Written evidence from Dr Yuka Kobayashi (CIR0022)

This written submission accompanies Y. Kobayashi’s (SOAS, University of London) oral submission given to the Foreign Affairs Committee on 27 March 2018. Note: the views represented here are Kobayashi’s own and do not represent SOAS.

General Points:

The BRI is a new labelling of an old initiative (Gwadar (China/Pakistan Corridor) 2006, Myanmar port/pipeline 2005, String on Pearls 2000s, Piraeus 2008, Belgrade-Budapest railway 2009) and one which is better understood as one of China’s attempts at ‘Global Governance with Chinese characteristics’. As China has developed and become an important member of the global community, the country has devised its own approach to global governance; this is not limited to trade/investment but is also seen in the area of human rights (Kobayashi 2016) and the environment/climate change (Kobayashi 2003, 2005).

However, whilst BRI is developing to become an alternative to the existing international economic order, it is not simply a global governance model. Though the global governance elements of financing of infrastructure through China led institutions such as the Asian Infrastructure Investment Bank (AIIB) has received much attention, it is also a complex web of bilateral relations between China and the 72 different participating countries; a regional initiative as seen in the mega-regional trade agreement Regional Comprehensive Economic Partnership Agreement (RCEP); and a domestic policy to address economic overcapacity and address economic underdevelopment in West China. The BRI’s domestic aims are based on Xi’s policies of making China a strong and wealthy nation (‘two centuries project’) and aims to connect China’s underdeveloped regions in the West (Xinjiang) via Central Asia to Europe giving access to new markets and realizing the ‘China Dream’.

Executive Summary:

The UK and China have overlapping interests in trade and investment. However, this relationship is complicated by
1) Different legal culture (de jure vs de facto compliance aka. ‘creative compliance’).
2) UK’s special relationship with the US.
3) UK’s legal and regulatory issues in connection with Brexit.
4) UK’s leverage in negotiations with China post-Brexit.
5) UK’s expertise pool on China and global governance (limited in comparison to the Chinese expertise pool). As a result missing opportunities and important issue areas.

Policy Recommendations

1) Reassess UK’s interests vis-à-vis China and the BRI to include missed opportunities.
2) Link China policy studies and scenario building on Brexit.
3) Nurture China/BRI/Trade and investment expertise in the UK.

Response to Committee’s questions:

1) What exactly lies behind the phrase ‘Belt and Road Initiative’? What are its main aims besides building infrastructure?

The term:

The Belt refers to the Silk Road Economic Belt and the Road refers to the Maritime Silk Road: these two make up the Belt and Road Initiative (BRI).
The Chinese term for ‘Belt and Road Initiative’ is yi dai yi lu - this has not changed since it is inception in 2013. On the contrary, the English term has changed three times: New Silk Road (2013), One Belt One Road (OBOR 2014), and the Belt and Road initiative (2015). The BRI echoes old notions of China’s historical Silk Road, including some ancient maritime routes between China and Europe, as well as the Silk Road’s trails overland. Beijing aims to spend a total of USD 4 trillion in BRI countries, with 900 deals already under way (Kobayashi/Sanchez 2017 and The Economist 2016).

The BRI was unveiled in Xi’s Astana speech in September 2013 and presented as a vision of development which is consistent with Chinese traditional culture, emphasizing the creation of a harmonious and secure environment with China’s neighbours. The Initiative builds on China’s growing military and economic stature, particularly its rapid economic development after WTO accession in 2001. The idea can also be found in Xi’s earlier ‘China Dream’ and ‘two centuries projects’, which envision a militarily and economically strong PRC going forth into its centenary of establishment (in 2049). “China’s rapid rise has offered both a ‘material’ and an ‘ideational’ basis for its leadership to promote its grand ideas of connectivity in infrastructure on a global scale combing its investments/financing with the notions of development and prosperity enhancing security” drawing countries lacking alternative sources of financing into the Chinese economic model with the motto of stability and ‘development for all’ or ‘win-win’ (Dave and Kobayashi 2018).

Some authors have branded the BRI as China’s ‘Marshall Plan’; it expands not only Beijing’s commercial interests and addresses domestic economic overcapacity, but also its soft power. With the Initiative, China will likely have an increase in international status and recognition, developing a new place in the world. “It is also part of a grand strategy where China aims to use connectivity projects to socialize Asia and Europe into its view of global order, which entails improving the world through its ideas, aspirations and norms” (Kobayashi and Sanchez 2017).

The Idea:

The BRI is made up of a bilateral component (China’s relations with 72 of the participating countries, regional initiatives, and global governance initiatives). The focus is on ‘connectivity’ – broadly defined. In BRI, there is the hardware of ‘connectivity’, such as infrastructural projects, road, rail, shipping including ‘dry’ ports (such as Khorgos) and sea ports. There is also the software of ‘connectivity’; connecting the people via initiatives such as the University Alliance and people-to-people projects (these involve cooperation between universities to pool know-how and facilitate transfer of technology, exchanges between civil society, NGOs and artists).

Initiatives focusing on infrastructural development are not unique to China: Hilary Clinton had a similar idea under the New Silk Road to connect South Asia and Central Asia through to Afghanistan, the UN’s ESCAFE had the idea to focus on infrastructural development for Asian countries after WWII, and the EU currently has its TEN-T connectivity platform which was seen as complementary to China’s BRI till negotiations fell apart between China and the EU.

What differs between these other initiatives and China’s BRI can be summarised in the following three points. Firstly, the scale and breadth of the BRI is much more ambitious. The BRI is an Eurasian project connecting China through Central and South Asia to Europe and beyond. In addition, the funding China has promised to date is several times the budget of the US, EU and UN initiatives. Even the Asian Development Bank (ADB) the other regional bank
led by Japan, acknowledges the existence of an “$8 trillion infrastructural funding gap” (ADB 2015), the niche has now been claimed by AIIB. Second, these other initiatives do not have the ideational/software element and solely focuses on the infrastructural hardware. Lastly, whilst the reception of the BRI has been mixed at best, China is very committed to and has unwavering confidence in the BRI.

China’s BRI builds on China’s established reputation and niche in financing and building massive infrastructural development projects at a rapid pace and a low cost, particularly in Africa, and engaging in similar projects in Central Asia, South and South East Asia, Latin America and Europe (Kobayashi and Sanchez 2017). China has also not shied away from investing in regions seen as too unstable and presenting investment risks (Dave and Kobayashi 2018). “Unlike Western states, China is able to deliver financing quickly, without the lengthy process of detailed feasibility and socio-political and environmental effects of investments” (Dave and Kobayashi 2018). Many of the BRI projects are hosted in unstable, underdeveloped countries. These countries are less attractive to Western investors; their lack of capacity and effective rule of law often becomes a deal-breakers for project funding. Many of the BRI participating countries have old-fashioned infrastructure that sorely needs updating. Key regions for the BRI’s success are areas where Chinese investors are welcomed; areas where Russia and the US have scaled back their involvement like Central Asia, Southeast Asia and South Asia, where the infrastructure is severely lacking and requires significant upgrades. Compared with the Russian funding linked with military and security, China appears to be providing financial and technical assistance and updating old links and initiating new projects, which is a welcome change.

Key nodes and Projects:

In contrast to the medieval silk routes where the Central Asian region together with Xinjiang formed the key nodes, the BRI is Sino-centric with Xinjiang at the centre. China’s BRI aims to create incentives and outlets for the less developed Western region of China, Xinjiang. The Develop West policies that were initiated by Zhu Rongji which aimed to bring Xinjiang to be developmentally on par with other regions in China have not been successful in the past decade. By making Xinjiang a gateway for new transport and trade corridors via Central Asia to markets and exports routes in Europe and beyond, it was hoped that a solution to the development problem would materialise (Dave and Kobayashi 2018).

The Silk Road Economic Belt:

Some key projects on the Silk Road Economic Belt, connecting Xinjiang with Central and South Asia are: 1) Khorgos free economic zone (on the China-Kazakhstan border), which is the biggest ‘dry port’ for Chinese goods to be distributed to markets in the Middle East, Europe and Africa; and 2) the China Pakistan Economic Corridor (CPEC), giving landlocked Xinjiang direct access to a deep sea port (Gwadar) in the Arabian sea (Dave and Kobayashi 2018). The Gwadar port was a key node in the BRI as it is an intersection where the ‘Belt’ meets the ‘Road’.

The Maritime Road:

The Maritime Road, formally referred to as the “String of Pearls”, is series of military and commercial ports dotted throughout the Indian Ocean that China
has acquired. Xi’s two centuries goals also call for a “strong and assertive China” which means a modernized and powerful Peoples’ Liberation Army (PLA) and Peoples’ Liberation Army Navy (PLAN). In order to realize this, China requires military facilities spread across the Indian Ocean to link up to its military facility in Djoubuti. The level of Chinese control over these ports on the ‘Road’ is still ambiguous, but Gwadar (Pakistan) and Hambantota (Sri Lanka) show a high level of Chinese involvement. The negotiations for Myanmar’s Kyaukpyu have been troubled; local protests against Chinese involvement created challenges for China’s idea of connecting landlocked Kunming through to the Kayukpyu deep port in the Indian Ocean. However, with Myanmar’s recent swing away from the West towards China, particularly in the recent year, there have been more developments in the BRI in Myanmar.

*BRI in Europe:*

As for Europe, the 16+1 and the Amber Road has shown that Chinese financing is an attractive option for countries negotiating for EU accession, Eastern European countries like the Balkans that require financing to update their infrastructure. Some European countries outside the EU, facing financial difficulties such as Serbia and Montenegro have played host to various BRI projects (these include Belgrade-Budapest Railway, energy projects in Serbia and Roads in Montenegro). However it is not only countries outside the EU but also EU countries with financial difficulty which have shifted towards China – Greece and Hungary have taken positions closer to China, showing how the BRI projects like the Piraeus Port and Belgrade-Budapest Railway are creating a ‘wedge’ in Europe.

2) How well does the UK government understand China’s ambitions with regard to the international economic order? What should the UK do to ensure that China’s participation in the international economic order best preserves what is good in the current system, while allowing a rising economic power a say in global governance?

The UK’s China policy is adequate – the FCO has some very talented individuals who are very knowledgeable about China. However, the UK’s China policy needs to move away from being just ‘adequate’ to ‘innovative’.

*Adequate but not innovative:*

To understand China’s ambitions with regard to international economic order, one needs 1) a firm grasp of China’s economy as well as 2) an appreciation of the international economic order. The UK has some talent in the former and the latter but is limited in staff with both sets of expertise. With regards to the BRI, the UK government has a good understanding of the Initiative’s definition, and its policies reflect this.

Whilst the UK government has a fair understanding of Chinese ambitions, it could improve on leveraging its interests. Theresa May’s response to Xi on her visit to Beijing in February was appropriate, particularly in her assessment of the BRI. However, she could have included more issues, which would have raised Britain’s chances of ensuring its interests. There have

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1 For example, in July 2017, Greece blocked the EU’s statement on China’s human rights.
not been any serious mistakes in UK policy vis-à-vis China in the BRI. However, there have been missed opportunities, where the right issues to represent UK interests have not been focused on (see section of oral evidence on opportunities and challenges of BRI). Opportunities for the UK do not lie in third party participation, but rather legal services. There also needs to be a better assessment on how leaving the EU is going to impact on UK’s trade relations with China. The focus to date is how the UK is going to be perceived by China as an investment destination post Brexit – whilst it is an important issue, it misses the more essential issues.

One of the tasks of the Department of Exiting the European Union (DExEU) is to make sure there are provisions made for all EU treaties, laws, regulations and directives after the Exit. Some treaties were signed by the UK and the EU which make this process easier, but the numbers of treaties alone reach 1700 which show the complexity of the situation. Making sure there are adequate provisions for the Exit in law, regulations, directives and treaties is a multi-year task, and this could have an impact on the UK’s participation in the BRI, coordination between DExEU, Cabinet Office and the FCO will become essential.

In April, EU ambassadors lodged a grievance against the BRI – once the UK leaves the EU, in addition to losing the single market, it will also lose protection and this kind of leverage against China. The UK on its own is not as strong as the UK as a part of the EU. Whilst the EU has had its fair share of issues, the developments with the BRI signal a need for UK to have the EU on its side. Without it, the UK is a single relatively weak state. The UK comes behind Belgium in exports to China, and while Chinese investment in the UK has been healthy to date, the indications post-Brexit are grim.

As mentioned above, the UK has expertise in China and in international economic order. While teamwork between the country experts and disciplinary experts can come up with adequate policy, innovative policy comes when a team has both sets of expertise. This can be done by either incorporating individuals with these skill sets into the discussions, or fostering this ‘in-house’, doing both would be the preferable option.

Limited recourses:

The UK needs to invest more in their knowledge pool. While the FCO China research desk and diplomats posted in China are talented, the resources provided to them are insufficient when compared with the resources available to their US, and EU counterparts. In these countries there is plenty of funding to have in house researchers who contribute to the academic debates in the issue areas (trade, investment, finance and global governance). While China was in its initial ‘learning phase’, catching up with global governance norms and practices, the UK’s adequate China policy sufficed; however, China’s diplomats and negotiators are currently highly educated and versed in the debates. China’s Ministry of Commerce (MOFCOM) has officials who frequently contribute to academic debates in trade/investment, have leading positions in international economic institutions and are on the editorial board of leading academic journals in trade and investment (Kobayashi forthcoming). The understanding of complex trade rules in Chinese diplomats shows China’s development in expertise – they are able to be responsible members of the international economic order as well as find strategic interpretations to existing norms and regulations, sometimes finding opportunities for implementation that is compliant de jure but not de facto and not in ‘spirit of the law’. The Chinese diplomats have found innovative methods for ‘creative compliance’, the UK needs to make sure their experts are on the same level (Kobayashi 2013).

In order for the UK to have a better China Policy, the UK needs to invest more in nurturing its expertise pool, and strengthen links to academics in the area. UK governmental institutions could have a pool of funding to send existing diplomats and FCO researchers for further study, and also cultivate links with academia not merely relying on the existing ones. With the expertise needed for Brexit, there have been ESRC funding schemes for academics to contribute to policy, however, when compared with the US and EU, the scale and attractiveness of such scheme pale in comparison, highlighting the UK’s lack of competitiveness.
3) How would you define the current trend of China’s integration into the global economy, and what are the likely implications for UK-China relations? What are the areas that exist for cooperation, and where might there be differences in China’s and the UK’s interests?

China is extremely well-integrated in the global economy; China benefitted enormously from WTO accession shifting from a manufacturing based economy to one that is well balanced in trade in goods and trade in services. It has moved from being a major recipient of investment to a major investor after a decade in the WTO. As reflected in Xi speech in Davos in 2017, the county has become a defender of globalisation in the age of isolationism. Helped by WTO accession, China has developed a sophisticated understanding of global economic institutions and has been able to shift from a quiet observer to a confident participant, as represented in their implementation, compliance and active participation in WTO dispute settlement (Kobayashi 2006, 2007, 2013). However, these developments do not mean China and the UK, EU and US share the same definition of a ‘market economy’ as evident in the recent discussions on the topic. These terms are broadly defined, and as international agreements are a product of negotiation, definitional sharpness is often compromised for consensus and an agreement.

**Different legal culture:**

The legal culture in the UK and China is fundamentally different. They are from different legal traditions: China follows the civil law tradition while the UK has a common law tradition. Moreover, China uses ‘creative compliance’, while the UK has a firm tradition in rule of law and takes compliance with the ‘spirit of the law’ very seriously. This can create some challenges in joint ventures between the UK and China under the BRI and other cooperative frameworks. The UK and China will have very different positions in terms of intellectual property and approaches to the content of trade agreements as evident in their Doha Round negotiations and positions taken at the Trans-Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP) negotiations. These different legal traditions are also reflected in approaches to investment and financing which puts the UK in a difficult position in participation in the BRI.

**The US complication:**

The UK’s relationship with China is also complicated by the UK’s special relationship with the US. When Trump voiced intentions of leaving the TPP last year, it appeared to shift the balance of mega-regional trade agreements in favour of the China led RCEP. This was much to Obama’s despair, as TPP was a priority for the previous US administration. Although Trump is reconsidering this, this shift in US policy has given Chinese led RCEP a push forward.

As the RCEP is still in the early stages of development, it is unclear where things are headed in the trade agreements. What is clear is that with the US resorting to unilateral measures such as Super 301; the UK is thus placed in an awkward position vis-à-vis China. Should it join the US or should it not. One requires caution in taking unilateral measures; for every measure, the other country could take a counter measure (in this case China can retaliate in soy bean and pork products which would damage US interests). In the long-term view, as trade is based on interdependence, both sides lose more in the end by resorting to unilateral measures.

**Yet opportunities exist:**

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2 For examples of China’s creative compliance in the WTO see Kobayashi 2013.
As raised in the oral submission, many BRI projects are built on joint venture contracts of some kind. A serious consideration for China is the need to protect their companies and workers. However, providing legal expertise in 72 jurisdictions is difficult. In comparison to the young law faculties set up in China after the Cultural Revolution, the UK has a rich tradition of legal expertise. UK universities are leading in the study of foreign countries, and their policies and laws. Contrary to the mainstream view that financial services are the UK’s strongest services sector, the UK knowledge hub, expertise in the leading universities and think-tanks are the biggest service sector the country possess. The strength of the expertise and experience lies in negotiating and implementing joint ventures abroad, expertise which China lacks and UK has plenty of creating a great potential for cooperation. This is also helped by UK law being the preferred legal system written in for arbitration in many of the BRI project contracts. The UK legal services and knowledge has huge potential that can and should be better utilized.

Bibliography:


A number of my publications can be accessed via my website at: