
Rule-Making, Rule-Taking or Rule-Rejecting under the Belt and Road Initiative: A Central Asian Perspective

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Abstract

Since the Belt and Road Initiative (BRI) was announced in 2013, China's expanding economic, geopolitical, and business presence demonstrates its eagerness to play a more significant role in the systems of international governance and law. The BRI's scale and influence have captured immense attention among politicians, policymakers, experts, and academics. They offer numerous interpretations of the BRI's global and regional impact. If China claims to be a stakeholder in the international system, what are the implications for the legal systems of the BRI countries and their governance systems? To what extent does the BRI lead to the expansion of China's institutions and legal norms? How can the BRI countries ensure that their interests in BRI projects are adequately protected? This article analyses the Central Asian perspective on the BRI. Central Asia and Kazakhstan, in particular, have strategic relevance to the BRI. Remarkably, the BRI was launched during the visit of President Xi Jinping to Kazakhstan, which means that Kazakhstan plays a critical transit role as China's pivot to Europe. Although the BRI is an ambitious global strategy, it has provoked much criticism, especially in liberal countries. Despite China's efforts to promote the BRI as a win–win endeavour, China's increased economic and political influence has already led to heightened scrutiny of its role in shaping ideology, economic development, and the legal and institutional landscapes. While many academic publications address different perspectives of the BRI, the context behind BRI projects requires further attention. This article contributes to the literature by studying BRI projects in Kazakhstan and their legal framework and governance.

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Introduction

Since the Belt and Road Initiative (BRI) was announced in 2013, China's expanding economic, geopolitical, and business presence demonstrates its eagerness to play a more significant role in the systems of international governance and law. The BRI's scale and influence have captured immense attention among politicians, policymakers, experts, and academics. They offer numerous interpretations of the BRI's global and regional impact. If China claims to be a stakeholder in the international system, what are the implications for the legal systems of the BRI countries and their governance systems? To what extent does the BRI lead to the expansion of China's institutions and legal norms? How can the BRI countries ensure that their interests in BRI projects are adequately protected?

This article analyses the Central Asian perspective on the BRI. Central Asia and Kazakhstan, in particular, have strategic relevance to the BRI. Remarkably, the BRI was launched during the visit of President Xi Jinping to Kazakhstan, which means that Kazakhstan plays a critical transit role as China's pivot to Europe. Kazakhstan is an integral part of the economic bridge between East and West: the Eurasian land bridge corridor and the China–Central Asia–West Asia corridor. Kazakhstan has already received China's BRI investment to upgrade its infrastructure and develop transport hubs. For Central Asia, BRI projects look highly promising and will allow an increase in connectivity, an expansion in regional trade, and modernization of the obsolete transport infrastructure. From China's perspective, the BRI is the way to deliver the public good, promote global connectivity, and portray itself as a responsible stakeholder.

Although the BRI is an ambitious global strategy, it has provoked much criticism, especially in liberal countries. Despite China's efforts to promote the BRI as a win–win endeavour, China's increased economic and political influence has already led to heightened scrutiny of its role in shaping ideology, economic development, and the legal and institutional landscapes. BRI projects pose questions about the initiative's transparency and sustainability. In China, some voices acknowledge that the BRI bears certain risks for the sustainability of China's economy and its future growth.

While many academic publications address different perspectives of the BRI, the context behind BRI projects requires further attention. This article contributes to the literature by studying BRI projects in Kazakhstan and their legal framework and governance. First, it starts with a brief literature overview of different narratives surrounding China's BRI. Then, it discusses the potential and boundaries for the export of China's development model to Central Asia. Next, it reviews bilateral agreements between Kazakhstan and China related to the BRI and Chinese investments. The article proceeds with case studies of several big projects in Kazakhstan associated with the BRI and examines their legal and economic foundations. It concludes with final remarks.

BRI narratives: pros and cons

BRI pros

The literature points out several benefits that the BRI brings to participating countries and the international community. The Chinese government often refers to these benefits to frame a positive attitude towards the BRI. First, the BRI has the clear potential for facilitating cooperation between East and West, improving market connectivity, and creating positive economic effects. The construction of modern infrastructure can lead to better regional trade, access to new markets, and higher living standards. BRI projects can facilitate the inflow of foreign investments, job creation, and technology transfer, and, as a result, increase public welfare and accelerate economic growth in many developing countries.¹ According to some estimations, 'if completed, BRI transport projects could reduce travel times along economic corridors by 12%, increase trade by between 2.7% and 9.7%, increase income by up to 3.4%, and lift 7.6 million people from extreme poverty'.² There has been an actual call among emerging States for adequate infrastructure and new investments. According to the Asian Development Bank, 'Asia alone requires \$26 trillion in infrastructure investment by 2030 to sustain current growth rates'.³ In Latin America and Africa, the absence of modern infrastructure is one of the major obstacles to growth and development.⁴ For many developing markets, China is the only investor that can offer sustainable and sufficient funds for local capacity building.⁵ As Pakistan's former commerce minister Khurram Dastgir Khan put it, 'China is the only game in town'.⁸ The BRI falls in line with the interests of those countries seeking a deeper integration into the world economy.⁶ The BRI can offer a very substantial level

¹ Wenxian Zhang and others, *China's Belt and Road Initiative: Changing the Rules of Globalization* (Springer International Publishing 2018).

² Caroline Freund and Michele Ruta, 'Belt and Road Initiative' World Bank (29 March 2018) <<https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative>> accessed 1 October 2019.

³ Ibid.

⁴ Feng Yujun and others, 'The Belt and Road Initiative: Views from Washington, Moscow, and Beijing' Carnegie-Tsinghua Centre for Global Policy (8 April 2019) <<https://carnegietsinghua.org/2019/04/08/belt-and-road-initiative-views-from-washington-moscow-and-beijing-pub-78774>> accessed 1 October 2019.

⁵ China has created new scholarship and grant programs for students from BRI countries. These programs embrace undergraduate, graduate, and language programs at China's top universities. See Katrin Bichenbacher, 'Scholarships From the Chinese Government Attract an Increasing Number of Young Students From Countries Along the Belt and Road, Especially Pakistan' *Global Times* (Beijing, 29 March 2018) <<http://www.globaltimes.cn/content/1095777.shtml>>.

⁶ With Western investors being wary of investing in Central Asian states that lack governance capacity and effective rule of law (Kazakhstan being an exception) and Russia prioritizing military and security-linked aid, China has been providing financial and technical assistance, refurbishing old links and initiating new projects in the region filling in the B \$8 trillion infrastructural funding gap. Dave Bhavna and Yuka Kobayashi, 'China's Silk Road Economic Belt Initiative in Central Asia: Economic and Security Implications' (2018) 16 *Asia Europe J* 267.

of investment through its financial institutions.⁷ In this regard, academics compare the BRI with the Marshall Plan, which involved 16 European countries after World War II.⁸

The BRI's vision desires to strengthen mutual economic cooperation, promote the free flow of goods and services, deepen market integration, and facilitate closer socio-economic ties. The vision does not require any compulsory institutions and redundant structures, creating more space for various institutional arrangements.⁹ The Chinese government presents the BRI as an opportunity that benefits all and as a possible alternative to 'a traditional Western framework of winner takes all'.¹⁰ Although the BRI is a Chinese initiative, all countries are deemed to be its equal participants, contributors, and beneficiaries. The BRI facilitates greater synergy with other development strategies at the national and regional levels.¹¹

Therefore, for many developing countries, the BRI's framework seems more attractive since it does not impose strict requirements, rules, or official membership to obtain access to BRI investments.¹² The BRI represents a new arrangement that offers an alternative to traditional development institutions and, at the same time, respects international norms.¹³ The BRI appears not to challenge, but, rather, to complement, established practices by consolidating and upgrading a network of bilateral free trade agreements and bilateral investment agreements into a single multilateral plan.¹⁴

⁷ China Development Bank finances more than 900 projects in 60 countries worth more than US \$890 billion. The Bank of China is expected to lend around US \$100 billion between 2016 and 2018. The Industrial and Commercial Bank of China (ICBC) examines approximately 130 projects worth US \$159 billion.

See Mustafa YAĞCI, 'Rethinking Soft Power in Light of China's Belt and Road Initiative' (2018) 15 (*Uluslararası İlişkiler*) International Relations 67.

⁸ Simon Shen and Wilson Chan, 'A Comparative Study of the Belt and Road Initiative and the Marshall Plan' (2018) 4 Palgrave Communications 1.

⁹ National Development and Reform Commission of the People's Republic of China, 'Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road' (28 March 2015) <http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html> accessed 1 October 2019.

¹⁰ Zhang and others (n 1).

¹¹ 'China: Stronger Legal Cooperation for Sound and Steady Development of the Belt and Road Initiative—Speech by State Councillor and Foreign Minister Wang Yi' *Asia News Monitor* (Seoul, 6 July 2018) <<http://libproxy1.nus.edu.sg/login?url=https://search-proquest-com.libproxy1.nus.edu.sg/docview/2064349967?accountid=13876>> accessed 26 August 2019.

¹² Fabio Indeo, 'The Eurasian Economic Union and the Silk Road Economic Belt: the Impact of the Sino-Russian Geopolitical Strategies in the Eurasia Region' *Analytical Media: Eurasian Studies* (10 May 2017) <<http://greater-europe.org/archives/2720>> accessed 1 October 2019.

¹³ Jianguy Wang, 'China's Governance Approach to the Belt and Road Initiative (BRI): Relations, Partnership, and Law' (2019) 14 *Global Trade & Customs* J 222.

¹⁴ 'On June 16, 2015, China's Supreme People's Court issued an opinion on the People's Courts providing judicial services and safeguards for the construction of the Belt and Road. . . which explicitly encourages the use of international arbitration in resolving BRI disputes, and requires the People's Courts to efficiently recognize and enforce BRI awards, and to improve the mutual recognition and enforcement of arbitral awards with BRI countries that are not member states of the New York Convention.' Zhang and others (n 1).

BRI cons

At the same time, academics and experts highlight specific barriers to the BRI's success, including geopolitics and policy coordination, investment uncertainty and low transparency, social resistance and corruption surrounding some projects. Many observers cast some scepticism about the Chinese model itself, which is considered to ignore liberal values such as democracy, human rights, and the rule of law.¹⁵

There is no single official source of data about BRI projects, no list of approved projects, no exact number of participating countries, and no guidelines on what it means to be a participant.¹⁶ Although insufficient information can be viewed as providing flexibility and freedom for countries to join the BRI, it creates misunderstanding and a lack of transparency around BRI projects and investments, and fuels prejudice and suspicion about China's real intentions.¹⁷ The lack of information creates the possibility of arguing that the BRI's geopolitical strategy targets the existing international order, thereby spreading a negative image of the BRI as an example of neo-colonialism.¹⁸ The BRI engages more than 60 countries around the world. These countries have different political, economic, and legal systems that affect their policies, values, and priorities. There is no explicit single coordination mechanism or framework that applies across all of the BRI projects. Each project is grounded on bilateral relations that vary from country to country, which raises the risk of inconsistency and weak enforcement.¹⁹

China's economic and political dominance in BRI projects leads to certain power distortions. Many economies involved in the BRI are relatively small compared to China. They have much less bargaining power over cooperative projects and worry about possible abuse and implications of China's rising influence. China's BRI investments are generally considered to be accompanied by environmental problems since many host countries have low pollution standards and weak environmental regulations.²⁰ Another concern is an import of Chinese

¹⁵ Oehler-Şincai and Iulia Monica, 'How Do BRI Narratives and Actions Impact Cooperation Relations and Partnerships Worldwide?' (2019) 7 *Global Economic Observer* 275.

¹⁶ Ben Mauk, 'Can China Turn the Middle of Nowhere Into the Centre of the World Economy?' *New York Times* (New York, 29 January 2019) <<https://www.nytimes.com/interactive/2019/01/29/magazine/china-globalization-kazakhstan.html>>.

¹⁷ Yujun and others (n 4).

¹⁸ In this regard, the BRI often is referred to as 'a Trojan horse for extending its geopolitical clout and dumping excess production capacity abroad.' See Zhang and others (n 1).

¹⁹ For instance, it might be challenging to ensure the same standards of procedure, efficiency, and safety across all countries along the high-speed cross-border railroads. See Yiping Huang, 'Understanding China's Belt & Road Initiative: Motivation, Framework and Assessment' (2016) 40 *China Economic Rev* 314.

²⁰ 'Most countries targeted by Chinese firms for industrial investments have very weak emissions and environmental standards and enforcement,' said Lauri Myllyvirta, lead analyst at Greenpeace's global air pollution unit. Brenda Goh and Mariya Gordeyeva, 'Shattered at Home, Cement Plants Bloom along China's New Silk Road' *Reuters* (31 January 2019) <<https://www.reuters.com/article/us-china-silkroad-cement-insight/shattered-at-home-cement-plants-bloom-along-chinas-new-silk-road-idUSKCN1PO35T>> accessed 7 October 2019.

business and labour force that potentially limits the scope for local engagement. Protests erupted in several China-controlled factories and construction sites against China's reported resistance to use the local workforce, offer competitive wages and acceptable work conditions as well as against the environmental impact of Chinese enterprises.²¹ Critics claim that the BRI facilitates debt-trap diplomacy, putting developing countries in debt dependence and then translating that dependence into geopolitical influence.²² China's investments in Sri Lanka, Pakistan, and Malaysia are central to the debt-trap argument.²³

Finally, limited transparency and weak governance standards facilitate arguments about corruption around BRI projects. Opaque regulation and the lack of public information about BRI projects cause uncertainty and doubts about the actual fairness of the BRI. Transparency International's Corruption Perception Index shows that countries along the BRI are among the most corrupt in the world.²⁴ Their institutional environment that makes corruption possible may welcome BRI projects as an opportunity for bribes and rent seeking while claiming that those projects support the country's economic development.²⁵

China's model in Central Asia

The BRI seeks to build a regional community of shared interests and norms, where China desires to contribute to the system of global governance.²⁶ China aspires to play a greater role by bringing its development model to the international spotlight. For some academics, the BRI represents the evolution of China's role in global governance from being a rule taker to an active

²¹ In 2013, people in Kyrgyzstan protested against the environmental effect of the construction of a China-backed oil refinery. There were labour strikes by Kyrgyz workers who demanded equal pay. See Anna Lelik, 'Kyrgyzstan: Bishkek Hopes Chinese Investment Can Produce Industrial Breakthrough' *Eurasianet* (22 June 2016) <<https://eurasianet.org/kyrgyzstan-bishkek-hopes-chinese-investment-can-produce-industrial-breakthrough>> accessed 7 October 2019.

²² John Hurley, Scott Morris and Gailyn Portelance, 'Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective' (Centre for Global Development, Washington DC, 4 March 2018). <<https://www.cgdev.org/publication/examining-debt-implications-belt-and-road-initiative-policy-perspective>> accessed 11 October 2019.

²³ Lucy Hornby, 'Mahathir Mohamad Warns against "New Colonialism" during China Visit' *Financial Times* (Beijing, 20 August 2018) <<https://www.ft.com/content/7566599e-a443-11e8-8ecf-a7ae1beff35b>> accessed 7 October 2019; Maria Abi-Habib, 'How China Got Sri Lanka to Cough Up a Port' *New York Times* (Sri Lanka, 25 June 2018) <<https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html>> accessed 7 October 2019.

²⁴ More information is available at 'Corruption Perceptions Index 2018 Transparency International' <<https://www.transparency.org/cpi2018>> accessed on 1 October 2019.

²⁵ As an illustration, in Kyrgyzstan, the failure of a Chinese-built power plant has led to the arrest of two former prime ministers accused of receiving kickbacks from the Chinese company in charge of construction. In Malaysia, the ongoing 1MDB scandal led to the cancellation of two major BRI-related pipeline projects. See Yujun and others (n 4).

²⁶ Anastas Vangeli, 'China's Engagement with the Sixteen Countries of Central, East and Southeast Europe Under the Belt and Road Initiative' (2017) 25 *China & World Economy* 101.

rule maker.²⁷ China has initiated a series of normative and conceptual notions to increase its international influence as a new rule maker.

The idea of Internet sovereignty provides a good illustration of China's ambition to shape international norms. Global Internet governance²⁸ has been traditionally driven by the industry.²⁹ Beijing has been among the most vocal countries in debates around the idea of Internet sovereignty when every country has a legitimate right to regulate and control its cyberspace on its territory for maintaining political order and social stability.³⁰ The country's technology potential and capital capacities support its ambition to be a world 'cyber power'. The Golden Shield Project—the so-called 'Great Firewall'—represents remarkable technical, legal, and regulatory measures to block or censor the invasion of potentially disrupting information and black-listed Internet resources.³¹ China has approved its Cybersecurity Law, which requires companies to censor all prohibited information, restrict online anonymity, store users' personal information locally, report on network security incidents, and provide access to security agencies upon their legitimate request. China has also been working on the development of its national information technology standards.³²

Today, Beijing takes the lead in various regional governance initiatives that aim to redraft existing cyber norms. In 2009, the Shanghai Cooperation Organization countries signed the Agreement on International Information Security Cooperation.³³ Later, in 2011, China, along with Russia, Tajikistan, and Uzbekistan, submitted the first draft of the International Code of Conduct for Information Security to the United Nations in order to formalize new cyber governance norms. After the initiative failed to obtain enough support, these countries, joined by Kazakhstan and Kyrgyzstan, proposed an updated version

²⁷ Yifan Yang, 'Corporate Public Diplomacy and Global Communication of China's "Belt and Road" Initiative' (2018) 33 *Pacific Focus* 497.

²⁸ The Working Group on IG made a working definition of Internet Governance as follows: 'Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.' Li Yan, 'Reforming Internet Governance and the Role of China' (2015) 12 *Focus Asia* 1.

²⁹ *Ibid.*

³⁰ China alone has over 750 million Internet users and a cross-border e-commerce volume of 6.7 trillion yuan in 2016. See Lim Yan Liang, 'China Continues to Push for More Controlled Cyberspace' *Straits Times* (Wuzhen, 4 December 2017) <<https://www.straitstimes.com/asia/east-asia/china-continues-push-for-more-controlled-cyberspace>> accessed 7 October 2019.

³¹ Jinghan Zeng, Tim Stevens and Yaru Chen, 'China's Solution to Global Cyber Governance: Unpacking the Domestic Discourse of "Internet Sovereignty"' (2017) 45 *Politics & Policy* 432.

³² Stewart M Patrick, 'Belt and Router: China Aims for Tighter Internet Controls with Digital Silk Road' *Council on Foreign Relations* (2 July 2018) <<https://www.cfr.org/blog/belt-and-router-china-aims-tighter-internet-controls-digital-silk-road>> accessed on 22 February 2020.

³³ 'SCO Member States' Joint Efforts in International Information Security Discussed in Moscow' *Shanghai Cooperation Organisation* (4 February 2017) <<http://eng.sectsc.org/news/20170204/209441.html>> accessed on 22 February 2020.

in 2015.³⁴ Last year, a United Nations committee approved a cybercrime resolution entitled 'Countering the Use of Information and communications technologies for criminal purposes', sponsored by China, Russia, Belarus, Cambodia, Iran, Myanmar, Nicaragua, Syria, and Venezuela. As a result, a new group is drafting terms of reference for a future international 'cybercrime' treaty.³⁵

To convey its rules and standards, China is engaged in many telecommunications projects around the world as part of a 'digital Silk Road' - Chinese-built, fibre-optic networks that could allow BRI countries to build their own Internet infrastructure or rely on China's technological and informational capacities, avoiding an exclusive and expensive dependence on Western technologies.³⁶ Such companies as Huawei Technologies, China Telecom, China Mobile Alibaba, and JD.com actively invest in digital infrastructure projects, deliver equipment, and provide technical assistance across the BRI.³⁷

However, digital technologies are not the only commodity that China is willing to export across the BRI. China demonstrates its desire to transmit its vision of a more censored and controlled cyberspace. Beijing employs the BRI as an avenue to build a network of countries that adhere to, and adopt its cyber policies, digital standards, and technologies. Some reports mention that, over the past few years, China has hosted officials from at least 36 countries along the BRI for large-scale training and seminars on cyberspace, big data, and media management.³⁸ Beijing expresses its ambition to globalize its governance and normative approach, and many countries show their willingness to learn from China. At the fourth World Internet Conference held in 2017, Saudi Arabia, Egypt, Turkey, Thailand, Laos, Serbia, and the United Arab Emirates 'agreed to cooperate with China in the digital economy to build an interconnected digital Silk Road'.³⁹ Recently, Vietnam introduced a new cybersecurity law that imitates

³⁴ Henry Rõigas, 'An Updated Draft of the Code of Conduct Distributed in the United Nations: What's New?' *Cooperative Cyber Defense Centre of Excellence* <<https://ccdcoe.org/incyber-articles/an-updated-draft-of-the-code-of-conduct-distributed-in-the-united-nations-whats-new/>> accessed on 22 February 2020.

³⁵ Justin Sherman and Mark Raymond, 'The U.N. Passed a Russia-backed Cybercrime Resolution. That's Not Good News for Internet Freedom' *Washington Post* (4 December 2019) <<https://www.washingtonpost.com/politics/2019/12/04/un-passed-russia-backed-cybercrime-resolution-thats-not-good-news-internet-freedom/>>.

³⁶ 'What China has done is put together a whole suite of not just technology, but information systems, censorship training, and model laws for surveillance. . . .It's the full kit, and the laws, and the training, to execute a Chinese version of the internet.' Sally Adee, 'The Global Internet Is Disintegrating. What Comes Next' *BBC* (15 May 2019) <<https://www.bbc.com/future/article/20190514-the-global-internet-is-disintegrating-what-comes-next>> accessed on 22 February 2020.

³⁷ Shunsuke Tabeta, 'Beijing Exports 'China-style' Internet across Belt and Road' *Nikkei Asian Review* (Wuzhen, 21 October 2019) <<https://asia.nikkei.com/Spotlight/Belt-and-Road/Beijing-exports-China-style-internet-across-Belt-and-Road>> accessed on 22 February 2020.

³⁸ William Chalk, 'China's Digital Imperialism: Shaping the Global Internet' *Supchina* (2 July 2019) <<https://supchina.com/2019/07/02/chinas-digital-imperialism-shaping-the-global-internet/>> accessed 21 February 2020.

³⁹ Patrick (n 32).

China's legislation.⁴⁰ Increasingly restrictive laws have been passed in Uganda, Tanzania, Thailand, Egypt, Turkey, and the United Arab Emirates.⁴¹ Finally, Russia and Central Asia have been incorporating elements of China's model by approving 'sovereign internet' regulation.⁴² Free speech and human rights activists widely criticize the trend that empowers authoritarian governments to block dissenting opinions, restrict Internet access, and censor online content without a transparent process.

At the same time, China claims that it has no intention of interfering in the internal affairs of other nations, of undermining other States' sovereignty, or of seeking hegemony or dominance.⁴³ Though China desires to see the new distribution of power, it expects to achieve it within existing institutions.⁴⁴ Beijing actively engages with the United Nations and other intergovernmental platforms utilizing standard diplomatic negotiations and various bilateral and multilateral dialogues.⁴⁵ China and its international financial institutions, including the Asian Infrastructure Investment Bank, demonstrate adherence to best international practices and global norms.⁴⁶ The country has been updating and expanding its network of bilateral treaties with the host countries to meet the needs of investor protection, judicial cooperation, and dispute resolution.⁴⁷

With the BRI, China and many developing countries desire to gain better international engagement and representation by obtaining a stronger voice in

⁴⁰ Justin Sherman, 'Vietnam's Internet Control: Following in China's Footsteps?' *The Diplomat* (11 December 2019) <<https://thediplomat.com/2019/12/vietnams-internet-control-following-in-chinas-footsteps/>> accessed on 22 February 2020.

⁴¹ Justin Sherman, 'Emulating China and Russia, More Countries Crack Down on Internet Freedoms' *World Politics Review* (11 January 2019) <<https://www.worldpoliticsreview.com/articles/27162/emulating-china-and-russia-more-countries-crack-down-on-internet-freedoms>> accessed on 22 February 2020.

⁴² See Oleg Matsnev, 'Kremlin Moves toward Control of Internet, Raising Censorship Fears' *New York Times* (Moscow, 11 April 2019) <<https://www.nytimes.com/2019/04/11/world/europe/russia-internet-censorship.html>> accessed on 22 February 2020; Robert Coalson, 'Explainer: Russia Takes a Big Step toward The 'Internyet'' *RadioFreeEurope RadioLiberty* (1 November 2019) <<https://www.rferl.org/a/explainer-russia-sovereign-internet-law-censorship-runet/30248442.html>> accessed 20 February 2020; Nataliya Shapovalova, 'Trebovanie lokalizatsii personalnykh dannykh v Respublike Kazakhstan: chasto zadavemye voprosy' *Dentos* (22 December 2016) <<https://www.dentons.com/ru/insights/articles/2016/december/15/legal-and-practical-approaches-to-meet-the-requirements-for-the-localization-of-personal-data-in-kz>> accessed on 23 February 2020 (in Russian).

⁴³ Zhang and others (n 1).

⁴⁴ 'Foreign Minister Wang Yi Meets the Press' *Ministry of Foreign Affairs of the People's Republic of China* (8 March 2015) <http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1243662.shtml> accessed 11 October 2019.

⁴⁵ SOAverine Arsène, 'Global Internet Governance in Chinese Academic Literature: Rebalancing a Hegemonic World Order?' [2016] *China Perspectives* 25.

⁴⁶ David Dollar, 'China's Rise as a Regional and Global Power' *Horizons* (2015) <<https://www.brookings.edu/wp-content/uploads/2016/06/China-rise-as-regional-and-global-power.pdf>> accessed 7 October 2019; Wade Shepard, 'Real Role of the AIIB in China's New Silk Road' *Forbes* (15 July 2017) <<https://www.forbes.com/sites/wadeshepard/2017/07/15/the-real-role-of-the-aiib-in-chinas-new-silk-road/#369bfc074727>>.

⁴⁷ 'China: Stronger Legal Cooperation' (n 11).

global institutions.⁴⁸ The success of this effort will depend on China's progress in implementing the transparency, equity, and sustainability of its governance and legal systems. The primary source of criticism is China's reputation as a country with a weak commitment to liberal values and the rule of law.⁴⁹ China's model focuses on strengthening economic growth, but it appears to have no real intention of changing the governance and political regimes in BRI countries.⁵⁰ In contrast to the West, Beijing pays less attention to market reforms, freedom of speech, good governance, and transparency in the region as potentially harmful and destructive issues for the current political status quo.⁵¹

The critical demand for Chinese investments and innovations may prevent Central Asian countries from opposing China's economic expansion and criticizing China's policies, including human rights abuses. One of the recent examples is the detention and house arrest of a Kazakh activist who was facing seven years of imprisonment over his opposition to China's Xinjiang policy towards Muslim and Turkic minorities.⁵² Eventually, he was released by the Kazakhstani court in exchange for ending his activism against the Chinese authorities.⁵³ Some observers linked his arrest with the expansion of China's investments in Kazakhstan. At the beginning of September 2019, another wave of public rallies spread around the country.⁵⁴ People protested against the government's decision to construct Chinese factories in Kazakhstan, which they described as outdated and polluting plants.⁵⁵

⁴⁸ Michael D Swaine, 'Chinese Views on Global Governance since 2008–09: Not Much New' (2016) 49 *China Leadership Monitor* 1.

⁴⁹ 'In November 2014, Mexico abruptly cancelled an HSR contract with China because the public and other Western railway corporations questioned the "legitimacy and transparency" of the bidding process. In February 2017, the European Commission launched an investigation into the Hungarian part of a planned 350-km HSR between Serbia's capital, Belgrade, and Budapest in Hungary, in order to assess whether it had violated European Union laws stipulating that public tenders must be offered for large transport projects.' Yang (n 27).

⁵⁰ Zhang and others (n 1).

⁵¹ Paul Stronski and Nicole Ng, 'Cooperation and Competition: Russia and China in Central Asia, the Russian Far East, and the Arctic' *Carnegie Endowment for International Peace* (28 February 2018) <<https://carnegieendowment.org/2018/02/28/cooperation-and-competition-russia-and-china-in-central-asia-russian-far-east-and-arctic-pub-75673>> accessed 1 October 2019.

⁵² Xinjiang has a population of almost 22 million, which includes 13 major ethnic minorities, including 8.8 million Uyghurs and 1.4 million Kazakhs. Amy H Liu and Kevin Peters, 'The Hanification of Xinjiang, China: The Economic Effects of the Great Leap West' (2017) 17 *Studies in Ethnicity & Nationalism* 265.

⁵³ Agence France-Presse, 'Xinjiang Activist Freed in Kazakh Court after Agreeing to Stop Campaigning' *The Guardian* (17 August 2019) <<https://www.theguardian.com/world/2019/aug/17/xinjiang-activist-freed-in-kazakh-court-after-agreeing-to-stop-campaigning>> accessed 1 October 2019.

⁵⁴ Pavel Mikhayev, Olzhas Auyezov and William Maclean, 'Dozens Protest against Chinese Influence in Kazakhstan' *Reuters* (4 September 2019) <<https://www.reuters.com/article/us-kazakhstan-china-protests/dozens-protest-against-chinese-influence-in-kazakhstan-idUSKCN1VP1B0>> accessed 1 October 2019.

⁵⁵ The export of pollution problems in the country is particularly relevant, given weak environmental regulation and enforcement in Kazakhstan. In the light of those concerns, protesters demanded President Tokayev to cancel his visit to Beijing. See Goh and Gordeyeva (n 20).

Growing economic dependence is causing widespread resistance among the population to potential large-scale migration from China. However, the national government continues to emphasize that new projects with China bring investments and create new jobs.⁵⁶

China, being economically more powerful, is one of the most prominent investors and trade partners for Central Asia.⁵⁷ Increasing economic engagement with China allows Beijing to put some pressure on Central Asian governments to ally with China's plans and policies.⁵⁸ Investment inflows, fuelled by low transparency around BRI projects, contribute to the existing sentiment of a 'Chinese threat' among the population in Central Asia.⁵⁹ As a result, despite China's desire to export its development model by promoting the BRI, it is perceived by the local community to be inconsistent with civil society, liberal values, and national interests.⁶⁰ It raises particular doubts that China's model and legal system would facilitate further institutional progress in the region.

Like China, Central Asian countries, to a large extent, are authoritarian States. They share similar political values and seek to defend themselves from human and civil rights criticisms and the call for political reforms, which they often label as interference in domestic affairs. For Central Asian governments, including Kazakhstan, Beijing, and its model, is a robust reference point that helps to protect the regime's legitimacy. China's model of a market economy driven by the State, with weak civil society, tight State control, and the political

⁵⁶ Deputy Prime Minister Zhenis Kasymbek told reporters in September that joint Kazakh–Chinese projects had created 4,000 new jobs, with 95 per cent of them going to Kazakh citizens. Kazakh State media reported last year that the two countries were implementing at least 51 joint projects in industry, transport, and logistics that were worth approximately \$28 billion.

See Farangis Najibullah, 'Anti-Chinese Protests Don't Deter Kazakh President from Visiting Beijing' *RadioFreeEurope/RadioLiberty* (10 September 2019) <<https://www.rferl.org/a/anti-chinese-protests-don-t-deter-kazakh-president-from-visiting-beijing/30157466.html>> accessed 1 October 2019.

⁵⁷ *Ibid.*

According to the country's First President Nazarbayev, Chinese companies produce more than 20 per cent of Kazakhstan's oil and some 1,200 enterprises in Kazakhstan operate with Chinese capital. Two countries reportedly set a goal last year of achieving US \$20 billion in trade volume within several years. Total trade turnover was US \$10.5 billion in 2017 and amounted to US \$8.2 billion in the first three quarters of 2018. According to official statistics, Kazakhstan's debt to China in 2018 was about US \$12.3 billion, which makes critics warn that the BRI leads Kazakhstan to the 'debt trap' and even may jeopardize its independence.

⁵⁸ Kazakhstan's foreign ministry has engaged in quiet diplomacy with major trade partner China on Xinjiang but has been reluctant to promote its efforts given sensitivities over the region. Last year the ministry said China had allowed 2,500 ethnic Kazakhs to leave the country and enter Kazakhstan 'as a kind gesture' but refused requests for further information. Agence France-Presse (n 53).

⁵⁹ Protests against China's presence occurred in the past. In 2016, Kazakhstan experienced a series of demonstrations against a nationwide land reform that, as its opponents claimed, would have allowed foreigners, and specifically Chinese, to acquire Kazakhstani farmland.

Eduard Fernandez, 'Chinese Handling of Kazakhs a Bump in Belt and Road' *South China Morning Post* (4 August 2018) <<https://www.scmp.com/week-asia/geopolitics/article/2158028/chinese-handling-kazakhs-bump-belt-and-road>> accessed 1 October 2019.

⁶⁰ Yujun and others (n 4).

hegemony of a single ruling party, looks appealing to the domestic political elite's legitimacy but not to the public. Although the BRI can potentially improve physical infrastructure in Central Asia, it pays less attention to an increasing demand to solve socio-economic and institutional problems, including better environment, health care, education, civil society, equality, and the rule of law.

Despite Chinese investors' concerns about weak regulation and high corruption in Central Asia, some academics argue that the high level of corruption and insufficient checks on the executive branch create fewer democratic constraints for China to achieve its policy goals.⁶¹ To protect its companies and encourage investments along the BRI, the Chinese government prefers to rely on closed-door negotiations and political and financial ties with the host countries' leadership.⁶² The success or failure of Chinese investments would affect bilateral political relations and future inflows of capital from China. Since the 1990s, many aspects of China–Kazakhstan relations, including the common border, trade, and oil and gas resources, have been closed to public review. The lack of transparency has become one of the main concerns among the Kazakhstani population that gives rise to controversy about the opaque nature of the local government's dealings with China.⁶³ Some political analysts argue that, in the absence of public disclosure, there is some room for both China and the national political elite to enjoy an unfair advantage.⁶⁴ Even though China's law considers bribes, including payments to foreign government officials and officials of international public organizations, as a criminal offence, the interpretation of those provisions remains ambiguous.⁶⁵ For example, it is unclear whether the provision covers managers of State-owned enterprises or family members of foreign government officials and what jurisdiction prevails: Chinese or the one where the official exercises its authority.⁶⁶ Scandals around some BRI projects show that China's anti-corruption laws are far from perfect.⁶⁷ China deals with serious

⁶¹ Daniel C O'Neill, 'Risky Business: The Political Economy of Chinese Investment in Kazakhstan' (2014) 5 *J Eurasian Studies* 145.

⁶² Lutz-Christian Wolff, Chao Xi and Jenny Chan, *Legal Dimensions of China's Belt and Road Initiative* (Wolters Kluwer Hong Kong 2016).

⁶³ The unwillingness and inability of Kazakhstan's government to effectively address such concerns facilitate speculations that the high corruption component of Kazakh–Chinese relations cannot be denied, and that Kazakhstan's political elite has been bought by Chinese interests and constitutes a kind of ultimate China lobby. See Zhenis Kembayev, 'Development of China–Kazakhstan Cooperation: Building the Silk Road of the Twenty-First Century?' [2018] *Problems of Post-Communism* 1.

⁶⁴ Naubet Bisenov, 'Kazakh President's Upcoming Beijing Trip Stokes Sino-phobia' *Nikkei Asian Review* (10 September 2019) <<https://asia.nikkei.com/Politics/International-relations/Kazakh-president-s-upcoming-Beijing-trip-stokes-Sino-phobia>> accessed 1 October 2019.

⁶⁵ Wolff, Xi and Chan (n 62).

⁶⁶ *Ibid.*

⁶⁷ Tom Wright and Bradley Hope, 'WSJ Investigation: China Offered to Bail Out Troubled Malaysian Fund in Return for Deals' *Wall Street Journal* (7 January 2019) <<https://www.wsj.com/articles/how-china-flexes-its-political-muscle-to-expand-power-overseas-11546890449>> accessed 1 October 2019; Jonathan Hillman, 'IMDB Probe Shines Uncomfortable Light on China's Belt and Road' *Nikkei Asian Review* (18 January 2019) <<https://asia.nikkei.com/Opinion/IMDB-probe-shines-uncomfortable-light-on-China-s-Belt-and-Road>> accessed 1 October 2019.

corruption problems domestically.⁶⁸ Although Beijing devotes its resources to fight corruption, it is doubtful that it will enforce a zero-tolerance corruption policy in the context of dealing with Central Asia.

At the same time, the BRI is China's grand plan. China is the most economically, technologically, and politically powerful country among the BRI States. Despite China's claim that it will obey the host countries' laws, it can export its norms and standards through joint ventures, bilateral agreements, contracts, and soft power. Hence, China's political reputation, law, and policies directly affect the BRI, its outcomes, and how it is perceived. The Chinese legal system, with its dimensions of the flexibility of norms and their application, tends to adapt to different contexts and relationships.⁶⁹ China seems to apply a similar approach to BRI projects in Kazakhstan by acclimatizing to the local context and managing its relations with the leadership on a bilateral basis. The flexibility of the Chinese leadership in approaching the BRI in Kazakhstan implies that legal norms, per se, are not the primary basis for China to rely upon.

BRI projects in Kazakhstan

China has one of the most extensive bilateral investment treaty (BIT) networks in the world, which includes almost 150 countries.⁷⁰ This network has expanded since the BRI's announcement. The history of collaboration between Kazakhstan and China started long before Chinese President Xi Jinping introduced his new grand strategy of a 'new Silk Road' in the capital of Kazakhstan in September 2013. Kazakhstan signed a BIT with China in 1992, shortly after it had become an independent State.⁷¹ The BIT appears to be standard for that period. It has a fair and equitable treatment clause and protection against the expropriation clause. The latter protects against expropriation unless it is in the public interest, under the due legal procedure, without discrimination, and with the real value compensation that is convertible and freely transferable. The dispute resolution clause defines the chance for investors to bring their claims to arbitration. The ground to bring such claims is based on the amount of compensation only. Finally, the BIT states that if the local laws and regulations provide more favourable treatment to investments, then the more favourable treatment shall apply.

In 2002, the countries signed the Treaty on Good Neighbourhood, Friendship, and Cooperation. Following this treaty, the countries restated their willingness to develop and strengthen their strategic partnership and cooperation. The partnership promotes principles and norms of international law, with

⁶⁸ Different studies review various aspects of corruption in China. Among the recent ones are Andrew Hall Wedeman, *Double Paradox: Rapid Growth and Rising Corruption in China* (Cornell University Press 2012); Fang, Qiang, and Xiaobing Li, *Corruption and Anticorruption in Modern China* (Lexington Books 2019); Guoping Jiang, *Corruption Control in Post-Reform China: A Social Censure Perspective* (Springer Singapore 2017).

⁶⁹ Wolff, Xi and Chan (n 62).

⁷⁰ See 'UNCTAD Investment Policy Hub' <<https://investmentpolicy.unctad.org/international-investment-agreements/countries/42/china?type=bits>> accessed 1 October 2019.

⁷¹ Ibid.

the embracement of non-interference in internal affairs, parity, and peaceful coexistence when the parties resolve all disputes through negotiations and consultations.

In 2004, the two countries signed a framework agreement on cooperation in the field of oil and gas. The purpose of the agreement is to facilitate joint projects in the areas of the exploration, production, processing, and transportation of oil and gas from Kazakhstan to China. The agreement especially mentions the joint project for the construction of an oil pipeline from West Kazakhstan to China. The parties have agreed that the basic principles of financing, design, construction, and operation of the oil pipeline shall comply with international standards and principles. International standards and technical specifications also apply to technical requirements, safety standards, health, and environmental protection, but only if they do not conflict with the national laws of the two States. To implement joint projects, the parties have established a company that focuses on the design, construction, and operation of the oil pipeline. The company has been registered on the territory of Kazakhstan under the national law.

Up to now, the two countries have planned 51 projects with a total worth of US \$27 billion, funded by Chinese investors and with a time line until 2022.⁷² In 2015, Chinese foreign direct investment in Kazakhstan exceeded US \$17 billion, becoming the top source of foreign direct investment in the country.⁷³ Driven by its energy security agenda,⁷⁴ China demonstrates a keen interest in Kazakhstan's energy resources, actively invests in building pipelines, and buys stakes in existing and new fields.⁷⁵ Another area of interest is infrastructure and logistics. In 2014, Kazakhstan announced its new development program Nurly Zhol (Bright Path), which seeks to drive investments into critical infrastructure and priority sectors, including agribusiness, manufacturing, logistics, tourism, information technology, and finance. The announced total costs of the program are US \$9 billion, with the forecast of creating 4,500 new jobs.⁷⁶

⁷² '[T]he two countries signed 33 deals worth \$23 billion. This is on top of a \$100 million project to construct a joint, full-service logistics terminal project in the Chinese city of Lianyungang that was launched during President Nursultan Nazarbayev's visit to China in 2014.' In 'Kazakhstan, China: Close Neighbours That Build Mutually Beneficial Ties' *Astana Times* (5 May 2015) <<https://astanatimes.com/2015/05/kazakhstan-china-close-neighbours-that-build-mutually-beneficial-ties/>> accessed 1 October 2019.

⁷³ *Ibid.*

⁷⁴ Kazakhstan has the petroleum energy market that has drawn special attention as the key market of CNPC's overseas investment in the field of energy. Kazakhstan is one of the primary sources of oil and gas import of China and is also one of the key factors impacting the oil and gas security of China. See Xu Teng, 'The Belt and Road Initiative and China-Kazakhstan Oil and Gas Cooperation' [2017] 24 *中国油气: 英文版* 51.

⁷⁵ 'For example, in 2014 KazMunayGas and the China National Petroleum Corporation signed an agreement to construct a \$150 million plant to manufacture oil and gas pipes near Almaty. Looking ahead, Kazakhstan will launch more than 20 joint projects with Chinese companies, many of them focusing on the energy sector.' 'Kazakhstan, China' (n 72).

⁷⁶ Information about the Nurly Zhol program is available from the Embassy of the Republic of Kazakhstan, Washington, DC, official website <<https://kazakhembus.com/domestic-policy/modernization-programs/nurly-zhol>> accessed 1 October 2019.

The program has been designed for Kazakhstan to grow into a robust transport and logistics hub in Central Asia. Within the framework of the program, Kazakhstan has launched 16 projects to increase the country's transit traffic.⁷⁷ The program focuses on infrastructure development and essentially aligns with the BRI. It requires enormous funding, which makes the Kazakhstani government enthusiastic about Chinese investments. Two routes of the BRI are reflected in the program: from China, via Central Asia and Russia, to Europe, and from China, via Central Asia and West Asia, to the Persian Gulf and the Mediterranean Sea. The following sections discuss several of the main projects related to energy and infrastructure.

Khorgos: The flagship of the BRI projects in Kazakhstan

Historically, Khorgos is known as an important transit point along the Silk Road. Today, it is the name of one of the BRI's flagship projects in Kazakhstan that connects 27 Chinese cities and 11 European cities and includes a centre for cross-border cooperation, a transport centre, and a free-trade zone. Cargo is delivered from China's inland cities to this location and then sent to various destinations on the Eurasian continent.⁷⁸ For Kazakhstan and China, Khorgos is a crucial transport hub designed to increase the flow of goods and services and cut the time of delivery to global destinations: the European Union, the Eurasian Economic Union, the Middle East, China, and other countries.

The history of the creation of the Khorgos International Centre for Cross-Border Cooperation can be traced back to the State visit of the president of Kazakhstan, Nursultan Nazarbayev, to China in December 2002. Two years later, in 2004, the countries signed a Framework Agreement on the Establishment of the Khorgos International Centre for Cross-Border Cooperation (Khorgos Centre).⁷⁹ The Khorgos Centre was deemed to introduce a new format of bilateral cooperation integrated into the global economy. The idea was to build an entrepreneurial and investment environment that would boost cross-border trade, develop border areas, create an attractive investment climate, and encourage environmental, cultural, and social interactions between Kazakhstan and China.⁸⁰ The Khorgos Centre is a place for trade and economic and investment cooperation located on both sides of the border. The Khorgos Centre's services include the marketing of goods, a transport terminal, hotels and restaurants,

⁷⁷ 'Kitai perevedyet v Kazakhstan 51 predpriyatie Forbes Kz' *Forbes* (Astana, 2 September 2016) <https://forbes.kz/finances/markets/kitay_perevedet_v_kazahstan_51_predpriyatie> accessed 8 October 2019 (in Russian).

⁷⁸ Li Yang, 'Khorgos, Where East Meets West' *Belt and Road Portal* (14 June 2017) <<https://eng.yidaiyilu.gov.cn/qwyw/rdxw/16151.htm>> accessed 8 October 2019.

⁷⁹ Information is available on the Khorgos International Centre for Cross-Border Cooperation's official website <<http://mcps-khorgos.kz/en/>> accessed 1 October 2019.

⁸⁰ The text of the framework agreement is available at <https://tengrinews.kz/zakon/pravitelstvo_respubliki_kazahstan_premier_ministr_rk/mejdunapodnyie_otnosheniya_respubliki_kazahstan/id-P050000204_> accessed 1 October 2019 (in Russian).

commercial infrastructure, financial services, and venues for various types of events and conferences.

The Khorgos Centre consists of two parts: the Kazakhstani and the Chinese. A separate corridor connects the two parts of the Khorgos Centre. Each side has its control checkpoints at the end of the corridor to monitor the movement of people and goods. The checkpoints include the border, customs, sanitary-quarantine, and veterinary control. The checkpoints operate under the national legislation of the two States. The authorized bodies of both parties are responsible for monitoring and patrolling their territory. The total area of the Khorgos Centre is 5.28 square kilometres, of which the Kazakhstani side is 1.85 square kilometres, and the Chinese side is 3.43 square kilometres. A separate agreement defines the boundaries and layout of the Khorgos Centre.

The main factor for defining an applicable law and jurisdiction is the location (Kazakhstan or China) where economic activities take place. The Kazakhstani and Chinese parts of the Khorgos Centre are subject to the national legislation of their States. The authorities of both States enforce their domestic laws on their territory. The same principle applies to the investigation and prosecution of offences committed on the territory of the Khorgos Centre. Each party is responsible for ensuring public safety and border control and preventing offences and criminal activities on its side of the Khorgos Centre. Offences and crimes fall under the jurisdiction of the territory where they have been committed. However, they may also be transferred under the jurisdiction of the other party based on a mutual agreement. The parties have agreed to assist, interact, and exchange relevant information during an investigation.

Each State is accountable for financing the design, construction, and maintenance of transport infrastructure, water supply, electricity, telecommunications, and other utilities on its territory of the Khorgos Centre. The two States collect taxes on their territories based on their national laws and the Agreement between the Government of the Republic of Kazakhstan and the Government of the People's Republic of China on the Avoidance of Double Taxation. Investment preferences and currency control are subject to the national regulation of each State. All payments and money transfers are freely convertible. Individuals can import and export cash to and from both sides of the Khorgos Centre if they comply with the requirements set by the legislation of each country. Banks or other financial organizations established in the Khorgos Centre provide services and conduct their operations in compliance with the financial regulations of their jurisdictions.

Before Coronavirus travel restrictions, citizens of the two States and third-country nationals could visit the Khorgos Centre for up to 30 days without issuing a visa based on a valid travel document agreed upon and recognized by the authorities of Kazakhstan and China, including an international passport. The two States have agreed to create a unified data bank for the exchange of information about visitors and vehicles entering or leaving the Khorgos Centre. The parties use mutual consultations to solve disputes related to their activities on the territory of the Khorgos Centre.

In 2011, to facilitate the development of the Kazakhstani side, Kazakhstan created a special economic zone: the 'Khorgos–Eastern Gates' (SEZ). The SEZ is six kilometres from Altynkol railway station, a border crossing point between Kazakhstan and China, and has direct access to the Western Europe–Western China highway, the country's longest road, with a total length of 8,445 kilometres. The SEZ consists of the Kazakhstani part of the Khorgos Centre, the Khorgos Gateway dry port (the Port), the industrial zone, residential areas, and supporting infrastructure.⁸¹

The SEZ aims to facilitate the country's infrastructure development and increase its transit capacities and export potential.⁸² It is deemed to assist Kazakhstani products to integrate into the global production and marketing system, to create a favourable investment climate, and to attract domestic and foreign investments. The SEZ focuses on regional development and increasing employment opportunities for the local community.⁸³ The law of the SEZ includes the Constitution of the Republic of Kazakhstan, the 2011 Law on Special Economic Zones in the Republic of Kazakhstan, the Presidential Decree of 2011 on the SEZ, and other legal acts of the Republic of Kazakhstan, except for customs regulation, which is subject to the Eurasian Economic Union's law.⁸⁴

Another goal of the SEZ is the creation of an industrial park and the attraction of production companies. In this regard, the SEZ offers tax and customs privileges for its members. In particular, the import of goods consistent with the SEZ's declared priorities are exempted from customs duties and taxes. If companies produce priority goods, they are exempt from value-added tax, corporate income tax, property tax, and social tax. The land is provided free of charge until 2035. The conditions for hiring foreign labour are tremendously simplified compared to domestic law. The SEZ allows foreign investors to construct and operate their facilities in the SEZ with their own employees.⁸⁵ The infrastructure of the

⁸¹ The Chinese side is managed by Xinjiang Uygur Autonomous Region. The Chinese side has invested 23.3 billion yuan in building the infrastructure. The media reported that the population residing on the territory of the Chinese part reached 15,000 people. Upon the completion of all the infrastructure facilities, it would be capable of accommodating 200,000 inhabitants. See Adil Kaukenov, 'Kitaisky vzglyad na Khorgos' *Vlast* (29 May 2013) <https://vlast.kz/avtory/kitajskij_vzglyad_na_horgos-1909.html> accessed 1 October 2019 (in Russian).

⁸² 'According to the published research on the LPI (Logistics Performance Index) index of the World Bank, considering the ease of supply of goods and the state of trade logistics at the national and international levels, Kazakhstan has improved its position in logistics and has taken 71st place among 160 countries in 2018, moving up by six positions in comparison with 2016.' Murat Baimukhanbetov, 'Status and Prospects of Creating Dry Port in Khorgos: Eastern Gates SEZ' *Ministry of Foreign Affairs Republic of Kazakhstan* (14 September 2018) <<http://mfa.gov.kz/en/content-view/murat-bajmuhanbetov-sostoanie-i-perspektivy-sozdania-suhogo-porta-na-baze-sez-horgos-vostocnye-vorota>> accessed 1 October 2019.

⁸³ *Ibid.* By 2023, the SEZ management plans to create more than 3,000 permanent jobs; by 2030, more than 10,000.

⁸⁴ Information is available on the Eurasian Economic Union official website <<http://www.eaeunion.org/?lang=en#about>> accessed 1 October 2019.

⁸⁵ Elena Bezgodova, 'Khorgos—Vostochny vorota—transportnaya nadezhda Kazakhstana' *RZD Partner.ru* (12 April 2018) <<https://www.rzd-partner.ru/logistics/comments/khorgos-vostochny-vorota-transportnaya-nadezhda-kazakhstan/>> accessed 1 October 2019 (in Russian).

Kazakhstani side has been designed to attract potential investors and stimulate tourist flows. Its project includes hotels, a congress hall, an ethnographic park, entertainment and sports facilities, shopping galleries, and residential areas. The project also allocates space for the International Kazakh–Chinese University, with a campus capacity of 2,000 students and a focus on economics, finance, business, management, and law.

To manage the SEZ and oversee its infrastructure, the government has set up a joint-stock company with 100 per cent State ownership. The company has the same name as the Khorgos Centre: Khorgos International Centre for Cross-Border Cooperation JSC.⁸⁶ In 2012, the volume of trade through the Khorgos Centre's checkpoints exceeded US \$1 billion, which was 55 per cent more than in 2011. Total imports amounted to US \$8.6 billion, and total exports reached US \$2.4 billion.⁸⁷ In 2016, more than 5 million people visited the Khorgos Centre, which was 36 per cent more than in the previous year.⁸⁸ According to the Chinese border control representative, the flow of visitors tends to grow. From 10–20 thousand people pass through the checkpoints daily.⁸⁹ The Khorgos Centre is gradually becoming an attractive place for shopping tourism in Western China. More than 40 duty-free shops have been opened in the Khorgos Centre, selling goods including clothing, shoes, hats, construction materials, household appliances, cosmetics, and food. The Khorgos Centre helps China's leadership to transform Xinjiang and integrate it into the BRI.⁹⁰

The SEZ intends to increase transit volumes between China and Europe. The government of Kazakhstan is eager to achieve a cargo turnover between China and Europe of 170 million tons and the volume of container transit through Kazakhstan of 1.7 million tons by 2020.⁹¹ To date, more than 80 companies, mainly residents of Kazakhstan, are members of the SEZ's industrial park.⁹² It is claimed that foreign investors have expressed some interest, among which are Hewlett Packard, DB Schenker, Toyota, FESCO, and BRAVIS, with whom contracts have been concluded for the transit of their goods through Kazakhstan's Altynkol railway station and processing in the Port.⁹³ Although not explicitly stated, the SEZ primarily targets Chinese investors and cargo traffic from China. State budget constraints, especially after the financial crisis of 2008 and the fall

⁸⁶ The State authorities have defined specific indicators to be achieved by 2037, including the total volume of investments (domestic and foreign), the total volume of produced goods and services, the number of registered participants, the volume of transit, employment, and local content.

⁸⁷ Kaukenov (n 81).

⁸⁸ Ibid.

⁸⁹ 'V 2016 godu ICBC "Khorgos" na kitaisko-kazakhstanskoi granitse posetilo 5 mln chelovek' *Russian.News.Cn* (6 January 2017) <http://russian.news.cn/2017-01/06/c_135961007.htm> accessed 1 October 2019 (in Russian).

⁹⁰ Ibid.

⁹¹ These numbers are reflected in the national program Nurly Zhol.

⁹² Dmitri Popov and Arina Mordvinova, 'Khorgos: "Vostochny vorota" ili "chernaya dira" evrasiiskoi integratsii' *Rossiski Institut Strategicheskikh Issledovani* (24 December 2015) <<https://riss.ru/analitics/24823/>> accessed 1 October 2019 (in Russian).

⁹³ There is no available data on foreign firms' plans to open production in the SEZ, which, among other things, might be explained by still limited infrastructure.

of oil prices, caused several delays in the commissioning of many Kazakhstani facilities, including the first stage of the Khorgos Centre and the Port. In contrast, China possesses significantly more capital. Most of the infrastructure facilities on the Chinese side were completed by 2014.⁹⁴ In November 2016, the SEZ's necessary infrastructure, including 108 facilities, was put into operation.⁹⁵ The construction cost of the infrastructure amounted to 36.8 billion Kazakhstani tenge.⁹⁶ According to SEZ management, the portfolio of attracted investments includes the implementation of 14 projects with a total value of 485 billion Kazakhstani tenge until 2023. Trading and investment projects are conducted with such partners as East Gate Partners, Hubei Kelison, KIF Warehouses, Phoenix Feed Mills, and Zarya Limited.⁹⁷

The BRI allows Kazakhstan to take advantage of its geographical location, to increase its production capacity and transit revenues, and to diversify its economy while splitting the costs with neighbouring China. China, on the other hand, receives an additional production and transport infrastructure at low cost and obtains better access to sales markets. The Khorgos Centre provides Chinese companies with the opportunity to ship their products relatively faster. The main advantage of the project, compared to the existing alternative corridors (for example, the Trans-Siberian or maritime routes) is its shorter travel time. With the new route, Chinese cargo can be shipped via the Port and reach Europe within 15 days—faster than by sea and cheaper than by air.⁹⁸ In 2015, the two countries signed an agreement on strategic cooperation for the joint development of projects of the SEZ and the Shanghai Cooperation Organization's international logistics zone in Lianyungang. According to the document, China plans to invest US \$600 million in the SEZ.⁹⁹

Khorgos dry port

The essential element of the SEZ is the Port—Khorgos Gateway, the largest Central Asian dry port, which represents the BRI's main logistics hub in Eurasia.¹⁰⁰ The Port started receiving the first trains in 2015.¹⁰¹ Both countries

⁹⁴ Popov and Mordvinova (n 92).

⁹⁵ Baimukhanbetov (n 82).

⁹⁶ Ibid (327.77 tenge = US \$1).

⁹⁷ Ibid.

⁹⁸ The sea corridor's travel time reaches 45 days and the Transib 14 days. For the corridor 'Western Europe–Western China,' from the port of Lianyungang to the borders with European states, the travel time is around 10 days.

⁹⁹ The agreement has a framework nature, and so far, there has been no information on specific steps for its implementation. See Popov and Mordvinova (n 92).

¹⁰⁰ 'The dry port is based on the same principle as any seaport, except the goods in containers are delivered not by ferries, but by trains. The containers are unloaded, stored and sent in different directions. They are delivered to different train platforms from China and then they are trans-loaded onto the Kazakh platforms or road transport, which carry the cargo onto Kazakhstan, Russia, Central Asia and Europe.' Baimukhanbetov (n 82).

¹⁰¹ Popov and Mordvinova (n 92).

expect that a significant number of cargo trains travelling between China and Europe will pass through the Port. Today, the Port is the leading Central Asian transport hub, which connects China and Europe. It is linked with the Kazakhstani terminal in the seaport of Lianyungang. The port of Lianyungang is ranked as the largest sea harbour of China in the Yellow Sea. It is among the 30 largest ports in the world, with trans-shipment volumes of more than 200 million tons and 5 million containers a year.¹⁰²

In 2017, China's COSCO Shipping Corporation and Jiangsu Lianyungang Port Corporation acquired a 49 per cent stake in the Port.¹⁰³ The remaining 51 per cent continues to be owned by the national railway company of Kazakhstan. Ninety-nine per cent of the Port's workforce are Kazakhstani nationals.¹⁰⁴ DP World, which runs the Jebel Ali port and free-trade zone in Dubai, manages the Port under a 10-year contract.¹⁰⁵ Kazakhstan plans to invest US \$35 billion until 2020 to develop the Port's transport infrastructure and increase its transit capacity from China to Europe from 1,000 20-foot equivalent units (TEUs) in 2011 to 800,000 TEUs in a few years.¹⁰⁶ The Chinese authorities expect that, by 2020, the volume of cargo through the Port will reach 20 million tons, and, by 2030, 35 million tons.¹⁰⁷ In the first quarter of 2019, the Port received 181 freight trains from China. Their final destinations were Germany, Poland, Central Asia, Russia, and the Middle East.¹⁰⁸ For potential investors, the SEZ represents not just a small Kazakhstani market of 18 million people; instead, it provides access to West China and member States of the Eurasian Economic Union, with a total population of 480 million people.¹⁰⁹ The SEZ and the Port are promoted as a strategic point from which investors can reach these markets.

The Port represents not only the railway connecting the Sino-Kazak border with Aktau—one of the main oil-producing areas of the country, where Chinese companies invested several billion dollars to exploit the energy sector—but also

¹⁰² Alexander Soadkowski, Zhomart Abdirasilov and Amangeldy Molgazhdarov, 'Transnational Value of the Republic of Kazakhstan' in *Transport Systems and Delivery of Cargo on East-West Routes* (Springer International Publishing 2018).

¹⁰³ '5 Transport Hubs Paving the Way for the Belt and Road Initiative' *Belt & Road News* (29 March 2019) <<https://www.beltandroad.news/2019/03/29/5-transport-hubs-paving-the-way-for-the-belt-and-road-initiative/>> accessed 7 October 2019.

¹⁰⁴ Yang (n 78).

¹⁰⁵ Han Fook Kwang, 'On Board the Kazakh Express as It Picks up Speed' *Straits Times* (Singapore, 25 September 2016) <<https://www.straitstimes.com/opinion/on-board-the-kazakh-express-as-it-picks-up-speed>>.

¹⁰⁶ Selmier W Travis, 'The Belt and Road Initiative and the Influence of Islamic Economies' (2018) 6 *Economic & Political Studies* 257.

¹⁰⁷ Kaukenov (n 81).

¹⁰⁸ 'Khorgos East Gate: From Steppes to High-Tech Facility' *Belt & Road News* (1 May 2019) <<https://www.beltandroad.news/2019/05/01/khorgos-east-gate-from-steppes-to-high-tech-facility/>> accessed 1 October 2019.

¹⁰⁹ 'The land area of the five EEU countries alone is 19.5 million square km - 48 per cent of the total land area of 64 BRI countries. Their total gross domestic product in 2015 (current US dollars) was roughly US \$12 trillion, of which the EEU members contributed US \$1.7 trillion, or some 14 per cent of the total.' Biliang Hu, Qingjie Liu and Jiao Yan, 'Promoting the Belt and Road Initiative by Strengthening "5 + 1" Cooperation' (2017) 2 *ANU Press* 409.

the main gateway of the BRI infrastructure and energy projects.¹¹⁰ The cooperation with China aligns with Kazakhstan's State program, Nurly Zhol, which focuses on creating the country's new infrastructure linked to the international network of railway and roads. By joining the BRI, Kazakhstan plays the role of China's strategic partner in Central Asia.

However, the Port comes with costs. The volume of shipment handled by the Port is still small compared to other Chinese and international ports.¹¹¹ The infrastructure has been put in place; however, it requires a further inflow of financial, human, and technology capital to transform it from a local transport terminal to a regional or even international logistics hub. It is not clear yet if the Port looks appealing to investors outside of China.¹¹² Since Kazakhstan has limited capital capacities, it relies extensively on capital support from China. The reliance on Chinese capital gives rise to the debt trap and economic sustainability concerns among the public. Despite the importance of building a productive relationship with neighbouring China as one of the largest trading partners, there is a fear that China, with its huge and fast-growing economy, will simply swallow the Kazakhstani market.¹¹³ In this regard, the Port represents a channel for Chinese products and the workforce to flood Kazakhstan and other Eurasian Economic Union's markets, dump domestic producers, and harm the interests of local business communities. Finally, experts admit to the risk of abuse of privileges granted by SEZ residents.¹¹⁴

To attract foreign investors outside of China and encourage transit, Kazakhstan should explicitly communicate the advantage of passing the goods through its territory, which is a challenging task. Smuggling schemes and corruption scandals surrounding the Khorgos Centre undermine its image among foreign investors and the Kazakhstani public. In 2011, Kazakhstan's financial police revealed a complex scheme of smuggling from China to Kazakhstan. A criminal group behind the scheme included high-rank national security and customs control officials. Forty-five people were prosecuted, including six group

¹¹⁰ Fabio Indeo, 'The Impact of the Belt and Road Initiative on Central Asia: Building New Relations in a Reshaped Geopolitical Scenario' in Zhang and others (n 1).

¹¹¹ Zhang and others (n 1).

¹¹² Ibid. In 2010, Senko, a Japanese logistics company, set up a joint venture with Lancaster of the UK to operate a logistics centre. Nevertheless, it sold its stake to its British partner last August after it failed to get approval from Kazakh and Chinese authorities to perform its own customs checks.

¹¹³ Kazakhstan is the ninth-largest country in the world in terms of territory, but its population and gross domestic product are small compared to China. Its national population is less than that of Beijing alone, and its economy was less than 1/45th the size of China's in 2016. See Kemal Kirişci and Philippe Le Corre, 'The New Geopolitics of Central Asia: China Vies for Influence in Russia's Backyard' *Brookings* (2 January 2018) <<https://www.brookings.edu/blog/order-from-chaos/2018/01/02/the-new-geopolitics-of-central-asia-china-vies-for-influence-in-russias-backyard/>> accessed 1 October 2019.

¹¹⁴ Chinese companies can import almost finished Chinese products under the guise of components and, introducing minor improvements into them, release them into the Eurasian Economic Union market as domestic. See Popov and Mordvinova (n 92).

leaders, who received a total of 93 years in prison.¹¹⁵ With the introduction of modern information technology systems today, the tracking system for containers and goods is becoming increasingly transparent.¹¹⁶ However, in 2016, the Kazakhstani anti-corruption bureau announced the detention of the president of the Khorgos Centre on suspicion of accepting a US \$1 million bribe.¹¹⁷ Businessmen still mention that they can bribe custom officials to ensure their goods get through with minimum or no paperwork.¹¹⁸

Even though the China–Europe rail link and the Port, as its integral part, are presented as an optimal logistics solution, many uncertainties remain. The Port is still far from reaching its maximum capacity.¹¹⁹ The bulk of goods do not reach Europe but remain in Central Asia.¹²⁰ Experts claim that local governments in Chongqing, Chengdu, Wuhan, and Zhengzhou have offered subsidies to lower freight costs for potential customers.¹²¹ Up to now, it is still significantly

¹¹⁵ Nazgul Abzhekenova, ‘Na “Khorgose” poteralos 5 milliardov dollarov’ *Caravan* (Almaty, 10 September 2016) <<https://www.caravan.kz/articles/na-khorgose-poteryalos-5-milliardov-dollarov-382463/>> accessed 1 October 2019 (in Russian).

¹¹⁶ The SEZ has introduced electronic control and data collection systems for all participants of the process. The primary function of the system is the automation of daily business processes in the SEZ. All participants in the logistics process operate within this platform. The system reads the information when the transport enters the SEZ and then collects all the information on the route and, in the end, creates an electronic log for the customs service with data on the size and weight of the vehicle, radiation monitoring, etc. See Baimukhanbetov (n 82).

¹¹⁷ See ‘Organized Crime and Corruption Reporting Project’ <<https://www.occrp.org/en/projects/27-ccwatch/cc-watch-briefs/5628-kazakhstan-the-head-of-free-trade-zone-detained-in-1-million-bribe-case>> accessed 2 October 2019.

¹¹⁸ Jon Watts, ‘Follow the New Silk Road’ *The Guardian* (30 July 2018) <<https://www.theguardian.com/cities/ng-interactive/2018/jul/30/follow-new-silk-road-china-belt>> accessed 2 October 2019.

¹¹⁹ Its annual shipping volume is equal to what a small Chinese port handles in a month. See Wataru Suzuki, ‘China’s Belt and Road Hits a Speed Bump in Kazakhstan’ *Nikkei Asian Review* (24 April 2019) <<https://asia.nikkei.com/Spotlight/Belt-and-Road/China-s-Belt-and-Road-hits-a-speed-bump-in-Kazakhstan>> accessed 2 October 2019.

¹²⁰ ‘In 2017, Khorgos handled the equivalent of more than 100,000 standard containers full of goods, double what it handled last year. It aims to handle 500,000 containers by 2020, but even that target is only around 1 percent of the volume of goods that travel from Asia westward by sea. So far, most of the Chinese-made products that pass through Khorgos are not destined for Europe but stay in Central Asia, moving on by train and truck. . . to nearby countries like Iran.’ Andrew Higgins, ‘China’s Ambitious New “Port”: Landlocked Kazakhstan’ *New York Times* (1 January 2018) <<https://www.nytimes.com/2018/01/01/world/asia/china-kazakhstan-silk-road.html>> accessed 2 October 2019.

¹²¹ One of the biggest obstacles to bolstering the rail freight route is the weather. In winter, temperatures can drop to as low as minus 50 degrees Celsius, damaging high-value-added cargoes such as laptops and car parts, the two biggest cargo types by volume currently moved westwards. Therefore, during the cold season, customers switch back to seaborne routes. To tackle the issue, Kazakhstan invested US \$100 million in diesel-fuelled, temperature-controlled containers. See Jing Yang, ‘Silk Road Subsidies Undermine Rail Link’ *South China Morning Post* (8 December 2014) <<https://www.scmp.com/business/economy/article/1657286/silk-road-subsidies-undermine-rail-link>> accessed 1 October 2019.

more profitable to ship goods to Europe by sea rather than by railway. Observers claim that most freight trains travelling from China to Europe return empty.¹²²

Moreover, the Chinese side has drawn attention to some of the issues when dealing with its Kazakhstani counterparts. While the Chinese side is rapidly expanding, the Kazakhstani side is lagging behind.¹²³ The different pace causes a gap in the development of infrastructure and transport networks between the two sides. Despite Kazakhstan's effort to improve connectivity, customs clearance and other services still are not as prompt and effective as customers expect them to be.¹²⁴ Chinese long-term visitors complain about the complexity of getting visas from the Kazakhstani authorities.¹²⁵ While Kazakhstani political leadership seems positive about Chinese investments, it must combat non-efficient bureaucracy, corruption, and public anxiety.¹²⁶

Kazakhstan-China uranium project

Like the Port, Semyzбай-U Limited Liability Company (LLC) has both Kazakhstani and Chinese shareholders.¹²⁷ The Kazakhstani national company Kazatomprom owns 51 per cent of shares, and the remaining 49 per cent of shares belong to Beijing Sino-Kaz Uranium Resources Investment Company, one of the subsidiaries of the China General Nuclear Power Corp Group (CGN).¹²⁸ LLC was founded in December 2006 to mine and process uranium deposits in Kazakhstan. It is a legal entity established in Kazakhstan and is registered under Kazakhstani company law. LLC has a governance structure typical to its corporate form. The simple majority of shares do not grant more decision-making power to the Kazakhstani shareholder since, in almost all cases, the charter

¹²² Kirişci and Le Corre (n 113).

¹²³ The Chinese side has been developing the new city of Horgos. 'This is a new urban undertaking that began in 2014 with the ambition of building a 200,000-person-city that could serve as a manufacturing, shipping, and commercial epicenter at China's primary New Silk Road gateway. The place is a national-level project, being developed by Beijing directly, which means that funding and political will are no obstacles. . . The industrial zone is starting to open, bringing in high-tech manufacturing operations from booming eastern cities like Shenzhen.' Wade Shepard, 'Korgos: The New Silk Road's Central Station Comes to Life' *Forbes* (20 February 2017) <<https://www.forbes.com/sites/wadeshepard/2017/02/20/khorgos-the-new-silk-roads-central-station-comes-to-life/#7507eef3c22e>> accessed 1 October 2019.

¹²⁴ This continues to be the case for semi-legal smuggling.

¹²⁵ Hu, Liu and Yan (n 109).

¹²⁶ 'The shift toward China has roiled domestic politics in Central Asia by playing into deep anti-Chinese sentiments left by Soviet propaganda and fears of China that date back centuries. Kazakh nationalists complain that their country, having gained independence from Moscow, now risks becoming a satellite of Beijing.' Higgins (n 120).

¹²⁷ As of August 2019, Kazakhstan produces the largest share of uranium from mines (41% of world supply from mines in 2018), followed by Canada (13%) and Australia (12%). See 'World Nuclear Association Official Website' <<https://www.world-nuclear.org/information-library/nuclear-fuel-cycle/mining-of-uranium/world-uranium-mining-production.aspx>> accessed 1 October 2019.

¹²⁸ The charter and other corporate information are available on the Semyzбай-U official webpage <<http://www.semyzбай-u.kazatomprom.kz/en>> accessed 26 August 2019.

requires mutual agreement between the two shareholders. The number of votes in LLC is equal to the percentage of shares. The shareholders have the right to sell, pledge, or transfer their shares to each other. Pledging shares with financial organizations by one shareholder requires consent from the other. Transfer of shares to a third party is possible only if the other shareholder refuses to exercise its priority buyout right (Articles 5.10–5.11 of the Charter).

LLC's corporate governance structure includes the General Meeting of Shareholders, the Supervisory Board, the general director, and the Audit Commission. The composition of powers looks typical for the structure of an LLC, where the General Meeting is a superior body, the Supervisory Board is a management and controlling body, and the general director is an executive position. Each body has its exclusive set of powers and authorities based on the Kazakhstani company law (Articles 6 and 7 of the Charter).

The General Meeting can be regular (once a year) and extraordinary. The latter may be called by the general director on his or her discretion, upon the request of the Supervisory Board or Audit Commission, or at the initiative of one of the shareholders. The quorum for the General Meeting is more than two-thirds of the votes, meaning that the participation of both shareholders' representatives is required. The General Meeting shall begin only if quorum is confirmed. The quorum shall be stated again every time before voting on several major decisions, including the changes in the Charter or Charter capital; approval of financial reports; reorganization or liquidation; suspension of the uranium deposits mining; mandatory buyout of the shares; and mortgage of company property and assets (Articles 7 and 9 of the Charter). Decisions are made by the open and unanimous voting of both shareholders (Article 10).

The Supervisory Board consists of five members, including the chairman. Each member is appointed for a term of three years. The shareholders take turns in nominating the chairman. The same shareholder cannot nominate the chairman of the Board and the chairman of the Audit Commission. Of five board members, three are representatives of the Kazakhstani shareholders and two represent the Chinese side. The meeting is legally binding if four members participate in it. The transfer of voting rights is not allowed. Similar to the General Meeting, the Supervisory Board makes decisions by unanimous voting of all the board members except for minor issues that can be made by a simple majority. In the latter case, when the number of votes for and against is equal, the chairman gets an extra vote (Article 11).

The general director is elected for a term of up to three years by the General Meeting. The Kazakhstani side nominates the candidate for the general director's position. The general director can be terminated if she or he fails to reach the management and revenue goals approved by the Supervisory Board for two subsequent years. In this case, the Kazakhstani side nominates another candidate, who shall be approved unanimously. If the new general director also fails to meet the goals, the Chinese side is entitled to present its candidate for the General Meeting's consideration. Finally, the Chinese side has the right to nominate eight senior managers, including the first deputy general director, who

fulfils the role of chief financial officer, and the deputy chief accountant. The Supervisory Board fills other senior management positions. There are particular decisions that the general director makes together with the deputy general director/chief financial officer, including the conclusion of purchase and sales agreements, construction contracts, and maintenance and consulting agreements as well as advance payment decisions (Article 12).

The Audit Commission has three members: two nominated by the Kazakhstani side and one by the Chinese. The Supervisory Board members and the general director cannot be Audit Commission members. The General Meeting elects the chairman of the Commission as advised in turns by the Kazakhstani and Chinese sides. The LLC presents its interim financial statements and annual audited financial reports to both shareholders. Book records and accounting documents are available for the shareholders' audit at any time (Article 13).

Those issues not stipulated in the charter are regulated by the Kazakhstani company law, provisions of which are similar to the company law of other civil law countries, including China. Although the Kazakhstani shareholder owns 51 per cent of shares, the corporate governance structure requires an absolute consensus of both shareholders, including the full agreement on financial issues. The two shareholders manage the LLC on a parity basis and the Chinese side maintains control and full access to the information with 49 per cent of shares. The allocation of shares only matters in terms of the net revenue distribution conducted proportionally to the shares upon the results of the fiscal year (Article 18).

As of 31 December 2017, LLC represented the single largest source of the natural uranium products for CGN.¹²⁹ It is the first Chinese overseas uranium-mining project.¹³⁰ The continuous downturn of the international natural uranium market caused recent production-cut measures by LLC.¹³¹ The downturn caused the shareholders to review the company's annual production targets and production costs. At the same time, CGN seems to be 'optimistic about the future development of the natural uranium market'.¹³² CGN is eager to secure its vast demand for nuclear fuel supplies. It operates 64 per cent of China's nuclear power plants and accounts for 51 per cent of the nuclear power plants that are

¹²⁹ 'It is now a major supplier for China's nuclear power stations,' said Li Cheng'an, deputy director-general of the finance department at Semizbay-U LLP. 'Kazatomprom: China Relationship with Kazakhstan Pays Off' *Powerexpo News* <<https://powerexpo.kz/en/press-centre/news/393-kazatomprom-china-relationship-with-kazakhstan-pays-off>> accessed 9 October 2019.

¹³⁰ *Ibid.*

¹³¹ In early 2017, Kazatomprom announced that it would cut the production volume of the mines under its control by 10% in order to cope with the natural uranium market downturn. To optimize its management, Semizbay-U conducted a comprehensive evaluation of its governance and control structure and identified the room for improvement in the areas of corporate development strategy, decision-making, and risk management.

¹³² See 'CGN Mining Company Limited Consolidated Statement of Profit or Loss and Other Comprehensive Income for the Year ended 31 December 2017' <http://www.cgnmc.com/en_cgnmc/2018/201803/82578a14dff143b68e80f31a773f4d20/files/3cfa1ffc54964424a6f24d6110efe282.pdf> accessed 9 October 2019.

under construction.¹³³ Therefore, CGN continues to be proactive in developing the existing uranium projects and seeking to acquire new uranium production facilities in strategic partnership with Kazatomprom.¹³⁴ This collaboration contributes to China's energy security and helps to reduce air pollution caused by coal-fired power generation.¹³⁵

BRI effect on the institutional landscape

The BRI provides new economic, development, and trade opportunities for its Member States, which might improve connectivity and access to different markets and technologies but does not necessarily lead to the increase of local production, employment, or an efficient and robust legal system. The degree to which the BRI can influence the Central Asian institutional landscape depends on a few factors. With the BRI, Beijing's presence in Central Asia has been rapidly expanding, replacing Russia as the leading investor.¹³⁶ The recent downturn of oil prices and the effect of Western sanctions against Russia have disrupted the Russian economy. The economic stagnation has limited Russian investment capacities and, as a result, eroded its economic influence in the region.¹³⁷ China, in turn, has been growing its economic and political power in the bilateral relations with Central Asian countries. Furthermore, China has been gradually pursuing its soft power. China has been increasing the number of scholarships for Central Asian students. From 2005 to 2015, the number of Kazakhs studying in China grew from 781 to 13,198 students.¹³⁸ China established more than 20 scientific centres focused on Central Asian studies and opened four Confucius institutes in Kazakhstan.¹³⁹ For Kazakhstan, a country with a long Russian border and significant ethnic Russian diaspora, China's growing presence aligns

¹³³ 'Kazatomprom' (n 130).

¹³⁴ 'CGN Mining Company Limited' (n 133).

¹³⁵ Zheng Xin, 'China Powers Up on Nuclear Projects' *China Daily* (1 August 2017) <http://www.chinadaily.com.cn/business/2017-08/01/content_30312378.htm> accessed 9 October 2019.

¹³⁶ 'Trade between China and the five Central Asian republics has risen from US\$1.8 billion in 2000 to US\$34 billion in 2015, while the five states' trade with Russia amounted to only US\$23 billion. Moreover, China is the most important creditor in the region; in addition to the financing of infrastructural projects, the energy sector in Turkmenistan and Kazakhstan has attracted huge investments from the Chinese government and banks, which granted US\$8 billion to Turkmenistan and US\$13 billion to Kazakhstan to develop oil and natural gas deposits and to realize east-oriented pipelines to ship hydrocarbons to China.' *Indeo* (n 110).

¹³⁷ In Kyrgyzstan, for instance, the hope to receive Russian investment has disappeared, inducing the government to turn to China: 'In January, parliament voted overwhelmingly to cancel two key hydropower construction deals with the Russian companies leading the projects, citing lack of progress in work. And then Kyrgyz Deputy Prime Minister Oleg Pankratov met with a delegation from China's State Power Investment Corporation on April 6 to discuss plans to build a cascade of four hydropower stations on the Naryn River.' *Lelik* (n 21).

¹³⁸ The Chinese government now offers 23 academic scholarships to Kyrgyz citizens wishing to study at Chinese higher education institutions. See *Stronski and Ng* (n 51).

¹³⁹ Arthur Guschin, 'China, Russia and the Tussle for Influence in Kazakhstan' *The Diplomat* (23 March 2015) <<https://thediplomat.com/2015/03/china-russia-and-the-tussle-for-influence-in-kazakhstan/>> accessed 9 October 2019.

with its multi-vector policy that aims to counterbalance any Russian ambition to dominate the region.

Despite its growing impact, China acknowledges the necessity to accommodate Russian interests in the BRI and addresses Russia as a strategic partner. Beijing frequently and deliberately includes Russia in its plans to tackle Russia's possible concerns over China's expansion. On the other hand, Russia's leadership seems to admit that it can maintain its influence only through collaboration and coordination with China, but not through competition. In 2015, Vladimir Putin put forward a new integration plan: the concept of a Great Eurasian Partnership that lies across the continent from Lisbon to Vladivostok. It embraces the BRI, the Eurasian Economic Union, the Shanghai Cooperation Organization, and the Association of Southeast Asian Nations members.¹⁴⁰ The concept is consistent with the BRI and accepts China's active role in the region. It allows Russia to join the initiative and, at the same time, share responsibilities and costs with China.¹⁴¹ In May 2015, Russia and China signed a joint agreement in Moscow that coordinates the strategic development policies of the two countries.¹⁴²

Both Russia and China consider Kazakhstan as an essential partner in many sectors, including energy and transport.¹⁴³ Kazakhstan is a critical part of any integration initiative in the region. However, Kazakhstan's relatively weak economic bargaining power fuels negative perceptions around the BRI and the presence of the Chinese workforce. The lack of transparency in regard to deals with Chinese investors causes the public to be even more suspicious that China would benefit unfairly at Kazakhstan's expense.¹⁴⁴ It creates a fear that China is

¹⁴⁰ 'China was the first to respond to the idea of a Greater Eurasian Partnership. Following the SCO Summit in Tashkent, President Vladimir Putin made an official visit to China on June 25, 2016. On this occasion, the meeting of Russian and Chinese senior officials resulted in the signing of a joint statement by the two countries'. Yongquan Li, 'The Greater Eurasian Partnership and the Belt and Road Initiative: Can the Two Be Linked?' (2018) 9 *J Eurasian Studies* 94.

¹⁴¹ Ivan Timofeev, Yaroslav Lissovlik and Liudmila Filippova, 'Russia's Vision of the Belt and Road Initiative: From the Rivalry of the Great Powers to Forging a New Cooperation Model in Eurasia' (2017) 25 *China & World Economy* 62.

¹⁴² As a sign of that cooperation, China agreed to invest US \$5.8 billion to extend the Moscow–Kazan high-speed railway into China. See Shannon Teizzi, 'At Russia's Military Parade, Putin and Xi Cement Ties' *The Diplomat* (9 May 2015) <<https://thediplomat.com/2015/05/at-russias-military-parade-putin-and-xi-cement-ties/>> accessed 9 October 2019.

¹⁴³ Russia's interest is represented by four major energy companies: Gazprom, Lukoil, Transneft, and Rosneft. Lukoil operates seven projects and has a stake in the Caspian Pipeline Consortium. Rosneft transports oil via Kazakhstan to China under an intergovernmental agreement signed in 2013. Another important pipeline of Russia and Kazakhstan transfers Kazakh oil to Russia and then on to Europe. Finally, Russian and Kazakhstan deliver oil via a maritime route in the Caspian Sea. Russia and Kazakhstan have close ties in gas supply. Two crucial gas pipelines go through Kazakhstan and allow Gazprom to deliver gas abroad. Russia and Kazakhstan established a joint company KazRosGas LLC; 50 per cent of each is owned by each country to unite resources in several mutual projects. See Guschin (n 140).

¹⁴⁴ In February 2018, the Chinese Council to Kazakhstan Zhang Wei had to explain to the media that China was not seeking hegemony and encouraged fostering good relations between two countries while giving the example of working visa restrictions Chinese citizens were facing. See

trying to gain more economic and political influence and eventually take over the region.¹⁴⁵ Despite the concern of Kazakhstan's dependency on Chinese money, the statistics of the National Bank of Kazakhstan show that China is not the country's largest creditor. As of 1 April 2019, the Netherlands is Kazakhstan's largest debt holder with US \$47 billion, followed by the United Kingdom (US \$21.5 billion) and the USA (US \$12.97 billion). China takes fifth place and Russia takes seventh place in the list with US \$11 billion and US \$9.3 billion respectively.¹⁴⁶

Finally, China still cannot compete with Russia's institutional, cultural, and legal legacy in the region.¹⁴⁷ Kazakhstan remains part of a Russian-speaking sphere of influence. It is a member of several organizations established and led by Russia.¹⁴⁸ China is mindful that other countries, including Russia, have strategic political and economic interests in Kazakhstan and the rest of Central Asia. The presence of different interests and the existing prejudice against China's influence constrain the possible extension of Chinese norms and institutions to Kazakhstan. The case studies provide a solid basis for the assumption that Beijing does not insist on bringing its legal rules and prefers to operate BRI projects within the local legal framework. The institutional and political landscape existing in Kazakhstan still allows China to protect its interests and fulfil its agenda. However, Kazakhstan does not have enough economic and political standing to be an equal partner for China. Therefore, while the amount of Chinese investments increases and China's presence in the region grows, China can choose to be more forceful in exercising its bargaining power.

Umida Hashimova, 'Why Central Asia Is Betting on China's Belt and Road' *The Diplomat* (13 August 2018) <<https://thediplomat.com/2018/08/why-central-asia-is-betting-on-chinas-belt-and-road/>> accessed 9 October 2019.

¹⁴⁵ 'China controls approximately 25 per cent of Kazakhstan's oil industry. This has led to fears that China is gradually taking over this industry, and bringing Chinese workers with it, when in fact in 2012 only 25 of PetroKazakhstan's employees were Chinese specialists, amounting to only 1.1 per cent of the workforce, and there were just 20 Chinese managers among the 440 employees in the company's head office. However, it is often stipulated in Chinese contracts that managers, specialists and labourers will be brought from China, which results in tensions on the ground when locals are unable to get what are perceived as the "good" jobs.' Raffaello Pantucci and Sarah Lain, 'Finance and Economics of the Belt and Road Initiative' (2017) 88 Whitehall Paper Series 56.

¹⁴⁶ Milana Beinoyeva, 'Dolg Kazakhstana pered Kitayem I Rossiyi sokratilsya. Infographika' *LSM* (6 September 2019) <<https://lsm.kz/vneshnij-dolg-kazahstana-za-1-kvartal>> accessed 1 October 2019 (in Russian).

¹⁴⁷ A remark of an ordinary Kyrgyz worker Ertabyldy Mamytov illustrates the existing attitude in the society: 'It would be better if Russia [moved production to Kyrgyzstan]. We have a long common history with Russia. China, we have already seen how that works. There were strikes in the places with Chinese investments. ... It would be better with some other investor, but if there is no other option, as long we can revive production, then let it be China.' Lelik (n 21).

¹⁴⁸ Kazakhstan and Russia are both founding members of the Shanghai Cooperation Organization, the Collective Security Treaty Organization, and the Eurasian Economic Union. Both are part of the Euro-Atlantic Partnership Council and the Commonwealth of Independent States.

Conclusion

In the beginning, the article raised several questions. To what extent does the BRI lead to the expansion of China's institutions and legal norms? How can the BRI countries ensure that their interests in BRI projects are effectively protected? The article tackled the first question in the previous sections. It concludes by addressing the second question.

Interviewees from the BRI host countries usually comment on several aspects associated with Chinese investments overseas, including transparency, social responsibility, public relations, and localization.¹⁴⁹ Chinese companies seem to get low scores, calling on Beijing to pursue better communication and higher transparency. Opacity around BRI projects in Kazakhstan feeds into speculations and general anxiety about China's presence. Highly limited information about dealing with China raises the question of whether China embraces the best governance standards or sticks to the existing institutions and norms. The literature usually refers to the Asian Infrastructure Investment Bank as an example of China's adherence to international rules and best practices.¹⁵⁰ It is worth mentioning that China has been making some efforts to improve transparency and reciprocity of BRI projects. Beijing actively engages its soft power tools to explain the BRI's agenda and goals and to reach out to domestic and international communities. China seems to acknowledge the critical role of promoting collaboration and inclusivity, aspiring to higher standards of legal norms and institutions and enhancing projects' quality.

However, China remains a State capitalism authoritarian model that lacks openness and freedom. It is an open question if China can offer Kazakhstan and other Central Asian countries a new system that promotes the rule of law, active civil society, transparency, and accountability of governmental institutions. Instead, China supports the existing institutions and political status quo. The public, academics, and experts shall have a chance to exercise more scrutiny over BRI projects in Kazakhstan to assess possible risks and minimize corruption. An open and well-informed discussion over the protection of domestic interests, fairness, governance, and business opportunities can build trust and address legitimate concerns over the BRI projects in the country. Better communication and transparency would help China to promote the BRI as a win-win initiative that benefits local communities and the environment, instead of bringing advantage solely to Chinese investors and a small group of the regional political elite.¹⁵¹

¹⁴⁹ In November 2014, Mexico abruptly cancelled a contract with China because the public and other Western railway corporations questioned the 'legitimacy and transparency' of the bidding process. See Yang (n 27).

¹⁵⁰ Thomas D Lairson, 'The Global Strategic Environment of the BRI: Deep Interdependence and Structural Power' in Zhang and others (n 1).

¹⁵¹ 'In Kyrgyzstan, the failure of a Chinese-built power plant has led to the arrest of two former prime ministers accused of receiving kickbacks from the Chinese company in charge of construction. In Malaysia, the ongoing 1MDB scandal led to the cancellation of two major BRI-related pipeline projects after it emerged that funds provided by the Export-Import Bank of China were embezzled by a company linked to former prime minister Najib Razak.' Yujun and others (n 4).