

THE SAMUEL GRIFFITH SOCIETY

BELT AND INROADS: PAVING CHINA'S WAY THROUGH THE STATE OF VICTORIA

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Introduction:

The dynamics in the world are shifting. A new superpower is fast emerging with a human rights record amongst the worst in the world – the People's Republic of China (PRC). It is a regime with over 1 million of its citizens in concentration camps because they don't conform to the ideals of the dictatorship. Those of other religious beliefs are held as prisoners of conscience, and as the China Tribunal under Sir Geoffrey Nice QC has shown, these people are killed for their organs for transplant.

It has ripped up an international agreement and persecutes pro-democracy elements while militarising islands illegally seized. Aside from the internal, brutal ugliness and expansion of its military footprint, the regime also pursues soft diplomacy.

The harsh, internal repression is about keeping the regime in power and in control. Its steady build-up of materiel and personnel is designed to intimidate. Yet its overarching strategy of engagement with the world is based on soft power, aimed at changing the world order without the use of military force and placing China firmly at its centre. And chief in its arsenal of soft power tactics is the Belt and Road Initiative (BRI).

In 2013, Xi Jinping, General Secretary of the Chinese Communist Party (CCP) and now 'president for life' with the removal of term limits on his leadership, unveiled plans for a 'Silk Road Economic Belt' and now known as the BRI. Metaphorically based on the historic Silk Road trade routes that connected the East and West, the BRI is a USD 1 trillion dollar global infrastructure development strategy to create an international trade route that connects China to the world.¹ According to *Victoria's New China Strategy*, the BRI will 'revive the

¹ "The New Silk Road", The Economist (Webpage, 2015) <<https://www.economist.com/special-report/2015/09/10/the-new-silk-road>>.

ancient Silk Road as a modern transit, trade and economic corridor, covering a population of 4.4 billion and an expected economic output of \$21 trillion.’²

The word ‘Belt’ in BRI is short for ‘Silk Road Economic Belt’, referring to the proposed overland routes for rail and road transportation through Central Asia along the famed historical trade routes of Central Asia before reaching Europe. Step one involves linking Central Asia to the Chinese economy and step two involves establishing railway connections between China and Europe. The ‘Belt’ initiative attempts to integrate the Eurasian landmass into a cohesive economic area.

The word ‘Road’ in BRI is short for ‘21st Century Maritime Silk Road’, referring to the Indo-Pacific sea routes through South and Southeast Asia to Africa and the Middle East. The ‘Road’ is China’s plan for China’s development of ports and economic hubs across the Indo-Pacific. The purchase and construction of port facilities and associated economic zones in countries as diverse and distant from one another including (but not limited to) Australia, Sri Lanka, Myanmar, Pakistan and Tanzania, are intended to provide China with maritime access and economic benefit across the Indian Ocean. These port facilities and associated economic zones will ultimately connect to Piraeus, Greece’s major port and owned by Chinese shipping group COSCO, allowing direct access to the markets of Europe.

China says the BRI will engage 65 countries, 4.4 billion people and approximately 40 per cent of global GDP’ and reportedly established 75 overseas economic and trade co-operation zones in 35 countries thus far.³ In addition to the 65 countries initially outlined for the BRI in 2013, already just under one-third of the world’s nations, the BRI has no fixed geographic scope. Instead, it continually builds on areas targeted for economic engagement, from ocean-based ‘blue economic passages’ to connect the world’s port’s with China to a ‘Silk Road on ice’ passage in the Arctic region, and an ever-expanding list of ‘new strategic territories’ including the deep sea, the Digital Silk Road, and even outer space – the Space Information Corridor.⁴

The BRI’s objectives and ‘the China Dream’

To understand the BRI in its fullest capacity is to understand China’s history and ‘the China Dream’. China is a nation with a long history and proud culture, stretching back thousands of years. Historically, China viewed their rulers as possessing dominion and leadership of not only their nation-state but the entire world. After the ‘Century of Humiliation’, given as the years of 1839-1939, which witnessed the powerful nations of Europe colonise, occupy and otherwise dominate China, the driving ethos of the CCP is to rebuild the Chinese nation, restore the glory of its ‘Celestial Empire’ and reposition itself rightfully as *primus inter pares* among all the nations of the world.⁵

Deliberately portrayed as the new Silk Road, the BRI is the instrument to realise the Chinese Dream, serving as an appropriate historical metaphor for its aspiration to return China to its former and rightful glory. At the National People’s Congress in 2018, Xi was announced as ‘president for life’ and declared China’s readiness to fight ‘the bloody battle’ to regain its

² Victoria's China Strategy (2020) <<https://www.vic.gov.au/victorias-china-strategy>>

³ China Belt and Road Initiative: Measuring the impact of improving transport connectivity on international trade in the region – a proof concept study https://www.rand.org/pubs/research_reports/RR2625.html

⁴ "China Proposes 'Blue Economic Passages' For Maritime - Business - Chinadaily.Com.Cn", Chinadaily.Com.Cn (Webpage, 2017) <https://www.chinadaily.com.cn/business/2017-06/21/content_29825517.htm>.

⁵ Tom Miller, *China's Asian Dream* (Zed Books, 2019).

rightful place in the world and outlined his visions for the ‘rejuvenation of the Chinese nation’, one that was the ‘greatest dream’ of China of the world's second-largest economy.⁶

The CCP therefore carefully crafts the BRI's image as a global economic and infrastructure programme, packaged to the world in a spirit of mutually beneficial economic co-operation. In 2015, the Xinhua News Agency, the largest and most influential Chinese state-owned media organisation, described the BRI as ‘a transnational network connecting Asia with Europe and Africa, with the aim of promoting common development among all the countries involved.’ The ‘hallmarks’ of the BRI include ‘openness, inclusiveness and mutual benefit’ and ‘China welcomes anyone who wants to jump on its express train of development.’⁷

For all the rhetoric that emanates from the CCP, the BRI is not simply a global economic and infrastructure exercise in goodwill. It is a vastly multifaceted economic and security programme that deliberately challenges the international order. The director of the (then named) Centre of One Belt and One Road Studies at the China National Institute for Shanghai Cooperation Organisation, International Exchange and Judicial Cooperation, Professor Xiang Lanxin, spoke of the BRI as a path to a ‘post-Westphalian world’.⁸

While challenging the international order and using the BRI as a path to a ‘post-Westphalian world’, the BRI is also intended as a security mechanism for China's expanding spheres of influence. In the Pacific, the CCP portrays the BRI as both premised on, and further validating its claims to the islands in the South China Sea. It is also using the BRI to increase its efforts in challenging Australia's neighbours in the South Pacific. China is growing its engagement with the Solomon Islands, Papua New Guinea, Fiji, Vanuatu and Tonga through aid, trade, loans, tourism, industry, police, military, educational and other arrangements.⁹ These actions are part of a broader Chinese challenge to U.S hegemony and Western interests in the Pacific.

On the far side of the Indian Ocean, the lowly populated nation of Djibouti provided China with both a trade port as well as its first overseas military base in 2017, an event that caused little notice in international affairs at the time. The National Bureau of Asian Research noted the radical shift in policy for the PLA:

On August 1, 2017, the day of its 90th anniversary, China's People's Liberation Army (PLA) officially inaugurated its first permanent overseas support facility under the blazing Djiboutian sun. The event indicated a dramatic departure from the previously prevailing claim that China “does not station any troops or set up any military bases in any foreign country” as a matter of policy. It also highlighted the long-term role assigned to the PLA in protecting China's expanding national interests, a role that Hu Jintao had granted the Chinese military back in 2004 as part of its “new historic

⁶ James Griffiths, "China Ready To Fight 'Bloody Battle' Against Its Enemies", CNN (Webpage, 2018) <<https://edition.cnn.com/2018/03/19/asia/china-xi-jinping-speech-npc-intl/index.html>>.

⁷ "Commentary: China's "Belt And Road" Initiative Delivering Benefits To World - Xinhua | English.News.Cn", Xinhuanet.Com (Webpage, 2017) <http://www.xinhuanet.com/english/2017-04/15/c_136210956.htm>.

⁸ Sidra Tariq Jamil, "Perspectives On The Intercultural Communication Strategy Between China And Islamic Countries Along Belt And Road Initiative" [2020] School of Journalism and Communication <<https://www.globalmediajournal.com/open-access/perspectives-on-the-intercultural-communication-strategy-between-china-and-islamic-countries-along-belt-and-road-initiative.php?aid=87937#25>>.

⁹ Graeme Dobell, "China Challenges Australia In The South Pacific | The Strategist", Australian Strategic Policy Institute (Webpage, 2018) <<https://www.aspistrategist.org.au/china-challenges-australia-in-the-south-pacific/>>.

missions.”... The 2015 defense white paper put an unprecedented emphasis on maritime interests and on the PLA’s responsibility to protect them as one of its core missions.^[4]

Since the success of that event three years ago, the future role of the People’s Liberation Army (PLA) in protecting BRI facilities outside of China is now a viable strategy option by the CCP.

On the economic side, the vast majority of the BRI uses PRC state-owned enterprises funding through significant loans provided by China’s policy banks and their other financial institutions such as the Asia Infrastructure Investment Bank and the Silk Road Fund (institutions founded to rival the IMF and WTO).¹⁰ The debts imposed on vulnerable partner countries through these projects have been criticised as ‘debt trap diplomacy’.¹¹ The most infamous example of ‘debt trap diplomacy’ is the Hambantota Port in Sri Lanka, ceded to China, along with 15,000 surrounding acres, for 99 years to pay off approximately USD \$1 billion in debt. The port is strategically located in one of the busiest shipping lanes in the world and is only a few hundred kilometres from its rival, India.¹²

China also uses its massive financial assets to dominate smaller economies through long-term control of infrastructure, natural resources and associated land assets, and through offering poor credit terms for infrastructure loans. Further, the ‘production capacity co-operation’ which China lauds as an integral aspect of the BRI, often involves the simple transfer of Chinese-owned production capacity to countries where production is both cheaper and their markets closer. Such processes can also result in China exerting some control over local markets, labour and export policies.

In a news article, this author was quoted as outlining concerns on the rise of China and its expansionist agenda. One expert dismissed these concerns, stating ‘...China doesn’t have ambitions for global conquest’, a misleading statement that fails to understand the nuance of the CCP’s aims.¹³ The CCP does not plan to ‘conquer’ the world by military might – as readers of this so-called expert may interpret – but it does harbour ambitions for global conquest by economic might. This is clearly evidenced in the global ambitions of the BRI and the continual pursuit of economic expansion into locations further and further away from China, including Africa, Latin America, Oceania, the Arctic and Antarctica.

Many nations do not understand or do not perceive the security threat the BRI is but many do understand the BRI is a joint strategic and economic weapon of the CCP, and one that poses a profound challenge to the stability of the global political and economic order.

Pursuing the BRI

With vast amounts of information publicly available even to a casual desktop researcher, it is disturbing that a democratically elected government of Australia has every intention of entering into a BRI agreement with such a brutal regime. But that is exactly what the

¹⁰ Tan Xinyu, "Central Soes Managing Over 3,000 Projects Under BRI", Chinadaily.Com.Cn (Webpage, 2018) <<http://www.chinadaily.com.cn/a/201811/12/WS5be9103ea310eff30328812f.html>>.

¹¹ Mark Akpaninyie, "China’S ‘Debt Diplomacy’ Is A Misnomer. Call It ‘Crony Diplomacy.’", Thedi diplomat.Com (Webpage, 2019) <<https://thedi diplomat.com/2019/03/chinas-debt-diplomacy-is-a-misnomer-call-it-crony-diplomacy/>>.

¹² Maria Abi-Habib, "How China Got Sri Lanka To Cough Up A Port (Published 2018)", Nytimes.Com (Webpage, 2018) <<https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html>>.

¹³ Finn McHugh, "Senator’S Incendiary Comment On China", News.Com.Au (Webpage, 2020) <<https://www.news.com.au/world/asia/eric-abetz-likens-china-to-the-rise-of-nazi-germany/news-story/2e44867b1c2f601843d50c28f021c38c>>.

Victorian Labor Government deliberately and wilfully seeks. The BRI has broad ramifications for Australia's security, foreign affairs, state and federal economies and our values and strategic interests as a Western democracy in the Pacific. While exerting broad influence on the internal and external affairs of Australia, it also provides a healthy dose of propaganda for the CCP as it legitimises the BRI to weaker powers or countries otherwise hesitant to ratify BRI agreements.

The Victorian Government foreshadowed its efforts to massively increase its economic links with China when it launched its China Strategy in conjunction with the Chinese province of Jiangsu and with consultative input from the Chinese government. One of the three 'themes' identified in 'Victoria's new approach to engaging China' is that 'Victoria will build substantive and enduring connections with China at every level – between our governments (including at the bilateral provincial level), businesses, communities and individuals.'¹⁴ The Strategy sees 'Victoria's total share of Chinese investment to Australia to increase from 8 per cent to 20 per cent by 2026' and the 'Victorian Government to attract and facilitate \$2 billion of Chinese investment into the State... within the next ten years.'¹⁵ The 2018 Progress Report on Victoria's China Strategy demonstrated that 'Victoria's share of investment from China into Australia has already reached 25 per cent — exceeding the ten-year target in the Strategy.'¹⁶ Alarming, the Progress Report revealed how 'the China Investment Corporation joined the Lonsdale Consortium to purchase 20 per cent of the 50-year-long Port of Melbourne lease.'¹⁷

It was clear that the CCP had grander plans for Victoria when the 2018 Progress Report stated that its '...commitment was recognised when the Premier was the only state leader invited to the prestigious Belt and Road Forum in May 2017.'¹⁸

Three years after the BRI was first announced by Xi Jinping, on 8 October 2018, the Victorian Government and China's National Development and Reform Commission signed a Memorandum of Understanding (MOU) on the BRI with the Victorian State Government. The signing of the agreement appears to have been promoted by various business lobbies in Victoria, key among which was the Australia China Belt and Road Initiative group (ACBRI), an advocacy group headed by former Trade Minister Andrew Robb and revealed by *The Australian* newspaper to not be registered under the Foreign Influence Transparency Scheme.¹⁹ ACBRI's website is no longer functional, and it is unclear whether it continues to operate.

Facing immediate scrutiny over the MOU, Premier Andrews initially refused to release its contents, only relenting after pressure from state opposition leader Michael O'Brien and the federal government. When finally revealed, an extreme lack of detail in the MOU was immediately apparent, instead making vague references about 'co-operation' and 'promoting the Silk Road spirit' and containing typographical errors, such as 'joint researches' rather than 'joint research'.

¹⁴ The Victorian Government, *Victoria's New China Strategy* (2016).

¹⁵ Ibid.

¹⁶ The Victorian Government, *Victoria's China Strategy Progress Report 2018* (2018).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Remy Varga, Damon Johnston and Rachel Baxendale, "Coronavirus: China Influencer Jean Dong'S Firm Up For \$50,000 In Victorian Funding", *Theaustralian.Com.Au* (Webpage, 2020) <<https://www.theaustralian.com.au/nation/politics/coronavirus-china-influencer-jean-dongs-firm-up-for-50000-in-victorian-funding/news-story/c2bfa686606403143741d6a5369d3368>>.

It also fails to correctly identify the parties mentioned in the MOU. It reads: ‘The Government of the state of Victoria, Australia (hereinafter referred to as “the Parties”) and the National Development and Reform Commission (NDRC) of the People’s Republic of China.’ The section, ‘hereinafter referred to as “the Parties”’ should be placed after the reference to the NDRC of the People’s Republic of China. Given that ‘the parties’ refers only to Victoria, all the obligations in the MOU stating the parties commit themselves to undertake any certain activities applies only to Victoria.

The only redeeming feature is Article V, Chapter V, which tells us the MOU does not create legal relations. Apart from drafting issues, concerns were raised over what rights Victoria had to terminate the agreement, as it can only be terminated by mutual understanding. It appears the MOU was written in Chinese and then poorly translated into English. The MOU is still freely available on the internet.

In October 2019, the Victorian Government doubled down and signed a framework agreement on the BRI. The agreement puts forth several areas of co-operation, including attempts to involve more Chinese companies working on Victoria’s \$70 billion ‘Big Build’ transport infrastructure construction programme and for companies from the state to get work on BRI projects around the world.²⁰ Like the MOU, the Framework Agreement is vague and bereft of detail, outlining how it will ‘provide guidance for all-round co-operation’ describing itself as ‘a coordination and engagement mechanism between Victoria and China’. It sets forth in poor prose the idea to ‘adhere to the principles of business dominated, market-oriented and government-guided’ and ‘bring into play respective strengths (*sic*) with the concept of openness’.²¹

Further on, both parties agree to ‘comply with international rules, and respect laws of opposite country’ without ever specifying what laws of China that Victoria should mutually respect, considering China’s laws (or lack thereof) regarding human rights abuses, including the detention of one million ethnic minority Uighers, the mass surveillance of its citizens, the forced organ harvesting of prisoners of conscience, amongst many others.

It is ironic that the last sentence in the overview of the framework of the agreement states that the Victorian Government will ‘consider both Victoria’s and the national interest before agreeing to any specific activity.’²² It was later revealed that no consultation occurred between the Victorian Government and the Department of Foreign Affairs and Trade (DFAT) over the final framework agreement that was signed. This was despite early warnings from DFAT that it was not in Australia’s foreign policy interest to sign up to the agreement. This reluctance to consult with DFAT on the framework agreement and release the MOU only after sustained pressure is indicative of a government that did not want scrutiny over these agreements.

Similar to Premier Andrews’ handling of Covid, the same skill, aptitude and competence appears to have been expended on the BRI. In early June 2020, Premier Andrews again doubled down and insisted that Victorian involvement with the BRI was still a good deal for the state despite continuing pressure, including Federal Opposition Leader Anthony Albanese who said he would not sign Australia up to the BRI. Premier Andrews said that while ‘We

²⁰ The Victorian Government, The Framework Agreement On The Belt And Road Initiative (2019).

²¹ Ibid.

²² Ibid.

don't agree with China on everything', 'some may be happy to take their orders from Canberra - I'm not one of them.'²³

State governments' power and the Foreign Relations Bill

Given the ample evidence (even back in 2018) indicating the BRI was a threat to Australia's national security, the Victorian Government's decision to continue to sign an MOU and framework agreement brought to the fore serious questions on the legal ramifications of an Australian state government signing agreements that raised serious national security concerns and foreign policy considerations, both of which should fall squarely under the purview of the Commonwealth Government.

Commonwealth laws can apply to state governments and override conflicting state laws. The Commonwealth has the power to enact or enforce specific legislation under valid heads of power for national security purposes. The present agreement between Victoria and China is a non-legally binding agreement containing vague statements. It is difficult to assess which laws, if any, may apply to future theoretical circumstances. The vague nature of the two agreements can be viewed as a way to slowly pull the Victorian Government in, making it increasingly difficult to untangle itself while still acting in accordance with commonwealth laws.

State executives can sign agreements, contracts, memoranda of understanding and the like by virtue of their nature as governments and legal entities. However, the Commonwealth may legislate where it has a head of power and states are then subject to Commonwealth laws, as are their agreements and any matters under such agreements.

In brief, each of the States is a sovereign State in its own right. They came together in an indissoluble Commonwealth federation for certain purposes, one of which was external affairs. Even in these specific certain purposes, the states can act and legislate if not in breach of Commonwealth laws. So, the Northern Territory, (taking a hypothetical example of course) could sell a port to a foreign interest in the absence of a federal law forbidding such a transaction.

The Constitution enshrines the right of the Commonwealth to create laws that override state laws as elucidated under Chapter V, Section 109, which states simply and unambiguously that 'When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.'

The Commonwealth has little awareness of the foreign engagement by State and Territory governments, public institutions such as universities, government departments or agencies with foreign governments, and their associated entities. There is no existing mechanism or consistent practice to ensure that State or Territory governments notify the Commonwealth of arrangements with foreign governments or consult and seek advice on the impact of such arrangements on Australia's foreign relations and national security.

Due to the Commonwealth having no oversight of the nearly tens (possibly hundreds) of thousands of arrangements Australian entities have with foreign entities and the sustained and unprecedented foreign interference experienced in Australia, the Commonwealth Government announced in August of this year it would legislate the *Foreign Relations (State*

²³ Noel Towell, "Andrews Says He Won't Lecture Beijing Nor Take Orders From Canberra", The Age (Webpage, 2020) <<https://www.theage.com.au/politics/victoria/andrews-says-he-won-t-lecture-beijing-nor-take-orders-from-canberra-20200602-p54ytd.html>>.

and Territory Arrangements) Bill 2020 to provide it with the necessary oversight and if needed, veto power.

An example of poor state government decision making which necessitates the Bill, is the infamous lease of the strategic Darwin Port to China for 99 years. The Foreign Relations Bill aims to oversee such state government actions.

The Bill is a 'legislative scheme for Commonwealth engagement with arrangements between State or Territory governments and foreign governments. The scheme will also cover entities that are associated with State or Territory governments (such as local councils and Australian public universities) and foreign governments (such as municipal or provincial governments).'²⁴ Furthermore, the framework of the Bill 'ensures framework ensures that arrangements between State or Territory governments and foreign governments, and their associated entities, do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.'²⁵

As empowered under Section 51(xxix) of the Constitution, the Federal Parliament has the power to make laws with respect to 'external affairs'. 'The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia, as well as legislation with respect to matters concerning Australia's relations with other nations.'²⁶ Therefore, it is right and proper that the Commonwealth Government, exercising its clear constitutional powers, legislates to protect our national interest.

The framework of the Bill 'ensures that arrangements between State or Territory governments and foreign governments, and their associated entities, do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.'²⁷

This is intended to foster a systematic and consistent approach to foreign engagement across all governmental levels in Australia. The framework to be established by this Bill ensures that State/Territory entities cannot negotiate, enter, vary, or continue to give effect to arrangements with foreign entities where the arrangement would adversely affect the Commonwealth's foreign relations or is inconsistent with the Commonwealth's foreign policy. Furthermore, 'whether an arrangement adversely affects Australia's foreign relations or is inconsistent with Australia's foreign policy is a matter for the Minister to consider on a case-by-case basis.'²⁸

Therefore, even without considering the threat of the BRI, the text of the Bill gives near certainty that the BRI will fall under the scope of the Bill. The Commonwealth Government would then have the capacity to terminate BRI arrangements and agreements entered into by the Victorian Government with China.

Conclusion

The possibility of Victoria owing billions of dollars of debt to the CCP could result in devastating economic and strategic damage, not only for Victoria but the nation, noting

²⁴ The Parliament of the Commonwealth of Australia, *Australia's Foreign Relations (State And Territory Arrangements) Bill 2020 Explanatory Memoranda (2020)*.

²⁵ Ibid.

²⁶ "Commonwealth Of Australia Constitution Act", *Legislation.Gov.Au (Webpage, 2013)* <<https://www.legislation.gov.au/Details/C2013Q00005>>.

²⁷ The Parliament of the Commonwealth of Australia, *Australia's Foreign Relations (State And Territory Arrangements) Bill 2020 Explanatory Memoranda (2020)*.

²⁸ Ibid.

Victoria represents 25 per cent of our nation's economy. For the world's second largest economy, owning so much of a state's debt and acting contrary to our national interests should have been sufficient grounds for ruling out any such deal. Yet Victoria proceeded.

The decision to pursue the BRI, despite warnings from DFAT, ample evidence pointing to its real nature as an instrument of foreign interference and other nations succumbing to 'debt-trap diplomacy', reveal the Victorian government turned a blind eye to these considerations and instead was all too eager to enter Faustian agreements in exchange for vast sums of money.

The Australian people expect their federal government to monitor these types of agreements and if need be, step in and cancel them. The Bill, empowering the Commonwealth to do so, is still being debated in the Parliament at the time of writing.