also improve Arctic governance by actively participating in international organizations relevant to Arctic affairs (e.g. the IMO and International Seabed Commission), and in search and rescue missions, and by incorporating international law on the Arctic into domestic legislation.

The Arctic Council as a model for security cooperation in the South China Sea?

One Chinese participant suggested that the Arctic Council could provide a useful model for cooperation, coordination and interaction between states in the South China Sea on issues of common interest. It was noted that states in the South China Sea region have been in search of a paradigm for security cooperation for the last decade, but that none of the proposals have come to fruition. There are similarities between the Arctic region and the South China Sea region in terms of overlapping claims to resources, conservation issues, scientific research, marine environmental protection, and transit regimes. At the same time, it was noted by others that there are significant differences too – the Arctic Council does not cover security cooperation, and the South China Sea raises more political and sensitive issues than the Arctic does.

At the 13th National People's Congress in March 2018, Chinese Foreign Minister Wang Yi stated that China aims to speed up the ASEAN Code of Conduct consultation process and actively explore options for a cooperation mechanism with the South China Sea states.⁵² One roundtable participant observed that

⁴⁷ For details, see <https://arctic-council.org/index.php/en/our-work/agreements>.

⁴⁸ The State Council Information Office of the People's Republic of China (2018), *China's Arctic Policy*, at para 2 of the Foreword.

⁴⁹ Page 5 above.

⁵⁰ Hoag, H. (2017), 'Nations agree to ban fishing in Arctic for at least 16 years', *Science*, 1 December 2017, <http://www.sciencemag.org/news/2017/12/nations-agree-ban-fishing-arctic-ocean-least-16-years>.

⁵¹ International Maritime Organization (undated), *International Code for Ships Operating in Polar Waters (Polar Code)*, MEPC 68/21/Add.1, adopted 1 January 2017, <http://www.imo.org/en/MediaCentre/HotTopics/polar/Pages/default.aspx>.

⁵² Ministry of Foreign Affairs of the People's Republic of China (2018), 'Foreign Minister Wang Yi Meets the Press', 9 March 2018, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1540928.shtml.

this was the first time that China has clearly articulated the need for a South China Sea mechanism to achieve peaceful cooperation and stability in the South China Sea. The same participant proposed that a model based on the Arctic Council could consist of an intergovernmental body created by a multilateral agreement between South China Sea states. Like the Arctic Council, it could have a president, member states, observers and a secretariat, with meetings both at council level (for high-ranking officers) and ministerial level. At the initial stage there could be five working groups – on environmental protection; confidence-building measures; joint development; sustainable development; and prevention and emergency. A South China Sea Cooperation and Development Fund could be established to provide the Council and its activities with institutional funding, either voluntarily, through the BRI or under the umbrella of the AIIB.

Some doubts were expressed about how easily this model would transfer, given deep differences of opinion among states on a range of South China Sea issues, as reflected in the proceedings before the Arbitral Tribunal in the case brought by the Philippines under Annex VII of UNCLOS, in which China refused to participate, and in which China rejected the Tribunal's awards.⁵³ At the same time, one participant emphasized that the Arctic Council was being proposed as a model for a potential security coordination mechanism rather than for dispute settlement. It was noted that this is, at the very least, another interesting example of innovative Chinese thinking on potential new institutions and norms, and an attempt at a mechanism based on the peaceful management of shared resources.

Looking ahead

Given China's ambitions to exert more influence on international law, Chinese and non-Chinese participants stressed the importance of this network as a means of engaging with each other to exchange views on topical international legal matters. A number of issues for future discussion were identified, including international law relating to peace and security (to be discussed at our sixth roundtable in New York in November 2018); implementation and accountability in international law, including through fact-finding missions and tribunals; and the rights of individuals with disabilities.

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⁵³ *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Case No. 2013-19, <https://www.pcacases.com/web/view/7>.