


RESEARCH ARTICLE

# China's Belt and Road Initiative is Not a Novel Approach to International Law-Making

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## Abstract

The Belt and Road Initiative (BRI) has advanced in various regions. While analyses have predominantly focused on its political and economic impacts, its legal aspects received less attention. This article explores whether the Chinese legal model implemented via the initiative represents a novel approach to international law-making. The focus is on its application in the Middle East and North Africa, where a set of primary mechanisms are utilised: soft law instruments that establish a theoretical and practical framework for collaboration. The author provides a comparative analysis of the European Union (EU) and United States (US) legal models, considering the overall pros and cons of Beijing's strategy. The article concludes that while these mechanisms represent a pragmatic governance model relying on flexible rules, they are not a novel approach. The US and the EU have employed such soft law instruments, under which binding agreements were established to ensure formal commitments.

**Keywords:** BRI; MENA region; soft law mechanisms; agreements

## 1. Introduction

The making of international law is a timeless topic of discussion, continually evolving with new ideas, concepts, and developments. Over the last century, this evolution has been significantly influenced by major events such as the two world wars, the Marshall Plan, the establishment of the Bretton Woods system, the creation of the European Community, the Cold War, and recent advancements (Koh, 2013; Pauwelyn, Wessel and Wouters, 2012; Evans, 2010). Additionally, both European and United States (US) models shaped international norms through various means (Bohnet et al., 2012). A common theme in all these developments is the role of states and their consent, which forms the foundation of international law within a consensus-based global regime (Klabbers, 2013). However, new authorities, governance layers, and normative elements also influence the socio-legal and theoretical landscapes. Changes have emerged due to political actors, informal rule-setting strategies, and the growing impact of civil society organisations, movements, and corporations (Mayer, 2022). These factors expanded international law, not formally where stagnation is evident, but rather through informal law-making processes (Pauwelyn, Wessel and Wouters, 2014), creating outputs and approaches to address challenges and deadlocks in traditional international law-making (Janssens and Wouters, 2022).

China's Belt and Road Initiative (BRI) exemplifies an informal approach to law-making established over the last decade. Through the BRI, Beijing employs a soft law strategy using

various instruments and partnerships that create commitments while allowing flexibility and compromise. International treaties lend legitimacy to the initiative, while bilateral treaties and Memoranda of Understanding (MoUs) are signed under the partnership-based framework to further these goals (Martinico and Wu, 2020; Petersmann and Martinico, 2020; Wang, 2019b). Thus, law serves as a means to implement BRI rather than its foundation. The legal frameworks created address political, geopolitical, financial, security, trade, technology, human rights, sustainable development, and environmental issues, among others (Chaisse and Gorski, 2018; Lorenzo, 2021). However, it has gaps, faces challenges and criticism (Andersen, 2020). States interpret the Chinese legal model exported differently including its efforts to reshape global norms (Zokaei, 2022) and the customised approach used to encourage different nations and regions to adopt China's vision of law and its societal functions (Chen, 2020; Wolff, 2020; Shi and Li, 2023). The Middle East and North Africa (MENA) and its nations are a prime example of this.

China had a strategic interest in the area since the Maoist period, viewing the region as an investment opportunity and a potential threat due to its volatility (Evron, 2019; Sidlo, 2020). This interest intensified with BRI. Chinese policy lending to MENA has been on the rise in countries including Jordan, Saudi Arabia, and Egypt (Young, 2019), providing reconstruction loans to nations like Lebanon and Syria and seeking cooperation in sectors such as infrastructure, energy, finance, high-tech, and industries (Petranek, 2019). Outside of the Asia-Pacific, MENA is becoming one of China's most crucial partners (Fulton, 2017). Beijing employs a variety of instruments (Martinico and Wu, 2020). It adopts a soft law strategy under the "one country, one approach" model building partnerships through a series of tools including visions and actions, cooperation plans, white papers, joint communiqués, guiding principles, planning programmes, and MoUs (Wang, 2019a). In the MENA, these instruments are categorised into two groups: those providing a theoretical foundation and those facilitating practical collaboration where hard laws such as treaties are used to implement the commitments established under the soft approach. Despite these efforts, it remains unclear whether the Chinese legal approach is succeeding.

This article seeks to answer the following question: does the legal strategy adopted by China in its BRI represent a new approach to international law-making? Doing so, the MENA region is selected as a case study. The author argues that the Chinese legal model via the initiative is not novel. The soft law approach has been employed by the US via declarations, dialogues and meetings, and cooperation mechanisms (Biden, 2022; Al-Anani et al., 2023). The European Union (EU) adopted such instruments like the global Mediterranean policy, joint dialogues, the Barcelona Process, the Union for the Mediterranean, and the European Neighbourhood Policy (ENP) (Leonard, 2022; Scazzieri, 2023). Similarly, the hard law strategy is not new. The US adopts treaties with Arab nations in relation for instance to trade and politics, deploying soft mechanisms first to ensure successful cooperation (Malkawi, 2010). The EU creates similar treaties with Arab countries on trade, transport, and border management (Del Sarto, 2015). This reality is worsened by the fact that the push towards pragmatism and flexibility endangered China's reputation and interests due to the negative consequences emerging from BRI implementation (Komakech and Ombati, 2023; CMS, 2021b; McKenzie, 2017). Overall, the initiative follows similar patterns to US and EU attempts to export their legal models to the region (Wang, 2019a; Wang, 2019b).

The article provides first an overview of the legal elements related to China's BRI. It then examines the soft law instruments constituting the theoretical and practical basis for cooperation. Later, the positive and negative impact of China's BRI legal approach on the MENA region is discussed and a comparison with US and EU Footprint takes place. Based on this, the author argues that the Chinese approach is not novel.

## 2. Legal elements of China's BRI

BRI analysis focused on economic, geopolitical, and international relations dimensions as legal scholars began to explore this topic recently (Shan, Zhang and Su, 2020; Martinico and Wu, 2020). Understanding the legal framework governing BRI is crucial to mitigate potential negative outcomes. There are concerns that the initiative led to human rights violations, international security threats, environmental harm, and restricted access to justice (Salamatin, 2020). Through the BRI, China is emerging as a global rule-maker, influencing some countries to adopt or adapt Chinese legislation (Nurgozhayeva, 2020). This influence extends to global regulatory frameworks and norms encompassing human rights, environmental, maritime, and private law. BRI does not fit neatly into any existing international category but carries significant legal consequences (Broude, 2021; Zou, 2020). There is currently no specific BRI law, and the initiative has no formal basis in public international law. At the domestic level, neither China nor other BRI-participating countries established specific rules for the initiative (Wolff, 2020).

China employs a bilateralism strategy that relies on soft law instruments. This approach, driven by a preference for flexibility, is a cornerstone of BRI (Petersmann and Martinico, 2020). Its advantages include the inexpensive establishment of sovereignty, frequent experimentation with norms, a diverse range of entities crafting agreements, and their adaptable execution (Shi, 2021). BRI utilises these instruments because of its partnership-based relational approach instead of relying on treaties. This includes the adoption of a “one country, one approach” model to develop relations with other nations, reflecting the varied cooperation models across countries. These instruments are considered non-binding, as China seeks a less formal and more flexible form of collaboration, avoiding the enforcement mechanisms typical of hard law obligations (Wang, 2019a). This does not imply that the rule of law is disregarded. In fact, the Supreme People's Court of China issued judicial interpretations that underscore its significance and addressed cases related to BRI.

The initiative's impact on international law is a recent topic of discussion. The focus is on ensuring Beijing's support for the global framework, its principles, and universal values to foster trust (Chen, 2020). China is working to have the BRI and its principles recognised by the United Nations (UN), including through resolutions from the General Assembly and Security Council, which acknowledged the initiative as a regional development effort. Additionally, it is advocating for BRI principles to be accepted as part of international law, emphasising shared benefits and joint contributions. It is aiming to use existing global mechanisms to further develop the initiative (Wang, 2019b). However, tensions are likely to arise due to differences in ideological beliefs and values, similar to how other superpowers have engaged with the global legal system (Chen, 2020). This is evident in how the BRI interacts with various legal phenomena, such as the fragmentation of international law (Chaisse and Kirkwood, 2021) and the way is pushing nations towards the implementation of Agenda 2030 (Shi and Li, 2023).

International law, in its various branches (public and private), forms the basis for the initiative by encompassing both soft and hard law concepts, as well as the notions of sovereignty and consent-based treaties (Li, 2021; Shi, 2021). It facilitates coordination and compromises among BRI members having different interests and provides a means for dispute resolution, despite attempts to circumvent international law (He, 2018; Afzaal, 2022). This often leads to confusion among partners who have various legal perspectives and interpretations of the initiative (Snyder, 2021a). International standards are seen as tools to build bridges among nations, particularly concerning cross-border technical matters (Snyder, 2021b). China employs general legal principles, global treaties, and multilateral and bilateral agreements for cooperation, all elements of the international legal system (Guo, 2023). However, BRI does not directly rely on these means, reflecting

China's pragmatic approach. This led to challenges in compliance, particularly regarding international environmental and economic law (Rodiles, 2022).

The interplay between BRI and international law led many to view the initiative as a transformative force. Some see it as reshaping the landscape (Bin, 2021), while others regard it as a global public good (He, 2018), a new governance and development form for the global community (The State Council Information Office of the People's Republic of China, 2023; Zhao, 2018), and a factor influencing and being influenced by international law (Chen, 2020; Yang, 2019). There are also views that it introduces a new form of multilateralism (Zhou, 2020), regionalism (Zeng, 2020a), while challenging the old order (Benabdallah, 2019) and reshaping frameworks such as human rights (Salamatin, 2020) and international investment law. However, the literature remains unclear on whether BRI's legal approach is novel or previously used. This study aims to address this gap, reflecting on whether the initiative creates novel methods for international law-making (Wang, 2019b; Chen, 2020).

### **3. Soft law instruments constituting the theoretical basis for cooperation**

#### **3.1. China's five principles of peaceful coexistence**

The principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, mutual non-interference in internal affairs, equality and mutual benefit, and peaceful coexistence were established in the 1950s (Lo, 2010). During the Cold War, these underpinned cooperation between China and MENA countries, particularly those aligned with the Non-Aligned Movement including Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Syria, Sudan, and Tunisia. These principles continue to guide the peaceful coexistence and economic relations between China and Arabs. This adherence contributed to China's success in the region, ensuring Beijing's perceived neutrality (Sidlo, 2020). However, these faced criticism for their inconsistent application in practice. China's evolving stance in conflicts like the Syrian and Libyan crises reflects its changing interests and status as a rising power (Liu, Wu and Xu, 2022). As it navigates its interests and the imperative to maintain its commitments and image, finding a balance is a significant challenge. Still, Beijing is likely to continue prioritising a less political and interventionist approach to fostering a peaceful political environment (Chen, 2020; Sevilla Jr, 2018).

#### **3.2. Hu Jintao's four fundamental principles for China–Middle East cooperation**

In 2004, then Chinese President Hu Jintao proposed four fundamental principles for China–Middle East cooperation: 1) mutual respect to promote political relations; 2) strengthened economic and trade ties for joint development; 3) expanded cultural exchanges for mutual benefit; and 4) enhanced cooperation in international affairs to safeguard world peace and promote development. These aimed to establish a new type of partnership. Several state leaders visited China (Jin, 2004), affirming their support for the Sino–Arab vision encapsulated by these principles (Yao, 2014). The core concept emphasised the co-existence of diverse nations and civilisations with varying social models and developmental paths, all grounded in international law (Fei, 2010). This approach underscored a new method for advancing China's soft power (Zhao, 2016). Building on these principles, significant developments took place setting foundation for deepening China–Arab relations (Cheng, 2018; Murphy, 2022).

#### **3.3. China's first Arab policy paper**

The document emphasises the importance of pragmatic cooperation between China and Arabs across sectors. It focuses on deepening the "China–Arab strategic cooperative

relations” within China’s Five Principles of Peaceful Coexistence, the UN Charter, and its 2030 Agenda. Politically, the emphasis is on fostering high-level exchanges and dialogues to enhance communication through consultations, cooperative mechanisms, and exchanges among legislatures, political parties, and local governments. Economically, the priority is on boosting investment and trade cooperation. This includes focusing on production capacity, investment, trade, energy, infrastructure, space, civilian nuclear power, finance, and the development of economic and trade mechanisms. Socially, there is an effort to collaborate on healthcare, education, human resources, science and technology, agriculture, climate change, environmental protection, and forestry. Culturally, the focus is on fostering connections among civilisations and religions, and enhancing cooperation in culture, broadcasting, film, television, press, publications, and think tanks. In the realm of peace and security, the document underscores the importance of regional security, military cooperation, anti-terrorism efforts, and addressing consular, immigration, judicial, and police matters, as well as non-traditional security threats (China’s Arab Policy Paper, 2016).

### **3.4. “1 + 2 + 3” economic cooperation patterns**

Arab countries and China are actively developing a “1 + 2 + 3” cooperation pattern, introduced in 2014 at China–Arab States Cooperation Forum. It serves as a roadmap for enhancing China–MENA partnership (Cheng, 2016; Kamel, 2018), emphasising a pragmatic approach to collaboration. It focuses on energy, supplemented by infrastructure and trade—the “two wings”—and advances in new technologies like nuclear energy, aerospace, and renewable energies—the “three breakthroughs.” The objective is to foster an economic relationship that transcends the traditional oil-based interactions (Fasulo and Talbot, 2017). Energy remains central to China–Arab relations due to the significant volume of oil imports from the region and the critical role of energy security in China’s economic growth. Trade and investments have seen relative advancement within the framework of these bilateral relations, though areas such as Free Trade Agreements (FTAs) still need further development. The three technological sectors—nuclear energy, space satellites, and new energies—are emerging fields where additional cooperation is necessary (Fulton, 2020).

## **4. Soft law instruments constituting the practical basis for cooperation**

### **4.1. Dialogue mechanisms**

China employs a strategy of “multilateralism with Chinese characteristics,” enacted through the China–Arab States Cooperation Forum across domains such as politics, trade, culture, technology, and foreign affairs (BRICS Policy Center, 2016). A strategic dialogue between China and the Gulf Cooperation Council (GCC) countries led to the establishment of cooperation encompassing security, stability, independence, and non-interference in internal affairs issues (Mission of the People’s Republic of China to the European Union, 2022). Arab countries collaborate with China through Forum on China–Africa Cooperation (Andersen et al., 2020). It operates through the Ministerial Conference, senior officials’ follow-up meetings, preparatory meetings for the Ministerial Conference, and consultations. Various sub-forums are established, including the China–Africa People’s Forum and Ministerial Forum on China–Africa Health Cooperation (Forum on China–Africa Cooperation, no date). The Asian Infrastructure Investment Bank (AIIB) plays a role in financing BRI projects. Most GCC states are members of the AIIB leading to the approval of projects in the Gulf (Ghaffar, 2018). Its influence is significant as Arab nations joined the bank and some AIIB directors are Arabs (Fasulo and Talbot, 2017).

## 4.2. *Partnerships with MENA countries*

China employs various types of partnerships prioritising aspects without requiring formal commitments including comprehensive strategic partnerships; strategic partnerships; comprehensive cooperative partnerships; cooperative partnerships; and friendly cooperative partnerships (Fulton, 2019). These can be bilateral or multilateral. The multilateral ones involve collaborations with entities such as the League of Arab States, GCC, and the Arab Maghreb Union (Sun, 2020). On the bilateral front, China established comprehensive strategic partnerships with Algeria and Egypt in 2014, Iran and Saudi Arabia in 2016, and the United Arab Emirates (UAE) in 2018. Strategic partnerships are formed with Djibouti in 2017, Iraq and Jordan in 2015, Kuwait and Oman in 2018, Morocco in 2016, Qatar in 2014, and Turkey in 2010. China's policy appears to focus on partnerships with Gulf countries (Fulton, 2019), extending beyond energy issues (ISPI MED, 2022). Majority were forged in the last decade, evolving from state visits. This shift is the outcome of diplomatic efforts to secure deeper engagement with BRI. Even states without current partnership agreements are expected to sign at least mid-level ones soon. Their nature depends on the level of political trust, existing economic ties, and the state's role in global economics and politics (Fulton, 2019).

## 4.3. *Bilateral agreements*

China is pursuing bilateral agreements based on mutual interests (Andersen et al., 2020). At least 18 Arab states signed treaties concerning BRI projects (Lons et al., 2019). These cover areas including infrastructure and health facility development, oil and gas, raw materials, trade, technical cooperation, and taxation (AlHasawi, 2020). The Abu Dhabi National Oil Company (ADNOC) signed a US\$1.6 billion contract with the China National Petroleum Corporation (Young, 2019). ADNOC and Mubadala Petroleum entered into agreements with Chinese firms including China National Offshore Oil Corporation and China National Petroleum Corporation (Hudson International Institute for Strategic Studies, 2021). Dubai Electricity and Water Authority established a partnership and investment deal with China's Silk Road Fund to create the world's largest solar energy project. Zhejiang China Commodities City Group and DP World agreed to develop a 3 km<sup>2</sup> traders market in the Jebel Ali Free Zone. In 2018, ADNOC finalised an agreement with China's Wanhua Chemical Group concerning the sale of liquefied petroleum gas (Young, 2019). Agreements were reached between China and Saudi Arabia, particularly following King Salman's 2017 visit to Beijing, during which deals worth US\$65 billion were signed (Fasulo and Talbot, 2017).

## 4.4. *Memorandums of understanding*

MoUs play a role in integrating Arab countries into the BRI (Center for Social and Economic Research, 2020). Since 2016, Saudi Arabia entered at least 15 MoUs with China, to diversify its economy (Fulton, 2017). Saudi Aramco collaborated with China North Industries Corporation and Sinopec to establish refineries in China. In 2018, China and Bahrain signed an MoU to enhance BRI projects. Since 2018, Abu Dhabi and China concluded at least 13 MoUs across sectors including energy, investments, and commerce (Ghaffar, 2018). Egypt entered MoUs in 2016 to enhance cooperation within BRI (China Daily, 2016). The following year, Lebanon and China executed two MoUs aimed at bolstering the initiative (Xinhua, 2017), and Morocco committed to a similar agreement (Belt and Road Portal, 2017). Tunisia signed comparable MoUs. Arab nations experiencing armed conflicts, such as Syria, signed MoUs in hopes of rebuilding their economies (GT Staff Reporters, 2022).



#### 4.5. Pairing of national visions

Visions are designed to align specific goals across different parties through political coordination, enhance facility connectivity, expand, and improve trade relations, and foster cooperation (Fulton, 2020). China is keen on creating synergies with national visions due to the economic prospects they offer, particularly through megaprojects and infrastructure initiatives (Young, 2019). Significant progress is achieved in aligning the initiative with the framework of Saudi Arabia's 2030 vision, including harmonisation of policies, development of infrastructure, improving connections, facilitating free trade, and integrating financial systems (Chen, Shu and Wen, 2018), via investments, bilateral agreements, and MoUs (Fasulo and Talbot, 2017). Other countries followed suit. Kuwait incorporated BRI into its National Vision 2035, committing to build a Silk City with diverse financial, touristic, and educational facilities, along with transportation hubs by sea, land, and air. Bahrain views BRI crucial to achieving its Economic Vision 2030 and ensuring economic diversification (Ghaffar, 2018). This initiative aligns with Qatar's National Vision 2030 (Seetao, 2022). Egypt coordinated with China to align BRI with its national revitalisation plan (Al Jazeera Centre for Studies, 2017).

### 5. Impact of China's BRI legal approach in the MENA region

#### 5.1. Positive aspects

The soft law approach of BRI facilitates the achievement of its goals more effectively than hard rules (Wang, 2019a). Beijing views the initiative as an opportunity for investment and networking rather than a platform to legally intervene in the affairs of other countries (Murphy, 2023). This less regulated strategy enhances the potential for informal consensus, fostering collaboration (Schneider, 2021) across diverse legal systems allowing the adoption of a pragmatic approach (Bin, 2021) in a region known for its volatility. The objective is to maintain non-binding commitments, granting flexibility to adapt to each state (Nolan and Leutert, 2020) through trial-and-error (Wang, 2019b). This is particularly crucial for the MENA region, where countries face varied challenges and must navigate numerous political, economic, and financial barriers (Evron, 2019). Moreover, this approach helps address uncertainties, as stakeholders, including Arab nations, need time to assimilate the implications of binding agreements. It simplifies the process of making compromises, thereby ensuring a win-win situation for states with differing interests, values, power dynamics and alleviating fears of power asymmetry and questionable intentions (Wang, 2019a). Additionally, soft laws under the initiative can evolve into hard obligations if all parties concur (Salamatin, 2020). The initiative supports the development of robust legal frameworks in participating countries, including those in the Arab world (BRI Advisory Council, 2020). For instance, the Guidelines for Country-By-Country (Region-by-Region) Foreign Investment and Cooperation published by the Chinese Ministry of Commerce include laws of host states (Zhai, 2021). The initiative is influenced by a unique Chinese interpretation of the rule of law, which impacts recipient nations (Che, 2021). Chinese domestic norms are being emulated in places like Egypt and the UAE, with cooperative arrangements often promoting public international law principles (Nurgozhayeva, 2020), aligning with China's aspirations to integrate more fully into the international community (Chen, 2020), a goal shared by Arab nations (Lorenzo, 2021). To address legal conflicts, China established specific dispute resolution mechanisms, including International Commercial Courts, also known as the "Belt and Road Court," (Xu, 2019; Anh and Ha, 2020; Zeng, 2020b) expected to foster new legal norms through the initiative (Dahlan, 2020). All the aforementioned elements are being implemented in the Arab world, where BRI projects are underway, particularly benefiting countries in dire need.

## 5.2. *Negative aspects*

Legal risks are a primary concern for BRI projects due to the flexibility they demand, which often leads to significant challenges in risk management, predictability, and consistency (CMS, 2021a; Ghafar and Jacobs, 2019). A uniform approach is ineffective because of varying legal traditions (McKenzie, 2017). Chinese companies have frequently tried to execute projects at an exceptionally fast pace or with excessive ambition, disregarding established domestic legal frameworks. Many raised concerns about lack of transparency, potential unfair business practices, and intellectual property violations. In several cases, Arab partners involved in BRI projects encountered legal disputes related to real estate, environmental protection, labour regulations, supply chain disruptions, and breaches of non-disclosure agreements. Regardless of the outcome, the parties must comply with court decisions (CMS, 2021b), although concerns about the impartiality of local judges and the enforceability of their rulings emerged (Wu, 2018). The soft law approach adopted for enforcement may lead to opportunism and non-compliance (Tai and Sun, 2019) due to the absence of adequate frameworks. Chinese soft law strategy has unique criteria: (i) minimal regulatory involvement, (ii) a collaborative, project-oriented model, and (iii) a hub-and-spoke organisational structure (Wang, 2021). This is problematic in regions like MENA, where many states have weaker legal and enforcement capacities, creating a risky environment for investments (Naja, 2023). This reality led Chinese companies to leverage relationships with governments and support from Chinese embassies to navigate regulatory compliance (McKenzie, 2017). Weak enforcement and vague rules resulted in labour violations prioritising project completion over worker safety (Komakech and Ombati, 2023). This is exacerbated in MENA nations that lack the institutions necessary to enforce domestic laws, international standards, or protect local interests (Russel and Berger, 2019). Despite its critical importance, the law is not the foundation of BRI, as the focus remains on maximising flexibility (Bin, 2021). Nevertheless, given that BRI-participating nations, including those in the Arab world, have diverse levels of development, governance styles, and political systems (Babatunde, 2020), the tension between ensuring legal certainty and promoting flexibility is inevitable (Dahlan, 2020). Cooperation between Arab countries and China is essential to address these legal shortcomings and ensure successful collaboration between both parties in the short and long term.

## 6. US and EU legal footprint in the MENA region

### 6.1. *The American approach*

The American legal system differs significantly from those of MENA nations, impacting the trust established among parties in various transactions (Bohnet et al., 2012). Over recent decades, American institutions and legal scholars developed an entire industry to advise Arab states on legal processes and development. This guidance addresses aspects such as the rule of law, which often conflicts with the non-democratic structures in many Arab countries, and the unique legal systems blending Islamic, Ottoman, European, and other legal sources. Attempts to transplant the Anglo-American system have proven ineffective, leading to tensions (Mednicoff, 2005). Despite this, the US Congress includes committees addressing various legislative topics related to the Arab world, such as finance and security (Hudson, 2019), though their reports lack legal relevance in the region (Said, 2009). The economic perspective presents a different scenario, as the US entered numerous FTAs with Arab nations, aiming to establish a US–Middle East free trade area. Countries like Jordan, Bahrain, Morocco, and Oman are included in these agreements. The US seeks to boost exports, compete with the EU economically, and strengthen historic ties. These treaties cover provisions spanning “goods, trade in services, competition, investment, intellectual



property rights, agriculture, sanitary and phytosanitary standards and technical barriers to trade, safeguard measures, dispute settlement mechanism, and rules of origin and customs procedures” (Malkawi, 2010, p.277). Bilateral treaties are signed regarding topics like law enforcement prompting these nations to develop new laws in case of their absence (Malkawi, 2007). However, such agreements are not without geopolitical, cultural, transparency, and linguistic complexities (Malkawi, 2007; Lawson, 2011; Gelfand et al., 2015). They are utilised to foster political cooperation, either directly with the US or by normalising relations with non-Arab countries like Israel. Examples include the Abraham Accords signed in Washington, DC, in 2020, involving Israel, UAE, Bahrain, Sudan, and Morocco, as well as peace agreements between Israel and Jordan (Singer, 2021; Kanovsky, 1995). To promote these objectives, even federal US laws are enacted to encourage American companies to participate in Arab Israeli joint ventures several decades ago (Lubetzky, 1994). These legal developments aim to promote US engagement in MENA based on five principles: partnerships, deterrence, diplomacy, integration, and values (The White House, 2022).

## 6.2. The European approach

The European legal presence in the MENA region dates back several decades, beginning with the adoption of the Global Mediterranean Policy in 1972, which addressed bilateral agreements on development assistance and trade cooperation, as well as human rights and democracy. In the 1990s, a renewed Mediterranean policy was introduced with a people-to-people approach, establishing specific sub-regional groups. Dialogue with the Gulf countries started in the 1980s, leading to bilateral agreements with the GCC based on mutual interests, though differences in values and priorities sometimes caused clashes. Comprehensive cooperation in politics, security, economy, finance, and culture began with the 1995 Barcelona Process, representing a Euro-Mediterranean Partnership. In 2004, the ENP was introduced, emphasising bilateralism and action plans with neighbouring countries through partnership and association agreements. The Union for the Mediterranean was initiated in 2008 to enhance regional integration through multilateral projects. The Arab Spring presented new challenges, prompting an ENP review and novel partnerships for democracy and shared prosperity with the Southern Mediterranean (Khader, 2013). The dialogue with the GCC countries has focused on potential areas of collaboration, mainly trade, investments, and security through specific treaties. It excludes certain EU-specific topics and normative elements, such as the rule of law and democracy, while emphasising sustainable development and good governance (Demmelhuber and Kaunert, 2014). Since then, new initiatives are adopted. The EU employs various instruments and approaches in the region, involving multiple institutions such as the European Commission, Directorate-Generals, Neighbourhood and Enlargement Negotiations, and the European External Action Service (Henokl and Stemberger, 2016). Mechanisms like the Instrument for Democracy and Human Rights focus on promoting human rights and the rule of law (Wouters and Duquet, 2013). The EU aims to transfer its rules and practices through normative policies, exemplified by trade agreements that require Arab nations to harmonise their trade rules with the *acquis communautaire* and EU law. This approach extends to areas such as transport and border management, supported by financial aid to train government and administrative officials in applying EU law and benefiting from such legislation domestically (Del Sarto, 2015). Additionally, the EU seeks to promote international law and norms including international trade law.

## 7. Discussion

The soft law approach of BRI is based on the Five Principles of Peaceful Coexistence, the Four Fundamental Principles for China–Middle East cooperation, the first Arab Policy Paper, the “1+2+3” economic cooperation pattern, dialogue mechanisms, partnerships with MENA countries, MoUs, and the pairing of national visions (Jin, 2004; China’s Arab Policy Paper, 2016; Fulton, 2017; Lons et al., 2019; Young, 2019; Andersen et al., 2020). This strategy is not novel. The US has long employed soft means to issue declarations, conduct dialogues and meetings, and establish cooperation mechanisms with Arab nations. The objective is to break down barriers, deepen cultural and economic ties, create new collaboration frameworks, provide further support, and address global challenges such as the COVID-19 pandemic, the wars in Ukraine and Palestine, protect food and energy supplies, and provide humanitarian aid (Hedayah, no date; Biden, 2022; Al-Anani et al., 2023; Blinken, 2024). The EU has also used soft instruments to foster relations with Arab nations. Examples include the Global Mediterranean Policy, joint dialogues, the Barcelona Process, the Union for the Mediterranean, and the ENP. Europe’s approach is based on *realpolitik* and transactionalism, aiming to ensure stability and prosperity, which benefits it long term. However, the use of soft power has often backfired, with the EU failing to achieve its intended results in many instances (Leonard, 2022; Scazzieri, 2023; Lynch, 2024). Chinese involvement in the Arab region created competition with the US and the EU regarding influence and dominance through soft means. Yet, its approach is not new; it has been used by its competitors for decades.

Beijing employs its hard law strategy within the broader framework of its soft law approach to strengthen relations with Arab countries. The former is not basis for it given the flexibility sought after by China. This strategy encompasses bilateral agreements focusing on infrastructure and health facility development, oil and gas, raw materials, trade, technical cooperation, and taxation (AlHasawi, 2020). It includes MoUs with companies from Saudi Arabia, UAE (Ghaffar, 2018), Egypt, Lebanon (Xinhua, 2017), Morocco, and other Arab nations. This approach is not new; the US adopts agreements with Arab nations, deploying soft mechanisms first to ensure successful cooperation. FTAs with Jordan, Bahrain, Morocco, and Oman were established after dialogues, meetings, and joint statements, resulting in binding commitments on trade in goods, services, and other issues (Malkawi, 2010). Soft mechanisms are crucial before concluding political agreements, as demonstrated by the 2020 Abraham Accords, where diplomatic efforts normalised relations between the UAE, Bahrain, Sudan, Morocco, and Israel (Singer, 2021; Kanovsky, 1995). The EU similarly establishes treaties with Arab countries on trade, transport, and border management (Del Sarto, 2015). These are signed once soft instruments pave the way for legal commitments. Association agreements with Tunisia, Morocco, Jordan, Egypt, Lebanon, Algeria, and Syria covering agricultural trade and service liberalisation among other matters are adopted. These have benefits and costs (Ghesquière, 2001). Additionally, treaties with specific regions, such as the EU-GCC Cooperation Agreement, are concluded. Further competition among China, the US, and the EU has legally intensified due to the proliferation of bilateral treaties in the MENA region. Nevertheless, the Chinese approach is a traditional one.

When considering the pros and cons of BRI legal implementation in Arab countries, one might wonder whether the efforts are worthwhile. The flexibility and pragmatism are commendable, given the region’s instability and diverse political systems, acknowledging that failure is part of the process. This approach facilitated compromises, leading to investment opportunities and network development. Chinese support in developing domestic legal frameworks, based on Beijing’s interpretation of the law, further enhances this process (Wang, 2019a; Wang, 2019b; BRI Advisory Council, 2020; Bin, 2021; Murphy, 2023). Some argue that the Chinese pragmatic and flexible approach is more effective than

the US and EU approaches, which often emphasise exporting values that may conflict with the ideologies and regimes of Arab countries (Mednicoff, 2005; Del Sarto, 2015). This focus sometimes jeopardised European and American interests. However, the Chinese approach faces challenges due to its high flexibility, affecting risk management, predictability, and consistency (CMS, 2021a; Ghafar and Jacobs, 2019). Chinese companies often prioritise rapid project implementation, sometimes disregarding domestic laws, transparency, fair business practices, and intellectual property rights (CMS, 2021b). When flexibility falls short, political relations with Arab governments and support from the Chinese government are leveraged (McKenzie, 2017). This situation is exacerbated in nations with weak legal and enforcement mechanisms (Komakech and Ombati, 2023). In contrast, European and American entities have a better reputation for respecting human values, upholding domestic legal systems, and supporting their development. A balance is needed between pragmatism, which allows for swift implementation, and respect for domestic norms and laws to build a good reputation. Nonetheless, some might argue that pragmatism alone is sufficient.

The European and American approaches have struggled to make significant changes in the legal systems of Arab countries, where the main influence continues to come from former colonial powers such as France and the UK (Ayoub and Schriber, 2024). This is compounded by existing legal traditions rooted in religion, Ottoman law, and the openness of lawyers to various legal frameworks (Ziadeh, 2006). However, one could argue that the focus on the domestic laws of European nations and US states represents an indirect influence. Legal scholars in the Arab world often use these regulations, particularly in emerging fields as models for their own legal frameworks (Black, Esmaeili and Hosen, 2013). When drafting legislation, Arab nations consider the context of each country, including the authoritarian nature and political ideologies (Kuran, 2016). Additionally, there is a tendency to model laws after established legal systems, such as those in Egypt and Lebanon (Dupret, 2011; Donohue, 2009). A more recent development is the trend towards regional harmonisation, as seen in the GCC's efforts to adopt unified rules to facilitate cooperation in areas like trade (Price, 2012). The challenge of balancing modernisation with the preservation of traditions, cultural values, and religious norms further complicates the adoption of American or European legal models (Harb, 2015). International agreements also play a role, as Arab nations view their perceived neutrality and objectivity favourably, leading to efforts to integrate them into domestic legal systems (Burgis, 2009).

China's BRI legal approach in the MENA region aligns with established international law-making practices. The soft law approach, which includes binding treaties, mirrors strategies used by the US and EU over the past century (Blinken, 2024; AlHasawi, 2020). The initiative's pros and cons reflect those of American and European efforts, which also experienced successes and failures. These approaches influenced international law-making (Wang, 2019a; Wang, 2019b; McKenzie, 2017; Komakech and Ombati, 2023). The EU's legal reach beyond its borders significantly impacted international law, emphasising the rule of law, human rights, and environmental protection. This is evident in the European Court of Justice's statement that the EU represents a "new order of international law" (Barrett, 2023), and in some scholars view that EU law is international law (Moorhead, 2012). Similarly, US law shaped global rules by establishing international principles and treaties. International law often serves US interests (Piccone, 2017) and is integrated into the nation's domestic laws. An example is Trump blocking the appointment of new judges to the World Trade Organization appellate body (Horton and Hopewell, 2021). China's impact through the BRI follows a similar path. Beijing advocates for international law with Chinese characteristics (Williams, 2020), introduces new ideas such as building a community with a shared future (Staiano, 2023), complies with specific global treaties,

seeks to alter rules, establish new ones (Kardon, 2023), and promotes “Chinese Exceptionalism” as a counter to American one (Cai, 2019).

## 8. Conclusion

This paper explored whether China’s legal strategy in its BRI represents a new approach to international law-making. Understanding this required evaluating the pros and cons of the initiative in the MENA region and comparing it with the US and EU legal models. The analysis revealed that China’s approach is not novel, as the soft law strategy has been previously used by the US and the EU. Similarly, the hard law model within the soft law framework resembles the treaties established by both the EU and the US. This situation is further complicated by the fact that the push for pragmatism and flexibility harmed China’s reputation and interests due to negative consequences from BRI implementation. Therefore, the Chinese legal approach through BRI mirrors that of Europe and the US, especially as China seeks to increasingly connect its initiative to international law. However, the legal strategy itself is not novel. However, the broader implications for international law, particularly how these approaches influence legal practices across various sectors, are yet to be fully understood. Notably, non-Western nations are increasingly shaping global frameworks and establishing regional systems to safeguard their interests.

The study is limited by its focus on analysing the pros and cons of the BRI in the MENA region. Further analysis of the initiative’s implementation in other areas is needed to confirm the results, particularly from a North/South perspective. Future studies should expand the comparative approach with the EU and the US to assess the interplay between their strategies and the overall impact on international law. It would also be beneficial to consider other nations that may be attempting to export their models for comparison. The legal perspective could be further explored through interdisciplinary research, combining fields such as politics and economics to understand how the law impacts various sectors in practice. Future work needs to consider all these elements and more, such as analysing specific legal aspects of the BRI, including bilateral agreements, the role of courts and comparing Chinese treaties with those of the US and Europe.

Based on the legal analysis, several recommendations can be made. First, given the similarities between the Chinese initiative and those in Europe and America, it would be beneficial to learn from the successes and failures of such legal models. Second, it is necessary to address the negative aspects of the initiative to minimise and eliminate potential adverse impacts and ensure proper implementation. Finally, better integration with international law is essential so that the global framework is not merely perceived as an advertising strategy but as a tangible part of the initiative.

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