

## The Legal Dimensions of China's Belt and Road Initiative: An Introductory Assessment

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### ABSTRACT

China's Belt and Road Initiative (BRI) is a global and highly ambitious infrastructural, trade and investment as well as economic development initiative of epic proportions. It is spearheaded and unwritten by PRC China. It strategically and seamlessly connects China in the epicentre with her South, South-east and Central Asian, Middle-eastern, African and European countries as well as Mongolia, Eastern and the rest of Russia. The "Belt" covers a network of overland road and rail routes, oil and natural gas pipelines as well as other infrastructure projects that will span out from Xi'an in central China across Central Asia and ultimately reaching as far away as Moscow, Rotterdam, and Venice. The belt also covers planned business development corridors running far and wide-- along the major Eurasian Land Bridges, through China-Mongolia-Russia, China-Central and West Asia, China-Indochina Peninsula, China-Pakistan, and Bangladesh-China-India-Myanmar trade/economic corridors. The "Road", on the other hand, is its maritime counterpart-- the 21st-Century Maritime Silk Road -- a network of planned ports and other coastal infrastructure projects that dot the map from South and Southeast Asia to East Africa and the northern Mediterranean Sea. The southern maritime trade routes reach as far as the Oceanic countries in the Pacific Ocean. The BRI's recent expansion incorporates also the Arctic sea routes (Ice Silk Road or One Ring). The focus of this article is more on the salient features of BRI with emphasis on the legal aspects of thereof.

### Key Words:

Belt and Road Initiative, Belt, Road, Ice Silk Road, Economic Development Corridors, Infrastructure Development, Public-private Partnerships, Proper law of the contract, arbitration of commercial disputes, E-commerce, E-contracts, E-payment, E-economy, digital free trade zones, One Click, Kunming-Singapore Rail Road, High Speed Railway (HSR), New Eurasian Land Bridge, rule of law, BRI Economic Community, sustainability and CSR.

## 1. INTRODUCTION

The trade routes map issued by PRC China below shows the economic and infrastructural vastness and potentials of China's 21<sup>st</sup> Century Belt and Road Initiative comprising of two main trade routes—the 21<sup>st</sup> Maritime Silk Road (beginning in Fujian province and passing through Guangdong, Guangxi, and Hainan before heading south to the Malacca Strait, traversing the Indian Ocean, Suez Canal, and leading to Athens and Venice and meeting up with the land-based Silk Road -- Silk Road Economic Belt -- from Xian (China) spanning across Central Asia, Middle East and Russia ending up in the European cities and ports. There is also a southern maritime trade route linking the South Pacific island states. In the Arctic, there is also the Arctic sea routes (the Ice Silk Road or One Ring). The BRI could easily be indicated as the biggest 21<sup>st</sup> Century trade and development initiative after the WTO and the abandoned TPPA. It is a very gigantic one indeed.

The Belt and Road Initiative encompasses more than 62% of the world population (4.4 billion), currently accounting for about 30% of global GDP and more than 35% of global merchandise trade.<sup>1</sup>

It must be pointed out and emphasised that the Belt and Road Initiative contemplates a two-way business traffic to the participating states led and underwritten by China. It will in the first stage involve massive investments in infrastructure development along the overland and maritime roads. The infrastructure developments will eventually lead to other greater and vital economic developments or spin-offs along the same roads. On the Indian sub-continent and African continent, too, economic development corridors and trade roads have also been planned and connected to at least one of the main trade roads. Before going any further, a few important and initial remarks must be noted. First, it must be stated in the clearest terms that this Chinese led trade and development initiative is expected to create a win-win economic and trade partnership for all participating states particularly the developing countries. It is unlikely that developing countries along the Belt and Road region will oppose it. Opting out of the trade initiative is likely to occasion economic disadvantage and alienation to the developing countries. It is opined that the Chinese inspired trade and development initiative must be viewed positively by all trading nations. It should not be viewed negatively as “global commerce on China's terms” or at the expense of other countries' national sovereignty or identity provided that there is respect for rule of law, basic human rights compliances, fairness and sustainability considerations underlying this ambitious trade and development initiative. The comments in the Australian news that BRI or ‘OBOR could redefine global trade and mark a tipping point for a new Asian century’, too, need not be viewed with alarm. It must be pointed and stressed that BRI is primarily an Asian inspired and led trade and development initiative with a global perspective for the 21<sup>st</sup> Century and beyond. It has the potentials of creating a vast and extensive trade and development network by linking at least three continents-- Asia, Europe and Africa. In fact, the final and eventual impact decades later from today may be—“the vision document for OBOR goes well beyond

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<sup>1</sup>Victoria Craw in an opinion piece in news.com.au (an Australian newspaper) on 23<sup>rd</sup> July 2017. The title of the news bulletin is “China's Belt and Road Initiative could redraw the map on global trade”. It appeared in the World Economy's section. Read also Rajeev Ranjan Chaturvedy's "The 21<sup>st</sup> century Maritime Silk Road." An article in Observer Research Foundation's website. An independent think tank on global economy. 10<sup>th</sup> Feb 2017.

infrastructure, envisioning closer coordination of economic development policies, harmonization of technical standards for infrastructure, removal of investment and trade barriers, establishment of free trade areas, financial cooperation and ‘people to people bonds’ involving cultural and academic exchanges, personnel exchanges and cooperation, media cooperation, youth and women exchanges, and volunteer services.”<sup>2</sup>

## 2. THE SHORT-TERM, MEDIUM TERM AND LONG-TERM PLANS AND OBJECTIVES OF BRI

We will list financing or investment as the first hurdle to overcome. Who will underwrite this initial investments? Mostly infrastructural at the beginning.

It has been reported that the Chinese-led trade and investment initiative will “receive funding from seven capital pools, amongst which are, the Silk Road Fund, the Asian Infrastructure Investment Bank (AIIB), BRICS Bank, and the SCO Development Bank.”<sup>3</sup> These banks are likely to play major roles in funding. “It is expected to cost at least \$900 billion, with estimates up to three times that. China has already pledged more than \$100 billion and it will be completed in a series of bilateral projects — such as the \$46 billion China-Pakistan economic corridor, or a \$5.2 billion railway that will eventually link Laos, Thailand, Malaysia and Singapore.” According to American newspapers, BRI is projected to cost a \$1 trillion.<sup>4</sup>

To reiterate, the long-term objectives will be beyond investment, trade, commerce and economic development. The social welfare of the participating countries and the local communities, transparency, public engagement and adherence to international practices and eventually standard rules, too, should be on the agenda as well. Peace, friendship, co-operation, innovation and security along the Belt and Road region should also be paramount in order to ensure the eventual success of the global trade initiative. Whether it will eventually lead to ‘One Culture One Region’ remains to be seen as one of the objectives of BRI as the 21<sup>st</sup> Century Chinese-led trade initiative traverses huge regions of the world with diverse racial groups, cultures, historical backgrounds and religions involving and impacting at least some 70 countries.<sup>5</sup>

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<sup>2</sup>Based on a post by Mr. Bert Hofman at the October DRC-CIRSD Silk Road Forum 2015, Madrid, Spain. Bert Hofman is the World Bank's Country Director for China, Mongolia and Korea in the East Asia and Pacific Region. He is based in Beijing. He wrote in his blog on OBOR. The title of this writing is – “China’s One Belt One Road Initiative: What we know thus far?”. Please note that China’s ‘One Belt, One Road’ (OBOR) has seen been rebranded as ‘Belt and Road Initiative’ (BRI).

<sup>3</sup>‘SCO’ stands for Shanghai Co-operation Organization. The group includes China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan, covering over 30 million square km and accounting for a quarter of the world’s population. It has Afghanistan, Belarus, India, Iran, Mongolia and Pakistan as observers, and Armenia, Azerbaijan, Cambodia, Nepal, Sri Lanka and Turkey as dialogue partners.

<sup>4</sup>Bert Hofman, *supra*. n 2.

<sup>5</sup>“Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road” (2015/03/28), issued by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization. See also a book on this new trade initiative: Chris Devonshire-Ellis, *China’s New Economic Silk Road*, (Hong Kong: Asia Briefing Ltd, 2015).

## 2.1 What does ‘Belt’ and ‘Road’ encompass?

The “Belt” is a network of overland road and rail routes, oil and natural gas pipelines, and other infrastructure projects that will stretch from Xi’an in central China through Central Asia and ultimately reach as far as Moscow, Rotterdam, and Venice. Rather than one route, belt development corridors are set to run along the major Eurasian Land Bridges, through China-Mongolia-Russia, China-Central and West Asia, China-Indochina Peninsula, China-Pakistan, Bangladesh-China-India-Myanmar.<sup>6</sup>

The “Road” is its maritime equivalent-- the 21st-Century Maritime Silk Road--a network of planned ports and other coastal infrastructure projects that dot the map from South and Southeast Asia to East Africa and the northern Mediterranean Sea.<sup>7</sup> The maritime route extends to the Oceanic nations in the Southern Pacific. In the north, the Arctic sea routes have been planned.

## 3. CHALLENGES AHEAD FOR THE BRI INITIATIVE

### 3.1 BRI: Tackling and Ironing Out the Gauge Differences Issue

The railroads linking different countries in the BRI regions use different gauges—the metre gauge, the Standard Gauge Railway (SGR) or other gauge or gauges. These constitute or involve huge transport problems and costs to the railway companies transporting the goods or passengers. The PRC Chinese railways use the Standard Gauge Railway (1.435 meter). However, India and Russia use wide gauge tracks of 1.676 meters and 1.52 meters, respectively. BRI HSR projects heading towards Central, South Asia, South-east Asia and West towards Europe will have to face the gauge differences. The new railroads (for example, the Indonesian Jakarta-Bandung high-speed railway project or the Nigerian Lagos-Kano HSR project) built under Chinese investment will, of course, not have the gauge issue as the Chinese railway consortiums will use the SGR gauge.

Just to point out and highlight problems caused by the gauge differences, we may now examine the Chinese goods trains heading westwards towards Russia and European cities. Due to the gauge differences, trains cannot operate from China or European countries into or out of the former USSR countries without altering bogies. Usually large facilities are provided to execute this cumbersome procedure at most border crossings between the Russian and SGR gauge territories (e.g., at Zabaykalsk or Erenhot). Changing bogies on a rail car usually takes hours and special, heavy equipments are required. In many cases (especially, containerized freight), freight is transshipped from one train to another without the need of changing the bogies. The use of variable gauge axles may not be a solution either. Such a procedure may save time but it could incur higher capital costs.

To add insult to injury, gauge differences along the BRI rail routes may involve geopolitical rivalry as well which may cause serious problems. For example, no offence intended, New Delhi or Moscow may not fancy China to impose geopolitical influence or leadership along its BRI railway routes.

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<sup>6</sup>Bert Hofman, *supra*. n 2.

<sup>7</sup>*Ibid*.

### **3.2 Framework for Seamless Cross-Border Carriage of Goods by Rail**

There is also the legal liability framework for the seamless cross-border carriage of goods by rail for loss or damage to the goods carried on board the trains along the BRI routes. This will also have to be ironed out in the short and medium term. In the long term, the search for a uni-modal legal framework may be necessary in the face of the expected increase in the shipment or carriage of goods by rail throughout the rail roads in the BRI regions as this mode of transportation may prove to be faster, cheaper and safer than by sea or air.

The eventual massive and rapid transport and movement of goods by rail especially to and from the BRI trade routes will definitely also promote goods in transit insurance business as well. Eventually when High Speed Rail (HSR) services also kick in, a liability regime and insurance of the risks involved will also have to be considered.

The issues highlighted here may find solutions from the experiences of the European Community in handling and facing the same.

### **3.3 Framework for Maritime Carriage of Goods**

Next, there is the legal liability framework for the maritime carriage of goods. This, too, needs to be fixed in the short-term. Experiences of the European Community will prove to be useful for the BRI maritime regime.

### **3.4 Framework for the Combined Multi-modal Transport of Goods by Sea and by Land in the BRI Countries**

There is also the legal liability framework for combined multi-modal transport of goods by sea and land in the BRI regions. This, too, will also need to be determined in the short-term. What is commented in Items 3.2 and 3.3 above equally applies here as well *mutantis mutandis*.

### **3.5 Massive Private Involvement and Participation in the Infrastructure Development: Role of Public-private Partnerships**

At the initial stage, the BRI Initiative may be described as a “loosely defined framework” and bilateral at the most. Participating states may lack the funds and/or expertise for its implementation. Private companies in various sectors in Hong Kong and Mainland China such as banking, construction, infrastructure investment, project planning, management and development, consultancy, *etc*– which have developed business relationships with many belt and road countries in the past are expected not to procrastinate by taking up the “super-connector” roles to partner with investors, intermediaries and project owners worldwide to take advantage of the massive commercial opportunities, mostly from infrastructural development projects, arising from the BRI Initiative. Experiences with large-scale cross-border infrastructure projects elsewhere in Europe and Africa have indicated that the involvement of private sector companies in the planning, financing, construction and management of large-scale cross-border infrastructure projects are very crucial. Public-private partnerships (PPPs) have a very crucial role to play in the ultimate success of the infrastructure projects and

developments in the BRI participating countries.<sup>8</sup> It will be most exciting to see how PPPs will come in and play out eventually to provide the pulse needed to drive the massive infrastructure construction and management and the applicable model law or laws that will eventually emerge in this vital sector. Serious research is urgently needed in this very crucial and niche area. The sheer size and scale of the infrastructure investments, development and construction and management contemplated in the BRI regions are hitherto unprecedented by what had taken place earlier in the other parts or regions of the world.

### **3.6 Opposition to BRI: How to tackle it?**

Taking an academic and non-partisan stance, it must be emphasised that globalisation has taken a new and far more positive and robust promises ahead with the BRI Initiative despite some doubts, which of course, remain to be ironed out in the course of time. China should be highly commended for boldly stepping up and forward to assume leadership in trade and economic development and partnerships and taking risks with the introduction of the BRI Initiative when the WTO is not making much headway and the TPPA abandoned by the Americans. Any adverse comments or opposition to this trade initiative are short-sighted for failing to realise the positive magnitude of this huge trade initiative spearheaded and underwritten by China.<sup>9</sup> It has gigantic and unprecedented commercial and business opportunities for all participating parties and countries. Most of the risks are to be borne and underwritten by the Chinese at least in the short term. Any state and party along the BRI regions that does not want to participate will do so at her own economic disadvantage and exclusion. If the opposition is due to geopolitical reasons, then it has to be dealt with by gentle diplomacy. A lot of public relations work will have to be undertaken to persuade those who have doubts and opposition to this huge business venture. The other concerns about BRI will be dealt with later in this article as they come up for discussion.

## **4. ASEAN MEMBER STATES' ROLE IN BRI**

ASEAN with its 640 million population is both the world's seventh-largest market and third-largest labour force, and has been projected to become the fourth-largest economic bloc by 2030.

The launching of BRI will certainly pile more pressure and urgency on the ASEAN Economic Community to perform and integrate as an economic community. ASEAN at 51 this year is moving quite slowly. Its efforts towards a more integrated economic community only began in 2015. ASEAN as a regional economic community will have to show more serious seriousness as an economic community with the launching of the ambitious BRI Initiative. It is opined that BRI or China expects ASEAN to step up and play a more active role itself as an economic community and complement BRI with the kind of massive investments made by China in the ASEAN region. A good example is the push and commitment made by China to get the

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<sup>8</sup>The term 'OBOR/BRI participating countries' is more apt at this early stage of the BRI Initiative. It will be too early to talk about 'BRI member states' at this stage although the use of the term is irresistible in this article.

<sup>9</sup>Attack by Robert Lighthizer, the US Trade Representative, that China is a threat to world trading system should be taken lightly as the WSJ had expressed concern about his appointment. Opinion of Tim Worstall in an opinion in the WSJ on 22-8-2017 pointed out that Robert is too concerned with trade deficit.

Kunming-Singapore Rail Road through in the very near future. China, too, has poured massive investments into Malaysia with investments in railroad and port construction. ASEAN Economic Community and BRI Initiative together will drive the economic development and prosperity in the South-east Asian region in the decades ahead. In return ASEAN will have to play its active role to guarantee the success itself and the greater BRI Initiative.<sup>10</sup> It is opined that Singapore will gladly and readily spearhead a leading and active role in the economic, trade, IT, e-commerce and e-economy and commercial dispute resolution spheres in the ASEAN and BRI member states.

## **5. THE JAPAN AND KOREAN ROLE AND STAKE IN THE BRI**

The Japanese Prime Minister, Shinzo Abe, on 14<sup>th</sup> July 2017 made his intentions very clear that the Japanese businesses will benefit greatly by working hand in hand with the opportunities offered by the BRI Initiative. This is good news for the BRI Initiative. It makes good business sense for the Japanese businesses to come on board and support the BRI Initiative. The earlier fear and resistance that AIIB would threaten the Asian Development Bank has proven to be unfounded.

It remains to be seen whether South and North Korea will come on board the BRI. It is sincerely hoped that South Korea will not unilaterally push ahead with its “Eurasia Initiative” (EAI) at the expense of peace, stability and integration of the Korean Peninsula. In fact, it is sincerely hoped that with the real prospects of peace in the Korean Peninsula, One BRI-Korea Initiative looks feasible in the near future.<sup>11</sup>

## **6. GOOD CORPORATE GOVERNANCE REGIME FOR COMPANIES OPERATING IN THE BRI MEMBER STATES**

There will be a proliferation of companies or corporations set up to serve and keep the BRI trade and business activities going and developing at the rate required by the various business stakeholders. The first thing that comes to mind is that good corporate governance. This is required of all the companies or corporations set up to provide infrastructural services along the BRI trade routes. Bad corporate regime will result in the failure of companies servicing the BRI businesses. Shrewd business strategy demands eventually that the corporate regime required and expected to be adopted will be uniform all along the BRI trade routes. The corporate and the commercial law regimes of Hong Kong<sup>12</sup> may be considered as the starting

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<sup>10</sup>Even Myanmar has warmed up to China for more trade links with and investment from China. See the news in Myanmar Times on 1-9-2017 under the headline “Government urged to establish Belt and Road Taskforce”. Vietnam, too, is one of China’s Belt and Road’s 65-nation investment plan in infrastructure-- Ralph Jennings, Voice of America news, 13-6-2018. The Trans-Asia HSR passes by the Vietnamese border.

<sup>11</sup>Maximilian Römer, an MPP candidate at the Hertie School of Governance in Berlin and a Yenching Scholar at Peking University, China.

<sup>12</sup>Thanks to the British legacy, the Hong Kong commercial law regimes are to be viewed as a boon rather than a bane to the development of commercial law in the BRI trade and commercial belt. But the more important and fundamental side question is whether PRC China should consider making the English commercial law system as the eventual commercial law of the BRI trade belt as well the commercial law of PRC China itself! This is a question that can only be decided by the Chinese themselves. The Chinese are wise and capable enough to make this vital decision which can really take them go global.

legal regimes or, perhaps, the more advanced corporate law and commercial law regimes of the European Union may be another viable option to adopt. Eventually one single and uniform corporate and commercial regime should be considered as the standard corporate and commercial regime of the BRI member states.<sup>13</sup>

### **6.1 Management of Commercial Risks**

Modern-day management of commercial risks is a portfolio that cannot be dispensed with in modern huge infrastructure construction and engineering firms. The construction firms usually build first, and then manage those projects thereafter before handing over those projects back to the project owners when the concession period expires. This matter will be of particular relevance and significance in the contexts of massive infrastructure projects coming up along the Belt and Road regions. Modern business schools will have pay serious attention to the teaching and research on commercial risks management as distinct from Insurance Law. Captive insurance is part of modern risk management. Perhaps more attention has to be paid to captive insurance with respect to risk management of giant infrastructure projects.

### **6.2 Packaging and Marketing of Insurance Products for the Commercial Risks in the Belt and Road Member States**

Of particular relevance and importance in terms of business opportunities is the transit insurance needed for the safety of goods and passengers carried along the Belt and Road railway and maritime routes. This sector is besides the insurance of the infrastructure facilities along the same routes. Reverting to the goods and passengers in transit insurance, the initial focus will be more on the insurance of goods in transit. Eventually when the High Speed Railway links come in for the rapid movement of passengers along the same routes, insurance of passengers in transit, too, will become relevant and necessary. The need for big insurance companies, marine and non-marine, with the packaging and marketing of the right insurance products and the handling and payment of insurance claims will be important to the insured's. Lloyds' insurance policies will be of particular relevance and significance here. This sector will prove to be important and lucrative in terms of the business opportunities for local marine and non-marine insurance companies. They may like to make forays in marine, goods in transit as well as passengers insurance, too, in the future. Local insurance companies may at the moment lack the exposure and expertise in the insurance sector. Joint ventures between the local and foreign insurance companies (with the Lloyds' of London and/or the London Market) may be a viable option in the short and medium for the Belt and Road insurance market. The size of the said insurance market is expected to be large when the movement of goods and passengers go into full swing in the Belt and Road regions. Again here the European Community's experiences in facing and handling the same may prove to be relevant and useful here for the Belt and Road insurance market.

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<sup>13</sup>It is frankly admitted that the term "BRI member states" as used in this article is not appropriate at this early stage of the implementation of the BRI Initiative. But it is contemplated that at some stage later, this phenomenon is inevitable considering that the Chinese will definitely not let this initiative fail.

## 7. COMMERCIAL DISPUTES RESOLUTION AND CONFLICTS OF LAW

Commercial disputes are unavoidable in business transactions. The trend today is that businessmen do not like their commercial disputes to be fought out by using the conventional adversarial system of litigation in the courts which may turn out to be highly bitter, costly, time consuming and energy sapping affairs for the parties to a dispute. At the end of the day, both the winner and loser may regret the costs, time and effort spent in litigation through the conventional court system. Consequently, most commercial contracts or agreements nowadays have at least the standard arbitration clause written into them. The rule is that if there is an arbitration clause in a commercial agreement, such a clause is binding on the parties to a contract. No party to such a clause can bypass the clause and bring the dispute to the court for litigation.

Arbitration clause is one thing, but two other related matters must also be highlighted here. The first is the applicable law to an agreement or contract (*ie*, the proper law of the contract). It must be clearly stated in the agreement. If not, search for the applicable law may prove to be a costly affair. The second related matter is the forum of dispute resolution. This matter, too, should not be left to the court to determine.

The matters highlighted in the foregoing are important to dispute resolutions in the context of modern businesses. It may prove to be an expensive and bitter affair if it is not handled properly by clear contractual provisions in the business agreements.

In mainland China, there are two internationally renowned commercial arbitration centres. They are the Beijing International Arbitration Centre (BIAC) and Shanghai International Arbitration Centre (SHIAC). In Hong Kong, arbitration of commercial disputes can be handled by the Hong Kong International Arbitration Centre (HKIAC). Elsewhere in South-east Asia, we have the Singapore International Arbitration Centre (SIAC) and the Asian International Arbitration (AIAC) in Kuala Lumpur. Save for the costs involved and with great respect to the others, the best arbitration centres in the China and South-east Asian regions are either the SIAC or HKIAC in terms of the quality of services provided. AIAC is just as competent as the others in the region if one is too concerned about costs of arbitration.

## 8. THE FUTURE OF BRI

As BRI is a relatively new global trade initiative, much hard work remains to be accomplished and many hurdles and obstacles will have to be faced and tackled over the next few decades. The Kunming-Singapore Rail Road is expected to be through in the next few years once the Indochinese section is completed. The only snag now lies in the Laotian section. The Chinese railroad contractors are now working furiously to complete that missing link. Once the Laotian link is completed, the Kunming-Singapore line will be through. Those railroads heading West towards the European cities have been up and running. The Beijing-London HSR is expected to be launched and operational by 2020. The overland road links with the Indian sub-continental countries may hopefully be through as well in the near future. India is expected to raise some initial resistance and objection to BRI. Hopefully, the resistance may be contained through skilful and patient diplomacy on the Chinese side. It must be pointed out and stressed

that India is a huge country with much to share and contribute in terms of basic infrastructure investments and development, technological advancement as well as contributions in terms of legal infrastructure input needed to get the BRI basic legal framework up and running in the foreseeable future. Additionally, India as a biggest democracy in the world has much to contribute, too, in terms of rule of law, basic human rights, labour and environmental norms as well as good administrative and corporate governance norms. Hence, India is a crucial and equal business partner in the efforts to establish the BRI land links with its ports on the shores of the Indian Ocean. Forays into Russia, Central Asian countries, Arab and Middle Eastern countries and countries in the African Continent are not expected to meet with resistance. In the circumstances, there is no turning back for BRI Initiative now. Much groundwork has been laid and the BRI Initiative is on the forward march. Full and complete linkages of the overland trade routes may take a decade at least to complete. In the context of the success of the BRI Initiative, it will be most useful and relevant to look at ASEAN grouping at 51 years now after its formation in 1967. ASEAN celebrated its 50<sup>th</sup> Anniversary on 8<sup>th</sup> August 2017. ASEAN is now making its march towards a rule-based Economic Community. It was once said that most observers did not give ASEAN a chance to survive as it began very slowly as an association of loosely formed states without formal rules and with its infamous policy of non-intervention in the internal affairs of its member states. There is no turning back for the ASEAN Economic Community now. The success story of ASEAN Economic Community will have much to inspire the forward march and ultimate success of the BRI Initiative. Of course, the march towards a BRI Economic Community is undoubtedly far fetch at the present moment, but there will be light at the end of the tunnel if China uses the right business and geo-political strategy towards achieving that end.

To look forward, it is best to quote an opinion of a World Bank official about the future and width of BRI:

“OBOR goes well beyond infrastructure, envisioning closer coordination of economic development policies, harmonization of technical standards for infrastructure, removal of investment and trade barriers, establishment of free trade areas, financial cooperation and ‘people to people bonds’ involving cultural and academic exchanges, personnel exchanges and cooperation, media cooperation, youth and women exchanges, and volunteer services.”<sup>14</sup>

In fact it is interesting to read a piece by Ivan Sekretarev on 13<sup>th</sup> September 2017 that outside the BRI Initiative, China has already gone on a massive acquisition trails of the world’s iconic brands with the objective of creating a global financial empire to shore up the BRI Initiative.

### **8.1 Economic Regions or Corridors of the BRI Initiative**

As BRI is a gigantic trade and investment belt spanning from China across Asia and Africa up to Western Europe, infrastructure, economic investment and development are undertaken and spearheaded by China as per the economic corridors identified and planned. To illustrate the point, some of the economic corridors identified and planned are as follows:

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<sup>14</sup>Bert Hofman, *supra*. n 2.

- a) China–Pakistan Economic Corridor (CPEC);
- b) Bangladesh, China, India, Myanmar Economic Corridor (BCIM);
- c) China-Mongolia-Russia Economic Corridor;
- d) China-Indochina Peninsula Economic Corridor;
- e) New Eurasian Land Bridge;
- f) the proposed China-Nepal-India Trilateral Cooperation;
- g) Sihanoukville Special Economic Zone (SSEZ) in Cambodia;<sup>15</sup> and
- h) Van Don, North Van Phong and Phu Quoc Special Economic Zones (SEZs) in Vietnam.

## **8.2 E-contracts, E-commerce, E-payment and E-government and E-economy in the 21<sup>st</sup> Century**

The 21<sup>st</sup> Century has ushered in the era of e-commerce and e-government. E-contracts, e-marketing and e-banking and e-logistics, *etc.*, will be the hallmarks of e-commerce and e-government leading to a digital and e-economy – domestic, regional or global. Cyber security will further enhance e-commerce, e-government, digital and e-economy of every country in the 21<sup>st</sup> Century. In this context, it must be pointed out that PRC China is the world's digital and e-commerce and e-economy powerhouse. Working with China in these vital areas (Jack Ma's One Click) is a huge advantage.

## **8.3 Making of A BRI Regime: Compliance with Rule of law, Basic Rights, Fairness, Inclusiveness, Sustainability and CSR**

This will be the most crucial component that may give a positive or negative image and rating to China's BRI Initiative in the crucial years ahead. It is also a very sensitive issue so far as China is concerned giving its Communist background. Nevertheless, since it is an important issue bearing serious economic implications on the future of BRI, some discussion thereof is deemed inevitable.

### **8.3.1 Addressing the Concerns Raised About BRI by Independent Observers**

Independent observers and commentators have expressed grave concerns that China's BRI Initiative is 'global commerce on China's terms'. It has been pointed out that poorer developing countries are sucked into China's global economic orbit because of the harsh terms of the loan agreements which eventually sucked the debtor countries into a debt trap from which there could be no escape. Is this kind of adverse criticism against the BRI justifiable? Let us take the case of Sri Lanka, for example. Sri Lanka had signed a US \$1.1 billion deal with China for control and development of the deep-sea port of Hambantota. Under the terms of the agreement, a state-run Chinese company will acquire a 99-year lease on the port and about 15,000 acres of land for building an industrial zone. The interest rate is 6.3%. This interest rate is considered by many observers as exorbitant. When the debtor country cannot repay the loan, the investor gets ownership of the project at least till the debt is paid up. Observers have pointed out that the Sri Lanka's Hambantota deal looks like an example of this mind-boggling strategy to grab poor countries' land at low premium for the investors. The Chinese have made much investment in

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<sup>15</sup> Served by Sihanoukville Airport (3 km away) and Sihanoukville deep water port (12 km away).

the Malaysian infrastructure projects of late and the new government is reviewing some of those projects. The Myanmar government, too, has approached China for massive infrastructure investment recently.<sup>16</sup> An attempt will be made elsewhere to provide some justification or condemnation for this kind of investment strategy of the investing state. It is beyond the scope of this article look into this objection.<sup>17</sup>

There are other serious concerns, too, regarding the BRI Initiative which need to be addressed. Some of them may be noted below:

- a) the allegation that China will export its pollution and unemployment problems back home to her overseas Belt and Road member states;
- b) the allegation that China will bring along not only the professional and skilled workers but unskilled workers as well including the cooks to her overseas investment territories thus depriving the host countries of employment opportunities and transfer of knowledge and sharing of economic benefits required by the developing host countries; and
- c) concerns about compliances with the rule of law, basic human rights, fairness, inclusiveness, sustainability and CSR.

### **8.3.2 Compliance with the Rule of law, Basic Human Rights, Fairness, Inclusiveness, Sustainability and CSR**

China is taunted to be the world's largest economic superpower in the 21<sup>st</sup> Century with the expected success in her Belt and Road Initiative involving her most ambitious 21<sup>st</sup> Century Maritime Silk Road and the revival of her Old Overland Silk Road westwards across Central Asia, Middle East, Africa and terminating in the European cities. However, there are serious concerns expressed by rights groups that there are serious deficiencies back home in China in terms of compliances with rule of law, basic human rights, fairness, inclusiveness, sustainability and CSR. Critics fear that China will probably ship these non-compliances overseas with impunity. History has always reminded us of China's notorious Tiananmen Square's Crackdown of pro-democracy activists in 1989, her treatment of the late Liu Xiaobo and his widow and China's recent back-tracking on the Hong Kong's One Country Two Systems treaty with Hong Kong and Great Britain. Those in charge of Belt and Road Initiative need to address these serious concerns in their dealings with BRI member states. The writers merely wish to make two remarks here. The first is that these concerns and worries are real and serious and will not fade away easily if China aspires to be the world's next super economic powerhouse of the 21<sup>st</sup> Century. Secondly, the writers wish to point out and emphasise that it only makes good business sense that if one country aspires to become a super economic power, the government has to empower and liberalise her subjects or citizens and others so as to take her country and her subjects or the world to greater heights of achievement in the future. Perhaps, China's one-country-two-systems experiment may influence China eventually to tilt more towards democratic practices in PRC itself rather than just only in Hong Kong or Macau.

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<sup>16</sup>The Yangon Central railway infrastructure project saw the Chinese and Singaporean contractors working on a joint venture with a Myanmar contractor. See also the Kyauk Phyu to Kunming oil and gas pipeline project to be financed by Chinese investments.

<sup>17</sup> Teoh and Ong, *The Dragon Stirs: The New Silk Road*, (Kuala Lumpur: Kanyin Publications), 2018 is a good book to read. One must learn how to transact business smartly with the Dragon.

#### 8.4 Lessons from the European Union or elsewhere

City University of Hong Kong (CityU), together with Tsinghua University, have agreed with the United Nations Economic Commission for Europe (UNECE) to establish the International PPP Specialist Centre of Excellence for Public Transport Logistics. Further, European Community experiences on railroad operations and motorways of the seas could be another useful source of corroboration and learning for the BRI research institutions. Research institutions focusing on Belt and Road Initiative will be covered separately below.

#### 8.5 The Future of BRI: The Long-term Plans and Objectives

At the rate the BRI Initiative is taking off progressively and simultaneously in different parts of the BRI regions since its launch in 2013, it is crystal clear that BRI is probably a new wave of globalisation of world trade in the making for the 21st Century and beyond. Now that the BRI has been entrenched in the Constitution of PRC China since the 19<sup>th</sup> National Congress of the Chinese Communist Party in October 2017. It is now too late now to stop the BRI wave or onslaught. With stalled WTO trade negotiations and failure of TPPA, the fate of the BRI Initiative looks more and more promising! One of the trade initiatives has to succeed and China's BRI looks more likely to succeed. Since multi-lateralism has failed to gain traction, perhaps, the new trade initiative spearheaded by China looks more likely to succeed in the long term. This is not to deny that multi-lateralism is not a viable option. It is speculated that it will be the long-term sustainable strategy. Indeed the whole BRI project will eventually link up with the Latin American free trade regions or areas because the Chinese companies and business have already gained footholds in some Latin American countries (for example, Chile and Bolivia). Better connectivity on both sides of Atlantic will allow goods and services from either side to reach or have access to each other. This will eventually force USA and Canada and Latin American trade areas to come into the BRI trade orbit. As has been emphasised earlier that to stay out of the global business and trade orbit is business suicide or economic ruins or exclusion for modern trading nations worldwide. Such is the forecasted Belt and Road global business waves or influences in the next few decades. In the circumstances, the move or trend towards a more rule-based Belt and Road business regime is highly likely to materialise in the long run as it makes more business sense to be linked and governed by a formal legal trade regime – *ie*, the BRI Economic Community. The 'One (Business) Culture, One Region' vision is perhaps a fanciful dream which may not materialise even in the long run! There is a need to strive for international human rights, commercial, and good governance norms in the BRI member states and, in particular, PRC China, as the leader of the BRI commercial bloc. PRC China, at the present moment, fails most of the basic norms of international human rights conventions. As a leader of the projected biggest regional or global commercial trading bloc in the future, PRC China has much to learn and gain from the relevant basic norms of European Union or UN or Hong Kong Basic Law. The sooner these norms are complied with by PRC China, the better it would be for the BRI member states particularly China. Eventually in the long term the BRI trading bloc is expected to move towards a rule-based trading bloc complying with basic regional or global commercial and human rights norms. One may query why also the international or regional human rights norms? This is because the BRI member states' trading and commercial activities will impact seriously and adversely the lives of so many citizens of the BRI member states who are directly affected by those business and trade activities.

## **8.6 Beyond BRI: Connecting with North and South American Trade Belts and Roads**

It is speculated that eventually Asian-EU-Pacific BRI trade belt and road will join and link up with the North-and-South American Trade Routes or areas making them the eventual globalised trade routes of the 21st Century and beyond. BRI is the next wave of globalisation of world trade in the making. It is speculated that BRI will ultimately be in charge of the whole global business and trade orbit ensuring or guaranteeing all member states free access and connectivity to the global business supply chains and trade.

## **8.7 How Much Stake do the Member States have in the BRI's Business Opportunities?**

It is proper at this juncture to look into the pertinent question of how much stake do the member states of BRI have in the business opportunities generated by the massive trade infrastructure investments and developments as well as the other trade opportunities and benefits arising from these gigantic global trade and business undertakings in the BRI's trade corridors and maritime trade routes. It is argued that BRI is a huge global business partnership<sup>18</sup> of the member states. Although China spearheads, underwrites and bears most of the initial business and investment risks incurred in the BRI free trade region or regions, the member states, too, have a huge stake, in those business, trade and investment opportunities. There are enough business and investment opportunities for all. As BRI may be divided into development and trade corridors, leaving out its maritime counterpart, some of those opportunities and associated activities that arise may be dealt with at the level of each trade and development corridor. Moreover, some member countries may contribute more because they have the requisite expertise and finances needed for certain kinds of trade activities. For example, in terms of good governance, democratic practices, human rights and labour norms, India is poised to contribute more than China. Hong Kong, too, may have a lot to contribute in terms banking expertise, dispute settlement mechanisms and corporate governance. Moreover, the costs factor may allocate certain business activities to certain parts of the BRI's development corridors. Therefore, member states need not have to worry too much about China grabbing the lion share of those opportunities. Eventually, fair competition rules may help to determine, allocate and distribute how much may each development corridor get out of those business opportunities generated. It is, therefore, argued that the BRI trade regime is a rule-based trade regime. It is inclusive and no country or countries along the BRI trade belt and road is/are excluded. Serious efforts must be made by all trading partners to ensure the success of this important objective.

## **8.8 What is the Role of UN's Model Business Laws in the BRI Business Law Regimes?**

As the construction of infrastructural activities go cross border, regional and ultimately global, what then is the role of UN's Model Laws in the BRI business law regimes? It can be envisaged quite easily at this stage that the UN's Model Laws, for example, the UN model law for PPP

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<sup>18</sup>The term 'partnership' here is not used in the sense used in Company Law contrasting it with company as a separate legal entity.

construction and management of railroads, bridges or ports contracts will be very relevant, acceptable and applicable to the relevant business activities undertaken by BRI member states. Those UN model laws may or need not be fully adopted but they could be readily modified to suit local circumstances at minimal costs.<sup>19</sup> In relation with the PPP model laws, for example, the contract law of individual member states may not be encouraged for the sake of uniformity, certainty and globality. Another type of UN model law that could be adopted by the BRI member states are the ILO's labour standards for the benefits and welfare of workers engaged in BRI's trade, construction and management contracts, for example. The UN International Human Rights Conventions, too, are of great relevance to China and the BRI member states in the future.

### **8.9 Towards an BRI Economic Community in the Long Run?**

As China has shown great leadership, vision, commitment and promises towards the grand BRI trade routes initiative ever since its launch in September and October 2013 by the President of China, Mr Xi Jinping, international bodies pushing for model laws have been interested also to promote their model law regimes to China and its agencies in charge of the BRI Initiative. This is obvious even if we were to confine our attention to the construction of BRI's trade routes alone as they were launched in 2013, not the extended and ultimate BRI product as speculated in Item 8.8 of this article. For example, the United Nations Economic Commission for Europe (UNECE) had signed an agreement with City University of Hong Kong and Tsinghua University in Beijing in January 2016 in Geneva to advance Public Private Partnerships (PPPs) model law within China's BRI initiative. This is a classic example of China's willing acceptance of PPP model laws in its BRI infrastructure projects. This augurs well for the future of the BRI Initiative. This is not surprising in the context of UN's model trade laws. As the BRI Initiative is many times larger than the Economic Commission for Europe's trade project, it is very likely that in the UN itself a trade commission dedicated to the BRI Initiative will eventually be set up as the BRI Initiative develops into a gigantic global trade bloc. Of course, in the long run, there is a high probability that the BRI Initiative may eventually graduate into a rule-based economic community like the European Union and the ASEAN Economic Community.<sup>20</sup>

### **9. Business and Investment Opportunities in the Borneo Island**

Although this part is mostly non-legal, the writers wish to highlight the business and investment opportunities available in the huge island of Borneo. The island of Borneo is huge in size and endowed with plenty of business and investment opportunities. Total land area of this big island including the adjacent islands is about 292,000 square miles (755,000 square km). The Malaysian states of Sabah and Sarawak are underdeveloped and blessed with a huge land area

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<sup>19</sup> The UN's Model Law body is already at work in respect of the PPP Model law. The United Nations Economic Commission for Europe (UNECE) had initiated an agreement with City University of Hong Kong and Tsinghua University in Beijing in January 2016 in Geneva to advance Public Private Partnerships (PPPs) model law within China's BRI initiative.

<sup>20</sup> For more information of China's Belt and Road Initiative, please visit China's Belt and Road Initiative's official web portal at: <http://english.gov.cn/beltAndRoad/>. CHINADAILY is a weekly newspaper in English covering and highlighting China's foreign trade and investments. Hong Kong Trade and Development Council (HKTDC) is another website (<http://www.hktdc.com/info/trade-events/EX/en/Exhibitions.htm>) actively promoting the activities of the BRI.

and underpopulated. The basic infrastructure facilities are poor and need to be substantially upgraded. The Indonesian Kalimantan side of Borneo is so vast in land area. It is largely undeveloped and underpopulated and very poor in basic infrastructure. Even little Brunei has recently shown interest in and welcomed the BRI investments. In terms of economic and business investments and developments, the opportunities in Borneo are simply immense. What the respective governments need to do is the open up the island to free trade and remove the antiquated and cumbersome immigration restrictions for the entry of foreigners into the respective regions of Borneo. To those who oppose economic developments purely for conservation of jungles and wild life only, they must be made to aware that economic developments must take place if they need to. Much more importantly, it suffices if there are conscious and concerted efforts being made to conserve and protect the forest, wild life, flora and fauna in the gazetted reserves while, at the same time, allowing the appropriate amount of economic developments to take place for feeding the hungry world population. The whole thing is a matter of rationality and proportionality. For the so-called activists who operate from faraway city states where there are no more forests and wild life left, it is too late for them to save their own forests and wild life anyway! There is in fact nothing left for them conserve but they openly allege that they are fighting for global conservation instead! How naïve and hypocritical they are!

## 10. Conclusion

In conclusion, it must be reiterated that this article covered a wide spectrum of China's ambitious and ginormous Belt and Road Initiative's general features. Only the more salient and important ones have been highlighted with emphasis on the legal aspects thereof. It cannot be gainsaid that the potential economic and financial prospects of the BRI for the participating countries will be immense in the long term. Only time will tell how much the global economy will be shaped by this very ambitious global economic development and trade initiative. The writers wish to announce that more works will be in the making in the coming years regarding the salient features of the BRI.<sup>21</sup>

**NB:** This article was originally published in October 2018. But it has been updated in March 2019.

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<sup>21</sup> This BRI research group wishes to announce that Dr Mohd Abu Taher of Southeast University will join this group as the representative from Bangladesh. He is expected to beef up the group's strength in the area of the rights of women and elders. The BRI research group also is indebted to Mr Law Chong Seng of Southern University College, Johor Bahru, for his willingness to share his expertise in e-commerce and logistics. He is welcome to join this group in the future. This BRI research group is also very glad to announce that it has inspired a MBA dissertation on "The Impacts of China's Belt and Road Initiative on Economic Developments and Trade Across Asia, Middle East, Africa and Eastern Europe" by Choon Kum Peng, March 2019 (MBA programme of Southern University College, Johor Bahru, Malaysia). The corresponding author of this BRI research group will happily accept any Marxist criticisms of some aspects of this article.