

Conference Report

GLOBTAXGOV & TRICI-LAW: The Belt and Road Initiative

21 February 2019, Leiden University (The Hague)

On February 21st GLOBTAXGOV, TRICI-LAW and the LeidenAsiaCentre organised a conference on the Belt and Road Initiative (BRI) from an interdisciplinary perspective. Its aim was to provide an overview of the opportunities and challenges presented by the BRI concerning international politics and relations as well as to identify potential legal issues regarding dispute resolution and the international laws on tax, investment and trade.

The conference consisted of three sessions in which experts gave presentations containing their views on the BRI from different standpoints and answered questions raised by audience members. Assoc. prof. Irma Johanna Mosquera Valderrama started the conference by giving an introduction on [GLOBTAXGOV](#)'s research project "A New Model of Global Governance in International Tax Law Making", while Prof. dr. Panos Merkouris introduced [TRICI-LAW](#)'s "The Rules of Interpretation of Customary International Law". Both of these are European Research Council (ERC) projects funded under the European Union's Seven Framework Programme (FP/2007-2013) that are brought together in this conference.

Session 1: Political and International Relations Aspect

The first of the three sessions, all of which were moderated by Prof. dr. Henk Vording, focused on the BRI's political and international relations aspect. Dr. Wang Jue kicked off by giving a presentation on China's outward economic expansion in relation to the BRI. In her presentation, Dr. Wang discussed the economic aspects of the BRI from a Chinese standpoint by setting out the country's development and the economic motivations of the Chinese Party-state to encourage outward investments. She emphasised that many foreign commentators overestimate the geopolitical motivations behind the BRI and concluded by listing economic opportunities as well as risks, many of which relate to obstacles in the countries receiving Chinese investments, facing the BRI.

Thereafter, Dr. Joris Larik discussed in his presentation China's two-faced approach to rule-based governance. On the one hand, he emphasised China's friendliness towards international law and institutions, mentioning the country's accession to the World Trade Organisation (WTO) as a prominent example. On the other hand, China's position in the South China Sea conflict shows a different face. Furthermore, Dr. Larik explained that China's foreign policy is not as normative as that of the EU and that there is therefore little conditionality involved for BRI partners when cooperating with China. He concludes by stating that the BRI does not represent pure Chinese altruism, nor blatant global expansionism.

Session 2: Investment Law, International Law, Dispute Resolution

The second session discussed the BRI from the perspectives of international law, investment law and dispute resolution. The latter of these three was the main topic for the first speaker, Dr. Diego Mejía-Lemos. In his presentation Dr. Mejía-Lemos underlined that the BRI is not primarily based on integration through law or international institutions, which means that the settlement of trade and investment disputes largely relies on the existing structure and bilateral treaties. These should be adequate to solve such issues. Especially international arbitration, based primarily on the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, remains important in this respect, although litigation before national courts is increasingly having potential to play a role as well.

Subsequently, Prof. dr. Panos Merkouris discussed the continued relevance of customary international law for the BRI. After first explaining why he believes that the International Court of Justice is most likely not a viable option for dispute settlement within the BRI, he explained that there is a renewed interest in customary law. In fact, there are different ways, both through direct and indirect points of entry, in which customary international law can be relevant in disputes that can occur within the BRI context. Dr. Merkouris ended his presentation by pointing out that the long-term nature of the BRI and its projects has implications for the way treaties can be reviewed, since legal interpretations can change over the course of time.

Session 3: Tax Law and interaction with Trade Law

The final session focussed on the BRI in relation to tax law and trade law. Shaomei Chen opened this session by presenting about China's tax treaties with the countries along the Belt and Road. She emphasised that China has a broad network of such treaties. However, Chen stated that some issues exist regarding this network in the BRI context, such as differences between the tax treaties that China agreed upon with BRI states, which can create uncertainty for taxpayers. Furthermore, China currently only has a tax treaty with 72 of the 122 BRI countries, posing potential risks for Chinese companies operating in some of these countries. However, Chen noted that there certainly is progress with regards to the resolution of tax disputes. The amount of disputes and the time needed to solve these is reducing. The Chinese government is committed to realise more effective dispute resolution mechanisms.

Finally, Dr. Anna Marhold, the last speaker of the conference, discussed the international trade aspect of the BRI and specifically its interaction with WTO law. She made clear that the BRI does not fit with existing international trade law structures and is not a deep free trade agreement initiative. It mainly relies on soft instruments instead. Although the WTO does provide rules that are relevant to the BRI, including concerning dispute settlement, such rules are mainly being relied upon in disputes between China, the EU and the US. When Chinese activities violate WTO rules in a BRI country, it is only the BRI state itself which can undertake action. Since many of these states are willing to grant China favours in exchange for its loans and investments, the WTO is often bypassed.

Roundtable

During the roundtable, as well as the Q&As after each session, the audience members and the speakers were presented with the opportunity to raise questions and discuss issues with one another. This resulted in interesting interactions which contained perspectives from different academic disciplines as well as from different regions, including from China. The speakers also discussed what they think are the biggest challenges to the BRI, which many believed include a lack of understanding and cooperation between China and the global powers among themselves, and between China, local communities and international institutions.