Investment Dispute Settlement in the Building of CPEC and its Impact on the Neighboring Region

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The settlement of disputes amongst the investors and the nations in which they are set up is a key part of investment assurance under International Investment Agreements (IIAs). The majority of IIAs contain arrangements concerning investor-state dispute settlement (ISDS). Despite the fact that they had shaped some portion of IIAs for over 40 years, it was just in the most recent decade that the international investors started using these ISDS mechanisms as models of resolution and settlement of disputes under the IIAs. The ISDS movement amid the most recent decade has produced a considerable number of cases touching upon key procedural and substantive parts of investment law, in this way encouraging the improvement of a law that, is probably going to advance later on. The paper comprises of four main sections. Firstly, it analyzes the major developments as regards the available mechanisms for investment dispute resolution, from diplomatic protection to bilateral investment treaties and ISDS mechanism. Secondly, it refers to the ISDS mechanism as a most suitable arrangement for the resolution of investment disputes, discussing its suitability by comparing it to other available mechanisms. Thirdly, it focuses on the BITs and FTAs Model of China with Pakistan and other countries, in order to see the specific method mentioned therein to find provisions and procedures to be utilized for the ISDS mechanism. Fourthly, it considers the CPEC Agreement and its prospects for China and Pakistan, in addition to the building of a multilateral treaty context in the South-Asian Region similar to the type of integration of North-American countries through the NAFTA Agreement.

Keywords: Investment Dispute Settlement; China-Pakistan BITs; CPEC; South-Asian Region Integration; NAFTA

1. Introduction

Regardless of whether a country conducts investment, trade or commercial activity in another country, it is necessary to ensure that such investment, trade or business is legal and lawful through developed mechanisms. Provisions for such legal measures have to be found between such nations' Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs). Bilateral investment treaties and free trade agreements are international agreements between the two countries/economies that provide guidelines which restrict governments' treatment of other countries/economies. Al-

most 2,400 BITs and similar accreditation bodies around the world include investment chapters in the free trade agreements such as the Energy Charter Treaty,[1] the China-Pakistan Free Trade Agreement and the Bilateral Investment Treaty, the China Pakistan Economic Corridor (CPEC) and other similar agreements. The basic principles required for such measures are deep-rooted, clearly defined parts of the International Investment Law that requires the governments in the investment markets not to be segregated from domestic or third-country investors; to provide for the cost of investing by the investors to be reasonable, fair and provide adequate protection.[2]

In any case, the operation of the dispute settlement mechanisms in investment and trade agreements is not the same. Since the latter only contains dispute settlement between states, therefore, this method of dispute settlement is considered to be a controversial remedy as it often requires the losing party to change the terms of the agreement such as the laws, control and additional tax rates. While the former *i.e.* bilateral investment treaties provide protection associated with the firm, and the breach of commitment will affect individual commitments. Bilateral investment agreements allow foreign investors to understand the possible ways through which he/she can bring a suit directly against the government in charge of default, by a mechanism called the 'investor-state dispute settlement' or ISDS.[3] For such disputes, the solution is usually a review or retrospective in nature. That is after a breach of the treaty, the ISDS authorities cannot ask the state to change its laws and controls, instead, it allows for compensation to be given to the investor by the government in charge of the default.

Since ISDS is a generally compliant method of investment dispute settlement, nations consent to such arrangements so as to set out standard procedures when foreign organizations contribute on their domain, for instance, by building processing plants. ISDS empowers the investors from one country to bring a suit or claim particularly against the country in which they have contributed before through an arbitration tribunal in case of any dispute relating to the investment. To prove the existence of breach of a certain term of an investment agreement is necessary for the investor to bring a claim against the other party. For example, an investment agreement would often say that an administration can control or 'confiscate' (for example, nationalize) an investment because it gives investors a satisfactory remuneration or compensation. If a country seizes investment or passes new laws to make the existing ones worthless (for example, it suddenly prohibits products manufactured by factories owned by foreign investors) and provides for no compensation at all, the investors can use ISDS to bring claims against that country directly, thereby asserting the fact that the violation of the terms of the expropriation in the agreement has occurred and they can demand adequate compensation.

2. Background

In accordance with customary international law, the State may recover the damages caused by the host country to its country through the implementation of reconciliation or diplomatic protection, which may include indemnity and/or restitution. In spite of this protection, and the employment of no coercive means, states may establish ad hoc commissions and arbitral tribunals to arbitrate claims that include treatment by host countries of foreigners and their property, through a legal method known as a 'State-State dispute settlement' (SSDS). A good example of this practice is the Iran-United States Claims Tribunal and the US-Mexico Commission of Inquiry. Nevertheless, these arrangements have been limited to the treatment of foreign investors in the past, and now ISDS allows investors to bring claims against the host states directly, without having to rely on the

[1] 1998, Energy Charter Treaty (ECT), 2080 UNTS 95, 34 ILM 360 (1995).
[2] R. Dolzer & M. Stevens, *Bilateral Investment Treaties,* 1st Edition, Kluwer Law International, The Hague 1995, pp. 103-108.
[3] J.W. Salacuse, *The Law of Investment Treaties*, 2nd Edition, Oxford University Press, Oxford 2015, pp. 655-661 .

previous SSDS mechanism.

Until now, legal protection of foreign direct investment under international law has been covered by more than 2750 bilateral investment treaties (BITs), multilateral investment treaties, specifically the Energy Charter Treaty and various free trade agreements (such as the North American Free Trade Agreement) that include special investment chapters in them. By the end of the 1980s and the mid-1990s, most of these treaties were challenged in the courts by investors claiming settlement of disputes which began in the late 1990s under such treaties or agreements.[4]

Most of these legal instruments make substantial guarantees to foreign investors, including 'reasonable and fair treatment', 'full insurance and security', 'free exchange of means', the privilege not to directly or in a roundabout way expropriate without adequate remuneration and access to the ISDS to the host country in order to redress the violation of the treaty obligations. Outstandingly, just foreign investors can sue states under investment agreements, since states are the parties to the dispute, and no one but states can be held at risk to pay injuries for the breach of that agreement. States have no such right to bring a unique claim against a foreign investor under such agreements, again in light of the fact that investors are not parties to the agreement and in this way cannot be in breach of it. The current China-Pakistan BIT and CPEC agreement likewise contain an 'intersection clause' requiring aggrieved parties to pick either a nearby court or ICSID arbitration to determine the investment dispute where the matter cannot be settled within six months.

3. The Investment Dispute Settlement Mechanism in General

3.1. Available Mechanisms for Investment Protection

In accordance with customary international law, the State may, by assurances of conciliation, recover the damages caused by the host country to its State or the establishment of an ad hoc commission and an arbitral tribunal to settle claims, including those dealing with foreigners and their property. At present, legal protection for foreign direct investment under international public law is through a system of more than 2750 bilateral investment treaties (BIT), multilateral investment treaties, most importantly, the Energy Charter Treaty,[5] the Free Trade Agreements, North American Free Trade Agreements (NAFTA) that contain chapters of investment protection. The larger part of these legal instruments provide substantial legal protection to foreign investors, including the privilege of 'fair and equitable treatment', 'comprehensive protection and security', 'free exchange of means', the privilege not to directly or in a roundabout way expropriate without adequate remuneration and access to the ISDS to the host country in order to redress the violation of the treaty obligations. The current China-Pakistan BIT and CPEC agreement likewise contain an 'intersection clause' requiring aggrieved parties to pick either a nearby court or ICSID arbitration to determine the investment dispute where the matter cannot be settled within six months.

3.2. The Emergence of the Investor-State Dispute Settlement Mechanism: From Diplomatic Protection to Bilateral Investment Treaties

It is a fundamental principle of public international law to protect foreign property. Disputes between States coming in light because of claimed infringement of a national's property rights can be

[4] J. Nakagawa, *Multilateralism and Regionalism in Global Economic Governance*, 1st Edition, Routledge, UK 2012, pp. 1-6.
[5] T.W. Wälde, *Investment Arbitration under the Energy Charter Treaty-From Dispute Settlement to Treaty Implementation*, Arbitration International, Vol. 12, No. 4, December 1996, pp. 429-466.

followed to the end of the eighteenth century. In the post colonization era, it was witnessed that the European empires ensured their business interests in foreign lands either through imperial submissions or by way of surrendering. Without these, the foreign investment disputes were worldwide disputes between the home State and the host State in light of political assurance or diplomatic protection, which was the customary method for getting redress for the injury caused by the breach of international law. According to customary international law, the State may, through the implementation of diplomatic protection, maintain the damage done by the host country to its country, which may include compensation, consular activities, negotiations, intercession, legal and arbitral proceedings, severance of political relations, and economic pressure. In spite of the provision of diplomatic protection and the lack of coercive means, States may also establish ad hoc commissions and arbitral tribunals to mediate cases (State-State dispute settlement-SSDS), including foreign national treatment and their property. An outstanding example of this is the Iran-United States Claims Tribunal and the US-Mexico Claims Commission. In the *Mavromatis Case,*[6] the Permanent Court of International Justice stated that "the State has, as an elementary principle of international law, right to protect its subjects, when injured by acts contrary to international law committed by another State, that are not accessible through ordinary channels."[7]

The first investor-state arbitration under a BIT occurred in 1987 (ICSID Case No ARB/87/3),[8] and the reports suggest that prior to this most of the investment disputes that referred to the international tribunals were either brought in pursuance to contractual agreements by the private parties or were state-to-state arbitrations. Two advancements related to the development of investor-state dispute resolution from diplomatic protection consist of; i) the foundation of discussions or negotiations for direct cases, and ii) the development in the utilization of dispute settlement mechanisms as provided under the common treaties (breach of which could be sought after either in the international forums or local courts).[9] Prior to this, the investment disputes had been dealt under the provisions of the Treaty of Friendship, Commerce and Navigation (FCN Treaty) amongst developed and developing countries.[10]After World War II, the developed countries started using new sorts of settlements. These incorporated Investment Guarantee Agreements (IGA) and the Investment Protection Agreements (IPA). While the previous settlements resorted to the investment protection and subrogation, the new settlement dealt with investment protection alone. The FCN Treaty, IGA, and IPA are aggregately known as Bilateral Investment Treaties. However, these treaties were limited to the treatment of foreign investors on retrospective basis whereas modern ISDS allows investors claims against states in general and on a prospective basis.[11]

3.3. ISDS and Other Dispute Resolution Procedures

The ISDS is an essential element of the credibility of the State's efforts to strengthen its commitments in international investment agreements. In fact, bilateral investment treaties providing international arbitration - about 33 percent of the total, based on large-scale treaty investigations – allow the private implementation of these commitments. If a State is deemed to be in breach of its investment commitments, the injured investor may receive monetary compensation or another form of remedy. In principle, the availability of such treatment has enabled countries to respect their investment treaty commitments.

[6] *Mavrommatis Palestine Concessions (Greece v. U.K.)*, PCIJ, Judgment of 30 August 1924, 1924 PCIJ Series A, Judgment No. 2, at 12.
[7] D. Gaukrodger & K. Gordon, *Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community*, OECD Working Papers on International Investment 2012/03, OCED Publishing, France 2012, http://dx.doi.org/10.1787/5k46b1r85j6f-en (10 April 2017).
[8] C.H. Schreuer, *The ICSID Convention: A Commentary*, 2nd Edition, Cambridge University Press, Cambridge 2009, pp. 71-1258.
[9] K. Qingjiang, *Bilateral Investment Rule-Making: BITs or FTAs with Investment Rules?*, The Journal of World Investment & Trade, Vol. 14, No. 4, January 2013, pp. 638-645.
[10] UN Conference on Trade and Commerce, *Investor-State Dispute Settlement and Impact on Investment Rule making,* New York-Geneva 2007, https://unctad.org/en/Docs/iteiia20073_en.pdf (12 April 2017).
[11] S. Miller & G.N. Hicks, *Investor-State Dispute Settlement – A Reality Check*, Rowman & Littlefield, Lanham 2015, pp. 17-19.

Likewise, the ISDS is also an executive procedure that sets out consistency and strategy to pay compensation in the instances of violation of investment commitments. International Investment Systems (IIAs)[12] and other global archives have three components that are unique to other countries. First, the legal premise of the ISDS is complex and volatile, while other large numbers of dispute resolution instruments are bound in all treaty frameworks. Second, the ISDS's power enables the private investor to make claims to States (depending on the various prerequisites set out in the various investment plans) and can provide important monetary awards. Thirdly, the institutional building of the ISDS has greatly attracted commercial arbitration (such as ad hoc, party-appointed arbitration groups, emphasizing speed, and alike).

The unique structure of the international dispute settlement framework has been strengthened through a more rigorous review of the three prominent and strongly used dispute resolution mechanisms developed by the (i) International Investment Law, (ii) World Trade Organization (WTO), and (iii) European Convention on Human Rights. The dispute settlement component of these three international law institutions was extensively reviewed and it was founded that each institution had a different dispute resolution framework compared to the ISDS mechanism. Under ISDS, investors can access the proceedings directly. Private parties are also allowed to enter the European Convention on Human Rights. In the WTO, only the WTO party can put forward the case. In the case of ISDS, investors seek financial (monetary) compensation in large numbers but are seeking temporary measures that require the respondent to do or not to do something. The WTO DSU does not award any damages. The only final remedy or compensation is the right of the country to withdraw the conflict with the WTO measures. For the European Convention on Human Rights, the most important treatment is mostly declaratory, but may also include 'fair remuneration' of honor. Moreover, ISDS awards review depending upon the forum proposed during the first dispute and can include ICSID abrogation methods (abrogation procedures) or national courts, usually for the sole purpose of prohibiting review of legal errors. On the contrary, all parties have the opportunity to make progress on the legitimate issues of the WTO, about 70% of the panel reports are appealed; leading to the appellate proceedings and circulation of the appellate decision to the member states within 90 days.[13]

4. China's Bits Serving as Models for the ISDS Mechanism Under CPEC

4.1. China-Pakistan BITs

China signed the 'Preferential Trade and Investment Agreement' (PTIA)[14] with Pakistan in 2006, which is the fundamental 'bilateral agreement' between the two countries. It covers trade and investment, as well as other monetary sectors. This PTIA serves to be the China's main BIT-compliant investment aid to Pakistan that provides a framework of rules for higher legal insurance amount to the investors than the earlier bilateral investment agreement concluded between both the countries in 1989. For Pakistan, the PTIA (Part 9) contains every standard provision for the second generation of bilateral investment treaties negotiated with developing countries. These include a definition of investment and the investor; admission clause; fair and equitable treatment; national and MFN treatment; confiscation; free exchange of assets; and ISDS. For China, the PTIA provides an opportunity to learn how to resolve complex financial commitments to reduce the tax on the trade of goods and incorporate the principles of management and investment.

[12] http://www.economist.com/news/finance-and-economics/21623756-governments-are-souring-treaties-protect-foreign-investors-arbitration (12 April 2017).
[13] https://euobserver.com/economic/130297 (12 April 2017).
[14] A. Berger, *Investment Rules in Chinese Preferential Trade and Investment Agreements – Is China Following the Global Trend towards Comprehensive Agreements?*, German Development Institute (DIE), Germany 2013, https://www.die-gdi.de/uploads/media/DP_7.2013.pdf (23 April 2017).

As a "rising star" of free trade agreements, China began a regional track, first with their own specific administrative regions e.g. Hong Kong, Macao, Pakistan and other friendly countries for the purposes of negotiations, because China has been on good regional track with Pakistan.[15] In this regard, the China-Pakistan Free Trade Agreement (FTA)[16] is a noteworthy understanding marked between both the nations that were concluded in 2006 and entered into force in July 2007. It likewise accommodates or facilitates investment security and arrangement for ISDS component if there should be an occurrence of an investment dispute. Trade volume in light of the agreement between the two states was $13 billion in 2013. A Second Phase agreement is at this moment being negotiated among China and Pakistan as CPEC, which will cut down obligations further and also institutionalize distinctive trade techniques.

4.2 China BITs Concerning Other Countries

The Chinese BIT program, since its inception in 1982, has experienced three periods and three generations of BITs, as shown in Table 1 below.[17] It should be noted, however, that although each generation of BITs characterized a given period, there could be BITs of different generations coexisting in a given period.

China's Bilateral Investment Treaties of Different Generations			
Generation	***Method***	***Year***	***Model***
First generation	Of Restrictive Methods	The 1980s – 1998	· Takes the European BIT as a model · No, or limit national treatment · Only the number of ISDS levy compensation
Second generation	Of Legalization Method	1998 – continuing	· Take the European Bilateral Investment Treaty as a model State treatment by the state · Law of (developing country) or non-compliance measures (developed countries) · Complete ISDS
Third generation	Similar to the NAFTA method	2007 – continuing	· (Partly) modeled on the NAFTA approach · Fair and equitable treatment in accordance with customary international law · MFN and national treatment "in like circumstances" · MFN treatment not extended to ISDS · Pre-establishment MFN treatment · Free transfer of funds exceptions in the case of a financial crisis.

The most comprehensive Bilateral Investment Treaty China concluded to date was with Canada in September 2012. The arrangements that began in 1994 in Canada depend on the Canadian Model

[15] X. Jun, *The ASEAN-China Investment Agreement: A Regionalization of Chinese New BITs*, SSRN Electronic Journal, June 2010, https://www.researchgate.net/publication/228174208_The_ASEAN-China_Investment_Agreement_A_Regionalization_of_Chinese_New_BITs (20 April 2017).
[16] 2006, China Pakistan Free Trade Agreement (FTA).
[17] J. Chaisse, *China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy*, Oxford University Press, Oxford 2019, pp. 431-434.

Treaty, which was completely different from the China Model Treaty. The contents of the Canadian Bilateral Investment Treaty have been in compliance with the Canadian Model Treaty since 2004 and incorporated into international minimum standards; implementation of necessities; open protection of the environment or money related to the general situation; direct preconditions; and point by point ISDS rules. All of these creative solutions have now been incorporated into the past China Bilateral Investment Treaties. According to China's bilateral investment treaties from the late 1990s, all Chinese PTIAs have adopted far-reaching ISDS provisions and, in accordance with Chinese practice, in the case of national treatment, in accordance with non-applicable measures. New Zealand, Peru, and ASEAN are in the search for PTIA with China, which has made Chinese PTIAs relatively significant. However, in terms of market access, China is reluctant to supplement any subsidies compared to bilateral investment treaties.[18]

4.3. Provision for ISDS in Agreements

The present Model BIT between China and Pakistan regulating investor-state dispute settlement contains an 'intersection provision' requiring the aggrieved parties to choose either a nearby court or ICSID arbitration[19] to determine the dispute where the matter cannot be settled within a period of six months. If ICSID arbitration is chosen, the state party may require the investor to experience the local administrative review procedures before turning to ICSID. It should be noticed that this 'fork-in-road' clause has been considerably treated lightly in some of China's later BITs, *e.g.* the Germany BIT stipulates that a disputing party may withdraw a dispute from a domestic court and submit it to international arbitration. This BIT additionally makes it clear that the domestic review procedure is an obligatory condition before German investors can depend on ICSID, despite the fact that such measures shall be taken within a period of three months at the maximum. As indicated above, earlier arrangements of the Chinese Model BIT provided extraordinary preference to the specially appointed ad hoc arbitration, not ICSID arbitration, as China endorsed the ICSID Convention late in 1993. Starting then, China started to recognize ICSID arbitration for AOC dispute alone until 20 July 1998 when the Barbados BIT was agreed upon[20] and China recognized non-AOC disputes to the ICSID arbitration as well.

The ISDS procedure begins by informing the host Government of the formalities of the existence and nature of treaty breaches. In fact, the next stage required by each bilateral investment treaty is a 'cooling-off' period for of minimum 3 months to a maximum of 6 months, through negotiations, consultations or other means to determine the matter of the disputing party. In the meantime, foreign investors can obtain strategic support from their own specific government, but once claiming to continue ICSID arbitration, the investor's government is prevented from claiming any other available remedies on his behalf (different frameworks are not expressly disallowed by the investor's government but the attitude of non-discrimination has become the standard).

Investment disputes can be brought by the organization and the general public. In all cases, the investment court is composed of three referees or arbitrators. As with most arbitration, these three arbitrators are chosen on the following basis; one is authorized by the investor, second one is authorized by the state, the third one is chosen by the party or its designated judge or by the named expert, related to the rules applicable to the dispute.[21]

Where the parties to the dispute do not consent or agree to the appointment of the arbitrators, then such appointment is assigned to the executive officials usually at the World Bank, the International

[18] J.F. Zimmerman, *Inter-State Disputes,* New York Press, USA 2006, pp. 155-175.
[19] M.J. Moser, *Dispute Resolution in China*, Juris Publishing Inc., USA 2012, pp. 237-408.
[20] H. Jo & H. Namgung, *Dispute Settlement Mechanisms in Preferential Trade Agreements: Democracy, Boilerplates, and the Multilateral Trade Regime*, Journal of Conflict Resolution, Vol. 56, No. 6, May 2012, pp. 1041-1068.
[21] M. Sornarajah, *The International Law on Foreign Investment*, 3rd Edition, Cambridge University Press, Cambridge 2010, pp. 236-305.

Bureau of the Permanent Court of Arbitration or a private chamber of commerce. The power is vested in them to make the final decision as to the appointment of arbitrators in order to settle the dispute.[22]

5. CPEC Agreement in Multilateral Treaty Context and its Impact on the South Asian Region

5.1. Prospects of CPEC

From a strategic viewpoint, the corridor will bring quite significant benefits to China as after completion, it will expand the number of trade routes between China and other regional countries. China imports 60 percent of its oil from the Middle East and 80 percent of that is transported to China through the long, expensive, and dangerous piracy-rife maritime Malacca Strait route through South China, East China, and Yellow Seas. At present, transportation of energy through the Strait of Malacca takes around 45 days, which could be effectively compressed to less than 10 days if done by means of Gwadar port as it gives the most ideal land and ocean courses for this reason. In this way, Gwadar-Xingjian course can fill in as a contrasting option to the Malacca Straits for the transportation of energy which will meet the needs in short time. It will likewise empower China to import energy and find new markets for its products in Central Asia, Africa, and the Middle East.[23]

CPEC has the opportunity to revive Pakistan's monetary structure, especially through the upgrading of the badly struck energy sector, by cultivating a more compelling energy network.[24] In case the CPEC turns into an advancement corridor for the greater part of Pakistan it will create employment opportunities, reduce poverty, maintain lawfulness by connecting with youth in business exercises and enhance the financial standpoint and pointers.[25] Fortifying the feeble connections between Pakistan's domestic trade and its fares ought to support for both the fares and investment, and promote advancement in goods and administrations. The majority of this would essentially expand the nation's GDP and have a multiplier impact on tax collection other than spending on social sector alone, for example, training, wellbeing and basic necessities of the people.[26] In this specific situation, the CPEC could even add to enhancing security in Pakistan, in a roundabout way through motivating forces for regional soundness and better relations with India, and specifically through development opportunities for Baluchistan and Khyber Pakhtunkhwa.[27] Such a perfect situation is in no way, shape or form ensured the CPEC cannot just alleviate a portion of the primary obstructions thwarting Pakistan's financial improvement but it can additionally increment its officially substantial foreign obligation i.e. external debt. More noteworthy transparency is fundamental to permit a vivid profit-gain investigation that at present is unrealistic. The State Bank's Governor has openly requested subtle transparency elements in the structure of the CPEC's arrangements, which are fundamental to satisfying his obligation as the boss of the nation's macroeconomic security.

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[22] N. Horn & S. Kröll, *Arbitrating Foreign Investment Disputes*, Kluwer Law International, The Hague 2004, p. 147.
[23] R.E. Grumbine, *China's Emergence and the Prospects for Global Sustainability*, American Institute of Biological Sciences, Vol. 57, No. 3, March 2007, pp. 249-255.
[24] T. Zimmerman, *The New Silk Roads: China, the U.S., and the Future of Central Asia, Centre on International Cooperation*, New York University, October 2015, http://cic.nyu.edu/publications/new-silk-roads-china-us-and-future-central-asia (30 April 2017).
[25] A. Shoukat & K. Ahmad & M. Abdullah, *Does Infrastructure Development Promote Regional Economic Integration? CPEC'S Implicationa for Pakistan*, http://www.pide.org.pk/psde/pdf/AGM32/papers/Does%20Infrastructure%20Development%20Promote%20Regional%20Economic%20Integration.pdf (25 April 2017).
[26] F. Shaikh & Q. Ji & Y. Fan, *Prospects of Pakistan–China Energy and Economic Corridor*, Renewable and Sustainable Energy Reviews, Vol. 59, No. C, June 2016, pp. 253-263 .
[27] World Bank Group, *Global Economic Prospects: Heightened Tensions, Subdued Investment,* World Bank Publications, USA 2019, http://www.worldbank.org/en/publication/global-economic-prospects (30 April 2017).

5.2. Impact of CPEC and Challenges in Making South Asia an Integrated Region

In the coming years, CPEC, a mega game-changer project, will significantly change the general geopolitical scene of Asia and can reshape the monetary perspective of the states in the region.[28] It is likely that the entire region will benefit from this passage as this investment can bolster monetary activities, increase trade linkages, redesign particular joint effort, deliver new budgetary open entryways, and increment socio-cultural accessibility among people in the district. The execution of this comprehensive investment would bring economic and financial opportunities that can change the destiny of the regional states that are required to go into multilateral settlement commitments keeping in mind the end goal to help their economies and give investment security and dispute settlement systems in that.[29] Along these lines CPEC has a more prominent local and financial incentive as it would give chance to every regional actor to make South Asia a consistent coordinated region.[30] In spite of the fact that there exist many focal points for upgrading financial joint effort and setting up local interconnection, to put the possibility of CPEC into the truth is as yet confronting a few difficulties. The disparate and clashing interests of some regional and additional regional actors are a danger to the development and accomplishment of CPEC. Since the declaration of CPEC, the territorial situation has as of now changed as some nations have started to see the investment with critical eyes and as a string to their advantage, which can frustrate the tranquil and peaceful nature of the investment.[31]

Afghanistan has tremendous significance in the geostrategic calculus of Pakistan and China, as it is considered to be a connecting link among other sub areas of Asia. Hence, peace and stability in Afghanistan are of crucial significance for Pakistan and China as well as for the security of the entire area.[32] Due to the Central Asian States (CARs) key geo-strategic location and their lavishness in oil and gaseous petrol assets with significant repositories in Uzbekistan, Kazakhstan, and Turkmenistan, all regional and international states – including Pakistan and China – are eager to get into nearer association with these states. For CARs, the majority of the five landlocked nations wish to access the ocean and broaden their energy channels which the CPEC project or corridor can satisfy. The corridor can likewise help in bringing colossal open doors for the CARs in the monetary fields. For the transportation of their characteristic energy assets, CARs can be encouraged with exchange and pipeline courses by Pakistan; and their products can be easily sent out to the Middle East and European states by means of Gwadar Port.[33] At first, the corridor faced resistance from Iran, which was thought to be in opposition and working with India to build its Chabahar port.[34] However, at the end of September 2015, Iran[35] has considered CPEC's cooperation options, which aims to increase availability through road and rail systems to expand the scope of trade and transportation.

Another country that seems to hinder the possibility of CPEC is the United Arab Emirates (UAE). Dubai port is a major part of the UAE economy. Once the Gwadar port is fully operational, it will specifically affect the Dubai port, which could lose 70% of the business area. In addition, the relationship between Pakistan and the UAE has recently been affected by Israel's refusal to launch a struggle against the rebellion in the UAE and Saudi Arabia allied with Yemen. These components incite the UAE to find new important partners in conflict with Pakistan. India is an obvious choice.

[28] M.H. Khan, *Geopolitics of CPEC*, Defence Journal, Vol. 20, No. 3, October 2016, pp. 69-75.
[29] J. Chaisse & P. Gugler, *Expansion of Trade and FDI in Asia: Strategic and Policy Challenges*, Routledge, The Hague 2009, pp. 23-284.
[30] A. Malik, *What CPEC Means for South Asia: It Fundamentally Alters Pakistan's Alignment, Sundering Its Link To The Subcontinent*, The Times of India, November 2016, http://blogs.timesofindia.indiatimes.com/toi-edit-page/what-cpec-means-for-south-asia-it-fundamentally-alters-pakistans-alignment-sundering-its-link-to-the-sub-continent/ (28 April 2017).
[31] K.M. Butt & A.A Butt, *Impact of CPEC on Regional and Extra- Regional Actors*, Journal of Political Science, Vol. 32, August 2015, pp. 23-24.
[32] H. Jo & H. Namgung 2012.
[33] S. Sial, *The China-Pakistan Economic Corridor: An Assessment of Potential Threats and Constraints*, 2014,http://www.academia.edu/13018116/The_ChinaPakistan_Economic_Corridor_an_assessment_of_potential_threats_and_constraints (27 April 2017).
[34] A. Arif, *Gawadar and Chabahar: Implications for the Region,* Institute of Strategic Studies, 2016, http://issi.org.pk/wp-content/uploads/2016/06/Final-Issue-brief-Areeba-dated-07-6-2016.pdf (28 April 2017).
[35] A. Arif, *CPEC: Prospects for Pak-Iran economic relations*, Institute of Strategic Studies, 2016, http://issi.org.pk/wp-content/uploads/2016/05/Final-Issue-brief-Areeba-dated-18-5-2016.pdf (20 April 2017).

Nevertheless, the UAE should understand the ground reality that its opposition to the CPEC project, especially the development of Gwadar port would not last long. In the future, if the UAE is interested in land and development in Gwadar, this can bring great benefits to the UAE as well. If UAE sides with India, this will affect its relations with Pakistan in the future.[36]

Although there are many favorable conditions for the improvement of financial coordination efforts in the region, yet CPEC is considered to be an important factor in the establishment of territorial interconnection. The differences and conflicting interests of some regional actors are the risks for developing and completing CPEC.[37] These are basically the United States and India as an important rival to the implementation of CPEC because it will hurt the Indo-US overwhelming Indian Ocean hegemony. For India[38], CPEC implies that China might have the high ground in the Arabian Sea as it will have complete control over the Strait of Hormuz through Gwadar's seaport. This will probably affect India's trade route. Thus, the expanding vital connection between the two nations as CPEC is a noteworthy worry for India – the transcendent energy of South Asia, which is unmistakably resentful about the arrangement of CPEC and has unequivocally voiced its resistance.[39]

With the continuous existence of conflicts in the region, the United States support in the favor of CPEC project would bear significant impact on CPEC as well as China, itself. By giving China the financial power in the region, the United States can use its expanding economic dependence, with the assistance of China to solve some of the key issues in the region, such as terrorism and fanaticism. In any case, it is not possible to disregard the guidelines for the current session of international politics, which are of interest, and change as geopolitical conflicts change.[40]

The deep and useful associations of Pakistan and China are most likely to overcome the difficulties brought about by regional conditions.[41] The best way to overcome some regional difficulties and inefficiencies is to make the trouble makers understand that CPEC will not only strengthen Pakistan's financial condition situations but also contribute towards the financial uplift of the entire region. In order to soften CPEC's opponents, China and Pakistan need to participate in external political initiatives, should improve negotiations and improve the overall understanding of regional countries. By looking at the vision of each of the key partners, CPEC can stimulate the financial situation, change the economic range of the entire region, and would help achieve the direct benefits out of this opportunity.[42]

5.3. A Multilateral Treaty Context in the South Asian Region akin to NAFTA

At the beginning of the 21st century, globalization was occurring very fast. Through a real network of expansion, the ideas incapable of becoming a reality have shifted the pattern of global collaboration from reciprocity to multilateral cooperation. As a result, the financial channel around the world has risen, often providing huge profits to the developing countries. The EU and the North American Free Trade Area are the main examples of this phenomenon of globalization.[43] In terms of consolidation, there are some areas where South Asia is considered to be the world's least integrated region. China has announced a two-pronged strategy based on the idea of opening up to

[36] S. Pande, *Sino-Pak Strategic Relationship: Implications for India*, Autumn, 2015, http://www.claws.in/images/journals_doc/1942499114_Sino-PakStrategicRelationship.pdf (25 April 2017).
[37] M. Abid & A. Ashfaq, *CPEC: Challenges and opportunities for Pakistan*, Journal of Pakistan Vision, Vol. 16, No. 2, 2015, pp. 142-169.
[38] A. Singh, *Chinese Corridors and their Economic, Political, Implications for India*, 2016, https://therearenosunglasses.wordpress.com/2016/06/08/life-or-death-economic-corridors-for-pakistan-and-india/ (20 April 2017).
[39] A. Ranjan, *The China-Pakistan Economic Corridor: India's Options*, Institute of Chinese Studies (ICS), 2015, http://www.icsin.org/uploads/2015/06/05/31e217cf46cab5bd9f15930569843895.pdf (29 April 2017).
[40] McBride, *Building the New Silk Road*, Council on Foreign Relations, 2015, https://www.cfr.org/backgrounder/building-new-silk-road (29 April 2017).
[41] S. Sial 2014.
[42] O. Alam, China-Pakistan Economic Corridor: Towards a New Heartland, 2015, http://blogs.lse.ac.uk/southasia/2015/11/16/china-pakistan-economic-corridor-towards-a-new-heartland/ (22 April 2017).
[43] P. Dumberry, *The NAFTA Investment Dispute Settlement Mechanism and the Admissibility of Amicus Curiae Briefs by NCOs*, Estudios Socio-Jurídico, Vol 4, No. 1, Jan./June 2002, pp. 58-82.

the west; i) through landlocked countries (new Silk Road) and ii) through waters (21st century Maritime Silk Road).[44]

An outstanding case of creating a multilateral treaty context in the South Asian Region through ISDS mechanism, for around two decades, is Chapter 11 of the North American Free Trade Agreement (NAFTA).[45] Chapter 11 allows corporations or individuals to sue Mexico, Canada or the United States for compensation when actions taken by their governments (or by those for whom they are responsible at international law, such as provincial, state, or municipal governments) violate international law.[46] This is considered to be roughly the same as the dispute resolution system under the CPEC agreement, which makes these agreements quite similar in this sense. The North American Free Trade Agreement (NAFTA)[47] is a multilateral treaty agreement that incorporates an unbiased, rule-based dispute resolution mechanism to affirm the legitimacy and consistency of North American business's involvement in commercial practices. Under this Agreement, a NAFTA party's company can communicate and contribute based on the knowledge of the guidelines to ensure reasonable treatment and to establish ways to solve the problem fairly when an unusual event occurs. Today, NAFTA parties apply and communicate most of the clear and deep-rooted guidelines from NAFTA and the World Trade Organization.[48]

As NAFTA has united the NAFTA countries (Canada, the United States, or Mexico) into one uniform region for any sorts of investment dispute resolution. Same can be inferred and implied under the CPEC agreement. Once CPEC is implemented, it will have an impact on its region or countries along its route, thereby increasing the likelihood of developing regional or multilateral settlements between different countries in the area of investment and dispute resolution of such investment. In this sense, the NAFTA is a major case for multilateral negotiations in South Asian countries where the main aim is to develop the Silk Road Economic Belt (SREB)[49] by developing a vast network of infrastructure. It will link Eurasia to East Asia, South Asia, and Central Asia. Chinese President Xi Jinping announced the Silk Road plan, reported investment of about 40 billion US dollars to create the Silk Road framework and upgrade the network. In this case, Pakistan's geopolitical position makes it more advantageous than other countries by providing a platform for the SREB plan through the implementation of the China Pakistan Economic Corridor).[50]

6. Conclusion

The multidimensional CPEC investment is a fiscally viable arrangement that can serve as a means to connect the entire Asian region to make it more coordinated and economically united in the 21st Century. It will establish the framework of a financial center in South Asia where nations will put and change the BIT setting into multilateral treaty context keeping in mind the end goal to secure their investment and provide safe ISDS mechanism to resolve future investment disputes. That is to say, the provision of a mechanism bore with reasonableness and due process. For instance, if the host government breaches international investment law, the investor secures a chance for dispute settlement that provides him/her with relief and any influence from the potential host state. In order to apply a unified investment dispute settlement mechanism across the entire South-Asian Region, NAFTA provides the main example for accomplishing this objective, thus, paving the way for ISDS mechanism to provide as a good alternative for settling investment disputes.

[44] K.L. Oelstrom, *A treaty for the future: The Dispute Settlement Mechanisms of the NAFTA*, Law and Policy in International Business, Vol. 25, 1993, p. 783.
[45] C.H. Brower II & J.J. Coe & W.S. Dodge, *NAFTA Chapter Eleven Reports*, Kluwer Law International, The Hague 2006, pp. 671-681.
[46] D.S. Macdonald, *Chapter 11 of NAFTA: What are the Implications for Sovereignty*, Canada-United States Law Journal, Vol. 24, 1998, p. 281.
[47] 1994, North-American Free Trade Agreement (NAFTA), 32 I.L.M. 289 & 605 (1993).
[48] J.H. Bello & A.F Holmer, *NAFTA, Law and Business Review of the Americas*, Kluwer Law International, 2001, pp. 589-602.
[49] McBride 2015.
[50] Y. Zahid & T.M. Butt & M. Riaz, *China-Pakistan Economic Corridor: Myth and Realities*, Science International Lahore, Vol. 28, No. 4, July-August 2016, pp.267-271.

Although there are many favorable conditions for the improvement of financial coordination efforts, it is also an important factor in the establishment of territorial interconnection. The differences and conflicting interests of some regional and non-regional actors are risks for completing the vision behind CPEC.[51] These are basically the United States and India, both are viewed as potential rivals to the implementation of CPEC because it will hurt the Indo-US hegemony over the Indian Ocean. At first, the CPEC project also faced resistance from Iran, which was believed to be an opponent and working in collaboration with India to build its Chabar port. In any case, at the end of September 2015, Iran made a turn considering an alternative to investment in CPEC with the aim of increasing cooperation by expanding the scope of trade and transportation through the availability of road and railway systems.

The deep and useful associations of Pakistan and China are most likely to conquer the difficulties brought about by regional conditions. The best way to meet some of these challenges, like the regional hegemony, is to make the opponents understand that CPEC will not only strengthen Pakistan's monetary situations but also contribute to the financial return of the entire region. In order to soften CPEC's opponents, China and Pakistan need to participate in external political initiatives, should improve negotiations and improve the overall understanding of regional countries. In order to express the vision of the Chinese Communist Party, it is very important to cooperate consciously and target territorial personnel to make them a partner, not an enemy. Both Pakistan and China should accept the arrangements reached with the different partners rather than avoid the arrangements and that will help in achieving entrepreneurship, peace and progress. By looking at the vision of each of the key partners, CPEC can stimulate the financial situation, change the economic range of the entire region, and would help achieve the direct benefits out of this opportunity. CPEC has the opportunity to revive Pakistan's monetary structure, especially through the up gradation of the energy sector.

Supposedly if CPEC turns into reality, the corridor for the greater part of Pakistan it will create employment opportunities, reduce poverty, maintain lawfulness by connecting with youth in business exercises and enhance the financial standpoint and pointers. Fortifying the feeble connections between Pakistan's domestic trade and its fares ought to support for both the fares and investment, and promote advancement in goods and administrations. The majority of this would essentially expand the nation's GDP and have a multiplier impact on tax collection other than just worrying to spend on social sector mostly like the wellbeing and fundamental necessities of the people. In this specific situation, the CPEC could even add to enhancing security in Pakistan, in a roundabout way through motivating forces for regional soundness and better relations with India, and specifically through development opportunities for Baluchistan and Khyber Pakhtunkhwa.

Such a beneficial situation ensures in every way, shape or form that CPEC cannot only just remove a portion of the primary obstacles thwarting Pakistan's financial improvement but it can additionally increment its substantial foreign obligations *i.e.* external debt. More importantly, transparency in implementing this mega project is the key to provide clear profit and gain examination that at present is non-existent. The State Bank's Governor has openly asked for strict application of transparency in the implementation of the CPEC's project, and this satisfies his obligation as the head of the nation's macroeconomic sector. To overcome any issues between the developed and undeveloped regions of Pakistan, thorough measures shall be taken to uplift the socio-economic sectors of the Pakistani society.[52]

[51] Butt & Butt 2015.
[52] Reuters, *Pakistan should be more Transparent on $46 Billion China Deal: SBP*, The Express Tribune, 2015. https://tribune.com.pk/story/1004177/cpec-needs-to-be-more-transparent-sbp/ (23 April 2017).

In addition, the 'One Belt - One Road (OBOR)'[53] initiative is considered to be part of Chinese pursuit of carrying out economic projects worldwide. This project bears significant socio-economic impact upon Pakistan through the implementation of CPEC, that is presumed to be part of the OBOR passage. The CPEC in turn is believed to bring positive socio-economic results for the entire South-Asian region.

[53] The Institute of Strategic Studies, *One Belt and One Road: Impact on China-Pakistan Economic Corridor*, http://issi.org.pk/one-belt-and-one-road-impact-on-china-pakistan-economic-corridor/ (23 April 2017).