Bruno Zeller
Gautam Mohanty
Sai Ramani Garimella

Enforcement of Foreign Arbitral Awards and the Public Policy Exception

Including an Analysis of South Asian State Practice

Springer

Enforcement of Foreign Arbitral Awards and the Public Policy Exception

Bruno Zeller · Gautam Mohanty ·
Sai Ramani Garimella

Enforcement of Foreign Arbitral Awards and the Public Policy Exception

Including an Analysis of South Asian State Practice

Springer

Bruno Zeller
Department of Law
University of Western Australia
Crawley, WA, Australia

Sai Ramani Garimella
Faculty of Legal Studies
South Asian University
New Delhi, Delhi, India

Gautam Mohanty
Jindal Global Law School India (JGLS)
O. P. Jindal Global University
Sonipat, Haryana, India

ISBN 978-981-16-2633-3 ISBN 978-981-16-2634-0 (eBook)
https://doi.org/10.1007/978-981-16-2634-0

© Springer Nature Singapore Pte Ltd. 2021
This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.
The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.
The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Singapore Pte Ltd.
The registered company address is: 152 Beach Road, #21-01/04 Gateway East, Singapore 189721, Singapore

Foreword by Justice Deepak Verma

International Commercial Arbitration's importance in the present-day framework of cross-border transactions and International Trade continues to burgeon. The single-handed preference of arbitration as a dispute resolution method between conflicting parties is well documented throughout the world, even more emphatically in South Asian jurisdictions. The rise of South Asian jurisdictions as economic powerhouses and the readiness of legislators to emphasize the use of arbitration is well illustrated by the very fact that the jurisdictions above have long provided for arbitration as part of their legislative fabric. Hence, it comes as no surprise that the number of arbitrations in South Asia is increasing rapidly.

International Commercial Arbitration has been a central interest of mine for about a decade. I have been involved in arbitration and dispute resolution as a member of the Hon'ble judiciary, starting my tenure as a Judge of High Court of Madhya Pradesh (India) and ending my tenure as a Justice of the Supreme Court of India. Even after I retired from the Hon'ble Supreme Court of India, I have continued pursuing my interest in arbitration as an arbitrator. Therefore, I consider myself lucky to have witnessed the development of arbitration in South Asia, and I believe the exponential growth of arbitrations in South Asian jurisdictions has been spectacular.

The present book is not just another book contributing to the endless list of literature already widely used in International Commercial Arbitration on public policy but, in my opinion, is unique in many respects. The distinguishing factor of this book is its regional perspective. The book is much more than a brief overview of the principal aspects of International Commercial Arbitration as in addition to an analysis of the United Nations Convention on the Recognition of Enforcement of Foreign Arbitration Awards ("New York Convention") and the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") and several secondary writings the book also discusses the interpretation of public policy by various national courts. An analysis of the interpretation of public policy by national courts in South Asia is an exercise that is imperative because unless the courts adhere to the international standards set out by the New York Convention and the Model Law, they will not be able to guide the growth of arbitration in the right direction.

The book provides a detailed and comprehensive examination of public policy treatment in South Asian jurisdictions, including India, Bangladesh, Pakistan, Nepal

and Sri Lanka. Each of the abovementioned jurisdictions is examined in-depth, and while the book has a South Asian perspective, it is not written in a parochial way. Besides referring to primary and secondary sources from the South Asian region, the book is replete with frequent references to well-known materials outside South Asia. In summation, the book is an excellent compendium and a primer for the reader to comprehend the enforcement of foreign arbitral awards in South Asia jurisdiction vis-à-vis public policy.

Veritably, the chapters of the book provide valuable insights into the panoramic understanding of public policy and is an essential contribution to the literature explaining the advantages, peculiarities and pitfalls of enforcement of foreign arbitral awards in South Asia. I extend my heartiest congratulations to the Learned Authors on coming out with such an excellent book with a unique focus. I am confident that it will be useful to students and practitioners in the region, litigants and advocates in other parts of the world who wish to know more about the impact and role of public policy in each of the diverse jurisdictions.

One of the authors, Mr. Gautam Mohanty, as I know him, is a scholarly and gentle author. He has that bent of mind, to express himself, with absolute and perfect clarity.

This is indeed an extraordinary and brilliant work by the Learned Authors. They have put the best foot forward at a right time, when full view on the subject was indeed needed.

March 2021

Justice Deepak Verma
Former Judge of Supreme Court of India and
Arbitrator
New Delhi, India

Foreword by Csongor István Nagy

It would be difficult to question the proposition that arbitration became the standard dispute settlement mechanism of international commercial transactions. This is due not only to its popularity but also to the fact that arbitration, contrary to litigation before state courts, is really capable of being international in every sense. However tolerant they may be to foreign cultural and legal patterns and foreign languages, state courts can hardly be truly international. Judges are local nationals, the procedure is governed by local rules (the *lex fori*) and the court (and also the procedure) will have an "official language." The emergence in Europe of international commercial courts tries to respond to these shortcomings and it will be seen how much these will be able to become an effective competitor for arbitration. For the time being, however, arbitration has two very important advantages. First, it is the only dispute settlement mechanism that ends with a mandatory (legally enforceable) decision and is still international to the core. Arbitrators may come from various regions and have diverse cultural and legal backgrounds. The language and the rules of the procedure can be freely chosen by the parties. Second, the value of an arbitral award in terms of enforceability is second to none.

Culture and legal patterns, even if they are not part of the applicable law, do matter. A good example is the German commercial law notion of "confirmation letter" ("*kaufmännische Beschtätigungsschreiben*"), which is not only a legal institution but a notion deeply rooted in the daily commercial practice. The confirmation letter is sent after the conclusion of the agreement. The fundamental rule is that if the receiver of the letter remains silent, the content of the contract is determined by the confirmation letter, unless the sender does not observe the requirement of good faith or the difference between the initial agreement and the confirmation letter is so great that the sender cannot reasonably expect the receiver to approve it. The confirmation letter works also in cases where the parties "almost" concluded the initial agreement ("*abschlussreif*"): in this case the letter not only confirms or changes but also creates the contract. The receiver is expected to object immediately; otherwise the letter will determine the content of the agreement.

Although confirmation letters may have evidentiary value in different legal systems, the letter's decisive impact on the content of the contractual relationship is peculiar to German law. In most legal systems, silence, in itself, infers no agreement.

The parties' concurrence of wills is based on an offer and an acceptance, and the same rule applies to the amendment of the contract. Hence, the silence of the confirmation letter's recipient, in itself, does not infer agreement. A judge coming from such a jurisdiction may not understand why the German party relied so confidently on its own unilateral declaration (confirmation letter) and why it makes continued references to the other party's failure to object. Was it reasonable for the German party to count on the other party's reply and assume that if the other party did not reply, this was because it was fine with the confirmation letter? May a non-Germany party be expected to be familiar with this commercial norm if it regularly deals with German business customers? An international tribunal may be more prone to recognize the misunderstandings emerging from cultural differences.

The practical value of arbitral awards is second to none. When it gets to state court judgments, the parties face significant uncertainties and hurdles. The enforceability of judgments is normally regulated by national law and this may make enforcement in multi-jurisdiction matters intensely complicated. Furthermore, what is worse, foreign court judgments, at least in commercial matters, are quite often enforced only if backed by an international treaty or reciprocity. Arbitral awards face no such uncertainties and hurdles. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides a closed list of grounds of refusal of recognition and enforcement. No foreign arbitral award can be excluded from the domestic legal sphere for reasons not listed in the Convention. Reciprocity is not among these. Of course, states may conclude treaties (mostly on a bilateral basis) and develop reciprocity to ensure the recognition and enforcement of the judgements of particular states. Nonetheless, the purview of the network of these treaties and reciprocal relations may not even compare to the geographical coverage of the 1958 New York Convention, which covers nearly the entire globe. This is why a New York court judgment and an arbitral award rendered in New York may have completely different practical values. To use the example of my country, aside from some exceptions, Hungarian courts do not enforce US judgments, as there is no confirmed reciprocity between the two countries (and no treaty providing for recognition and enforcement). On the contrary, arbitral awards rendered in the US can be smoothly enforced in Hungary, owing to the 1958 New York Convention.

This book addresses this core element of the success story of arbitration: enforcement and refusal to enforce and, hence, its relevance cannot be overstated. As noted above, the 1958 New York Convention created a uniform regime for the recognition and enforcement of foreign arbitral awards. This is a major achievement, nonetheless, it is far from eliminating geographical diversity. Uniform rules create uniform frameworks but may be applied in diverse and diverging ways. It is easier and more advisable to unify law through flexible rules using vague terms, however, these may raise issues when they are interpreted. The requirement of uniform application is embedded in various international instruments but it has raised difficulties in practice and, at times, courts have not been reluctant to read their own laws into the wide categories of uniform law. The notoriously undefinable "public policy" is a perfect example. This ground of refusal is a security valve and the final reservation of all

states, which affords courts a very wide playing field. However, if applied improperly, it may put the whole system upside down. This book provides an excellent and comprehensive analysis of the practice of public policy from a very important regional perspective.

Csongor István Nagy
Professor of Law and Head
Department of Private International Law
University of Szeged, Szeged, Hungary

Acknowledgements

A book is a long term project and this has been no exception. The fact that it crystalized into the book the esteemed reader is reading now is the result of support and inspiration of various kinds and from various sources. At the outset, I would like to thank both my co-authors, Prof. Ramani and Prof. Bruno for having me on board for this book and for providing me with unambiguous support and the necessary critique to transform my work into meaningful contribution. Further, I greatly benefited from my personal experiences in arbitration by being associated with Justice Deepak Verma, Former Judge of Supreme Court of India. His guidance and insights in arbitration have truly shaped my understanding of the practical intricacies involved in arbitration which are highlighted throughout the book. On a personal note, I thank my fiancée Aleksandra Cwik, for her unconditional love and support throughout the process of writing the book. Furthermore, I would like to thank my friends who have consistently encouraged me to believe in my abilities to pull though the process of writing this book. At a fundamental level, I would like to thank my sister for instilling in me the love for writing. Above all, this book is dedicated to my parents, my first teachers, for which I am immensely grateful.

—Gautam Mohanty

The authors collectively would like to extend their gratitude to Al-Imran Khan (Bangladesh) and Nirogini Thambaiyya (Sri Lanka) for their timely help with the case law from South Asian jurisdictions. The authors also thank Judge Saleem Marsoof, Judge, Supreme Court of Fiji, and formerly of the Supreme Court of Sri Lanka, for consenting to allow references to his research, as well as making available the recent jurisprudence from Sri Lanka that forms part of this work. The authors also acknowledge the valuable support provided by Sajawal Hussain (Pakistan) and Prakriti Malla (Nepal) in accessing the jurisprudence from those respective jurisdictions. Lastly, the authors would like to thank the publishers for their extensive support, especially for their consideration and the additional time provided during the pandemic.

Contents

About the Authors

Bruno Zeller is Professor of Transnational Law at the University of Western Australia, Perth; Adjunct Professor at Murdoch University, Perth; Fellow of the Australian Institute for Commercial Arbitration, Panel of Arbitrators—MLAANZ; Visiting Professor at Humboldt University, Berlin and a Visiting Professor Stetson Law School, Florida. Prof. Zeller is an international law consultant with Michael Bula Solicitors and specializes in transnational commercial law. He is the author of the seminal work—*Four-Corners—The Methodology for Interpretation and Application of the UN Convention on Contracts for the International Sale of Goods*(2003), amongst a host of research work in the form of books, chapters in edited collections and journals. His research in the area of transnational commercial law and commercial arbitration is much cited.

Gautam Mohanty is an Assistant Professor at Jindal Global Law School (JGLS), O. P. Jindal Global University. He graduated from National Law University Odisha in the year 2015 and has a Master's in International Business Law from Central European University in 2017. He is also an arbitration consultant and has experience advising domestic and international clients in commercial and dispute resolution matters. He has served as an Arbitration Tribunal Secretary to Hon'ble Justice Deepak Verma, Former Judge of Supreme Court of India in several arbitration matters. Further, he has published his work in several reputed journals and his areas of interest include international commercial arbitration, international investment law, private international law, Blockchain and the law. He is currently pursuing his Doctoral Studies at Kozminski University, Warsaw, Poland.

Sai Ramani Garimella teaches international commercial law and arbitration at South Asian University, an inter-governmental organisation of the South Asian Regional group, SAARC. Dr. Garimella also serves as the Visiting Senior Research Associate at the Research Centre on Private International Law in Emerging Countries, University of Johannesburg, Johannesburg, South Africa. Her research on international arbitration has appeared, recently, in the Manchester Journal of International Economic Law. She has co-edited a commemorative volume on the CISG, titled *Contracts for the International Sale of Goods: A Multidisciplinary Perspective.* (A

Commemorative Volume Celebrating 30 Years of The CISG (Sweet & Maxwell, 2019), contributing an essay on Article 42—Third Party IPR Claims in Transnational Commerce—Addressing the Indeterminacy. She has been awarded the Isambard Kingdom Brunel fellowship by the University of Portsmouth in 2019. Her research on international arbitration is appearing in the current volume of Pepperdine Dispute Resolution Journal. She has previously co-edited a collection of essays on Private International Law and the OBOR (Routledge, 2018) and Private International Law—South Asian State Practice for Springer (2017).

Chapter 1
Enforcement of Foreign Arbitral Awards—An Introduction

Overview
This chapter seeks to explain the importance of the enforcement of Arbitral Awards in South Asia with global trade in the South Asia region being at the threshold of a new era. Global trade has been made all the more significant by China's push towards the development of the new Silk Road. International commercial arbitration has been regarded as the norm for resolving international business disputes for many years and the supply chain by road, rail and ship are creating a multinational supply chain through South Asia, South-East and Central Asia into Europe. Hence, it is inevitable that the newly proposed Silk Road would create new challenges to Dispute Resolution practices, especially pertaining to the enforcement process of an Arbitral Award.

This chapter, in particular, will discuss

- The background of the Silk Road
- The importance of the New York Convention ("NYC") on the Recognition and Enforcement of Arbitral Awards
- The UNCITRAL Model Law ("Model Law") on International Commercial Arbitration
- The difficulties encountered in implementing the regime of enforcement of foreign awards.

1.1 Introduction

At the end of April 2017, the first train arrived in China which originated in England through the newly identified Silk Road. It is anticipated that a train can arrive in China every week. The question that then arises is how do the legal systems take into account the new logistics possibilities? A trans-shipment may not be too difficult to understand as it can be accommodated within the current dispute resolution system. However, the issues will be more complex and multifaceted when goods are

© Springer Nature Singapore Pte Ltd. 2021

B. Zeller et al., *Enforcement of Foreign Arbitral Awards and the Public Policy Exception*,
https://doi.org/10.1007/978-981-16-2634-0_1

off-loaded and new goods are loaded at multiple locations in different countries. In essence, the possibility of damages or breaches of contract may potentially be more frequent. Consequently, how do arbitration and specifically the enforcement process takes into account the multitude of jurisdictions which need to be included in the risk assessment? To answer that, it is argued that diverse legal systems within the supply chain while interacting with each other tend to display a level of diversity. The issue is not as much a question of selecting a governing law, a seat or a procedural framework through an established arbitral institution such as the London Court of International Arbitration ("LCIA"), the International Chambers of Commerce ("ICC"), the Singapore International Arbitration Centre ("SIAC") and the Hong Kong International Arbitration Centre ("HKIAC"). The issue relates to the legal regime impacting the challenge and enforcement of awards in countries with diverse legal systems. The book will argue that the current State practice in this context needs to be appreciated in a holistic manner that factors in the international law on the subject and the local issues that have impacted the development of the law in the States. Such understanding, in view of the authors, is pertinent for commerce to help contracting, risk avoidance and risk management.

The addition of new players from countries along the Silk Road in South Asia and Central Asia is bound to make new challenges inevitable. Given the fact that several countries and nationals are and expected to be involved in the OBOR project, it can be safely presumed that any commercial dispute arising will be a cross border dispute incorporating different legal systems. As with most cross-border infrastructure transactions, the possibility of disputes remains high and in the context of OBOR, the potential is increased further as the scope and scale of the BRI projects finds itself taking place in countries rated as 'high risk' by Transparency International's Corruption Perception Index (CPI).[1]

1.2 The Silk Road—What is Proposed

The Silk Road Initiative, also known as One Belt One Road (OBOR) or Silk Road Economic Belt or Belt Road Initiative (BRI), is a development strategy announced by the President of the People's Republic of China in October 2013[2] involving infrastructure development and investments in countries in Europe, Asia and Africa.[3]

[1] Over 25% of the countries participating in the BRI ranked over 100 on Transparency International's 2017 CPI. https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table, accessed 07/08/2020.

[2] Ministry of Foreign Affairs of the People's Republic of China, 'President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries', Ministry of Foreign Affairs of the People's Republic of China, 07 September, 2013, https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesgjtfhshzzfh_665686/t1076,334.shtml, accessed 07/08/2020.

[3] The World Bank, 'Belt and Road Initiative', 29 March, 2018, https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative, accessed 28/09/2020.

A perusal of the official paper on the "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road" 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 in March 2015 encapsulate the principles and framework, the cooperation priorities as well as the cooperation mechanisms. As the title of the official paper reveals, the OBOR is divided into (a) the overland Silk Road Economic Belt and (b) the 21st Century Maritime Silk Road.[4] In other words, 'Belt' refers to the trade routes through land whereas 'Road' refers to sea routes.[5] In essence, the OBOR is an ambitious program setting out the foundations for a trade network and a roadmap for a series of massive infrastructure projects, ranging from high-speed railways to ports and airports. The Silk Road Initiative is aimed at increasing China's global economic dominance and seeks to connect China with East Asia, European and African Countries. From South-East Asia to Eastern Europe and Africa, the initiative includes 71 countries that account for more than half of the global GDP.[6] Notably, the OBOR is perceived as the most international project that China has embarked on in the last decades and as of 2018, China has signed more than 80 cooperation agreements with countries and organizations.[7]

In the context of OBOR, it is noteworthy that Chinese companies, during the period from January 2015 to August 2017, have signed more than 15,300 new construction contracts in BRI countries, with a cumulative value of more than US$300 billion[8] and China has signed cooperation agreements with over 40 countries and international organizations.[9] There is no doubt that the OBOR or the Silk Road is of immense economic value to Asia and requires massive investments to be functioning efficiently. Be that as it may, the redirection of Chinese money overseas will undoubtedly increase the potential for disputes in the construction and trade sectors that can be resolved in Arbitration. Importantly China's BRI has the potential to accelerate economic growth and development in neighboring countries. The ten nations of the Association of Southeast Asian Nations (ASEAN), for example, will see their

[4]Pichler and Meissner [1].

[5]Transparency International, *supra* 1.

[6]Lily Kuo and Niko Kommenda, 'What is China's Belt and Road Initiative?', https://www.theguardian.com/cities/ng-interactive/2018/jul/30/what-china-belt-road-initiative-silk-road-explainer, accessed 30 September, 2020.

[7]Jiang Jiang, 'Belt and Road—An Initiative for Win–win Cooperation', Malta Independent, April 10, 2018, https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zwjg_665342/zwbd_665378/t1549461shtml, accessed 07/08/2020.

[8]Joseph Tam, Karen Lin, Cloris Li, 'A thousand miles begin with a single step: tax challenges under the BRI', *International Tax Review* 28 November 2017, https://www.internationaltaxreview.com/article/b1f7nb45fj2r7y/a-thousand-miles-begin-with-a-single-step-tax-challenges-under-the-bri, accessed 15/10/2020.

[9]Xinhua,'Full text of President Xi's speech at opening of Belt and Road forum', 14 May 2017, http://www.xinhuanet.com/english/2017–05/14/c_136282982.htm., accessed 15/10/2020.

collective urban population expand by 20,000 people every day for the next ten years, creating significant demands for new infrastructure.[10]

Given the enormity of the BRI, China is also in awareness of the expected rise in cross border commercial disputes and has attempted to facilitate such disputes within its legal regime. The establishment of the China International Commercial Court ("CICC") by the Supreme People's Court of China in July 2018 is an attempt by China to adjudicate disputes arising from BRI.[11] Notably, the CICC consists of two courts, one in Xian for adjudicating disputes from overland projects and one in Shenzhen for maritime disputes.[12] The CICC is merely a "permanent adjudication organ" of the Supreme People's Court and not a new court in itself and is assisted by an International Commercial Expert Committee on issues pertaining to foreign law.[13] Nonetheless, a limitation of the CICC that should be taken into due notice is that CICC may only accept a case provided that such a case has a connection to China. Therefore, it follows as a necessary corollary that there is an inherent limitation on the CICC which might leave the disputes unrelated to China in a legal quagmire and hence, disputing commercial parties from different countries may hardly perceive the CICC as a preferred forum to resolve a dispute arising from OBOR projects.

Current discussions in the context of dispute resolution in OBOR disputes essentially have revolved around implementing unified arbitration rules and resolution mechanisms.[14] The International Academy of the Belt and Road(Hong Kong) has been the first to propose unified arbitration and dispute resolution rules for OBOR disputes.[15] A perusal of the aforesaid proposal indicates that the Academy aims to introduce a new set of regulations encapsulating mediation, conciliation, arbitration and appeal procedures titled "Blue Book-Dispute Resolution Mechanism for the Belt and Road".[16] Considering the involvement of several countries, the Blue Book focuses on emphasizing the cultural differences of the disputing parties by permitting the parties to appoint an arbitrator who has the expertise and understanding of local or regional culture and practices.[17]

However, since 2017 a rethink of the BRI has taken place, most specifically in ASEAN countries. In some cases, there have been calls for a renegotiation of contracts. A more prudent approach to the creation of sovereign debt which inevitably

---

[10]PwC, 'PwC Growth Markets Centre—Realising opportunities along the Belt and Road', June 2017, https://www.pwc.com/gx/en/growth-markets-centre/assets/pdf/pwc-gmc-repaving-the-ancient-silk-routes-web-full.pdf, accessed 15/10/2020.

[11]China International Commercial Court, http://cicc.court.gov.cn/html/1/219/index.html%20 accessed 10/10/2020.

[12]Ministry of Foreign Affairs, PRC, *supra* 2.

[13]Jue Jun Lu, 'Dispute resolution along the Belt and Road: what does the future hold?', Practical Law Arbitration Blog, 2 August, 2018, http://arbitrationblog.practicallaw.com/dispute-resolution-along-the-belt-and-road-what-does-the-future-hold/, accessed 07/08/2020.

[14]See, Wang [2], 11; see generally, Malik [3].

[15]International Academy of Belt and Road, available at: http://interbeltandroad.org/en/major_events/, accessed 07/08/2020.

[16]Ministry of Foreign Affairs, PRC, *supra* 2.

[17]Ibid.

follows infrastructure projects, appears to be taking place which thereby changes the landscape and financing of new projects and increases the potential for dispute resolutions.

In March 2015, China's National Development and Reform Commission, along with its Ministries of Foreign Affairs and Commerce, published the first official document setting out the vision, guiding principles and defining routes with an action plan for the OBOR in the following terms[18]:

> Over 2000 years ago, our ancestors, trekking across vast steppes and deserts, opened the transcontinental passage connecting Asia, Europe and Africa, known today as the Silk Road. Our ancestors, navigating rough seas, created sea routes linking the East with the West, namely, the maritime Silk Road. These ancient silk routes opened windows of friendly engagement among nations, adding a splendid chapter to the history of human progress.
>
> Spanning thousands of miles and years, the ancient silk routes embody the spirit of peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit. The Silk Road spirit has become a great heritage of human civilization . . . Generation after generation, the silk routes travellers have built a bridge for peace and East-West cooperation.
>
> History is our best teacher. The glory of the ancient silk routes shows that geographical distance is not insurmountable. If we take the first courageous step towards each other, we can embark on a path leading to friendship, shared development, peace, harmony and a better future.

In that context, the effects of OBOR can be simply understood as an increase in trade in goods and services affecting rail, road and sea transports. In order to facilitate the smooth functioning, six major cooperation corridors have been proposed, namely:

On land, the plan is to build a new Eurasian land bridge and develop the economic corridors of China-Mongolia-Russia; China-Central Asia-West Asia; the China-Indochina peninsula; China-Pakistan; and Bangladesh-China-India-Myanmar…On the seas, the initiative will focus on jointly building smooth, secure and efficient transport routes connecting major sea ports along the belt and road.[19]

In addition to rail transport, OBOR has attempted to boost maritime trade as below:

China also plans to build a $46 billion economic corridor—pipeline, rail, roads, bridges and more—through Pakistan. The goal is to establish a trade route connecting Gwadar, a port on the Arabian Sea, to northwest China. This enormous project is driven in part by Beijing's desire to build additional routes for its energy imports from the Middle East—to lessen its dependence on sea routes.[20]

The importance of the Silk Road is not so much the building of a connection between China and Europe as both are developed economies, having a predictable

---

[18]The State Council of the Peoples Republic of China, 'Action plan on the Belt and Road Initiative', 30 March, 2015, http://english.www.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm, accessed 07/08/2020.

[19]Geoff Wade, 'China's 'One Belt, One Road' initiative', http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/ChinasRoad, accessed 20/10/2017.

[20]Ibid. See also, Jacob Mardell, 'The BRI in Pakistan: China's flagship economic corridor', 20 May, 2020, available at: https://merics.org/en/analysis/bri-pakistan-chinas-flagship-economic-corridor, accessed 20/10/2020.