

The background is a vibrant pink. It features several abstract elements: a large light blue circle on the left with three white wavy lines inside; a yellow shape with a central notch and a small dot to its right; a white wavy line that curves across the middle; a dark purple shape on the right; and several yellow and black striped shapes at the top and bottom. The text is positioned in the lower-left area.

**Rising in the East:**  
Finland, Europe and  
a newly assertive China

RISING IN THE EAST:  
FINLAND, EUROPE AND  
A NEWLY ASSERTIVE CHINA

Publishers

ISBN 978-951-8964-17-2

*This is a joint publication of the Wilfried Martens Centre for European Studies and the Toivo think tank. The publication receives funding from the European Parliament. Wilfried Martens Centre for European Studies, the Toivo think tank and the European Parliament assume no responsibility for facts or opinions expressed in this publication or any subsequent use of the information contained therein. Sole responsibility lies on the author of the publication. The processing of the publication was concluded in 2019.*

Wilfried Martens Centre for European Studies  
Rue Du Commerce 10  
Brussels, B-1000  
www.martenscentre.eu

Ajatuspaja Toivo / Toivo Think Tank  
Kansakoulukuja 3 A  
00100 Helsinki  
www.toivoajatuspaja.fi

Edited by Juho Mäki-Lohiluoma and Niklas Nováky.

<b>Introduction</b>	<b>7</b>
<b>China – Middle Kingdom 2.0</b>	<b>8</b>
Community of Common Destiny	11
Belt and Road in Cyberspace	12
<b>Dealing with the Dragon: The need to enhance Europe’s foreign policy resilience</b>	<b>15</b>
China’s rise	35
The challenge to European unity	37
Mitigation options	38
Conclusion	41
<b>China is challenging other players in the Arctic</b>	<b>46</b>
China’s roadmap of creating a new Arctic Silk Road	48
The Arctic is connecting Russia’s oil and gas to China’s growing economy	51
China’s interests in other Arctic areas	54
Arctic Governance and China	56
What next?	59
Searching for EU’s Arctic Policy	61
<b>In BIT We Trust? – Protection of Finnish Investments in China</b>	<b>70</b>
Where to sue? Arbitral Jurisprudence and Investment Treaties	73
Criticism and Reflections	75
EU Investment Policy – A New Era for Finnish Investors in China?	77
Conclusions and Discussion	81
<b>Conclusions</b>	<b>234</b>
<b>Sources</b>	<b>237</b>

## Writers

### **Sini Ruohonen, Msc., Executive Director, Toivo think tank**

Sini Ruohonen works as the Executive Director of Toivo, where she leads the research and policy work of the think tank. Prior to assuming her current position, Ruohonen worked as a Researcher at the University of Turku. Ruohonen is also a City Councilor and member of the Executive Board at the City of Turku.

### **Niklas Nováky, PhD, Research Officer, Wilfried Martens Centre for European Studies**

Niklas Nováky works as a Research Officer at the Wilfried Martens Centre for European Studies, where he specializes in the research of European security and the EU's security and defense policies. Nováky holds a PhD in International Relations from the University of Aberdeen and an MSc in Politics and Government in the EU from the London School of Economics and Political Science.

### **Outi Luova, Docent, University of Turku**

Doctor of Social Sciences Outi Luova works as a University Lecturer and Vice-Director of the Centre for East Asian Studies at the University of Turku. As one of the leading Finnish researchers on China, Luova also acts as the Director of the Finnish University Network of Asian Studies. She is regularly published in leading academic journals and writes op-eds for Finnish newspapers and magazines.

### **Jari Vilén, Msc., Senior Adviser for Arctic Policy, European Political Strategy Centre, European Commission**

Jari Vilén advises the European Commission's leadership on Arctic Policy at the European Political Strategy Centre, the Commission's in-house think tank. Prior to assuming this position, Vilén served as Finnish ambassador to Hungary and Poland, and EU ambassador to Council of Europe. His career includes also two terms as a Member of Finnish parliament and minister of European Affairs.

### **Juho Mäki-Lohiluoma, LL.M, Lawyer & Vice Chairman, International Young Democrat Union**

Juho Mäki-Lohiluoma works as a Lawyer in the private sector and as a part-time Policy Consultant to Toivo Think Tank. He has previously worked e.g. as a journalist and Special Adviser to the Finnish Government. Mäki-Lohiluoma is a 1st Vice Chairman of the International Young Democrat Union, the global umbrella organisation of centre-right political youth organisations.



# Introduction

Sini Ruohonen

China's Foreign Policy is changing. Workable answers to it can only be achieved at the European level, and not through narrow national interests.

As of now, the European Union (EU) is the world's largest economy, but it's unclear how long any single European country can retain its place even in the global top ten of the same statistic. While the economic centre of the world is shifting, and the share of the global GDP produced in Europe continuously falling, the significance and need to find a common European approach to the realities of tomorrow seems ever-increasing. One of the reasons for it is the newly assertive China, the Rising in the East.

China's Foreign policy in the 2010's has been changing fast. A balanced approach towards China is not easy to achieve. On the one hand, the authoritarian government of China is as almost as far from the ideals of the European centre-right as anyone can be. On the other hand, any future global power can't be approached simply with blunt idealism, but with straight-backed pragmatism, that will create stability, security and prosperity, while standing firm on the core values that the Europe is built upon.

The aim of this book is to provide the reader with four perspectives into the current developments of Chinese-European relations, along with solutions on how they should be handled by policymakers. The book is published jointly by Wilfried Martens Centre for European Studies and Toivo think tank. The publishers are independent think tanks and political foundations of two centre-right parties, the European People's Party and the National Coalition Party of Finland (Kokoomus).

In the first article, Outi Luova, one of the leading Finnish researchers on China, outlines the current and future directions of the Chinese foreign policy – its strengths, weaknesses and possibilities – and discusses the Community of Common Destiny (CCD), the new framework for an international system that China now offers. Luova characterises contemporary China as the “Middle Kingdom 2.0” and an aspirant global power in a multiplex world.

Niklas Nováky, a Foreign and Security Policy Researcher at the Wilfried Martens Centre for European Policy, argues that the gravitational pull of China's economy and the investment flows coming from the Middle Kingdom risk becoming a paralysing wedge for EU's foreign policy. According to Nováky, the EU's ability to speak in one voice in its relations to China is likely to be even more difficult in the future than it is now. To mitigate this risk, the EU needs to enhance the resilience of its foreign policy. For this, Nováky presents three mutually inclusive tools: increasing the use of Qualified Majority Voting (QMV), creating a European Security Council (ESC), and launching a new Marshall Plan for financing intra-European infrastructure development projects.

The Arctic area is quickly shifting from a cold borderland to one of the hotspots in global politics. It's already now an area of utmost importance not only to the European Arctic nations such as Finland, but to the whole of Europe and the EU. The Arctic is also attracting an increasing number of interested nations and other players. A fitting example of this is China's increasing

presence in the area, which Jari Vilén discusses in his article. Vilén, a former Finnish and EU Ambassador and Minister of European Affairs, currently advises the European Commission's leadership on Arctic Policy at the European Political Strategy Centre (EPSC), the Commission's in-house think tank. According to Vilén, China's activity in the Arctic has laid emphasis on scientific research on climate change, although the underlying causes behind the actions are clearly economic ones. China is also aiming to incorporate the Arctic region to their new Belt and Road Initiative, a development project in which China is investing up to 900 billion euros in railroads, harbours and other infra-structure in 65 countries all around the globe.

The EU is currently also negotiating an international investment agreement (IIA) with China. This possible future regulatory framework, along with the deficiencies in the current one, is the topic of the article of Juho Mäki-Lohiluoma. He notes that in the case of Finnish investments in China, a comprehensive set of investment protections is available, but due to a self-contradictory body of arbitral awards and differing academic opinions, the specific scope of these protections is often unclear, and so is the level of protection. According to Mäki-Lohiluoma, the EU Investment Policy and EU-China investment agreement would mark a new era for investors operating in Finnish and Chinese market, which could be described as a one of public actors taking back control of investment treaty interpretations. Mäki-Lohiluoma is a Lawyer and a former Special Adviser to the Finnish Government.

In many ways, China justifiably sees its future as one of continued growth, increasing prosperity and claiming (back) its role as the leading global powers. It's an image that creates optimism, hope and opportunities for many, especially China itself, but also

uncertainty and new challenges for Europe and the EU. It's vital, that these challenges are answered not by all EU member states individually, by looking only at the short-term interests of said member state, but together as the political and economic union we are. Finding these answers is also the aim of this book, and I hope we have proven successful in that task.

*Sini Ruohonen works as the Executive Director of Toivo, where she leads the research and policy work of the think tank. Prior to assuming her current position, Ruohonen worked as a Researcher at the University of Turku. Ruohonen is also a City Councillor and Member of the Executive Board at the City of Turku.*



# China – Middle Kingdom 2.0

Outi Luova

China aims to establish itself as one of the leading global powers, and the race to the top is increasingly moving into the field of Artificial Intelligence. Digital technologies have been identified as key components of China's great power strategy and merged into the Belt and Road Initiative.



For most of the early modern era until the mid-19th century, China was the biggest economy in the world. After a humiliating century of weakness and wars, in 1949, the restoration of China as a great power was the self-evident goal of the new communist regime. The bitter lessons of history had convinced Chinese leaders that science and technology were the keys for national rejuvenation. Now, China has regained its strength and is emerging as the Middle Kingdom 2.0 of the cyber age. How is China building its great power capacity and how does it define its anticipated future leadership role?

Guided by Party Secretary Xi Jinping's assertive strategies, the country aims to establish itself as one of the global leading powers by 2050. The plan that was issued in the 2017 Party Congress, proceeds in three stages: by 2020 China has reached the level of "moderately well-off society", which will enable China to become one of the leading innovation countries by 2035. At that time, China is envisioned to enter the stage of "modern socialism". Finally, the plan depicts that by 2050 China has gained comprehensive national strength and is a leading global power. The plan identifies 12 areas in which China pursues for global leadership. They range from manufacturing and science and technology to culture and sports.

Above all these 12 sectors, the new defining field of great power competition is artificial intelligence (AI). Regarding AI, the "Sputnik moment" for China's leadership was the Go board game tournament in 2016 between Google Deepmind's computer program AlphaGo and the multiple world champion Lee Sedol. AlphaGo won three out of the four matches in Go, which is by many regarded as the most complex board game in the world. Convinced of the potential of AI to start a new technological

revolution, China issued an ambitious plan for the development of the field in 2017.

The plan defined AI as a national priority and key to the competitiveness of a country: it's crucial to ensure the security of the state, and it's also vital for economic growth and the well-being of the society. With the help of AI, it's possible to produce new efficient services for example in the health sector, education, transport, and business. It also provides unprecedentedly efficient tools for control, because it enables the collection and analysis of personal information in totally new scales. As in other fields of sciences, also in AI, China's leaders push for civil-military integration.

The results of the 2017 AI-plan can be seen already. China has gained leadership in the development of surveillance techniques and is quickly catching the US in the development of autonomous vehicles: cars, helicopters, and drones which can be used for both civilian and military purposes. China's advances in AI prompted Donald Trump to issue an executive order in February 2019 to direct more investment into AI. The leaders of powerful nations hold the (contested) view that the first country to deploy advanced forms of AI will gain supremacy. The arms race has moved into the field of AI.

The US holds still a clear leadership in AI development, and will retain it for obvious reasons. Contrary to China that stands out in some strategically selected niches in applied AI, the US benefits from a more comprehensive AI capability. Furthermore, the innovation capacity of Chinese researchers is restrained by increasing ideological control including restrictions on interaction with the global science community.

## Community of Common Destiny

China's great power strategies are based on a collection of traditional Chinese ideas of a proper world order, and they are updated to meet China's current needs. China offers a new framework to the current international system: Community of Common Destiny (CCD). The term echoes old Chinese notions of "world shared by all" (tianxia wei gong) in which harmony prevails without demands for uniformity (he er butong). Like the ancient Middle Kingdom, China now positions itself in the center of this world order as the norm-maker and an example to follow.

China advocates this Community as fairer and more equal than the current international system, that according to China is unequal and based on self-interest of nations. In China's words, the CCD aims to address the complex challenges of the human-kind with mutual efforts. China's leadership sees that the current global situation creates an opportune moment for China to advocate this model and even to strive for global leadership ahead of the original "2050-plan". Trump's isolationist and US-first-policies offer an unprecedented context for Xi to promote his vision of common efforts to address the global challenges. Also the current crisis of the Western liberal democratic system offers an extraordinary opportunity for China to advocate its modern socialist system as a superior alternative for other developing

countries. China's model has met with positive response in developing countries and it's gaining momentum due to the global authoritarian wave.

Chinese-language official publications make efforts to assure their readers of the necessity to catch the moment. Xi is cited to have said that in the problem-ridden world, the international community is observing China's model and looking forward to hearing China's voice. Imposing a feeling of unfaltering self-confidence, the publications assure that China's modern socialism can offer solutions to the many problems faced by the humanity. Hence, China cannot stay absent. These depictions can be seen as attempts to buttress the image of Xi Jinping as a leader of global eminence, and also as responses to domestic criticism on costly international projects along the so called "Modern Silk Road".

China is actively constructing the Community of Common Destiny, both conceptually and geographically. As a regional community, the term was first used in the context of China's neighborhood already in 2012, and gradually it has expanded within the realm of the "modern Silk Road". China has made persistent efforts to get wide recognition to the term, and has reaped some success. The term has been included in a number of UN documents which allows China to claim that the Community of Common Destiny truly is a globally shared goal.

## Belt and Road in Cyberspace

The modern Silk Road, or officially the Belt and Road Initiative (BRI) is a prime example of China's concrete efforts to establish and nurture the Community of Common Destiny. The BRI aims to create a new platform for international co-operation by improving connectivity and by promoting development and stability without normative and political preconditions. The initiative echoes the traditional concepts of "world shared by all" and "harmony without uniformity", and it places China, the Middle Kingdom, into the center of actions.

As digital technologies were identified as key components of China's great power strategy, they were merged into the Belt and Road Initiative. While energy and transport projects still make the majority of China's FDI's and loans in the BRI, the share of digital projects is growing fast. During the BRI Forum in 2019, Xi Jinping identified digital economy and innovation-driven development as BRI's new priorities.

The BRI provides an excellent platform for China's technology companies to test their products abroad, to enter new markets and develop own global brands. Thanks to generous strategic funding, Chinese companies can offer high-quality fiber optic cables and digital technologies for much lower prices than their Western competitors. Despite concerns in some Western countries for eventual security risks involved in networks and systems

built by Chinese companies, many BRI countries choose the more affordable options. The BRI helps Chinese companies to establish themselves as global technology champions and standard setters. According Refinitiv, a company providing financial markets data, by early 2019 the BRI had captured 2,631 projects in 126 countries with a combined value of over EUR 3 trillion. However, due to hype-filled promises and lack of transparency it's impossible to estimate the actual scale of Chinese investments, the number of projects that have been materialized, and the extent of debt-dependencies that the projects have created in BRI countries.


Chinese tech companies not only provide physical infrastructure for BRI countries, but also digital service platforms for domestic and international e-commerce. Xi Jinping has also envisioned the expansion of the digital Silk Road into frontier areas such as nanotechnology, quantum computing and smart cities. For example, the "City brain" system, that one of the Chinese tech champions Alibaba has built to the Chinese city of Hangzhou, is already duplicated in Kuala Lumpur. As the new networks and services need to be safe and secure both from the users' and the governments' point of view, Chinese firms provide cybersecurity solutions too. Clearly, the BRI projects enhance both connectivity and control.

China also builds a “Space BRI” based on its own global satellite navigation system BeiDou (Big Dipper). It already has a relatively dense coverage over one hundred European, Asia-Pacific and East African countries. The China Satellite Navigation Office develops the BeiDou as an alternative to the GPS-system that is owned by the U.S government. Overall, China uses the BRI as a channel to influence the global standardization process of new technologies. The Standardization Administration of China has issued an action plan which aims to create uniform standards in the realm of BRI for satellite navigation system and new technologies such as 5G and AI. Standards that are aligned with Chinese technologies help Chinese companies to gain advantage in global markets. The digital infrastructure and smart city projects provide an excellent basis for the adoption of products that use Chinese standards. The BRI is one of the platforms that enables China to establish norms that conform to its conception of “harmonious” world in which censorship and surveillance are the new normal.

For an aspirant global power, the current world is a much more complex place than the Cold War world. Amitav Acharya has described the emerging world order as multiplex: a world with several parallel models of modernity, complex challenges, and multiple actors – not only great powers – that matter. China is undoubtedly a global economic power, and in the context of Asia-Pacific it can be regarded as a regional power. But even there, its influence is effectively balanced by Japan’s overseas assistance, political Islam, and the efforts of the “Quad” (India,

Japan, Australia, and the US) to promote Western liberal-democratic development model for a “free, open, and inclusive Indo-Pacific”. Also China’s domestic situation, in the first place the rapidly aging population, counteracts China’s global rise. China will remain a regional power, as the ancient Middle Kingdom was, but with world championship in several strategically selected

*Doctor of Social Sciences Outi Luova works as a University Lecturer and Vice-Director of the Centre for East Asian Studies at the University of Turku. As one of the leading Finnish researchers on China, Luova also acts as the Director of the Finnish University Network of Asian Studies. She is regularly published in leading academic journals and writes op-eds for Finnish newspapers and*



# Dealing with the Dragon: The need to enhance Europe's foreign policy resilience

Niklas Nováky

The gravitational pull of China's economy and the investment flows coming from the Middle Kingdom risk becoming a paralysing wedge for EU foreign policy. To deal with it, the Union needs to enhance its foreign policy resilience.

It has been said that the defining question of international politics of the 21st century is the rise—or return, depending on the length of one’s historical perspective—of China as a great power (Allison 2017). Since the People’s Republic began to open its doors to the world in the 1980s, China has become the second largest economy in the world, trailing only the European Union (EU). This has enabled Beijing to achieve impressive results in the area of domestic economic development, but also to launch geoeconomic megaprojects such the Belt and Road Initiative (BRI). China’s meteoric economic rise has also enabled the country to become more assertive in the military domain. This can be seen from the opening of China’s first-ever overseas naval base in Djibouti in 2017, Beijing’s construction of artificial islands in the South China Sea to create a de facto sphere of influence, and the modern weapons systems it has developed.

In the US, China’s increasing power has caused analysts to warn about the potential challenges that it is likely to pose to American interests. It is also a challenge to the EU, despite the fact that Brussels tends to view Beijing with less concern than Washington. There is a sense in Europe that it is possible to cooperate with China in the fields of international trade and invest for mutual gain while standing firm in areas such as freedom of navigation and human rights. Yet, Europe also has become more aware of the potential negative effects that an increasingly powerful China might have on it. This led the European Commission to describe China as Europe’s ‘systemic competitor’ in 2019 (European Commission 2019, p. 1). Yet, it is difficult to speak of a

common EU strategy on China as the individual member states have so far tended to struggle to agree on a common line towards Beijing—as they do on many other challenges as well. Although the EU has a Common Foreign and Security Policy (CFSP) in principle, in practice it has 28 national foreign policies that often do not see eye to eye even on relatively trivial questions.

This article argues that the gravitational pull of China’s economy and the investment flows coming from the Middle Kingdom risk becoming a paralysing wedge for EU foreign policy. More specifically, as China’s influence continues to grow in Europe, those countries that have developed particularly close ties with Beijing are unlikely to support the adoption of common EU positions on issues sensitive to China. This means that the EU’s ability to speak in one voice is likely to be even more difficult in the future than it is today. To mitigate this risk, the EU needs to enhance the resilience of its foreign policy—that is, its ability to avoid paralysis due to external pressures. This could be done by increasing the use of Qualified Majority Voting (QMV) in the EU’s Common Foreign and Security Policy (CFSP), creating a European Security Council (ESC), or launching a new Marshall Plan for financing intra-European infrastructure development projects. The rest of this article is divided into four sections. The first provides a brief historical overview China’s rise, the second outlines the challenge that an increasingly powerful Beijing poses to EU foreign policy, the third proposes three mutually inclusive options on how the EU could mitigate that challenge, and the conclusion provides some final thoughts.

## China's rise

The roots of China's unprecedented rise trace back to the premiership of Deng Xiaoping, who led the People's Republic from 1978 until 1992. Deng has been described as the architect of modern China's ideology of 'socialism with Chinese characteristics'—a combination of Marxism and free market economics. During Deng's premiership, China began to open up to international investment and the global market, which has produced impressive results. In 1980, China's Gross Domestic Product (GDP) was US\$ 0.19 trillion or approximately the same as that of Greece or Portugal in 2017. By 2018, it had grown to US\$ 13.6 trillion, making China's economy bigger than that of the US and second only to that of the EU. This has enabled China to lift approximately 850 million of its citizens from extreme poverty since the 1980s—a feat unprecedented in world history in terms of its scale and speed. The engine of this growth has been China's large population, cheap labour, and an export-oriented economy. This has made China an attractive destination for Western manufacturers, many of which have relocated their production facilities to the country over the past decades. In addition, Western consumers have been able to enjoy relatively cheap Chinese consumer goods exports, which range from clothing to electronics.

Due to the rapid development of China's economy, the country is increasingly known also for its high-end technology exports.

These include products such as smartphones and 5G equipment, for which the Chinese telecommunications company Huawei has become particularly well known in the West in recent years. It is also home to a large number of software and internet-based businesses, such as Tencent and Alibaba. Artificial Intelligence (AI) in particular is an area in which China is quickly becoming a world leader. In 2017, for example, China passed the US as the largest funder of AI research in the world. Furthermore, China is also a world leader in the production of high-speed rail networks. The country is home the longest and also most extensively used high speed rail network in the world, which reached 29,000 km by the end of 2018 and is being used by 1.33 million passengers daily.

China's economic strength has also enabled the country to become more assertive on the world stage. Especially under President Xi Jinping, China has begun to pursue an activist foreign policy. An example of this is the BRI, which Xi launched in Kazakhstan in 2013. The BRI is a massive infrastructure investment programme that seeks to improve China's connectivity to markets in Central Asia, Africa, South America and Europe. It finances different kinds of infrastructure development projects around the world, such as the development of the Belgrade-Budapest railway and the port of Piraeus in Greece. However, the BRI is much more than an instrument for financing connectivity projects.

It has been described as ‘the Chinese plan to build a new world order replacing the US-led international system’ (Maçães 2018, p. 5), and it has its own supporting institutions. These include the Asian Infrastructure Investment Bank (AIIB) founded in 2015 and the Silk Road Fund established in 2014. In addition to the BRI, China’s increased power is also visible in the military domain. In 2017, China opened its first overseas naval base in Djibouti. In the same year, Russia and China held joint naval drills in the Baltic Sea—the first time in history that the People’s Liberation Army Navy (PLAN) has had a presence in the Baltic Sea. During the recent celebrations to mark the 70th anniversary of the People’s Republic, China showcased some of its new weapons systems. These include a hypersonic missile and a stealth drone, sending the message that China is quickly narrowing the West’s traditional advantage in the area of military technology.

## The challenge to European unity

China’s rapid rise and its increasingly assertive behaviour on the world stage has raised alarm in the West. The 2017 US National Security Strategy referred to Beijing as a ‘competitor’ and ‘revisionist power’ that challenges American power, influence, and interests (White House 2017). This alarm derives partly from history because the rise of a new power that challenges the old order has tended to coincide with increased tensions between the new power and the established one—tensions that have often led to war. Given that the US has been the most powerful state in the international system since the end of the Cold War, China’s rise has attracted attention especially among American foreign policy scholars. They have become particularly concerned about the different kinds of “traps” that China’s rise might create. The most discussed of these is the Thucydides Trap, which warns that war is almost always the result when one great power threatens to displace another from its throne in the international system. Another is the Kindleberger Trap, which warns that international order might collapse if a rising power replaces another as the world’s de facto leader but fails to take on the former leader’s role as a provider of international public goods such as guaranteeing the security of international maritime traffic.

In Europe, China rise is viewed somewhat differently than it is in the US. Although Europe is aware of the challenges that China’s



rise creates, Europe sees Beijing much less as a threat than Washington. This is because European scholars tend to see that the continent has no interest in participating in a great power conflict if China and the US fall into the Thucydides Trap. The EU has sought to base its relations with Beijing on pragmatic economic cooperation while maintains a dialogue on more sensitive issues such as human rights. The 2016 EU Global Strategy noted that '[t]he EU will also deepen trade and investment with China, seeking a level playing field, appropriate intellectual property rights protection, greater cooperation on high-end technology, and dialogue on economic reform, human rights and climate action' (European Union 2016, p. 37-38). On the other hand, the Global Strategy also made clear that the EU seeks to develop its relations with China under existing international norms and principles, noting that '[t]he EU will engage China based on respect for rule of law, both domestically and internationally'. It also underlined the EU's desire to pursue a united policy towards the BRI, noting that the Union 'will pursue a coherent approach to China's connectivity drives westwards'. However, the EU has also awoken to the potential negative effects that an increasingly powerful China might have on it. This led the European Commission to refer to Beijing recently as 'a systemic rival promoting alternative models of governance' (European Commission 2019, p. 1).

The biggest challenge that an increasingly powerful China is likely to pose to Europe concerns its effects on European unity. Europe often struggles to speak in one voice on the world stage. Despite the impressive advances in the area of European foreign and security policy cooperation since the 1970s, Europe still finds it regrettably hard to agree on common positions even on

relatively trivial questions—from the perspective of European interests—such as Venezuela. The same concerns bigger challenges such as Russia, which has often been able to use its role as an important exporter of natural gas to many European countries to undermine Europe's efforts to maintain a united front towards Moscow. China, however, is likely to be a challenge of far greater magnitude for Europe's efforts to forge a common foreign and security policy. The main reasons for this are the size of China's economy and the investment flows coming to Europe from Beijing. Given the low rates of economic growth across Europe, many countries on the continent have begun to view China as an increasingly vital source of foreign investment. The downside of this is that China has been able to use its economic power to build up its political influence in Europe. This can be seen from the creation of the 16+1 framework for economic cooperation between China and Central and East European countries and Italy's decision to join the BRI in 2019 – the first G7 country to do so. It is also making it increasingly hard for European countries to agree on common positions on issues that touch on Chinese sensitivities. In 2016, the EU debated how to respond to Beijing's activities in the South China Sea. Due to opposition especially from Hungary and Greece, both of which have received generous amounts of Chinese investment, the EU's statement on the issue was weakened to the point that it did not even mention China directly.

## Mitigation options

Dealing with China's challenge to European unity requires Europe to boost the resilience of its common foreign policy. Resilience is a new Brussels buzzword that was popularised by the 2016 Global Strategy. It can be understood as the ability of an actor to withstand different kinds of destabilising internal and external pressures such as political polarisation, disinformation attacks, external interference etc. Thus, this article proposes three mutually inclusive options for the EU to enhance its foreign policy resilience, which vary in terms of their level of ambition and political feasibility. They are: (1) increased use of QMV in CFSP matters, (2) the creation of a new ESC, and (3) the launch of a new European Marshall Plan.

First, the EU could increase the use of QMV in foreign and security policy matters. At the moment, the vast majority of EU decision in this sensitive area are taken by unanimity among the member states. As a result, EU foreign and security policy often tends to reflect the lowest common denominator, the course of action that is acceptable even to the least enthusiastic member state. The consequence of this is that the EU often struggles to speak effectively on the world stage as even a single member state can theoretically block common European action. As a result, the European

Commission proposed in 2018 that the EU could expand QMV in foreign policy in a limited way to cover three new areas: (1) the adoption of EU positions on international human rights issues, (2) the establishment of sanctions regimes, and (3) the deployment of EU civilian missions (European Commission 2018). This would enhance the resilience of common EU foreign policy by making it easier for the Union to arrive in common positions, and to react to behaviour by third actors that undermines the international order. However, the difficulty with this step is that many smaller member states, particularly from Central and Eastern Europe, are against using QMV in EU foreign and security. They worry that QMV would further increase the influence of big member states and lead to the creation of a two-tier Europe.

Second, European countries could create an ESC to make it easier for them to act collectively on the world stage. The idea of creating some kind of ESC has been around since the 1980s. However, it started to receive mainstream attention only from 2017 onwards, particularly from political leaders in Germany and France. The basic premise behind the ESC idea is that Europe needs a new structure that would help it respond to international developments and to plan for long-term strategic challenges.

At the moment, no official ESC blueprint exists, except for the ones that have been produced by think tanks and academia. However, the basic choice seems to be between two types of structures: (1) an ESC that would be created within the EU's existing institutional framework, or (2) an ESC that would be created outside the Union. Germany in particular has signalled interest towards the latter kind of ESC, particularly because it would reduce the threshold for post-Brexit UK to participate in it. An ESC could be beneficial for European foreign policy because it could help Europe project a more unified front on the world stage. When European leaders meet with their counterparts from China or the US, for example, they could do so as representatives of a broader ESC by inviting leaders from other European countries to participate in these visits — as French President Emmanuel Macron did in 2019 when he met China's President Xi in Paris. The ESC could also help big European countries assume a greater leadership role for European policy.

Third, the EU could launch a new European initiative for financing infrastructure development projects in the member states — a Marshall Plan 2.0. China has been able to develop its influence in Europe due to the continent's sluggish economic growth and limited availability of financing for big development projects. Beijing has been able to step into the financing vacuum especially in Central and Eastern Europe, but to some extent also in Southern and Northern Europe. Therefore, the EU should consider a new infrastructure financing initiative to create an alternative to Chinese funding for European countries. The purpose of the initiative

would be to make European countries less dependent on Chinese investment in order to decrease Beijing's ability to drive an indirect wedge to the formulation of common EU foreign policies on certain issues, and therefore improving the EU's general foreign policy resilience. It would essentially follow the same strategic logic as the original Marshall Plan, which was launched by the US following World War II to facilitate Europe's recovery, thereby making it less likely that Western European countries would fall under Communism. In recent, it has become popular in the EU to call for different kinds of Marshall Plans such as a 'Marshall Plan for Africa'. However, the Marshall Plan that is perhaps needed the most today is another Marshall Plan for Europe.


## Conclusion

This article argued that China's rise as a global power poses a difficult challenge to the unity of EU foreign and security policy. More specifically, the gravitational pull of the Chinese economy and the investment flows coming to Europe from the Middle Kingdom will make it harder for the EU to speak in one voice on the world stage. This is because EU countries that benefit from their relations with China will think twice before supporting common European positions that might go against Beijing's interests. In other words, China is likely to become a wedge that can indirectly paralyse the EU's foreign policy machinery even more than Russia's natural gas pipelines.

To mitigate this challenge, the article proposed three different but mutually inclusive steps that the Union could take. These were (1) increased use of QMV in CFSP matters, (2) the creation of an ESC, and (3) the launch of a new European initiative for financing infrastructure development projects. If implemented, these measures would contribute towards enhancing the EU's foreign policy resilience, its ability to withstand different kinds of internal and external pressures. However, they do not come without challenges of their own. Many smaller EU countries have already expressed opposition to more active use in QMV in EU foreign policy because they see that it would further empower the big countries—France and Germany. The creation of an ESC will be difficult for the same reason if participation in it would be limited only to a small group of European countries. If it is unfeasible to take these steps within the EU framework, a solution might be to take

them outside the Union—for example, by launching an ESC that would adopt positions on behalf of the participating countries by QMV. With regards to the new European infrastructure initiative, the key challenge would be its funding—that is, where would the money come from? As the wealthiest country in Europe, Germany would certainly have to contribute a sizable sum of money into it. However, this would not be enough, and it would be politically unsustainable to rely too heavily on money from any one member state. Thus, the initiative should also include privately invested money. This would likely reduce the threshold for European countries to launch it.

*PhD Niklas Nováky works as a Research Officer at the Wilfried Martens Centre for European Studies, where he specializes in the research of European security and the EU's security and defence policies. Nováky holds a PhD in International Relations from the University of Aberdeen and an MSc in Politics and Government in the EU from the London School of Economics and Political Science.*



# China is challenging other players in the Arctic

Jari Vilén

The Arctic area is quickly shifting from a cold borderland to one of the hotspots in global politics. The area is attracting an increasing number of interested nations and other players, in addition to the traditional actors in the region. A fitting example of this is China's increasing presence in the Arctic.

The Arctic, traditionally regarded as a remote borderland, has lately gained international attention especially due to climate change. The phenomenon of global warming, having most imminent effects in the Arctic, is now causing the melting of glaciers at an unprecedentedly high speed. It poses the risk of global sea levels elevating up to 70cm by the end of this century. Evidently, this would create catastrophic social, economic and environmental consequences. Residents of coastal areas in Europe and elsewhere would end up losing their homes, while changes in local climates would be starker and more unpredictable. Flooding, hurricanes and heat waves could even render parts of Europe uninhabitable.

Paradoxically, these changes in the climate are now presenting new avenues for business, namely in the form exploiting the resources found in the Arctic area such as gas, oil and rare minerals, and with the opening of new transportation routes. Naturally, this all would influence the amount of political, economic and military activity in the area.

## China's roadmap of creating a new Arctic Silk Road

In January 2018, China published their first official Arctic policy in the form of a white paper. According to this strategy roadmap, China defined itself a "Near-Arctic-State". Furthermore, the paper stated that the Arctic area is a global issue, which cannot be left only to the Arctic states. China recognises the sovereignty of Arctic governments but states, that according to the United Nations Convention on the Law of the Sea (UNCLOS) and international law, other countries are entitled to conduct scientific research, maritime navigating, freedoms of the air, fishing and undersea cables, in addition to searching and exploiting natural resources found in the area.

Scientific research is still in the focal point of China's public agenda, but economic interests have now gathered more attention and public coverage. The Arctic white paper also defines China's desire to incorporate the Arctic region to their new Belt and Road Initiative (BRI), a development project in which China is investing up to 900 billion euros in railroads, harbours and other infrastructure in 65 countries all around the globe.

The official objective of this project is to connect China to Europe and Africa, improving trade and economic integrity between China and its partners. According to the Chinese, the initiative benefits not only China, but all participating countries. Yet, the initiative can also be seen as China's ambitious plan to increase the country's global influence.

China's huge economy is fueled by imported energy, and thus it is concerned of shipping routes, which it considers to be overseen by the United States (US) Navy. The Northern Sea Route (NSR) is not under US control, and Russia's economic interests are driving towards opening the route as soon as possible. Hence, the seaway's strategic importance is growing in the future, only to be accelerated by climate change. Thus, it may become a worthy alternative to current shipping routes, possibly having a radical influence on global sea trade.

In addition to the Northern Sea Route, China is also interested in the Northwest Passage (NWP), which runs through the Canadian Arctic Archipelago and due to melting glaciers, also possibly through the central parts of the Arctic Ocean. China's potential interest in the NWP would make it involved in the ongoing dispute between Canada and the US over the passage's status: Canada claims sovereignty over the straits within the archipelago, while the US regards them as a part of international waters.

A great deal of uncertainty is still surrounding the time frame and impact of Northern Sea Route (NSR) becoming a globally relevant shipping route. Estimates predict the route to be accessible year-round without the help of icebreakers in the 2040s or 2050s. Although, similarly to other Arctic routes, the Northern Sea Route would remain dangerous and difficult to navigate even in the absence of ice. In order to succeed, the route would require sizable investments in harbour infrastructure and search-and-rescue capacity. In addition, the possible political and technical challenges set by Russia further complicate the potential implementation of the project.

Regardless of this, Chinese businesses have a positive outlook of the possibilities of the NSR. The route would shorten the crossing to Europe by 10 days while not being occupied by pirates. COSCO, a Chinese shipping company has already operated on the Northern Sea Route during the summer, and Chinese investors have been quick to take part in the planning of the Kirkenes-Rovaniemi -railway and Helsinki-Tallinn -tunnel railway projects. Together all these initiatives would connect China to the EU Internal Market via the Arctic. In the future, China would effectively have access to an efficient and reliable railway connection from the Arctic Sea to the Mediterranean, from the Kirkenes harbour in the north to Mediterranean ports of Trieste and Pireas, effectively making China's Belt and Road -initiative a Road, Belt and Circle -project.

## The Arctic is connecting Russia's oil and gas to China's growing economy

In the recent years, China and Russia have increasingly searched for new ways to cooperate in the Arctic region. The 2017 joint statement of China and Russia was published just before the Hamburg G20 summit. It announced strengthened cooperation in transportation, scientific research, energy resources, tourism and environmental protection between the two countries in the Arctic area. China is in fact quite dependent of its continuous cooperation with Russia, which is quite self-evident after a simple glance at the World map. The Northern Sea Route runs parallel with Russia, while connecting China to Europe and Northwest Europe.

Sanctions posed on Russia due to the illegal annexation of Crimea and the conflict in Eastern Ukraine have coerced Russia into looking towards China for support and investment. China has also shown its interest in developing the region, demonstrated by examples in Norway and Finland.

Russia's relationship with China has tensions, despite its dire need for investment. China's interest in the region is not limited to science, trade, natural resources and infrastructure, but expands to the global role of creating a new connection between China and Northern Europe, independent of the US. Russia considers

China as a vital trade partner and investor, which it tries to utilise in order to develop the economic growth of Siberia and Russian Far East. However, this cooperation poses a strategic challenge. Russia will want to maintain the possibilities to monitor and control the Northern Sea Route, which is challenged by China's ambitions of developing its own fleet of icebreakers and China's stance of free mobility in the Arctic Sea. Hence, the cooperation between the two countries can be described as utilitarian relationship, where neither party knows how long it will continue to go on.

Especially regarding the energy sector, China is an important, if not the most important, partner for Russia. In 2014, the two countries' national oil and gas companies, Gazprom and CNPC, concluded a 400-billion-euro natural gas deal in which Russia agreed to provide China with natural gas for a minimum of 30 years. EU sanctions halted Western investment in 2017, which were partly replaced by Chinese investments. For example, the Jamal FNG -project got new investors in the form of the CNPC and China Development Bank.



## China's interests in other Arctic areas

Iceland was the first European country to establish a free trade agreement (FTA) with China in 2013. China's GDP dwarves that of Iceland's by 500 times, implying that trade alone was of secondary importance in the deal. Iceland is a strategically important target to China to emphasise their interest and willingness in Arctic cooperation. The China-Iceland joint Aurora research founded in 2018 was a part of this new cooperative relationship. As a matter of fact already in 2011, a Chinese private business owner even attempted to purchase a significant part of Iceland's territory for commercial purposes, This attempt was intercepted by the Icelandic government and later abandoned.

Relations between Norway and China had been strained for many years, ever since Norway's Nobel committee decided to award the Chinese dissident Liu Xiabo with the Nobel Peace Prize in 2010. The situation was normalized in 2016 and the FTA negotiations were resumed.

China's advances regarding FTAs in Europe have particularly taken place with countries outside the EU, as trade negotiations with the Union itself have not been established due to political reasons, such as state aids, free competition, trade regulation and intellectual property rights. However, relations between China and the EU are tight and the importance has only strengthened during the last years. In October 2019, the Chancellor of Germany Angela Merkel announced that one of the most important themes during Germany's Presidency of the Council of the EU of 2020 will be cooperation between EU and China.

In 2018, during the 20th summit between the EU and People's Republic of China, the bilaterally important companionship and cooperation was highlighted. Europe is China's largest trade partner, and respectively China is EU's second largest trade partner. The value of daily joint trade between the two exceeds 1,5 billion euros.

The increase in Chinese activity has also faced opposition. The attempted purchase of land in Iceland was toppled by the Icelandic government. Elsewhere, Denmark which oversees Greenland's foreign and security politics has expressed its concern over China's growing influence and activity in Greenland, ranging from readiness to build a research centre to renewing airports. In addition, China is especially interested in the region's rare minerals. China's own raw material supplies may be depleted in a couple of centuries, due to unsustainably excessive exploitation. A new dimension to the conversation rose up more recently with President Trump's announcement of willingness to purchase Greenland entirely.

This otherwise surprising announcement did have a positive impact of rising general awareness and interest in the Arctic area.

China has also expressed its interest in the US territory of Alaska. In spring 2017, having met president Trump the Chinese president Xi Jinping paid a visit to Anchorage, where he met the governor of Alaska. Consequently, at the end of the year, the Chinese state-owned enterprise Sinopec announced a 43-billion-dollar deal on a gas pipe project in Alaska. However, due to tensions between the US and China, this project has not advanced and the company has announced that it is no longer interested in building the pipeline.

## Arctic Governance and China

During the 2013 Arctic summit ministerial meeting, China was accepted together with Singapore, India, Japan, South-Korea and Italy as an observer of the Arctic council. EU's similar request was then declined due to Canada's resistance and the situation has remained same ever since, especially due to Russian opposition.

China's membership as an observer could not have been taken for granted, for example due to Russia's concerns. Russia's mistrust was based on the fear of how granting China or EU an official membership status would consequently diminish the position of other member states in the Arctic council. However, Russia later changed their stance on China's membership and has now concentrated its efforts on preventing the EU being granted an observer status in the council.

The general US sentiment towards China has become increasingly more negative and especially with regards to China's position in the Arctic council. The US regards China as a gatecrasher and does not agree to its definition of a "Near Arctic State". The US argues that China has attempted to merely gain an Arctic identity, without the geological position to back up this claim. Furthermore, the main focus of the US' China policy has ever more clearly become stopping the growth of global Chinese influence.

This has been conveyed by Foreign Minister Pompeo's statements at the Arctic council's ministerial meeting in Rovaniemi in May 2019, in which he condemned the actions of both Russia and China. President Trump has also had a stark opposition towards China's actions in the Arctic. This stance was further confirmed

during Finnish president Niinistö's visit to the White House in October, where in the joint declaration president's stated that "Arctic should be governed by the actual nations of the Arctic".

China, however, has been moderate in their comments. It has emphasised its objectives in the Arctic region to consist of understanding, protecting, developing and taking part in governance of the region, in order to secure the interests of all Arctic nations and the international community, and promote sustainable development in the region. China has also declared its compliance with all legal and political standards. For example, China has confirmed to adhere to the Svalbard Treaty, the United Nations Convention on the Law of the Sea, the International Maritime Organization's Polar Code and the pre-emptive ban on fishing in high seas portion of the Central Arctic Ocean. This is an area that is roughly 2.8 million square kilometres in size: about the size of the Mediterranean Sea.

This historic agreement, signed in 2018, includes the EU, Canada, the People's Republic of China, Denmark (in respect of Greenland and the Faroe Islands), Iceland, Japan, the Republic of Korea, Norway, the Russian Federation and the US.

Respectively, China does not want to come across as a silent and weak player in an area which is growing in geopolitical and economic importance due to climate change. One could speculate that China's main concern would consist of the Arctic Council countries, especially the US and Russia, allocating the area's natural resources and influence between themselves. The central question is, how long will China be contempt holding the ring, and when it will start demanding recognition in Arctic affairs? Furthermore, what will be the consequences if China is not let in?

## What next?

The release of the Arctic strategy was the first public statement of China's Arctic ambitions. As a result, other countries are keeping a closer eye on China's advances in the area. China's operations in the region will not only interest the member states and observers of the Arctic Council, but also neighbouring countries of South-Korea and Japan, both which are attempting to create their own strategies with regards to the Arctic. Since 2016, China, South-Korea and Japan have arranged trilateral meetings among their representatives of Arctic affairs, in order for information exchange.

China's activity in the Arctic has also laid emphasis on scientific research on climate change, although the underlying causes behind the actions are clearly economic ones. The BRI can now justifiably be described as a "Belt, Road and Circle" project, which binds the upcoming Arctic network more closely to China's nebula of global influence. The Arctic region's role in the China's global foreign policy has changed, and all nations from the US to the EU must consider China's upcoming plans and actions in the Arctic area.

## Searching for EU's Arctic Policy

One can reasonably ask, where is the EU's Arctic policy now? Three EU member states, namely Denmark, Finland and Sweden, are Arctic countries, and half a million EU citizens live in the Arctic region. The Arctic has been a part of EU for decades and will continue to be so evermore. Geopolitical shifts are now leading us to a situation

where EU itself must more clearly define its diverse objectives in the Arctic, ranging from environmental protection to economic activity and security policy.

Stability, sustainable use of natural resources and the regions importance in fighting against climate change make the Arctic an area of paramount importance. Hence, the EU must systematically include the Arctic area in all segments of policymaking and bring it to the mainstream of politics altogether. The general objective for EU in the Arctic should be ensuring multilateral and rules-based order in the region, which ultimately would benefit all actors in the region. Cooperation with the US, Russia and China is imperative in order to achieve this.

The Arctic is no longer a cold and remote borderland, but increasingly in the locus of geopolitical and geo-economic policymaking. Hence, the EU must have its own Arctic strategy, which defines the Union's objectives for the future of the region. This strategy must entail climate protection, sustainable development, understanding the wishes of local populations and taking part in peaceful cooperation with all parties in order to achieve security, stability and prosperity in the region. A safe, stable, sustainable and prosperous Arctic is important not only to the EU, but to the world.

*Jari Vilén advises the European Commission's leadership on Arctic Policy at the European Political Strategy Centre, the Commission's in-house think tank. Prior to assuming this position, Vilén served as Finnish ambassador to Hungary and Poland, and EU ambassador to Council of Europe. His career includes also two terms as a Member of Finnish parliament and minister of European Affairs.*



# In BIT We Trust? – Protection of Finnish Investments in China

Juho Mäki-Lohiluoma

In the era of globalized economy and value chains, investing in offshore-production and diversifying investment portfolios globally has become a commonplace solution for many companies. The volume of cross-border investments has increased rapidly, and so has the need for transparent rules for protecting these investments.

The first international investment agreement (IIA) was signed in 1959 between Germany and Pakistan, with earlier bilateral agreements between states also referring to the treatment of investments. Since then, international investment agreements have been multiplying to now cover most of the cross-border investments in the world economy. Majority of the law concerning cross-border investments now stems from thousands of bi- and multilateral investment agreements with treaty formulations at the center of individual cases of interpretation. However, general principles of international law concerning investments also hold an important role. No investment treaty is interpreted in isolation, but under the auspice of the general framework and principles of international law and international investment law.

Finland is a contracting party in a wide range of Bilateral Investment Treaties (BIT), including one with the People's Republic of China. The scope of the Sino-Finnish BIT is broad, with the notions of investment and investor described open-endedly. This asserts the BIT-protections further than a narrow definition would. Regarding the substantive protections of the Treaty itself, the Sino-Finnish BIT entails the most used standards, and most of them in a very standard form. The only clear shortcoming in the Sino-Finnish BIT's set of substantive protections is the lack of pre-establishment national treatment, which would require the contracting countries to treat prospective investors from the contracting party with the same rules as they treat domestic investors.

However, in a broader sense, the Sino-Finnish BIT has the same problems as many other BIT's. Even if the agreement entails most of the substantive protections known in international investment law, many of them are not in any way qualified. Therefore, the substantive protections are not clearly defined and especially the non-relational standards are open to interpretation, which creates legal uncertainty from the perspective of the investor, and an unclearly defined limitation to sovereign State's right to regulate.

Therefore, it can't simply be stated that the protection of Finnish investments in China and vice versa are comprehensive because the relevant BIT offers certain set of protections. Rather it should be noted that the set of protections is available, but due to a self-contradictory body of arbitral awards and differing academic opinions, the specific scope of these protections is often unclear – and so is the level of protection. The patchwork of standards in the Sino-Finnish BIT could have loopholes which only become evident in individual cases.

## Where to sue? Arbitral Jurisprudence and Investment Treaties

The rise of direct investor-State arbitration is the product of dispute settlement clauses in many modern international investment agreements. This creation of the subjective rights to the investors and their decentralized enforcement mechanism is one of the unique characteristics of international investment law. Since the 1990's, the arbitration clauses have predominantly been interpreted as “a unilateral offer by host States” that directly allows the investors to institute arbitral proceedings to defend their rights in the international level.

In many BIT's that EU Member States have with China, investor-State dispute settlement arbitration is subordinated to the exhaustion of local review procedures and/or limited by a waiting period. In the Sino-Finnish BIT, investors are limited by a three-month waiting period, during which the dispute should be settled “amicably”. Only after this waiting period can the dispute be submitted either to a local court, International Centre for Settlement of Investment Disputes (ICSID) or ad hoc arbitral tribunal. The tribunal, unless otherwise agreed upon, will operate under the United Nations Commission on International Trade Law (UNCITRAL) rules. The BIT doesn't put any other limitations on the choice of forum, so the investor has a strong set of options at disposal.

The BIT states that in settling the dispute, applicable law is the law of the Contracting Party involved in the dispute, so with the case of Finnish investments in China, the Chinese law, along with the BIT and the rules of international law applicable to both Contracting Parties.

What one can't read from an individual BIT is that many arbitral tribunals have accepted the possibility of importing more favorable procedural clauses from other BIT's through the most favored nation (MFN) clause of the applicable BIT. With China and Finland, this possibility exists. Both countries have other BIT's, which do not stipulate a three-month waiting period, and MFN standard is provided by the Sino-Finnish BIT. A convincing body of arbitral awards and academic writing confirms that that Finnish investors can submit a dispute to local Chinese court, ICSID or ad hoc arbitral tribunal without the three-month waiting period outlined in the BIT. Therefore, the protection of investments is in this regard stronger than what would appear from the BIT, and what the contracting parties seemingly agreed to when entering into the BIT.

## Criticism and Reflections

Numerous concerns have been raised in the public and political discussion about international investment protection and investor-States arbitration. Some of these can be categorized as outright protectionist, but many shed light to a complex and multidimensional debate around foreign direct investments and the role of public actors in governing them. At the heart of the discussion lies to roles and power of public and private actors and the perceived “character” of international investment agreements. Are investment treaties akin to human rights treaties which promote the international rule of law? Or do they instead undermine the regulatory autonomy of host states and protect narrow corporate interests at the expense of the public?

The discussion is heavily politicized. It seems the approach of an individual towards international investment agreements can often be traced back to how the person views the role of the state, private property, and society at large.

Part of the criticism arises from certain arbitral awards where investments protection standards have been given a broad interpretation, thus indirectly limiting the right of governments to regulate in the public interest. To provide an example, the Protection and Security standard is sometimes considered to account to an obligation to provide a stable legal environment and to a prohibition of regulatory changes that exceed certain magnitude. The same criticism is present with other non-relational standards, such as Expropriation and Fair and Equitable Treatment.

Especially in the case of the earlier-signed BIT's, the contracting parties can certainly not have predicted the exact scope of the protections and clauses they have included in the agreements. Thus, the limitations these BIT's currently pose to the state's right to regulate could be more than the state itself decided to enter into. This is obviously deeply problematic.

Second string of criticism stems from the lack of transparency in investment treaty negotiations and enforcement. Third can be construed from the so-called private enforcement mechanism, which characterizes international investment law. It's the view of many that in investor-State disputes arbitrators are entrusted with “more than just a private dispute”, and the current system doesn't sufficiently consider this aspect.

Some other critique is less convincing. Among these are general criticisms toward capital flows and cross-border investments. It should be recalled, that trade and investment liberalization has lifted tens if not hundreds of millions of people from poverty – even if the impact of financial openness and FDI flows does differ between countries and is dependent on their domestic environment. There certainly is room for improvement in international investment law and how it's enforced, but it seems all but productive to follow the lead of certain researchers and attack global capitalism as a whole in the international investment law context. If we want to find and fix the pressing issues in international investment law, the most productive starting point is not a weakly-reasoned ramble on ethical-deficit and perceived neo-liberal hegemony, but a pragmatic de- and re-construction of the current system, followed by set of workable solutions.

## EU Investment Policy – A New Era for Finnish Investors in China?

Following the entry into force of the Treaty of Lisbon in 2009, foreign direct investment is included in the list of matters falling under the common commercial policy. The EU now has exclusive competence to negotiate on foreign direct investment.

Even though Member States lost their competence to engage in bilateral investment treaties with third parties as result of the Lisbon treaty, the agreements already conducted remain in force. The Member States also have the right to negotiate and engage in new BIT's when the European Commission specifically gives them a permission to do so. This exception could be relevant e.g. in cases, where some of the BIT's now in place either lapse or are terminated and the EU can't provide a replacement.

Member States are required to take the necessary measures to eliminate possible incompatibilities between EU law and bilateral investment agreements concluded between Member States and third countries. The approach of the EU is that these bilateral investment agreements will gradually lose their significance, since the EU is entering into new treaties with investment provisions.

The EU is currently negotiating an investment treaty with China with negotiations launched in 2013. The EU-China negotiations are aiming for a stand-alone investment agreement that does not include trade issues, but its scope is considered to go beyond the current investment protection dimension to cover also market access.

However, as of now, there are no frameworks in place for dealing with disputes arising from investments between the EU and China. Instead, there are 26 BIT's between China and EU Member States. From the perspective of the EU, the situation with China, an important trading partner, is challenging. According to the European Commission, there are clear discrepancies between standards of protection granted by the various existing BITs with China. The patchwork of BIT's results in an uneven level of protection for investors from different Member States. One example of this is Sweden, which was the first country in the world to sign a BIT with China in 1982. The agreement, perhaps due to its age, lacks some of the protections found in newer BIT's. Additionally, most of the BIT's not include market access provisions for the pre-entry phase, which is also the case of the Sino-Finnish BIT. Pre-entry National Treatment would, however, be important in order to ensure that European investors have the same market access as Chinese domestic investors. As of now, this is far from the truth.

The future investment policy approach of the EU is not yet entirely clear due to a very limited amount of on-going and finished negotiations. The EU has not issued its own Model BIT, which would give clearer indication of its objectives. However, concerning dispute resolution, the European Commission has indicated that it wants to reform how disputes about investments



are settled. It's leading efforts to set up a multilateral investment court, permanent Investment Court System (ICS), to rule on investment disputes. It also favours the introduction of clearer and more precise rules on investment protection. This new policy can be characterized as institutionalization of the dispute settlement mechanism. Behind it lie the transparency concerns often raised regarding investment-State arbitration and political pressure.

This new approach is visible in the Canada-EU trade agreement (CETA), which also includes investment protection clauses. In CETA-based investor-State arbitration all documents will be made publicly available, all hearings will be open to the public, and interested third parties, such as NGO's, will be able to make submissions. In CETA, some of the substantive protections considered more problematic are more concisely formulated and their scope is specifically limited. The standard of Fair and Equitable Treatment has been limited to a closed list, which refers to e.g. denial of justice, arbitrary conduct and breach of due process. The notion of indirect expropriation has, in turn, been explained in detail in an annex. Other substantive protections are also more clearly defined in comparison to the Sino-Finnish BIT.

Concerns regarding the right to regulate have also been addressed in CETA. In the preamble of the agreement, the parties state an intention to preserve their right to regulate and to achieve legitimate policy objectives, such as public health, safety, environment, public morals and the promotion and protection of cultural diversity. What is also new, is EU's and Canada's competence to issue binding clarifications on how CETA provisions should be interpreted. Tribunals are obliged to follow these clarifications.

Therefore, answer to the question posed in the subtitle is two-fold. On the other hand, EU's bargaining power – which far

exceeds the Finnish one – enables a more coherent set of substantive protections and perhaps can mend some of the loopholes in the Sino-Finnish BIT. At the moment, most substantive protections in existing EU Member State BITs with China are limited to provisions dealing with protections once the investment has been made, and do not address the question of market access for prospective investors. This is also the situation with the Sino-Finnish BIT. An EU-China investment agreement would offer the opportunity to have a full comprehensive and uniform agreement and address these issues.

On the other hand, the EU seems to have adopted a position of strictly controlling and thus limiting the scope of the substantive protections, as described above. When, or rather if, the China-EU investment agreement will be finalized, it may well grant Finnish investors extra-protections and bring legal certainty. At the same time, it most likely introduces limits to arbitral jurisprudence and interpretations of non-relational standards of protection, like it did with CETA. From a general policy perspective this is positive. It's most favourable that public actors know what they're getting into when signing international agreements and outline limits and directions on how the agreement should be interpreted. However, ad hoc and other arbitral tribunals seem to have sometimes adopted a broader definition of various BIT clauses than what the parties to the agreement might have expected. This means that the new EU policy of defining substantive protections clearly, refraining from the use of ad hoc tribunals, and pre-selection of arbitrators with an increased focus on their competences, could well grant investors a more limited protection in individual cases.

## Conclusions and Discussion

As a conclusion it can be said that in comparison to many other cross-border investment situations, the Sino-Finnish BIT offers comprehensive protections. However, the deficiencies of the international investment law, highlighted by the vast body of criticism, are present also in the context of China and Finland.

The EU investment policy, with its aim of clearly defining and limiting substantive protections and increasing transparency in arbitral proceedings, could well prove a positive development also in the context of China and Finland, even if the whole current set of substantive protections would not be present in the future Sino-EU BIT.

From the perspective of an individual investor, the EU Investment Policy will definitely mark a new era, but that era should rather be described as a one of public actors taking back control of BIT interpretations – not an extension of investors rights.

*Juho Mäki-Lohiluoma works as a Lawyer in the private sector and as a part-time Policy Consultant for the Toivo Think Tank. He has previously worked e.g. as a journalist and Special Adviser to the Finnish Government. Mäki-Lohiluoma is 1st Vice Chairman of the International Young Democrat Union, the global alliance of centre-right political youth organisations.*

# Conclusions

What to expect, if you're  
expecting China to change?

Juho Mäki-Lohiluoma & Niklas Novák

Until quite recently, many prominent observers in the West were expecting China to transform politically. They saw that it would be only a matter of time until the Middle Kingdom would start to democratise and become a liberal democracy. This expectation has been anchored in the theory of modernization, according to which democratization becomes more likely as the prosperity of a society grows. The reason for this is that higher levels of prosperity tends to increase the size of the educated middle class, a segment of society that has historically been a vocal advocate of greater civil liberties.

In his now famous *The End of History?* -article, American political scientist Francis Fukuyama wrote, as the Cold War was coming to an end, that it was hard to believe that the Chinese students who have studied abroad would settle for China being the only country in Asia unaffected by the larger trend of democratization, which was then sweeping across Europe. In hindsight, the period that preceded the publication of Fukuyama's article in 1989 may actually have been the high-point of political freedoms in China. Since then, the freedom of media and academics has deteriorated significantly, especially in recent years. The 2019 World Press Freedom Index, for example, ranked China 177th from a total 180 countries –the only ones trailing it were Eritrea, North Korea and Turkmenistan. With reportedly over 600 million surveillance cameras, Artificial Intelligence (AI) and full control of citizens' digitally connected lives, China is becoming a surveillance state.

Not even the Chinese students that Fukuyama was referring to have been able or even willing to change the current trajectory of China's political development. In fact, many in the West have warned that Beijing may be winning the contest over the hearts and minds of its young people who spend time abroad. Rather

than making Chinese young people more liberal in their political outlook, studying in the West may instead be arousing greater nationalism and disdain for the host countries (Fish 2018). Regardless of the importance attributed to the role of students, millennials and China's growing young middle class in the country's possible democratization, it is worth noting that foreign studies have not unequivocally led Chinese to become more positively attuned to democratic societies and democracy as a political system. In the minds of these students, illiberalism has survived its first contact with liberalism.

It can therefore be argued that the West's traditional approach to China, based on the expectation of eventual democratisation, has failed. It has been even dangerous because it has dulled strategic thinking about how the West should handle an increasingly powerful China. This is the case particularly in Europe, where many policy makers used to work under the assumption that Europe's own cosmopolitan values and principles would enable it to facilitate positive change on the international stage. Thus, it is only now that Europeans are beginning to question old dogmas and think seriously about how the continent should engage with a large and wealthy authoritarian country that aspires to global leadership.

Although progress has already been made, Europe's China policy needs to be sharpened further. The EU is already taking steps in this regard as evidenced by the European Commission's recent characterisation of China as a systematic competitor. However, China's rise as a global power poses a difficult challenge to the unity of EU foreign and security policy. The gravitational pull of the Chinese economy and the Chinese investment flows are likely to make it even harder for the EU to speak in one voice on

the world stage, especially on issues that are sensitive to China. This is because they allow Beijing to also increase its political influence in Europe, as demonstrated by the creation of the 16+1 (now 17+1) framework between Beijing and Central and East European countries.

To move forward, this publication calls for three “resets” in Europe’s China policy. The first reset concerns Europe’s approach to the Belt and Road Initiative (BRI). European countries and the EU need to understand that the BRI is much more than simply an instrument for financing different kinds of connectivity projects across the world. It is, in fact, the Chinese plan to build a new world order replacing the US-led international system and should be treated as one.

The second reset should be to comprehensively observe the opportunities and challenges that China carries with it. This means more focus on the concrete efforts China is pursuing e.g. in Europe, in the Arctic and in the developing world – not just in diplomatic memos, but in the public eye. It needs to also mean observing China’s domestic development more closely. In Brussels, there is an ever-ongoing cry about the lack of high-quality and widely read journalism on EU affairs, but perhaps that cry could be replaced with a similar cry concerning China. A partial solution for this would be if the Union began to fund independent research and China as well as Chinese language training in Europe.

The third reset concerns EU foreign policy. There is a growing need to enhance the resilience of EU foreign policy, namely its ability to with-stand different kinds of internal and external pressures. This reset is not only driven by the new assertiveness of China. Rather, it is driven first and foremost by the EU’s continuing inability to act effectively on the world even when faced with relatively trivial challenges—if the Union cannot speak in one voice when dealing with a hermit like Nicolas Maduro’s

Venezuela, there is no hope that it could develop an effective common approach towards major strategic challenges such as Russia and China. The EU’s foreign policy resilience could be enhanced through an increased use of qualified majority voting in Common Foreign and Security Policy (CFSP) matters, the creation of an European Security Council, and the launch of a new European initiative for financing infrastructure development projects.

However, these resets are not sufficient unless they translate into shifts in the EU’s concrete policy approach to China also in other sectors. In the ongoing investment treaty negotiations, to give one example, the EU’s negotiation mandate should clearly reflect the newly found understanding of China as a systematic rival. On the other hand, when considering the permits and cooperation agreements linked to large infrastructure investments, such as the planned Helsinki-Tallinn railway-tunnel, it should always be bared in mind that even though none of these projects single-handedly carry significant security threats, they are all linked to a larger strategy of a authoritarian, revisionist global power.

China is already a global power and one of the major poles of international politics—especially in the field of economics. Overtime, the Middle Kingdom will increase its power even further. It poses a challenge that no European country is equipped to handle alone. Dealing with China in an effective way therefore requires European countries to develop common policies and strategies at the EU level, as this book has argued. However, this should not lead to excessive alarmism or Sinophobia. China is a political challenge, but Europeans should not view it as an enemy. It is society with an incredibly long and rich history and one that Europeans need to learn more about. In addition to the three resets mentioned above, it is therefore also important that Europe and China take steps to increase cultural and educational cooperation between each other.

Agreement between the Government of Finland and the Government of the People's Republic of China on the Encouragement and Reciprocal Protection of Investments, 15 November 2006.

Agreement on the Mutual Protection of Investments between The Government of the Kingdom of Sweden and the Government of the People's Republic of China, March 29 1982.

Allison, G. 2017. *Destined for War: Can America and China Escape Thucydides's Trap?* Boston: Houghton Mifflin Harcourt.

Biscop, S. 2019. *European Strategy in the 21st Century: New Future for Old Power*. Abingdon: Routledge.

Bungenberg, M., Griebel, J., Hobe, S., Reinisch, A. "General Introduction to International Investment Law" in Bungenberg et al.. 2015. *International investment law*. First edition. Baden-Baden: Nomos. p. 1-5.

Bungenberg, M., Hobe, S. "The Relationship of International Investment Law and European Union Law" in Bungenberg et al.. 2015. *International investment law*. First edition. Baden-Baden: Nomos. p. 1602-1629.

Clover, C. and Ju, S.F. 2017. Chinese military base takes shape in Djibouti, *Financial Times*, 12 July, accessed at <https://www.ft.com/content/bcba2820-66e1-11e7-8526-7b38dcaef614> on 11 November 2019.

Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part, Chapter 8 <[https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:22017A0114\(01\)](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:22017A0114(01))> accessed 25.10.2018

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions, Towards a comprehensive European international investment policy, COM(2010)343 final.

European Commission. 2018. *State of the Union 2018: Making the EU a stronger global actor – European Commission proposes more efficient decision-making in Common Foreign and Security Policy*, Press release, 12 September, accessed at [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_5683](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5683) on 13 November 2019.

European Commission. 2019. *EU-China – A strategic outlook*, 12 March, accessed at <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf> on 12 November 2019.

European Union. 2016. *Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union's Foreign And Security Policy*, June, accessed at [https://eeas.europa.eu/sites/eeas/files/eugs\\_review\\_web\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eugs_review_web_0.pdf) on 12 November 2019.

European Commission. 2013. *Impact Assessment Report on the EU-China Investment Relations*, SWD (2013)185, p. 16.

Fish, Eric. 2018. *Caught In A Crossfire: Chinese Students Abroad And The Battle For Their Hearts*, accessed at <https://supchina.com/2018/01/18/caught-in-a-crossfire-chinese-students-abroad-and-the-battle-for-their-hearts/> on 2 December 2019.

Griebel, J. "The New EU Investment Policy Approach" in Bungenberg et al.. 2015. *International investment law*. First edition. Baden-Baden: Nomos. p. 303-325.

Higgins, A. (2017. *China and Russia Hold First Joint Naval Drill in the Baltic Sea*, *The New York Times*, 25 July, accessed at <https://www.nytimes.com/2017/07/25/world/europe/china-russia-baltic-navy-exercises.html> on 11 November 2019.

Kessedjian, C. "Where Public meets Private: a Few Thoughts on Investment Law and Arbitration" in Bungenberg et al.. 2015. *International investment law*. First edition. Baden-Baden: Nomos. p. 1602-1629.

Klein, M., Aaron, C. & Hadjimichael, B. *Foreign Direct Investment and Poverty Reduction*. 2001. *World Bank Policy Research Working Paper*. WPS2613. <<https://www.oecd.org/daf/inv/investment-statisticsandanalysis/2422017.pdf>> accessed 27.10.2018

Kynge, J. and Peel, M. 2017. Brussels rattled as China reaches out to eastern Europe, Financial Times, 27 November, accessed at <https://www.ft.com/content/16abbf2a-cf9b-11e7-9dbb-291a884dd8c6> on 12 November 2019.

Mações, B. 2018. Belt and Road: A Chinese World Order. London: C. Hurst & Co.

Niemelä, P. 2017. The Relationship of EU Law and Bilateral Investment Treaties of EU Member States: Treaty Conflict, Harmonious Coexistence and the Critique of Investment Arbitration. Academic Dissertation University of Helsinki Faculty of Law. p. 198-222.

Norman, L. 2019. EU Struggles to Reach United Response to Venezuelan Crisis, The Wall Street Journal, 1 February, accessed at <https://www.wsj.com/articles/venezuelan-crisis-leaves-eu-divided-11549030931> on 12 November 2019.

Nye, J.S. 2017. The Kindleberger Trap, Project Syndicate, 9 January, accessed at <https://www.project-syndicate.org/commentary/trump-china-kindleberger-trap-by-joseph-s-nye-2017-01?barrier=accesspaylog> on 12 November 2019.

Nyren, P. 2018. Den nya kinesiska nationalismen. Timbro, accessed at <https://timbro.se/smedjan/den-nya-kinesiska-nationalismen/> on 12 November 2019.

Page, J. 2019. China Brings Out the Big Guns for National Day, The Wall Street Journal, 1 October, accessed at <https://www.wsj.com/articles/china-brings-out-the-big-guns-for-national-day-11569928535> on 11 November 2019.

Paparinskis, M. The International Minimum Standard and Fair and Equitable Treatment. Oxford University Press; 2013. p. 14-38.

Regulation (EU) No 1219/2012 of the European Parliament and the of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries, Article 3.

Reinisch, A. "The Likely Content of EU Investment Agreements" in Bungenberg et al.. 2015. International investment law. First edition. Baden-Baden: Nomos. p. 303-325

Reporters without borders, World Press Freedom Index 2019 accessed at <https://rsf.org/en/ranking/2019> on 2 December 2019.

Shill, S. W. 2010. "International Investment Law and Comparative Public Law – Introduction", in Schill, S. W. (ed) International investment law and comparative public law. Oxford; New York: Oxford University Press. p. 3-37.

Suez, Sociedad General de Aguas de Barcelona S.A., and InterAguas Servicios Integrales del Agua S.A. v. The Argentine Republic, ICSID Case No. ARB/03/17.

White House. 2017. National Security Strategy of the United States of America, December, accessed at <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf> on 12 November 2019.

World Bank. 2019a. China, Data, accessed at <https://data.worldbank.org/country/china> on 11 November 2019.

World Bank. 2019b. The World Bank In China, Overview, accessed at <https://www.worldbank.org/en/country/china/overview> on 11 November 2019.

*This is a joint publication of the Wilfried Martens Centre for European Studies and the TOIVO Think-Tank. This publication receives funding from the European Parliament. The Wilfried Martens Centre for European Studies, the TOIVO Think-Tank and the European Parliament assume no responsibility for facts or opinions expressed in this publication or any subsequent use of the information contained therein. Sole responsibility lies on the author of the publication. The processing of the publication was concluded in 2019.*



Wilfried  
**Martens Centre**  
for European Studies