

Book Review

The Belt and Road Initiative and the Law of the Sea

Edited by Keyuan Zou

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As China's power grows in international politics, its foreign policies such as the Belt and Road Initiative (BRI), which was launched by Chinese President Xi Jinping, is attracting global attention for its enigmatic, historic, and geopolitical implications. The 'Belt' in BRI refers to the land-based 'Silk Road Economic Belt', while the 'Road' signifies the ocean-based '21st-Century Maritime Silk Road'. China's Silk Road largely reminds the world of its grand history along the trajectory of the spread of trade and interactions throughout the Eurasian continent. This legacy may even go back a few thousand years, recalling its global achievements and influences in a world where Western culture prevails. Ever since its economic and military rise in the present world, China's diplomatic and political power has been geopolitically threatening the status quo which the United States and its allies have created and nurtured after the Second World War. However, the enigma surrounding BRI raises questions as to its concrete contents and impact on the regions where Chinese investment and economic development assistance permeates deeply. Moreover, the extent to which BRI influences the current rules of international law, for example, has been unclear, not to mention the law of the sea, or the United Nations Convention on the Law of the Sea (UNCLOS), which governs the Maritime Silk Road (MSR).

The book under review, whose origin is a compilation of revised and updated papers presented at an international symposium, 'The Belt and Road Initiative and the Law of the Sea', held in Zhoushan, China, in June 2016 (p. vii), may appear to provide the reader with intriguing topics and a wide coverage of issues in the field of ocean law and policy. The volume is divided into the following five parts: (1) use of the oceans; (2) sea lanes of communication and navigational safety; (3) marine energy and sea ports; (4) maritime

law enforcement and cooperation; and (5) access of the land-locked states to the sea.

In the first chapter, Keyuan Zou, the sole editor of the volume, who stresses BRI's huge potential in promoting economic development, along with its geographic coverage and other positive effects in the concerned regions and among the participants, admits that some countries still have 'doubts and distrust' (p. 7) concerning the real intention of China to pursue the BRI and its plausibility as a win-win plan for the participating countries and the whole world, under UNCLOS. The reader the book under review would certainly expect to learn when and how these 'doubts and distrust' will hopefully be dispersed.

In Part I, Chapter 2, Seokwoo Lee and Hee Eun Lee discuss the implications of the BRI and maritime economic cooperation in East Asia for South Korea, advocating BRI as an opportunity for South Korea, whose skilful and steadfast reaction to challenges in terms of its strategic relations with China and the United States will decide its fate, by delicately positioning itself between the two great powers. Examining the legal implications of BRI and MSR for the use of the oceans with a special reference to the rules and regulations of the International Maritime Organization (IMO), in Chapter 3 Renping Zhang advocates the development of Chinese shipping and related industries through national and regional cooperation in the application and implementation of the relevant rules of UNCLOS and IMO conventions, along the MSR where regional maritime cooperation — such as the one in Southeast Asia — will be significant both for China and for sustainable global development with regard to economy, politics, culture, and society.

In Part 2, Chapter 4, in the light of China's Arctic Policy of 2018, which launched a joint project to build a 'Polar Silk Road' in the future, Ted L. McDorman provides an overview on the Arctic of 'old issues' (Canada's Northwest Passage and Russia's Northern Sea Route, as well as Article 234 of UNCLOS) and 'new developments' (the Polar Code of 2017 and the Arctic Agreements of Search and Rescue (SAR) of 2011 and of Oil Pollution, Preparedness, Response and Co-operation (OPPRC) of 2013, respectively). After discussing South Korea's regulations and efforts to enhance the safety of passenger ships, in Chapter 5 Suk Kyoan Kim explores the implications of the South Korean cases for the safety of the new MSR, such as the extension of the coverage of the International Convention for the Safety of Life at Sea (SOLAS) and the encouragement of countries participating in the MSR to actively engage in international legal and institutional regimes for maritime safety. While China's assertive maritime policy may face US counter-reaction in the South China Sea, described as 'an American lake' (Noam Chomsky), in Chapter 6 Anthony Carty depicts an optimistic future plan under China's One Belt One Road (OBOR) project in conjunction with a 'German-led Europe' (p. 78), where the vast infrastructural developments will be integrated into one massive area of trade and

economy along Central and Western Asia, which will be linked up with Central and Western Europe.

In Part 3, Chapter 7, Yen-Chiang Chang discusses the global energy interconnection initiative and suggests an institutional framework for the establishment of relevant national laws for better development of marine renewable energy in China. Chang stresses cooperation in the BRI as opportunities for China to commence energy interconnection with the countries along the belt and the route as well as promoting cooperation with regard to aspects such as marine renewable energy. Examining the role of sea ports in the BRI strategy in the light of (1) Chinese law, (2) international law, and (3) economic development, in Chapter 8 Ling Zhu concludes that the strategy can offer a window of opportunity for sea ports to add more content to their role, such as ‘operator’, ‘engine of economic development’, and ‘regulator’ (p. 112), in the development of a healthy and sustainable network within the port community. In Chapter 9, Zhihua Zheng argues for a harmonised transport law to deepen economic ties in regions where the BRI seeks a common ground for cooperation and development by following market operation, improving regional infrastructure, and upgrading their connectivity to a higher level.

In Part 4, Chapter 10, while examining bilateral cooperation to maximise the effectiveness of fisheries management measures (by using the examples of Australia/France and China/USA), Warwick Gullett suggests that China could focus its bilateral and regional fisheries enforcement cooperation activities on states along the 21st MSR, where China’s investments linked to port redevelopment and fish processing factories, in particular, are taking place. Exploring the interpretation and application of some relevant rules of UNCLOS concerning the freedom of navigation and the protection and preservation of the marine environment, in Chapter 11 Vasco Becker-Weinberg examines the situations of the Mediterranean and Red Seas in connection with the development of BRI, for a renewed opportunity for maritime cooperation in these regions. Discussing port state jurisdiction and port state control under UNCLOS and the relevant regional memorandums of understanding (MoUs) on port state control, in Chapter 12 Chen-Ju Chen proposes that, through BRI, China can play a role to promote the cooperation and coherence between different MoUs, as well as encourage the enforcement of maritime conventions within the states along the BRI routes.

In Part 5, Chapter 13, in connection with the inland waterways in landlocked countries included in the development of trans-regional transport and logistic routes mentioned in BRI, Helmut Tuerk thoroughly discusses the history, conceptual development, and practice concerning the rights of land-locked states under UNCLOS. In examining the challenges that land-locked developing states are facing in terms of access to and allocation of high seas fisheries, in particular, Chapter 14 by Anastasia Telesetsky proposes a

'thought experiment' at this stage in order to build, under BRI, connectivity between the network of 'Belt' states and 'Road' states across globally shared resources (p. 212), with China as the leader of BRI, to improve equity for land-locked developing states within the regional fisheries management organisations (RFMOs) in which China is an active member.

The book under review covers a wide range of topics and regions in relation to maritime affairs, navigation safety, marine energy, sea ports, fisheries, and land-locked states, spreading mainly across the Eurasian continent from Western and Central Europe through Southeast and East Asia. As is common with this kind of a compilation of symposium papers, the reader would not overlook the time lapse between their original presentations at the symposium in 2016 and their publication in the form of this volume as one of the Brill's series of *Maritime Cooperation in East Asia* in 2020. During the four years or so, the world has seen the aggravation of the US-China trade conflicts, China-India territorial skirmishes and tense bilateral relations, Japan's reluctant and delayed participation in BRI, and President Trump's defeat in the 2020 US Presidential Election, for example. It would, therefore, be too demanding to expect to read a chapter that deals with an issue such as Japan-China relations in BRI, BRI after China's tense relations with India, and BRI after the Trump Administration.

In the light of the title of the book under review, i.e., *The Belt and Road Initiative and the Law of the Sea*, however, what is more frustrating with its contents is the fact that, except for Chapters 3, 8 and 12, very few papers properly and fully discuss BRI and the law of the sea, including UNCLOS. The reviewer would expect a book with such a title to more squarely consider the significance and impacts of BRI, OBOR, and MSR in the context of, or in relation to, the law of the sea, or UNCLOS, in particular. In fact, some of them, such as chapters: 4 (Arctic waters), 5 (Korea's case on maritime safety), 10 (Bilateral fisheries practice), 11 (The Mediterranean and the Red Seas), 13 (Land-locked states' rights), and 14 (Land-locked developing states) — only discuss the items or case study of a country/countries with brief additional remarks of BRI and/or the maritime issues at the beginning and/or end of them. Other chapters, such as: 2 (South Korea's dilemma), 6 (China's dilemma), 7 (China's national energy policy), and 9 (Transport law's harmonisation); scarcely consider the law of the sea or (domestic) maritime law *per se*, although they might seem to touch or scratch the surface of marine affairs in the widest sense. In other words, the book under review could have more profoundly explored the concrete meaning and consequences of BRI in the framework of, and in relation to, UNCLOS and other related rules and regulations of the law of the sea.

It is understandable that the issues dealt with under the title of BRI and MSR may be varied and hurriedly updated, as the recent publication of a book on MSR after a

symposium shows in a mode.¹ However, experts and professionals in the field of the law of the sea and BRI/MSR would be waiting impatiently for a genuine monograph or an encyclopaedia-like handbook on BRI/MSR and the law of the sea, only because what they really need now is more systematised and organised analyses and more thorough discussions on these two fields of study, so that the ‘doubts and distrust’ mentioned above will be driven away as soon as possible for the sake of the regions as well as the whole world.

Endnote

- 1 See, for example, *The 21st Century Maritime Silk Road: Challenges and Opportunities for Asia and Europe*, Edited by Keyuan Zou, Shicun Wu and Qiang Ye, Routledge, 2020.