



RIETI Discussion Paper Series 19-E-076

# **Generating a Reform of the BRI from the Inside: Japan's Contribution Via Soft Law Diplomacy**

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<https://www.rieti.go.jp/en/>

Generating a reform of the BRI from the inside\*  
~Japan's contribution via soft law diplomacy~

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Abstract

This paper investigates whether there is space for Japan to maneuver soft law mechanisms regarding China to ensure conformance of Belt and Road Initiative (BRI) projects to high-level standards. The author posits that with its unique geographic position, sharp rivalry in ASEAN, and strongly intertwined and complementary market with China, Japan's potential to reform the BRI from the inside should not be underestimated. Rather, by stubbornly adhering to high-level "Quality Infrastructure Investment" (QII) principles promoted by the G7 countries in the last three years, Japan has successfully pulled China toward these principles, enabling it to endorse the notion of high-quality infrastructure in the second BRI forum. Under Japanese presidency, the G20 Osaka summit also vastly contributed to upgrading the level and normative content of the QII principles. Moreover, despite its soft law and less-institutional nature, effective utilization of the Japan-China Memorandum on Business Cooperation in Third Countries can provide Japan with some new tactics that can restrain harmful economic activities of Chinese companies in its markets. At this point, the Sino-Japanese collaboration in Thailand's East-West Economic Corridor Program will test whether the Chinese government is sincerely marketing "Third Party Market Cooperation" or if it is just another futile attempt.

Keywords: BRI, FOIP, China, Japan, third party market cooperation forum, quality infrastructure

JEL classification: D23, L22, L25, M10

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\* This study is conducted as a part of a project titled, "Comprehensive Research on the Current International Trade/Investment System (pt. IV)," undertaken at the Research Institute of Economy, Trade and Industry (RIETI). The author is grateful for helpful comments and suggestions by Tsuyoshi Kawase, Fujio Kawashima, Takemasa Sekine, Yuka Aoyagi and Discussion Paper seminar participants at RIETI.

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## 1. Introduction

China became the second biggest economy in the world, with several-trillion-dollar reserves, without a matured legal system; however, it is now overwhelmed with overcapacity problems and a gradually decelerating economy. Because of these challenges, China entered the second phase of the “going out” program. An ambitious Chinese leader, President Xi Jinping, launched the One Belt, One Road (OBOR) program, which later changed to Belt and Road Initiative (BRI).<sup>2</sup> BRI is a very dynamic, fast-moving, and result-oriented initiative of China. It is dynamic because China enriches its substantive content with new elements almost every year. It is fast-moving because Chinese policy banks are wholeheartedly supporting BRI-related overseas infrastructure projects with a hundred billion dollars. It is result-oriented because Chinese firms are carefully accomplishing most of the infrastructure projects showing the real outcome.

Successful implementation of the BRI may give China the power to change its trade and investment tide; however, currently, it seems not to challenge the International Economic Law Framework (IEL) *status quo* to the extent that China feels comfortable. Using loosely organized web soft-law instruments and adopting a flexible and cautious approach, China is pushing its companies to secure more markets overseas. When it feels comfortable, China relies on the existing web of International Investment Agreements, World Trade Organization rules, free trade agreements (FTA), and Double Tax Treaties, which were concluded with the BRI countries. They are at the maximum level for China, and it does not want to be bound by any other international economic rules unless they serve its national interest. However, competing with heavily government-supported Chinese companies in overseas markets is becoming a daunting task for private companies of developed countries; the main concerns include international lending, tied-aid (conditional trade), competitive neutrality in investment decisions, and international tenders. However, it might be a mistake to try to contain China through high-level standardization of IEL rules, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), in this ongoing turbulent international political-economic situation. Considering the welcome messages by most countries in the BRI to China and its infrastructure projects, it seems almost a futile attempt to restrain China’s

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<sup>2</sup> In this paper, the author used the One Belt, One Road (OBOR) and Belt and Road Initiative (BRI) interchangeably.

unfair practices through strict treaty law obligations.<sup>3</sup> If so, it would be imperative for “deep-FTA-maker-multilateralist” developed nations to figure out unconventional ways to co-exist with China in countries in the BRI.

This paper argues that policymakers and IEL scholars should consider innovative forms of economic governance. The author believes that the only feasible way to contain China and its grand strategy is soft law diplomacy, which can only be accomplished by Japan. With its unique geographic position, sharp rivalry in ASEAN, and strongly intertwined and complementary market with China, Japan’s potential to reform the BRI through innovative soft law tools from the inside should not be underestimated. The Land of the Rising Sun has already launched its strategy, namely Free and Open Indo-Pacific (FOIP), with quality infrastructure investment (QII) as its flagship brand. Unfortunately, because of poor commercialization and some administrative hesitation, the Japanese government has barely discussed it globally, compared to the BRI.

Regardless of the abovementioned facts, the “debt-trap” problem in the BRI raised questions regarding China’s lending practices, compelling it, a nation rather isolated because of its “trade war” with the US, to look for a formidable partner like Japan. Japan had emerged as an emboldened norm-setter in the recently concluded CPTPP and finally decided to seize this opportunity to revive FOIP and QII on a new level. Introduced at the G7 Ise-Shima Summit in 2016, the concept of QII has steadily evolved in various forums of the world, finally being featured in the speech of the Chinese President during the Second BRI Forum in 2019. This article concludes that although the principles of QII, adopted in the G20 Osaka summit, are a kind of soft law in the area of transnational infrastructure connectivity, in conjunction with a so-called third-party market cooperation mechanism with China, it can provide Japan with a unique opportunity to raise infrastructure quality with Chinese partners in a third country market. The Sino-Japanese collaboration in Thailand’s East-West Economic Corridor Program for the first time will test this argument.

This discussion paper first examines BRI (2.1) and analyzes the essential part of BRI, namely “Infrastructure connectivity” (2.2). Then, the paper presents a review of FOIP(3.1) and examines the extent to which Japan was successful in marketing the QII (3.2). The final section discusses China’s third party market cooperation agreement networks and assesses the current impact and future role of the FOIP in reforming the BRI under the Sino-Japanese third party cooperation mechanism (4), followed by the conclusion (5).

## **2. Belt and Road Initiative (BRI) of China**

The concept and scope of the BRI are very flexible and dynamic. Initially, the BRI consisted of two main parts: the Silk Road Economic Belt and the 21<sup>st</sup> Century Marine Silk Road. The former includes countries in the western part of China and continues until Western Europe, while the latter represents countries along the Pacific and the Indian Ocean and the Mediterranean Sea. Moreover, some experts also consider the Digital Silk Road—constituting the Third Silk Road—that complements the New Silk Road Economic Belt and 21<sup>st</sup> Century Maritime Silk Road. For them, it is the most important of the three Silk Roads, as it creates the digital and communications infrastructure for the other roads—which should produce much deeper global connectivity.<sup>4</sup> In addition, China also initiated the so-called “Polar Silk Road” to

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<sup>3</sup> Industrialized nations, including Japan, Australia, and other Asia-pacific countries, launched the CPTPP, and on the other side of the world, EU is trying to negotiate the TTIP with the US to gain leadership in a standard setting. However, such a treaty-based legalistic approach is limited. For instance, many developing countries have not yet endorsed those deep FTAs, but they are gradually allowing China to ink the BRI projects successfully.

<sup>4</sup> Belt and Road Interview Series: Don Lewis on BRI’s Legal Framework, 5 August 2018

Available at: <https://beltandroad.ventures/beltandroadblog/2018/08/05/understanding-the-bri-legal-framework>

the Arctic, by developing shipping lanes opened because of global warming.<sup>5</sup> Although there are more than 70 BRI partner countries, there is no formal membership in the BRI. Since its announcement, it has always been open for every country to join the club.

## **2.1 Is BRI a brand new international economic order, status quo, or nothing serious?**

In 2019, six years of the BRI announcement by President Xi Jinping in both Kazakhstan and Indonesia were completed. Past years were enough to generate a series of studies on BRI. Although most studies have analyzed the political and security aspects of BRI, fortunately, the IEL aspect has started gaining attention in recent academic debates. Simultaneously, with the crystallization of BRI-related projects as well as policy papers of the Chinese government, it became easier to build the theoretical framework and conduct a comprehensive legal survey on BRI.

Most prominently, Guiguo Wang, a leading Chinese scholar of international law and the Head of the International Academia of the Belt and Road in Hong Kong, outlined the BRI and its relationship with general international law and later on with IEL.<sup>6</sup> In his 2016 paper presented at Chuo University in Japan, Wang depicted BRI as the production of market-based globalization, resulting from overcapacity problems in China.<sup>7</sup> Chaisse and Matsushita referred to the BRI as a “titanic project” promoted by China for the “construction of a new major commercial axis.”<sup>8</sup> Inspired by policy papers of the Chinese government, Chinese scholars are also rushed to articulate theoretical foundations of the BRI and legitimize it for the wider public, addressing the BRI from an “international public goods perspective.”<sup>9</sup> Zou and Qiu argued that the inherent elements of the “concept of the common heritage of mankind,” such as co-management, co-benefit, and co-participation, are well reflected in the BRI.<sup>10</sup> Considering the ambitious plans of the BRI, such as the harnessing and application of big data to directly solve environmental challenges and providing basic internet access for more than 3 billion people who still have no internet connectivity, Chinese scholars’ argument is not entirely unfounded.<sup>11</sup>

The 2018 and 2019 years also saw several attempts to thematically read the BRI in tax,<sup>12</sup> international private law,<sup>13</sup> the rule of law,<sup>14</sup> and other comprehensive and interdisciplinary works as well.<sup>15</sup> However, the fundamental problem was still unanswered:

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<sup>5</sup> Reuters, (2018) ‘China unveils vision for ‘Polar Silk Road’ across Arctic’, January 26.

<sup>6</sup> According to some sources, professor Wang is currently working on the Code of BRI that lay out principles the BRI projects should be conducted. Concrete time of completion as well as endorsement of such code by Chinese leaders however is not yet clear.

<sup>7</sup> Guiguo Wang, (2016) The Belt and Road Initiative from the Perspective of Contemporary International Law, *Hikakuho Zasshi (Comparative Law Review)*, 50(3), p.19.

<sup>8</sup> Julien Chaisse and Mitsuo Matsushita (2018), ‘China’s ‘Belt and Road’ Initiative: Mapping the World Trade Normative and Strategic Implications’, *Journal of World Trade*, 52(1), 163-185, p.165.

<sup>9</sup> Jinhxia Shi, The Belt and Road Initiative and International Law: An International Public Goods Perspective, in Yun Zhao (ed), *International Governance and the Rule of Law in China under the Belt and Road Initiative* (Cambridge University Press, 2018), pp.9-31.

<sup>10</sup> Zou, Keyuan and Qiu, Wenxian (2018) *The Belt and Road Initiative and the Common Heritage of Mankind: Some Preliminary Observations*. Chinese Journal of International Law, 17 (3). pp. 749-756.

<sup>11</sup> See Winston Ma Wenyan, Could a Digital Silk Road solve the Belt and Road’s sustainability problem?19 September 2018. Available at: <https://www.weforum.org/agenda/2018/09/could-a-digital-silk-road-solve-the-belt-and-roads-sustainability-problem/>

<sup>12</sup> Michael Lang and Jeffrey Owens (eds), *Removing Tax Barriers to China’s Belt and Road Initiative* (Kluwer Law International, 2018).

<sup>13</sup> Poomintr Sooksripaisarnkit, Sai Ramani Garimella (eds), *China’s One Belt One Road Initiative and Private International Law* (1st Ed, Routledge, 2018)

<sup>14</sup> Yun Zhao, *supra* note 9.

<sup>15</sup> See Julien Chaisse and Jędrzej Górski (eds), *The Belt and Road Initiative: Law, Economics, and Politics* (Brill, 2018); Wenhua Shan, Kimmo Nuotio, Kangle Zhang (eds.), *Normative Readings of the Belt and Road Initiative: Road to New Paradigms* (Springer, 2018).

whether BRI will be a next deep FTA and if not, then to what extent it will be compatible with IEL? Actually, from the very beginning, China’s policy on the BRI, referred to as the “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road” (2015 Action and Vision Plan) described the BRI as the provider of “new models of international cooperation and global governance.”<sup>16</sup> Accordingly, in 2016, Guiguo Wang prophesized that contrary to previously belief, the BRI would not be an FTA in a conventional way. The research conducted by his academy elaborated as follows:

*“One Belt and One Road” is a Chinese initiative to develop international economic and trade relations. Therefore, when discussing its relationship with international law, the Chinese position on international law must be taken into account. The “One Belt and One Road” Initiative will probably operate under an international order that reflects the Chinese position, including China’s viewpoints and statements, and will rely on the effective protection of such order.*<sup>17</sup>

**Table 1. Overview of China’s 2015 Vision and Action Plan for BRI**

<i>Basic principles: open cooperation, harmonious and inclusive, market operation, mutual benefit</i>		
Five Priorities of Cooperation	Policy coordination	promote intergovernmental cooperation, building a multi-level intergovernmental macro policy exchange and communication mechanism, expanding shared interests, enhance mutual political trust, and reaching new cooperation consensus
	Facilities connectivity	improve the connectivity of infrastructure construction plans and technical standard systems in transport, energy, and international communication fields
	Unimpeded trade	improve investment and trade facilitation, enhance customs cooperation, improve the customs clearance facilities, increase cooperation in supply chain safety and convenience, lower non-tariff barriers, jointly improve the transparency of technical trade measures, enhance trade liberalization and facilitation, support localized operation and management of Chinese companies
	Financial integration	expand the scope and scale of bilateral currency swap and settlement, open and develop the bond market in Asia, establish the AIIB and BRICS New Development Bank, conduct negotiation among related parties on establishing Shanghai Cooperation Organization (SCO) financing institution, and set up and put into operation the Silk Road Fund, strengthen practical cooperation

<sup>16</sup> ‘Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road’ 28 March 2015, Issued by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization, First Edition 2015. Available at: [http://en.ndrc.gov.cn/newsrelease/201503/t20150330\\_669367.html](http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html)

<sup>17</sup> ‘One Belt and One Road’ and International Law: A Chinese Perspective. Available at: [http://interbeltandroad.org/learning\\_space/one-belt-and-one-road-and-international-law-a-chinese-perspective/](http://interbeltandroad.org/learning_space/one-belt-and-one-road-and-international-law-a-chinese-perspective/)

		of China-ASEAN Interbank Association and SCO Interbank Association
	People-to-people bond	send students with Chinese scholarships to each other's countries, promote cooperation in jointly running schools, hold culture years, arts festivals, film festivals, TV weeks and book fairs in each other's countries; enhance cooperation in and expand the scale of tourism, carry out sports exchanges, provide medical assistance and emergency medical aid, increase our cooperation in science and technology

Source: the author's summary based on 2015 Visions and Actions Plan of BRI (1<sup>st</sup> edition)<sup>18</sup>

Therefore, it can be assumed that China wants something else. More recently, well-known IEL scholars, Chaisse, and Matsushita presented the following conclusion:

*OBOR is not a new type of FTA, and neither is it a competitor to the WTO or the TPP; OBOR is a radically new approach towards international trade and investment in a turbulent (trade) time.*<sup>19</sup>

While they posited the possibility of the emergence of the common market or a new type of FTA, for them it is premature to postulate on the BRI's future at this moment.<sup>20</sup> Contrary to their view, Heng Wang argued that the BRI could constitute a kind of Chinese counter-model to strengthen trade agreements promoted by industrialized nations.<sup>21</sup> However, Wang also agreed with the above authors that the BRI may grow into a legal framework or remain as an open forum. According to him, due to the vast numbers of states in the BRI, and also its diverse interest (preferring investor-state dispute settlement rather than labor rights), China intentionally gave priority to flexibility and elasticity over predictability, consistency, and rule enforcement.<sup>22</sup> In addition to him, Jaemin Lee described the BRI as a "new scheme for international economic cooperation" that is different and/or independent of trade liberalizing FTAs.<sup>23</sup> For him, BRI's goal is different from that of FTAs: while the FTAs pursue integrated market with trade and investment liberalization, the BRI focuses on the construction of specific infrastructure projects that help parties facilitate speedy transport of goods and services and ultimately increases connectivity between each other.<sup>24</sup> Accordingly, while scholars are united on the different nature of the BRI compared to the FTA in its organizing principles and modes of connectivity,<sup>25</sup> they have not reached a unanimous standpoint whether it competes against strong FTAs or not.

Nonetheless, from an economic point of view, the success of BRI in Asia, Africa, and Europe would sooner or later change the tide of trade, investment, and service toward China. Then, emerging as a winner, this factor may enable China to re-write or at least lead the revision

<sup>18</sup> 2015 Action and Vision Plan, *supra* note 16.

<sup>19</sup> Chaisse and Matsushita, *supra* note 8, at 167.

<sup>20</sup> *Id.* at 185.

<sup>21</sup> Heng Wang, (2019) China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability, *Journal of International Economic Law*, 22 (1), pp. 29–55, 55.

<sup>22</sup> *Id.*

<sup>23</sup> Jaemin Lee, The Belt and Road Initiative under Existing Trade Agreements: Some food for thought on a New Regional Integration Scheme, in Yun Zhao, *supra* note 9, at 59-60.

<sup>24</sup> *Id.* at 61-62.

<sup>25</sup> See Alice D.Ba, 'TPP, OBOR and ASEAN: Where Will They Lead To?' RSIS Commentary, No.108, 11 May 2016. Available at: <https://www.rsis.edu.sg/wp-content/uploads/2016/05/CO16108.pdf>

of global economic rules for its benefit. If that time arrives, the concept of BRI will probably fade away,<sup>26</sup> but the power it presents to China will compete against that of current strong FTAs.

**Table 2. Comparison of the BRI with strong and conventional FTAs**

<b>Strong and conventional FTAs</b>	<b>BRI</b>
Continuous economic cooperation in trade, investment, and service fields	Series of infrastructure and cultural projects
Singular homogenizing framework (connects different economies around common rules, common regulatory approaches)	Multi-component framework (connects diverse parts, piece by piece, via their common interest in national development)
Private initiatives are emphasized	Both the role of government and public initiatives are vital factors
Private companies	SOEs or national champions with the strong back-up of China
First rulemaking; second, development	Rulemaking and development co-occur/proceed parallel with each other
Free market and free enterprise philosophy	A mix of government and private initiatives
Participation is limited with a clear timetable	Open-ended framework/forum and open to everyone, anytime
Members are active participants	China is the chief financier, initiator (provocateur), and coordinator
Treaty-based: strictly defined, with (robust) implementation and dispute settlement mechanism	Non-treaty based: loosely defined soft law instruments, no enforcement monitoring and dispute settlement mechanism
Institutionally focused	Less institutionally focused
Settled, static (except occasional revisions), and predictable	Flexible, dynamic, and future is incalculable (navigating in uncharted seas)
Aims high-level market access with a deep intrusion of state sovereignty in trade, investment, and service sectors	Based on China's market conditions, aims to gain market access, trade facilitation and export infrastructure, and industrial zones
Emphasizes corporate social responsibility, responsible investment, and transparency	Depends on host state's legal environment, but generally avoids emphasizing corporate social responsibility, responsible investment, and transparency
Bilateral, plurilateral, and multilateral	Mostly bilateral or group+1

Source: Ba (2016), Chaisse/Matsushita (2018), Wang (2019), and the author's observations.

## **2.2 Core idea: Facilities connectivity**

As shown in Table 1, the BRI has **five priorities of cooperation**, of which “facilities connectivity” has top priority. China considers an insufficient infrastructure investment is a bottleneck for economic development in developing countries. Therefore, it aims to accelerate

<sup>26</sup> Belt & Road Advisory, Belt and Road Interview Series: Gordon Orr, 17 June 2018. Available at: <https://beltandroad.ventures/beltandroadblog/2018/6/16/belt-and-road-interview-series-gordon-orr>



connectivity of infrastructure as a key area and core goal of the Belt and Road Initiative.<sup>27</sup> If successfully implemented, six major corridors - the New Eurasian Land Bridge, and the China-Mongolia-Russia, China-Central Asia-West Asia, China-Indochina Peninsula, China-Pakistan, and Bangladesh-China-India-Myanmar economic corridors—should connect the Asian economic circle with the European economic circle in the future. China is actively financing railway, road, port, air transport, energy, and communication facilities alongside these corridors.

**Table 3. The list of completed BRI infrastructure projects**

Railways	China-Laos Railway, China-Thailand Railway, Hungary-Serbia Railway, and Jakarta-Bandung High-Speed Railway
Roads	China-Mongolia-Russia, China-Kyrgyzstan-Uzbekistan, China-Russia (Dalian-Novosibirsk), China-Viet Nam roads
Ports	Pakistan’s Gwadar Port, Sri Lanka’s Hambantota Port, Port of Piraeus in Greece, Khalifa Port Container Terminal Phase II in the United Arab Emirates
Air transport	1,239 new international routes have opened between China and other BRI countries, accounting for 69.1 percent of the total of China's new international routes over that period
Energy facilities	China-Russia crude oil pipeline, China-Central Asia natural gas pipeline, China-Russia natural gas pipeline, China-Myanmar oil and gas pipelines
Communication facilities	China-Myanmar, China-Pakistan, China-Kyrgyzstan, and China-Russia cross-border fiber optic cables for information transmission

Source: The Belt and Road Initiative Progress, Contributions and Prospects 2019 Report.

Since the early days of the BRI, for its successful implementation, Guiguo Wang raised harmony of the BRI with the existing framework of international economic treaties and agreements that is echoed in a number of other studies.<sup>28</sup> In the 2015 Vision and Action Plan, China urged countries to “*speed up investment facilitation, eliminate investment barriers, and push forward negotiations on bilateral investment protection agreements and double taxation avoidance agreements to protect the lawful rights and interests of investors.*”<sup>29</sup> China is now actively seeking the conclusion of high-level BITs with its partners in the world.<sup>30</sup>

On the other hand, being a passive player in a legally binding rulemaking, China has been taking a *strategic non-treatification policy* toward critical economic issues associated with the BRI. If China is delaying its membership to WTO Government Procurement Agreement in the domestic market, in the overseas market, its low level of accountability for sovereign loans, corporate social responsibility of Chinese companies that are participating in building BRI and subsidizing its companies’ going out strategy with various competitively non-neutral ways are posing significant problems for conventional players of global economy. For flexibility, China is strategically avoiding treaty-based legal frameworks that levy

<sup>27</sup> See ‘The Belt and Road Initiative: Progress, Contributions and Prospects,’ Report, the Office of the Leading Group for Promoting the Belt and Road Initiative, April 22, 2019. Available at: <https://eng.yidaiyilu.gov.cn/zchj/qwfb/86739.htm>

<sup>28</sup> Wang, *supra* note 7, at 17. See also Lee, *supra* note 8, at 59-80.

<sup>29</sup> Although that may be true to some extent, given the fact that after the announcement of the BRI in 2013, Chinese investors have not initiated any single investment treaty case against countries in the BRI, except one against Yemen in 2014, which has already been settled by parties, may cast doubts on the usefulness of concluding BITs by or with China. See Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen (ICSID Case No. ARB/14/30).

<sup>30</sup> See Jinhxia Shi, The Belt and Road Initiative and International Law: An International Public Goods Perspective, in Yun Zhao, *supra* note 9. at 28.

burdensome obligations.<sup>31</sup> China relies on soft law instruments such as extensive consultation, shared benefits, letters of intent, memorandum of understandings (MoU), and joint contribution, which is a weak and vague form of global governance.<sup>32</sup> The list of hundreds of deliverables of the Second BRI Forum also vividly shows the scale of soft law and political instruments China relies on pushing the BRI agenda in the world.<sup>33</sup>

An incompatibility with high-level international standards can be considered the second problematic aspect of “facilities connectivity.” Since the beginning, China has avoided setting a clear benchmark for financing the BRI infrastructure projects. Because of China’s “tied-aid” financing practices (that are ignorant of the financial condition of recipient countries) provided mainly to Chinese SOEs, which, in turn, employ Chinese labor forces in overseas markets, made many countries question whether China wants open, sustainable, bankable, and transparent infrastructure connectivity. Of the 65 initial countries in the BRI, eight began experiencing increasing stress because of BRI-related Chinese debt.<sup>34</sup> Furthermore, when the Sri Lankan government agreed to transfer the management of the strategic Hambantota port to a Chinese company for 99 years,<sup>35</sup> and Tajikistan did the same for gold and silver mining rights, eyebrows rose around the globe about the sincerity of China on BRI.<sup>36</sup> Concerned about this “debt trap” problem, Myanmar, Malaysia, and Pakistan began re-negotiating, freezing, or even canceling several expensive projects previously proposed by the Chinese SOEs.<sup>37</sup> This phenomenon even led the harshest critic of the BRI, the United States (US), to name China’s initiative as a “bribe-fueled debt-trap diplomacy” that undermines good governance worldwide.<sup>38</sup>

### 3. Free and Open Indo-Pacific (FOIP) Vision of Japan

Although BRI is gaining attention worldwide because of success and failures, not many have paid serious attention to China’s close neighbor, sharp rival, and the third largest economy in the world—Japan. It launched its BRI-competitor in 2014, the so-called FOIP. Initially, Japan

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<sup>31</sup> Scholars like Heng Wang also raised this question earlier in 2019, describing BRI as a “non-treaty based approach” of China, which shows a “passiveness in engagement with sensitive aspects.” He further notes that, “*The use of soft law in the BRI is largely attributable to the decentralized nature of the BRI and the difficulties of concluding hard law with the large number of BRI states. There is no clear center for rule-making, central institution or a BRI-wide treaty under the BRI. Existing treaties are insufficient to address investment issues. .... It is difficult for BRI states to agree on binding treaty obligations due to legal, political, economic and social differences. It is easier to conclude soft law than hard law, since soft law avoids the complexity of treaty ratification.*” See Wang, Heng. (2018) ‘Divergence, Convergence or Crossvergence of Chinese and US Approaches to Regional Integration: Evolving Trajectories and Their Implications.’ *Tsinghua China Law Review* 10.2, 149-185, p.156.

<sup>32</sup> Also see Remarks by Ambassador Lu Shaye at the Canadian National Exhibition Belt and Road Forum, Chinese Embassy in Canada, August 31, 2018. Available at: [https://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/zwjg\\_665342/zwbd\\_665378/t1590197.shtml](https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zwjg_665342/zwbd_665378/t1590197.shtml)

<sup>33</sup> List of Deliverables of the Second Belt and Road Forum for International Cooperation, April 27, 2019. Available at: <http://www.beltandroadforum.org/english/n100/2019/0427/c36-1312.html>

<sup>34</sup> See John Hurley et al. (2018) ‘Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective,’ CGD Policy Paper 121.

<sup>35</sup> Go Yamada and Stefania Palma, ‘Is China’s Belt and Road working? A progress report from eight countries: Beijing’s infrastructure push clouded by project delays and mounting debt,’ Cover story, *Nikkei Asian Review*, March 28, 2018.

<sup>36</sup> Eurasianet, Tajikistan hands Chinese company rights to silver reserves, June 21, 2019. Available at: <https://eurasianet.org/tajikistan-hands-chinese-company-rights-to-silver-reserves>

<sup>37</sup> Nihonkeizaishimbun, ITTAICHIRO SHUKUSHO, TETSUDOYA KOUWAN, SEIBIHI SAKUGEN, TAICHUU SAIMUKYUZOUNI KEIKAI, [BRI is shrinking, cutback in railroads and ports’ costs, precaution towards Chinese debts ], October 12, 2018.

<sup>38</sup> See Belt and Road Portal, ‘China warns US over BRI criticism,’ May 13, 2019. Available at: <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/89801.htm>

was hesitant about marketing this strategy. Nonetheless, it seems that Japan—emboldened by the success of the CPTPP, learning from the BRI failures, and with the beginning of the US retreatment in Asia—finally decided to take the big stage with its brand. The author now explores the Japanese version of the infrastructure export policy under the aegis of the FOIP strategy and its challenge and synergy with the BRI through the lens of QII and third-party market cooperation mechanism, respectively.

### **3.1 The concept of Free and Open Indo-Pacific Vision**

Although little is known, Japan also began developing its regional connectivity foreign policy strategy under Prime Minister Shinzo Abe. The FOIP aims to “‘improve connectivity’ between Asia and Africa through free and open Indo-Pacific, and, with ASEAN as the hinge of two oceans, promote stability and prosperity of the region as a whole.”<sup>39</sup> The real architect of the FOIP concept, however, is Abe, who unveiled the idea in mid-2016 in Nairobi, during the Sixth Tokyo International Conference on African Development; when he first introduced this concept, he described it as a way for promoting shared values such as the rule of law and free-market economies throughout the region.

Similar to China’s change from OBOR to BRI, Japan has also softened its tone on the FOIP because of objections from ASEAN members. During his meeting with the Malaysian prime minister, Abe intentionally chose the word “vision” instead of “strategy.”<sup>40</sup> Therefore, in November 2018, it was positioned as a priority policy for cooperation development, as the “Free and Open Indo-Pacific vision.”<sup>41</sup>

The FOIP consists of three pillars: first, promotion and establishment of the rule of law, freedom of navigation and free trade; second, the pursuit of economic prosperity (improving connectivity); and the third, commitment for peace and stability. Among the specifics of the FOIP, pursuing economic prosperity by improving “connectivity” through infrastructure development, such as ports and railways, occupies a special place. Initially, it had two elements, one was improving “connectivity” in ASEAN (East-West Economic Corridor, Sothern Economic Corridor, etc.), within South West Asia (North East Connectivity Improvement Project in India and Bengal Bay Industrial Growth Zone, etc.) and from South East Asia to southeast Africa through South West Asia and the Middle East (Mombasa Port, etc.). The second one was strengthening economic partnership (including investment treaties) and improving the business environment.<sup>42</sup> However, according to a recently updated pamphlet of the FOIP, Japan has added “People-to-people connectivity” as a third sub-division of the FOIP’s economic pillar. This shows that China’s BRI is enriching the Japanese version of infrastructure development as well.

### **3.2 Core idea: Quality infrastructure investment**

Japan was already ahead of China’s BRI when it came to the idea of driving regional prosperity by achieving greater access to markets via infrastructure. Concerned about losing its position as the dominant donor, with the careful eye on the rise of the BRI, and with bitter experiences

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<sup>39</sup> A New Foreign Policy Strategy: ‘Free and Open Indo-Pacific Strategy’. Available at: <https://www.asean.emb-japan.go.jp/files/000352880.pdf>

<sup>40</sup> Yukio Tajima, ‘Abe softens tone on Indo-Pacific to coax China’s ASEAN friends,’ *Nikkei Asia Review*, November 13, 2018.

<sup>41</sup> Accordingly, in January 2019, the webpage of the Ministry of Foreign Affairs of Japan for the FOIP also changed its title from Strategy to Vision. Available at: <https://www.mofa.go.jp/files/000407643.pdf>

<sup>42</sup> A New Foreign Policy Strategy: ‘Free and Open Indo-Pacific Strategy’. Available at: <https://www.asean.emb-japan.go.jp/files/000352880.pdf>

against China,<sup>43</sup> Japan also developed its infrastructure export strategy: The QII. The strategy aimed to specifically addressing the concerns expressed by third countries regarding the BRI, namely, transparency, sustainability, and community engagement with projects.<sup>44</sup>

To pursue the FOIP, under the leadership of Abe, the Japanese government launched the Partnership for Quality Infrastructure in May 2015 as part of the Japan Revitalization Strategy.<sup>45</sup> The 2015 Partnership for QII was later upgraded as the “Expanded Partnership for Quality Infrastructure” in May 2016 during the G7 Ise-Shima Summit, to finance infrastructure projects of approximately US\$ 200 billion across the Indo-Pacific over the next five years (2017-21).<sup>46</sup> Creating new engines for Japan’s economic development by exploring new frontiers of growth in the international infrastructure market is one of the main aims of the expanded partnership.

In contrast to the BRI&Facilities connectivity nexus, the most distinctive part of FOIP&QII is the guiding standards that it adopted. The Japanese government is very keen on promoting the development of high-quality infrastructure in Asia, Africa, and Latin America under the rules of openness, transparency, economic efficiency given life-cycle cost, and fiscal soundness, including debt sustainability of the recipient countries. Different from other donors like China, Japan raised the high-quality infrastructure to its brand, promoted following standards as an international one, and urged for rulemaking on quality infrastructure in forums such as G7, G20, and the OECD club.<sup>47</sup>

The concept has evolved in recent years in the following order. Beginning in 2014 with the Brisbane and Antalya G20 Summits in 2015, the G7 Ise-Shima Principles for Promoting Quality Infrastructure Investment of 2016 named five principles that cover governance, economic efficiency, resilience, job creation, capacity building, social and environmental impacts, alignment with economic and development strategies, and effective resource mobilization.<sup>48</sup> In particular, it emphasized sustainability and reliable operation of quality infrastructure during the life span of a project, and transfer of expertise and know-how to local communities. Moreover, being quite concrete in terms, the G7 Ise-Shima principles articulated debt sustainability and fiscal outlook.

Three months after the G7 Ise-Shima Summit, the leaders of the G20 met in Hangzhou, China, held on 4-5 September 2016, reaffirmed their commitment to promote investment, with focus on infrastructure in terms of both quantity and quality. They particularly stressed,

*“the importance of quality infrastructure investment, which aims to ensure economic efficiency in view of life-cycle cost, safety, resilience against natural disaster, job creation, capacity building, and transfer of expertise and know-how on mutually agreed terms and conditions,*

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<sup>43</sup> Indonesia and its Jakarta-Bandung railway project is the best example of the competition between the two countries. In 2015, bidding against Japan, China was selected to construct the Jakarta-Bandung railway section, while Japan was to upgrade the railway that connects Jakarta with Surabaya.

<sup>44</sup> Andre Wheeler, Japan’s trade engagement with China – is Myanmar a case study? Nov 01, 2018. Available at: [https://www.joc.com/regulation-policy/trade-policy/international-trade-policy/japan’s-engagement-china---myanmar-case-study\\_20181101.html](https://www.joc.com/regulation-policy/trade-policy/international-trade-policy/japan’s-engagement-china---myanmar-case-study_20181101.html)

<sup>45</sup> MOFA, Announcement of “Partnership for Quality Infrastructure: Investment for Asia's Future”, May 21, 2015. Available at: [https://www.mofa.go.jp/policy/oda/page18\\_000076.html](https://www.mofa.go.jp/policy/oda/page18_000076.html)

<sup>46</sup> MOFA, ‘The “Expanded Partnership for Quality Infrastructure” initiative directed toward the G7 Ise-Shima Summit Meeting announced’. Available at: [https://www.meti.go.jp/english/press/2016/0523\\_01.html](https://www.meti.go.jp/english/press/2016/0523_01.html)

<sup>47</sup> See Kentaro Sonoura, ‘Japan’s initiatives for promoting “Quality Infrastructure Investment”’, UN General Assembly High-Level Side Event: Promoting Quality Infrastructure Investment, 19 September 2017. Available at: <https://www.mofa.go.jp/files/000291344.pdf>. See also UN General Assembly High-Level Side Event: “Promoting Quality Infrastructure” (Co-hosted by Japan, the European Commission and the United Nations), September 26, 2018. Available at: [https://www.mofa.go.jp/ic/dapc/page6e\\_000130.html](https://www.mofa.go.jp/ic/dapc/page6e_000130.html)

<sup>48</sup> “G7 Ise-Shima Principles for Promoting Quality Infrastructure Investment”, May 2016.

*while addressing social and environmental impacts and aligning with economic and development strategies.”<sup>49</sup>*

The above was an almost literal repetition of what Japan achieved in the G7 summit. Notwithstanding this fact, QII was still a vague notion in the international arena wherein it should be greatly articulated. Without stopping at the G7 Ise-Shima and G20 Hangzhou summits, Japan steadfastly continued QII diplomacy. Although G20 Leaders’ Declaration at Buenos Aires in 2018 was limited to an assurance to the issue, stating “we look forward to progress in 2019 on quality infrastructure”<sup>50</sup>; nonetheless, the G20 Osaka Summit in June 2019 provided a historical opportunity to Japan, to globally diffuse and carefully calibrate the content of QII. Strategically using this moment for the promotion of quality infrastructure, Japan further cemented its position by adopting the “G20 Principles for Quality Infrastructure Investment” (G20 Principles) as a top document in the summit.

As mentioned at the very the top, the document sets out voluntary and non-binding principles to reflect common strategic direction and aspiration for a quality investment. Nonetheless, compared to previous efforts of Japan in Ise-Shima and Hangzhou, the G20 Principles of Osaka are very far-reaching and ambitious. It seems that Japan, with the help of the European Union (EU) and US, as well as other members of the QUAD (Australia, and India), could insert vital principles for infrastructure projects, such as “transparency,” “accountability,” and “debt sustainability.”

Concerning this topic, Principle No. 6 is most crucial. In the preamble of this principle, G20 leaders firmly announced that:

*“Sound infrastructure governance over the life cycle of the project is a key factor to ensure long- term cost-effectiveness, accountability, transparency, and integrity of infrastructure investment. Countries should put in place clear rules, robust institutions, and good governance in the public and the private sector, reflecting countries’ relevant international commitments, which will mitigate various risks related to investment decision-making, thus encouraging private-sector participation. Coordination across different levels of governments is needed. Capacity building is also key in ensuring informed decision-making and effectiveness of anti-corruption efforts. In addition, improved governance can be supported by good private sector practices, including responsible business conduct practices.”*

Notably, the above Principle laid out the following four main sub-principles: *First*, G20 Leaders agreed that openness and transparency of procurement should be secured to ensure that infrastructure projects are value for money, safe, and effective, and therefore investment is not diverted from its intended use. *Second*, to assess the financial sustainability of each project and identify potential infrastructure projects subject to limited financial means, well-designed and well-functioning governance institutions should be in place. *Third*, combined with enhanced transparency, anti-corruption efforts should continue to safeguard the integrity of infrastructure-related investments. *Fourth*, support investment decision-making, and project management, access to adequate information, and data is an enabling factor.

There are three noteworthy points here: First, the G20 Principles on QII are a milestone in shaping international soft laws in the field of sustainable infrastructure investment. To address debt-trap issues, the document requires (using word “should”) open, fair, and transparent procurement system, involvement of wide range of stakeholders, facilitation of well-functioning government institutions, using the measures to mitigate corruption at all

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<sup>49</sup> G20 Leaders’ Communique Hangzhou Summit, September 5, 2016, G20 Information Centre, para.39 Available at: <http://www.g20.utoronto.ca/2016/160905-communique.html>

<sup>50</sup> G20 Leaders’ Declaration: Building Consensus for Fair and Sustainable Development, December 1, 2018, G20 Information Centre. Available at: <http://www.g20.utoronto.ca/2018/2018-leaders-declaration.html>

stages of infrastructure project and places the access to adequate information and data as a benchmark for decision-making and project management. In addition to the above standards, the G20 Principles also strongly demand that the donor states align proposed infrastructure projects with national strategies and consider country circumstances.

China's stance toward the G20 Principles is another critical point. Until now, there is no inter-state document of the G20 Summit, which includes that China has never adopted such a strong-worded (soft) commitment on the sustainability of infrastructure. China's willingness to adopt such principles at the global forums, like G20 summit reflects an awareness of international criticism of its investments in infrastructure. According to Japanese officials involved in the negotiations on the principles, China was initially cautious about the new principles; however, now, it has become more accepting of the idea as it recognized the economic and financial benefits of promoting high-quality infrastructure.<sup>51</sup>

The final point is that since QII has also gained broad support among other international stakeholders, it provides an opportunity to strengthen this soft law in the future. Some reports of international development banks have described "quality infrastructure" as an element of sustainable infrastructure.<sup>52</sup> By emphasizing transparency, openness, economic efficiency, and fiscal soundness, APEC issued a revised Guidebook on Quality Infrastructure Development and Investment in 2018.<sup>53</sup> There are also various reference points in the world, including the Global Infrastructure Hub that announced "Quality Infrastructure Investment' Casebook."<sup>54</sup> Along with the G20 Summit in Osaka, the OECD, and the IMF prepared the Reference Note jointly which aligned to the G20 Principles for QII as part of the 2019 G20/Infrastructure Working Group Agenda.<sup>55</sup> In addition to the G7, G20, and OECD Ministerial Council Meeting in 2017, the UN 2030 Agenda for SDGs also focused on the importance of quality infrastructure among its 17 Sustainable Development Goals.<sup>56</sup> Being an innovative and experimental measurement tool for sustainable development, QII brand of Japan can be a powerful instrument to upgrade infrastructure lending in the developing world. In this way, the soft law diplomacy of Japan on quality infrastructure has reshaped international economic governance of infrastructure connectivity. Consequently, President Shi during the 2019 BRI summit officially endorsed some of the principles.<sup>57</sup>

Due to its flexible, informal, and elastic nature, soft law provides a comparatively relaxed environment for global consensus-building on ruling making among major countries. As a result of the G20 member countries' effort in the last five years, including Japanese endeavor, international soft law-making on collective mechanisms for transport connectivity

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<sup>51</sup> Tetsushi Kajimoto, 'World's top economies lay out principles on debt sustainability at G20 meet,' Reuters, June 9, 2019.

<sup>52</sup> See Inter-American Development Bank, IDB Invest, 'What Is Sustainable Infrastructure?: A Framework to Guide Sustainability Across the Project Cycle,' Technical Note:IDB-TN-1388, March 2018, p.10.

<sup>53</sup> APEC Guidebook on Quality of Infrastructure Development and Investment (Revision), November 12, 2018. Available at: [http://mddb.apec.org/Documents/2018/SOM/CSOM/18\\_csom\\_014app11.pdf](http://mddb.apec.org/Documents/2018/SOM/CSOM/18_csom_014app11.pdf)

<sup>54</sup> 'Quality Infrastructure Investment' Casebook. Available at: <https://www.github.org/resources/publications/quality-infrastructure-investment-casebook/>

<sup>55</sup> See OECD/IMF Reference Note on the Governance of Quality Infrastructure Investment, June 2019. Available at: [https://www.mof.go.jp/english/international\\_policy/convention/g20/annex6\\_5.pdf](https://www.mof.go.jp/english/international_policy/convention/g20/annex6_5.pdf)

<sup>56</sup> Especially see Goal 9: Build resilient infrastructure, promote sustainable industrialization and foster innovation: 9.1 Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all. Available at: <https://www.un.org/sustainabledevelopment/infrastructure-industrialization/>

<sup>57</sup> Furthermore, China has recently adopted 'Guiding Principles on Financing the Development of the Belt and Road', 'The Belt and Road Ecological and Environmental Cooperation Plan' and 'Guidance on Promoting Green Belt and Road'. Available at: <https://eng.yidaiyilu.gov.cn>

has advanced.<sup>58</sup> Its content is vastly clarified, concretized by references notes and procurement practices by multilateral development banks, and normative significance has increased. Most importantly, G20 countries successfully brought China under this soft law mechanism as a responsible player.<sup>59</sup> Although the QII as a soft law lacks stringent enforcement mechanism at present, being carefully negotiated and drafted, it can be considered an important step forward for incremental formation of the *opinion juris* that generates customary law of transnational connectivity infrastructure. As frequently observed in international financial law, an evolutionary process of soft law opens the way for transforming the G20 QII principle into hard treaty law in the future.

The only problem in this innovative soft law is its enforcement. Therefore, the application of the principle of quality infrastructure by a critical emerging player in infrastructure investment, especially China in the host countries, must be examined, because without the capability of being binding, the willingness of China to comply with QII in the overseas market plays a major role in strengthening the normative force of QII. Moreover, because of China's unique approach toward Japan, the QII brand has already found its way to reform China's way of promoting the BRI in the third countries. Section 4 will focus on this issue.

#### **4. FOIP-BRI cooperation in the third countries' market**

China wishes to enlist the help of developed countries' in the overseas Belt and Road infrastructure projects as well as of the BRI-related financial institutions, such as the Asian Infrastructure and Investment Bank. China hopes that bringing countries like Japan on board will let it dodge accusations of practicing a new form of colonialism through foreign aid.<sup>60</sup> Furthermore, despite the launch of competing initiatives by the most prominent investors, there were some calls for both parties to establish an effective mechanism for coordination and dialogues on the regional connectivity within South East Asia.<sup>61</sup>

At the beginning, Japan's position was not evident in this respect: it showed neither interest nor reaction toward the BRI.<sup>62</sup> Finally, in July 2017, Japan announced that it would consider the possibility of becoming involved in BRI-related initiatives and projects if the latter met four preconditions. For Japan to collaborate with China-led BRI projects, they must be characterized by (1) openness; (2) transparency; (3) economic sustainability; and (4) the ability of the developing countries involved to claim financial ownership over the projects in question. In other words, Japan has made it clear that any official support would be limited and conditional, dependent on the projects satisfying the "quality infrastructure" principles.

After the Chinese prime minister visited Japan in May 2018, both parties came up with the so-called "Third Party Market Cooperation," a slightly more neutral name for what Chinese media often bluntly refers to as Japan's "participation in the Belt and Road Initiative." To

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<sup>58</sup> See Chapter 2. Strategies and activities of development partners for transport connectivity, OECD, *Enhancing Connectivity through Transport Infrastructure: The Role of Official Development Finance and Private Investment*, The development Dimension, OECD Publishing, 2018, pp.49-59.

<sup>59</sup> Daniel Runde, 'Pursuing Quality of Infrastructure for Sustainable Growth,' Think 20, March 8, 2019, p.7. Available at: <https://t20japan.org/policy-brief-pursuing-quality-of-infrastructure-for-sustainable-growth/>

<sup>60</sup> Oki Nagai, 'China and Japan kick off joint effort on foreign infrastructure,' Nikkei Asian Review, September 26, 2018.

<sup>61</sup> See Zhao Hong, 'Chinese and Japanese infrastructure investment in Southeast Asia: from rivalry to cooperation?' IDE Discussion Paper, No.689, February 2018. Available at: <https://www.ide.go.jp/English/Publish/Download/Dp/689.html>

<sup>62</sup> See China Focus, 'High-level Interview with Masahiro Kawai: How Has Japan Embraced the Belt and Road Initiative?', April 26, 2019. Available at: <http://www.cnfocus.com/high-level-interview-masahiro-kawai-how-has-japan-embraced-the-belt-and-road-initiative/>

evaluate, while Tokyo's decision to consider cooperating with China on the BRI could make economic sense for its companies seeking additional markets,<sup>63</sup> Tokyo would also gain the rare opportunity to hold China to higher levels of transparency and accountability.<sup>64</sup> In other words, conducting joint projects with the Japanese may encourage China to embrace higher standards.<sup>65</sup> Furthermore, such selective engagement with China on the third countries' infrastructure projects opens the way for gaining information as well as encourages the Chinese side to align more with high-level international standards.<sup>66</sup> Simultaneously, this collaboration will also test the critics of the BRI who now have a template that uses collaborative financing instruments to make the BRI more universally acceptable than China-centric.<sup>67</sup>

#### 4.1 Chinese "Third party market cooperation agreement" network

China's third-party market cooperation agreement (3PMCA) can be considered a loosely designed soft law instrument. It aims to facilitate cooperation between investors of both countries and provide a level playing field in the third markets. As one Chinese ambassador expressed, for China, the cooperation in third-party markets is meant to align its productivity with technologies of developed countries, with the development demand of developing countries.<sup>68</sup> Although Chinese scholars assert that cooperation in third-party markets as a new model of international cooperation initiated by China,<sup>69</sup> actually these types of soft law instruments are not brand new.<sup>70</sup> Nevertheless, the coverage of China's 3PMCA is far greater than any other country's similar network. To date, China has succeeded in concluding these types of agreements with more than 10 developed nations: beginning with France (2015), Canada (2016), New Zealand (2017), Belgium (2018), Portugal (2018), Singapore (2018),

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<sup>63</sup> See Joji Uramatsu and Kiyohiro Akama, China General Bureau, and Shinichi Nishiwaki, Asia General Bureau, 'Japan firms hopping on modern Silk Road railway under China's 'One Belt One Road'', The Mainichi, October 15, 2018.

<sup>64</sup> On this issue, the well-known Japanese expert noted as follows:

*"If we decide as a basic principle that the recently discussed cooperation between Japanese and Chinese companies in the Indo-Pacific will contribute to the development of emerging nations in that region, there is no reason for Japan to hesitate with our cooperation. ....Also, if such joint projects influence the actions of Chinese companies, it may contribute to a change in the Chinese model itself."* See Akihiko Tanaka, 'Changes to the international system due to the rise of China. From trade wars to a "new Cold War."' *Diplomacy*, No.51 Jan. 14, 2019. Available at: <https://www.japanpolicyforum.jp/archives/diplomacy/pt20190114014015.html>

<sup>65</sup> See Tobias Harris, 'Quality Infrastructure: Japan's Robust Challenge to China's Belt and Road, APRIL 9, 2019, Special series – Southern (Dis)comfort. *"Maybe the United states and other countries will only be able to influence China's efforts on the margins, but, as Japan shows, even limited engagement could challenge China and its businesses to aspire to higher standards."*

<sup>66</sup> Daniel Kliman and Abigail Grace, 'Power Play: Addressing China's Belt and Road Strategy,' September, 2018. Available at: <https://s3.amazonaws.com/files.cnas.org/documents/CNASReport-Power-Play-Addressing-Chinas-Belt-and-Road-Strategy.pdf?mtime=20180920093003>

<sup>67</sup> Andre Wheeler, 'Japan's trade engagement with China – is Myanmar a case study?', November 1, 2018. Available at: [https://www.joc.com/regulation-policy/trade-policy/international-trade-policy/japan's-engagement-china---myanmar-case-study\\_20181101.html](https://www.joc.com/regulation-policy/trade-policy/international-trade-policy/japan's-engagement-china---myanmar-case-study_20181101.html)

<sup>68</sup> Remarks by Ambassador Lu Shaye, *supra* note 32.

<sup>69</sup> See Wu Hao, 'Exploring Third-party Markets through BRI,' China Today, 22 February 2019. Available at: [http://www.chinatoday.com.cn/ctenglish/2018/ii/201902/t20190222\\_800157434.html](http://www.chinatoday.com.cn/ctenglish/2018/ii/201902/t20190222_800157434.html)

<sup>70</sup> Earlier, there were long-term settlements with east and west European firms in a wide area of activities, and one of them are cooperation (production and marketing) in third markets. See Iliana Zloch-Christy, *East-West Financial Relations: Current Problems and Future Prospects*, p.63, CUP 2010; Another example, Chile concluded so-called 'Closer cooperation agreement to improve products competitiveness in the third markets' after 2003 with Singapore and New Zealand. More recently, for instance, Japan and the US also concluded such agreement to support US-Japan cooperation on energy infrastructure in third countries in November 2017. See Memorandum of Cooperation between the Ministry of Economy, Trade and Industry Government of Japan and the United States Trade and Development Agency to Support Japan-U.S. Cooperation on Energy Infrastructure in Third Countries. Available at: <http://www.meti.go.jp/press/2017/11/20171107002/20171107002-2.pdf>



Japan (2018), Germany (2019), Italy (2019), Luxembourg (2019), and finally, with Holland (2019).<sup>71</sup>

China is also in pursuit of attracting reputed international organizations in its 3PMCA web. For example, the European Bank for Reconstruction and Development (EBRD) and the China International Contractors Association signed the MoU in 2018. They underscored to develop their cooperation and continue to forge synergies on investments in third-party markets that are EBRD countries of operations and are part of the BRI.<sup>72</sup>

#### **4.2 Normative Content of China's 3PMCA**

Notably, many of the 3PMCA are not accessible to the broader public, thus, making it impossible to analyze their normative content.<sup>73</sup> France was the first EU member country to sign the 3PMCA with China. In the Joint Declaration between China and France on the partnerships in third-party markets on June 30, 2015, all parties agreed to play a dominant role of companies with the support of public authorities and to comply with international law, international practices and relevant commercial principles, as well as laws and regulations of France, China, and third countries. To construct a close, durable, and comprehensive Sino-French economic strategic partnership, after three years, the China-France Joint Fact Sheet on the 6<sup>th</sup> High-Level Economic and Financial Dialogue further upgraded underlying principles of cooperation in third markets and infrastructure connectivity.

Parties stressed that,

*“...cooperation should abide by the shared principles of market rules, transparency, sustainable economic development, open procurement and a level playing field for all investors, and comply with established international norms and standards, respective international obligations, as well as the law of the countries benefitting from the projects, while taking into account their policies and individual situations.”*<sup>74</sup>

To Chinese policy-makers, exploring third-party market cooperation could yield benefits without causing a clash of interests in projects involving China, France, and some French-speaking African countries.<sup>75</sup> However, until now, the Sino-French collaboration has focused on potential cooperation only in a developed country, Hinkley Point - Britain's first nuclear power plant station.

Italy, the first member among the G7 countries to endorse the BRI by concluding MoU with China, also dealt with cooperation in third countries.<sup>76</sup> More importantly, they also highlighted the importance of open, transparent, and non-discriminatory procurement procedures. Regarding cooperation in the third countries,

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<sup>71</sup> In addition, in 2013, China had already offered such agreement to India as well to enhance bilateral trade cooperation aiming at third country markets.

<sup>72</sup> Anthony Williams, 'EBRD to step up cooperation with China and EU on Central Asia investment, November 14, 2018. Available at: <https://www.ebrd.com/news/2018/ebrd-to-step-up-cooperation-with-china-and-eu-on-central-asia-investment-.html>

<sup>73</sup> For instance, Australia, Singapore governments have not yet opened these agreements for public. In case of Australia, it was due to Chinese government's request.

<sup>74</sup> See China-France Joint Fact Sheet on the 6<sup>th</sup> High Level Economic and Financial Dialogue, December 7th, 2018, Paris.

<sup>75</sup> Zheng Xin and Zhong Nan, 'Third-party market cooperation welcome,' ChinaDaily 28 August 2018. Available at: <https://www.chinadailyhk.com/articles/203/59/197/1535420480758.html>

<sup>76</sup> Memorandum of Understanding between The Government of the Italian Republic and the Government of the People's Republic of China on Cooperation within the Framework of the Silk Road Economic Belt and the 21<sup>st</sup> Century Maritime Silk Road Initiative, March 2019, Rome. Available at: [http://www.governo.it/sites/governo.it/files/Memorandum\\_Italia-Cina\\_EN.pdf](http://www.governo.it/sites/governo.it/files/Memorandum_Italia-Cina_EN.pdf)

*“The Parties will jointly explore opportunities of cooperation in Italy and in China and discuss cooperation in third Countries. The Parties are committed to modes of cooperation that are advantageous to all participants and to projects that benefit third Countries by supporting their priorities in terms of development and the needs of their people, in a fiscally, socially, economically and environmentally sound and sustainable manner.”* (Paragraph III)

Somehow, similarly, the Joint Statement of the 2<sup>nd</sup> China-Germany High-Level Financial Dialogue also echoed *“cooperation in third countries based on transparency and sustainability. .... decisions ... made by enterprises and financial institutions based on commercial criteria.”* (Paragraph 12)<sup>77</sup>

On April 29, 2019, Swiss and Chinese side agreed to,

*“recognize that the cooperation should be enterprise-led, market-based, in compliance with international practices and norms, as well as the laws and policies of the countries benefitting from such cooperation. This cooperation should be based on economic viability and long-term sustainable growth, social and environmental sustainability, mutual benefits, consensus, inclusiveness, open and non-discriminatory procurement processes and a level playing field, in line with national development priorities as devised by the countries concerned and with the common pursuit of the UN Sustainable Development Goals.”* (Paragraph 2)<sup>78</sup>

Furthermore, agreement with multilateral banks, such as the EBRD, is also noteworthy for this paper. According to the agreement,

*“The cooperation is intended to contribute towards the improvement of the economic, social, fiscal, financial and environmental sustainability of Europe-Asia connectivity, while abiding by the shared principles of market rules, transparency, open procurement and a level playing field for all investors.”*<sup>79</sup>

Above excerpts from the 3PMCA show how the EU is trying to conclude sophisticated instruments with China. Although the agreement notes with Italy and Switzerland do not constitute an international agreement that may lead to obligations under international law and discourage parties to vigorously implement provisions of the MoU, they are noteworthy in two aspects: First, MoUs on 3PMCA may have some soft and diplomatic pressure on China, paying attention to the fiscal and environmental soundness and sustainable-ness of the infrastructure project in a third country. Second, beginning with France, there is gradual enrichment of the normative contents in the 3PMCA with China. If China and France initially referred to *“compliance with international law, international practices, and relevant commercial principles,”* step-by-step international organizations and western developed nations succeeded in inserting powerful principles such as *“transparency,” “open procurement,”* and *“level*

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<sup>77</sup> Joint Statement of the 2<sup>nd</sup> China-Germany High Level Financial Dialogue, January 18, 2019, Beijing. Available at: [https://www.bundesfinanzministerium.de/Content/FR/Downloads/2019-01-18-D-C-Finanzdialog-Statement.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundesfinanzministerium.de/Content/FR/Downloads/2019-01-18-D-C-Finanzdialog-Statement.pdf?__blob=publicationFile&v=2)

<sup>78</sup> Memorandum of Understanding on Developing Third-Party Market Cooperation between The Federal Department of Finance and the Federal Department of Economic Affairs, Education and Research of the Swiss Confederation and the National Development and Reform Commission of the People's Republic of China, April 29, 2019 Beijing. Available at: <https://www.news.admin.ch/news/message/attachments/56683.pdf>

<sup>79</sup> Williams, *supra* note 72.

*playing field.*” This shows that at least on a soft law level, there is a way to concede China to abide with high-level international rules.

### **4.3 China-Japan 3PMCA and 2018 Beijing Third Party Market Cooperation Forum**

On May 9, 2018, Japan and China signed the Memorandum on Business Cooperation in Third Countries.<sup>80</sup> Compared to the Sino-Italy MoU, the Sino-Japan Memorandum seems short, consisting of only four short paragraphs. First, both parties noted strong complementarities of their companies overseas and that developing their business cooperation in third countries would also benefit such countries. Second, as a working mechanism of this cooperation, the parties decided to establish the Committee for the Promotion of Japan-China Business Cooperation in Third Countries under the framework of the Japan-China High-Level Economic Dialogue. Third, both countries agreed to hold the Japan-China Forum on Third Country Business Cooperation, based on private-sector economic cooperation in third countries. Finally, both sides would hold discussions toward the formulation of possible specific projects, under the above frameworks.

Initially, compared to China’s 3PMCA with western European countries, Japan could only conclude very dry soft law tools. Nonetheless, the Sino-Japanese 3PMCA is very different for a few reasons. Although China and its SOEs have already signed several joint projects in the third countries under the 3PMCA, the one with Japan will be its first and large-scale joint project in a third *developing* country. For example, the Sino-French Third-Party Cooperation on the Hinkley Point C nuclear power station or China’s CRRC and Germany’s Siemens’ third-party cooperation in some key projects. However, none has been realized yet. The large-scale and wide scope of the Sino-Japanese third-party market cooperation is unprecedented.<sup>81</sup>

Five months after the agreement, both parties successfully held the first China-Japan Third-Party Market Cooperation Forum in Beijing in October 2018. Approximately 1,500 people, including leaders from political and industrial circles of both countries, attended ceremonies, comprising a total of 52 memorandums of cooperation, that were concluded between both the public and private sectors in a wide range of fields.<sup>82</sup> As part of the cooperation, the Japanese contractor JFE Engineering Corporation and a Chinese enterprise agreed to develop an energy-efficient smart city in Thailand. Japanese trading house Itochu Corporation agreed to expand investment in an offshore wind power generation project in Germany with China’s state-owned CITIC Group Corporation. The Japan Bank for International Cooperation and the China Development Bank decided to launch a scheme to finance infrastructure projects in third countries jointly.<sup>83</sup>

Although Abe announced that the Japanese government would work together with the Chinese to facilitate projects that can also benefit third countries in line with international standards in terms of openness, transparency, economic efficiency, and financial soundness. Following him, Premier Li expressed high hopes for China and Japan to conduct cooperation in third countries by taking advantage of their mutually complementary strengths and implementing projects that will be beneficial for all parties; however, being cautious, the parties carefully avoided referring to their initiatives as well as those of the others.

Private sector collaboration in a third market on specific projects and under the aegis of several cooperation mechanisms are emphasized as specific characteristics of the Japan-

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<sup>80</sup> METI, Japan and China Conclude Memorandum on Business Cooperation in Third Countries, May 10, 2018. Available at: [https://www.meti.go.jp/english/press/2018/0510\\_003.html](https://www.meti.go.jp/english/press/2018/0510_003.html)

<sup>81</sup> Shen Shivei, ‘Opinion: What is the goal of China-Japan third party cooperation?’, October 27, 2018. Available at: [https://news.cgtn.com/news/3d3d674d7859544d30457a6333566d54/share\\_p.html](https://news.cgtn.com/news/3d3d674d7859544d30457a6333566d54/share_p.html)

<sup>82</sup> For the full list of MoUs, visit <https://www.meti.go.jp/press/2018/10/20181026010/20181026010-1.pdf>

<sup>83</sup> METI, ‘52 MOCs Signed in Line with Convening of First Japan-China Forum on Third Country Business Cooperation,’ 26 October 2018. Available at: [https://www.meti.go.jp/english/press/2018/1026\\_003.html](https://www.meti.go.jp/english/press/2018/1026_003.html)

China 3PMCA. Japan could also place its participation under the strict conditions of openness, transparency, economic efficiency, and financial soundness of every joint infrastructure projects. Furthermore, co-working with China in BRI-related projects provided the Japanese side an opportunity to propose China to proactively participate in rulemaking.<sup>84</sup>

Moreover, it seems that the Japanese side began to pursue economic-pragmatism through participation in BRI projects.<sup>85</sup> Because, as (Jinhxia) Shi rightly pointed out, “the sheer size of the investment required means that Chinese investors are increasingly looking for foreign partners to collaborate on projects”<sup>86</sup> and it is progressing in practice. According to reports, the cooperation between the Chinese and other countries’ enterprises is occurring in many parts of the world. Chinese and Canadian nuclear energy enterprises have successfully cooperated in third-party markets, including Romania, Argentina.<sup>87</sup> Japanese and Chinese companies are relying on each other in the Middle East markets and are eager to cooperate in South East Asian markets, such as Thailand. According to Kanaoki, among the 52 memoranda concluded during the 2018 China-Japan Third Party Market Forum in Beijing, some are already ongoing projects.<sup>88</sup> For instance, a few cases of Chinese and Japanese business cooperation in a third country were listed, including a petrochemical project in Kazakhstan involving Sinopec and Marubeni and an offshore wind energy project in Germany jointly developed by CITIC and Itochu. Moreover, as bluntly posted on the homepage of the Chinese embassy in Thailand, with more bargaining power, Japan and Chinese companies may gain “more support in preferential policy, infrastructure connectivity, human resources.”<sup>89</sup>

The cooperation has already begun yielding results. For instance, in the case of Thailand’s Eastern Economic Corridor Program (EEC program), the host state welcomed the Sino-Japanese cooperation in their territory and in the same month, Japan and China signed in the MoU, both sides’ embassies held a trilateral seminar on “China-Japan Cooperation on the Eastern Economic Corridor of Thailand” in Bangkok.<sup>90</sup> After a year, it seems that movements have already begun between Sino-Japanese corporations for five infrastructure projects in the flagship project of the Thai government.<sup>91</sup> As a showcase of the Sino-Japan third-party market cooperation, Chinese and Japanese sides held their first Workshop on Business Cooperation in Thailand on the April 2, 2019.<sup>92</sup> However, for this topic, it is essential for both sides’ financial institutions (JBIC, China Development Bank and China EXIM Bank) to have already started

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<sup>84</sup> For instance, during his speech in the Forum, JETRO Chairman and CEO Hiroyuki Ishige stressed the importance of developing a free and fair business environment and urged China to take a leading role in international rule-making and the steadfast implementation of those rules. See Jetro Topics, ‘1st Japan-China Third Country Market Cooperation Forum at the Great Hall of the People in Beijing on October 26’ Available at: [https://www.jetro.go.jp/en/jetro/topics/2018/1810\\_topics11/message.html](https://www.jetro.go.jp/en/jetro/topics/2018/1810_topics11/message.html)

<sup>85</sup> Hidetaka Yoshimatsu, (2019) ‘Partnership against the rising dragon? Japan’s foreign policy towards India,’ The Pacific Review, pp.1-27.

<sup>86</sup> Shi, *supra* note 9, at 25.

<sup>87</sup> Remarks by Ambassador Lu Shaye, *supra* note 31.

<sup>88</sup> Kanaoki Tsukio, ITTAI ICHIRONI KAKAWARU NIHONKIGYOUNO ARATANA SHOUKINO KANOUSEI[The possibility of new commercial chances for Japanese corporations that collaborate with BRI], BOUEKITO KANZEI, VOLUME 790, 2019, JANUARY.

<sup>89</sup> ‘Seminar on ‘China-Japan Cooperation on Eastern Economic Corridor of Thailand’ Held in Bangkok’, June 1, 2018. Available at: <http://www.chinaembassy.or.th/eng/dszl/dshd/t1564718.htm>

<sup>90</sup> EEC Press News, ‘China – Japan Cooperation on the Eastern Economic Corridor of Thailand,’ May 31, 2018. Available at: <https://www.eeco.or.th/en/pr/news/china—japan-cooperation-eastern-economic-corridor-thailand>

<sup>91</sup> See Piyachart Maikaew, ‘Japanese, Chinese company reps to be ‘matched’ with EEC,’ Bangkok Post, March 22 2019. Available at: <https://www.bangkokpost.com/business/news/1649400/japanese-chinese-company-reps-to-be-matched-with-eec>

<sup>92</sup> Japan-China Workshop on Business Cooperation in Thailand, March 20, 2019. Available at: [https://www.jetro.go.jp/thailand/topics/\\_435975.html](https://www.jetro.go.jp/thailand/topics/_435975.html)

working on bankable projects in Thailand on the conditions of global standards of openness, economic viability, compliance with laws, transparency, and debt sustainability.<sup>93</sup>

As expected, Thailand “emerged as a major beneficiary” of the Forum, according to the South China Morning Post, with multiple Thai-focused deals (smart city development, high-speed rail, etc.) included in the China-Japan agreement.<sup>94</sup> Such a trilateral agreement may generate several positive effects for all parties. First, since the 2018 Forum in Beijing produced an agreement between the Japan Bank for International Cooperation and China Development Bank to provide joint loans to infrastructure projects overseas, Japan can also control whether a debt-trap problem is not occurring in host countries like Thailand. Second, parties may form complementary advantages of each other. With their strength in investment feasibility studies, risk management, and corporate social responsibility issues, Japanese corporations may not only bar Chinese counterparts from conducting illicit transactions that negatively affect local communities but also strengthen their consciousness on corporate social responsibility. Despite its soft law and less-institutionalized nature, the China-Japan 3PMCA Working Mechanism, if effectively implemented, can provide Japan some new tactics to restraint harmful economic activities of Chinese companies in the third markets.<sup>95</sup> Third, more cooperation leads to more trust on each other. Therefore, Japan and the other G20 countries are highly encouraged to engage with Chinese companies in developing countries’ market actively.<sup>96</sup> Thus, Thailand’s EEC program, which stands at the center of Japanese outward investment destination, will be a test for China and BRI-suspicious countries. Nevertheless, strengthening the 3PMCA from soft law to hard law and upgrading its substantive content and institutional architecture is a daunting task for the Japanese side.<sup>97</sup>

#### **4.4 Improving the international economic governance of regional connectivity initiatives**

To evaluate the synergy between BRI/Facilities connectivity and FOIP/Quality infrastructure, Japanese “stubbornness” on quality infrastructure based on bankability and sustainability of

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<sup>93</sup> See presentation materials: Japan Bank for International Cooperation, ‘Collaborations between JBIC and China Governmental Financial Institutions in Third Country Markets’, April 2, 2019, Bangkok, Thailand. Available at: [https://www.jetro.go.jp/ext\\_images/thailand/thailand/pdf/DocumentsJapaneseCompanies.pdf](https://www.jetro.go.jp/ext_images/thailand/thailand/pdf/DocumentsJapaneseCompanies.pdf)

<sup>94</sup> Lee Jeong-ho, ‘Why Thailand could be the big winner as China and Japan start to work together,’ 26 October 2018, South China Morning Post. Available at: <https://www.scmp.com/news/china/diplomacy/article/2170391/why-thailand-could-be-big-winner-china-and-japan-start-work>

<sup>95</sup> See Lee Jeong-ho, ‘Why Thailand could be the big winner as China and Japan start to work together,’ October 26 2018, South China Morning Post. However, China and Japan may have differing agendas, and analysts argued that the investments may offer Japan a new tactic for limiting China’s influence over the region. “The joint development with China implies Japan is indirectly helping the [belt and road] by developing smart cities in Thailand,” said Kotaro Tamura, an Asia fellow at the Milken Institute and a former parliamentary secretary in charge of economic and fiscal policy at Japan’s Cabinet Office. “But Japan will check both Chinese government and business activities in Asean through mutual collaboration.” Available at: <https://www.scmp.com/news/china/diplomacy/article/2170391/why-thailand-could-be-big-winner-china-and-japan-start-work>

<sup>96</sup> Zhou Yongsheng, ‘China and Japan Promote Third-Party Market Cooperation With Optimistic Outlook,’ China Today, October 28, 2018. Available at: <http://www.cnfocus.com/china-and-japan-promote-third-party-market-cooperation-with-optimistic-outlook/> arguing that ‘[i]f China and Japan can make good use of this new growth point, even though it cannot become the leading process and direction for the improvement of Sino-Japanese relations, it will indeed help China and Japan deepen their understanding of one another, increase trust and dispel doubts, as well as expand the external growth space of bilateral relations.’

<sup>97</sup> Because even with similar instruments concluded between Japan and the US, any dispute about the interpretation or implementation of the Memorandum should be resolved through consultations between the participants. See Memorandum of Cooperation between the Ministry of Economy, Trade and Industry Government of Japan and the United States Trade and Development Agency to Support Japan-U.S. Cooperation on Energy Infrastructure in Third Countries. Available at: <http://www.meti.go.jp/press/2017/11/20171107002/20171107002-2.pdf>

projects eventually led China to implicitly admit the biggest deficiencies in the BRI. For instance, high-ranking Chinese official Wei, an important promoter and planner of the China-Japan third-party market cooperation, also noted that this is the first time for the two sides to publicly announce details of all cooperative projects. It was also a response to international scholars' concerns on the transparency, source of funds, and return on investment of projects under the BRI.<sup>98</sup> Furthermore, in April 2019 Joint Communiqué of the Leaders' Roundtable of the 2nd BRI Forum by explicitly referring to "high quality" several times, almost repeated the standards launched by the "Quality infrastructure" proposed by Japan.

*"Looking into the future, we envisage high-quality Belt and Road cooperation..... We will strive to build high-quality, reliable, resilient and sustainable infrastructure. We emphasize that high-quality infrastructure should be viable, affordable, accessible, inclusive and broadly beneficial over its entire lifecycle, contributing to sustainable development of participating countries and the industrialization of developing countries. .... In the interest of sustainability, we support improving cooperation in project preparation and implementation, to promote projects that are investable, bankable, economically viable and environment-friendly."*<sup>99</sup>

China also began using the term "high-quality" in tandem with the BRI with countries in the BRI.<sup>100</sup> This significant change in China's behavior toward high-quality, bankable, and sustainable infrastructure projects can be considered a huge diplomatic success of high-quality standards posed by the FOIP/QII. Nevertheless, such verbal assurance by Chinese leadership may not provide a guarantee for the successful implementation of the Sino-Japan 3PMCA; it requires continuous upgradation.

Against this background, the author suggests the following recommendations for policymakers to ensure the success of QII in the future.

### **Recommendation 1: Multilateral-izing and enriching the content of 3PMCA**

For success, the so-called China's "Third Party Market Cooperation" agreements network can be strengthened from soft law to hard law with the participation of host states and multilateral development banks or continue concretization of the China-Japan 3PMCA. In other words, under the China-Japan Third-Party Market Cooperation Working Mechanism, Japan should strive to enrich the content of the MoU concluded through learning from Western European countries' experience. Compared to the Sino-Japan MoU on 3PMCA, those of Western developed states excel at their sheer normative content, novel schemes, and transparency. While Japan also could specify its own four conditions, simultaneously developing a framework of China's 3PMCA with developed nations signals the possibility of its renewal in the future. Based on the success of the Thai experience, the 3PMCA may also develop into a legally binding treaty in the future. In that sense, forthcoming the Second Forum for the Third Party Market Cooperation between Japan and China in the next year may play a meaningful role for multilateral-izing and enriching the content of 3PMCA.<sup>101</sup>

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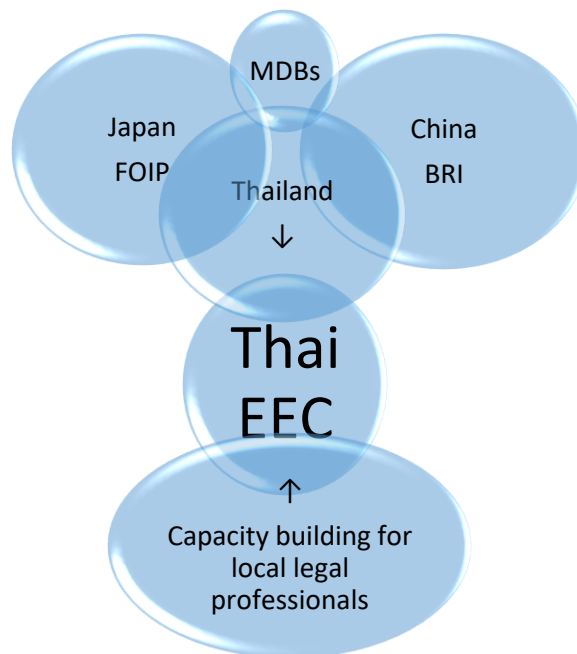
<sup>98</sup> See 'China-Japan third-party market cooperation not limited to B&R, official', November 7, 2018. Available at: <https://eng.yidaiyilu.gov.cn/ghsl/wksl/70953.htm>

<sup>99</sup> Belt and Road Cooperation: Shaping a Brighter Shared Future Joint Communiqué of the Leaders' Roundtable of the 2nd Belt and Road Forum for International Cooperation, 27 April 2019, Beijing, China. Available at: <http://www.beltandroadforum.org/english/n100/2019/0427/c36-1311.html>

<sup>100</sup> See Xinhua, 'Xi asks China, Uzbekistan to promote quality Belt and Road construction', August 28, 2019. Available at: [http://www.xinhuanet.com/english/2019-08/28/c\\_138345803.htm](http://www.xinhuanet.com/english/2019-08/28/c_138345803.htm)

<sup>101</sup> Daisuke Suzuki, 'Japan and China to hold infrastructure forum during Xi visit,' Nikkei Asia Review, September 16, 2019.

**Figure 1. Image of multi-party 3PMCA with Thailand**



**Recommendation 2: Diffusing QII in collaboration with global partners**

At this point, the significance of the continuity of QII diplomacy by Japan without any breaks should be emphasized. Working with donor-partner countries in the third markets and pushing China to actively endorse the principles of sustainable, comprehensive, and international rules-based connectivity only serve to strengthen international economic governance on mega-infrastructure-connectivity projects. Adoption of the EU’s new central Asian strategy, which included “quality infrastructure,” can be considered a successful story of close EU-Japan collaboration on QII rule-making and its further dissemination in the globe.<sup>102</sup> By closely collaborating with interested parties, such as France and other EU states, Japan should urge China to become a member of the Paris Club and fairly share the global burden of debt restructuring.<sup>103</sup>

Nonetheless, as noted “the idea[FOIP/QII] has been badly promoted and remains poorly understood across Asia.”<sup>104</sup> It has no annual summit, no dedicated home page, and even Abe’s critical speech at the “Third party market cooperation forum” in Beijing is yet to be translated into English; in his speech, the Japanese leader proposed the primary conditions of collaboration between Japan and China.<sup>105</sup> Furthermore, since there is no official document that openly recognizes QII as part of the FOIP or vice-versa, both concept’s bilateral connection remains vague. Therefore, while clarifying the FOIP/QII relationship through new ways of promoting activities, Japan should actively continue to promote QII not only in donor

<sup>102</sup> See Council Conclusions on the New Strategy on Central Asia, 17 June 2019. Available at: <https://www.consilium.europa.eu/media/39778/st10221-en19.pdf>

<sup>103</sup> See Masahiro Kawai, Japan’s G20 Presidency for 2019: Potential Agendas and Issues, Pensamiento Propio, «El G20 en tiempos inciertos: Reflexiones en torno a la presidencia argentina» p.193. Available at: <http://www.cries.org/wp-content/uploads/2018/11/014-Kawai.pdf>

<sup>104</sup> See James D.J. Brown, ‘Promoting Japan’s answer to China’s Belt and Road: To compete with Beijing, Tokyo must go out and market the free and open Indo-Pacific brand,’ Opinion, Nikkei Asia Review, April 25, 2019.

<sup>105</sup> See Third country market cooperation forum, the text of the Speech of Prime Minister Abe, October 26, 2018 (in Japanese). Available at: [https://www.kantei.go.jp/jp/98\\_abe/statement/2018/1026daisangoku.html](https://www.kantei.go.jp/jp/98_abe/statement/2018/1026daisangoku.html)

countries forums but also in recipient countries in cooperation with other donors as well. We should also acknowledge success stories of Japan in this direction. In early 2019, during his central Asian visit, Foreign Minister Taro Kono invited his counterparts in that region to adopt QII in infrastructure imports from donor countries,<sup>106</sup> Japan also strived to widespread QII to African continent in the 7th Tokyo International Conference on African Development that was held in Yokohama in September 2019.<sup>107</sup>

### **Recommendation 3: Operationalizing local capacity**

Finally, in contrast to the top-down approach of China-Japan-Thailand Trilateral Partnership at the EEC program, Japan can also offer a bottom-up approach. This refers to the activation of Japan's soft power under its Official Development Assistance. Notably, Japan is the only country in Asia that can compete and outperform any nation in the legal assistance and education at present. Characterized by a tight focus, sustainable funding by the Ministry of Education, Culture, and Sports, and veteran staffs with more than 20 years of rich experience, Japan may strategically use its soft power against unfair practices of Chinese companies abroad. With its satellite legal education and research centers established in the leading state universities of Mongolia, Uzbekistan, Vietnam, Cambodia, and Laos, Japan has already shown a reliable performance of nourishing hundreds of young jurists within the BRI countries; this can be a very formidable force of law enforcement against unfair players in their homeland. In other words, a large community of Japan's university law faculty alumnae/alumni originating from ASEAN—especially from Vietnam, Cambodia, and Lao—can play a very significant role in filtering the proposed infrastructure projects considering their national interest. Japan should be more proactive with the BRI countries with the focus of capacity building and education of specific legal fields. Only with the support of the “invisible hand” of highly educated jurists in Japan may persuade China to implement obligations fairly under the 3PMCA in host countries.

## **5. Conclusion**

This paper examined the possibility of improving the governance of BRI through China-Japan collaboration in third-party country markets as well as the contribution FOIP/QII. The author argued that one of the constructive ways for developed nations to deal with Chinese initiative is not by demonizing it, but by endorsing the BRI, both private or public, either directly or indirectly, and collaborating with Chinese companies in third-country market *based on market rules and high quality standards (conditional approach)*. Although being a soft law that lacks stringent enforcing mechanism, the principles of quality infrastructure represent the collective intent of rule-setting under G20. Therefore, they have great potential in influencing state practices in procuring infrastructure projects. In addition to QII, China's bilateral 3PMCA further enhance market rules and high standards in particular countries. This approach has the potential to lead the reforming of the BRI from the inside and the Second BRI Forum in Beijing has already shown some concrete signs.

Two years ago, a young lawyer warned the world that “the lack of other truly competitive sources of foreign financing is what ultimately reinforces China's monopolistic

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<sup>106</sup> Foreign Minister Kono Attends the Seventh Foreign Ministers' Meeting of the “Central Asia plus Japan” Dialogue, Dushanbe, Tajikistan, May 18, 2019. Available at: [https://www.mofa.go.jp/region/europe/eu/page6e\\_000187.html](https://www.mofa.go.jp/region/europe/eu/page6e_000187.html)

<sup>107</sup> Because of the Japanese government's effort, 7<sup>th</sup> conference of TICAD adopted “Yokohama Declaration 2019” and “Yokohama Plan of Actions 2019”; both documents referred to the “quality infrastructure” several times. For the TICAD 7 outcome documents, visit following home page: <https://www.mofa.go.jp/region/africa/ticad/ticad7/index.html>



advantage over foreign-financing of infrastructure and connectivity projects.”<sup>108</sup> The scale of financial support from Japan or any other developed nation cannot match Chinese economic statecraft in BRI-projects in two aspects: volume and velocity.<sup>109</sup> The BRI differs from the FOIP in the sense that the former encompasses complete foreign policy of China, whereas the latter only covers foreign relations of Japan partially. However, with their formidable and well-thought approach, Japan’s FOIP/QII standards successfully challenged the BRI/Facilities connectivity in multilateral fora. These efforts and worldwide critique of BRI led Chinese leaders to re-think the quality and sustainable-ness of BRI projects. Xi Jinping’s emphasis on “high-quality, sustainable, resilient, affordable, inclusive and accessible infrastructure projects” in his speech during the second BRI Forum in Beijing clearly shows how Chinese leaders began focusing on those concerns.<sup>110</sup> However, whether this collaboration will lead to improved governance in big infrastructure projects alongside the BRI, will be determined in the future.

In conclusion, it may be ironic that the biggest beneficiary of penetration of QII as an international economic rule is China itself. In the last two years, familiar academicians, as well as policymakers, have highlighted how domestic groups are unsatisfied with the inefficiency and non-transparency of BRI projects; urgent efforts are needed. Similar to the WTO, the QII and effective cooperation under the 3PMCA can be powerful tools for reformers inside China. Aspiring “to control the potential costs and risks of causing social frictions and legal liabilities with local citizens” of BRI countries, China has shown enthusiasm in adherence to best international practices.<sup>111</sup> Therefore, rather than putting pressure from the outside, creating a demand within China to endorse high-quality standards of connectivity is also one of the decisive factors to diffuse QII broadly.

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<sup>108</sup> See Diane Desierto, (2017) ‘China’s ‘One Belt, One Road’ Initiative: Can A Bilaterally-Negotiated ‘Globalization 2.0’ Internalize Human Rights, Labor, and Environmental Standards?’, EJIL: Talk.

<sup>109</sup> Takahara Akio, SEMARU CHUGOKU ‘SHA-PU-WA-’: NIHON, KIHANJUNSHU WO UTAEYO,[Pressing China’ Sharp Power: Japan should appeal to observance of rules] Nihonkeizaishimbun, October 16, 2018.

<sup>110</sup> The complete text of President Xi Jinping’s speech at the Belt and Road Forum for International Cooperation 2019. Available at: <http://www.cpecinfo.com/news/the-complete-text-of-president-xi-jinping-speech-at-the-belt-and-road-forum-for-international-cooperation-2019/NzAwMQ==>

<sup>111</sup> See Noriaki Abe, International “Soft-law” Evolving in Southeast Asia, Implications for Better-functioning Global Governance: Cooperation between the ASEAN and the OECD on Responsible Business Conduct, the Japan Chapter of the Asian Society of International Law The 10th Anniversary Annual Conference, July 14, 2019, Conference paper, pp. 26-27.