



“一带一路”与人类命运共同体 构建的法律与实践

王瀚◎主 编

刘亚军 吕江◎副主编

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内容提要

本书是“一带一路”合作与发展法律论坛与“一带一路”法律研究协同创新中心的法学研究成果结晶。它包括了“一带一路”发展倡议与法治创新、“一带一路”国家安全与反恐合作、“一带一路”民族宗教法律、“一带一路”金融税收国际法律合作、“一带一路”贸易投资便利化法律、“一带一路”国家互通互联法律保障机制、“一带一路”国家能源安全和能源合作法律, 以及丝绸之路环境保护与文化遗产法律等八个与“一带一路”相关的重大法学专题。

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内容简介

2015年10月19日，由中国法学会主办、西北政法大学承办的主题为“深化法律合作，共建‘一带一路’”的第四届中国—亚欧法律论坛在西安召开。此次会议邀请到中国法学会副会长张鸣起、巴基斯坦总理法律和司法特别助理阿斯塔·奥瑟夫·阿里、上合组织地区反恐机构执委会副主任普罗夫、蒙古律师协会会长甘巴特尔·班兹拉齐等重要嘉宾。在会议上，出台了指导未来“一带一路”法律实践的纲领性文件《西安宣言》，同时为丝绸之路区域合作与发展法律研究院和中国—亚欧高端法律人才培养基地举行了揭牌仪式，并正式启动了“一带一路”法律网和中国反恐信息网。40多名与会专家学者围绕“一带一路”法律建设进行了广泛的学术交流。

2016年5月13日，由陕西省教育厅举办、西北政法大学承办的“‘一带一路’合作与发展法律论坛”在西安隆重召开。此次会议是2016年丝绸之路国际博览会暨第二十届中国东西部合作与投资贸易洽谈会的一个重要论坛，会议邀请到了包括联合国国际海底管理局克里斯·布朗教授，乌兹别克斯坦塔什干国立法律大学校长堪亚佐夫教授、国际关系部部长雅库布教授，俄罗斯圣彼得堡国立亚历山大一世皇帝交通大学副校长吉谢列夫·伊戈尔·巴夫洛维奇先生在内的国内外知名法学专家40余人，共商“一带一路”与中国法治创新问题。

2016年5月14日，由“一带一路”法律研究协同创新中心主办，西北政法大学丝绸之路区域合作与发展法律研究院、西北政法大学国际法研究中心、西北政法大学国际法学院联合承办的“一带一路”法律研究协同创新中心2016年年会在西安召开。“一带一路”法律研究协同创新中心是

由中国政法大学、西南政法大学、华东政法大学、中南财经政法大学、西北政法大学、武汉大学法学院、对外经济贸易大学法学院以及 IR OBOR Lawyers Alliance（“一带一路”国际律师联盟）于2015年11月发起设立。此次年会的主题是“‘一带一路’发展战略与国际法治创新”。国内知名法学家30余人参加了会议，共商“一带一路”倡议下，法学高等教育的未来发展和法学人才的培养。

2017年5月15日，为了深入学习习近平主席在5月14日“一带一路”国际合作高峰论坛开幕式上的重要讲话以及在中国政法大学考察时做出的重要指示，西北政法大学丝绸之路区域合作与发展法律研究院和国际法研究中心联合召开了以“面向‘一带一路’的中国法治创新、法学研究和法学教育”为主题的研讨会，与会20多名专家学者共同学习和交流了习近平主席的重要讲话和重要指示。

无疑，由西北政法大学承办、丝绸之路区域合作与发展法律研究院具体负责的这些高级别会议，对搭建“一带一路”倡议下，国内外法律高等教育的研究和交流具有重大的实践意义。四次会议共收集到86篇学术论文，经西北政法大学丝绸之路区域合作与发展法律研究院学术委员会遴选，汇集了8个专题、40篇代表国内法学在“一带一路”理论创新方面的优秀论文，在此以飨读者。同时，该论文集亦有助于国内开展“一带一路”与法学、经济学、政治学交叉研究的专家学者、政府工作人员学习参考。

西北政法大学丝绸之路 区域合作与发展法律研究院简介

丝绸之路区域合作与发展法律研究院是经中国法学会批准，在西北政法大学设立的学术研究、人才培养和科研服务综合型高校智库平台。研究院院长由西北政法大学副校长、陕西省“三秦学者”、博士生导师王瀚教授担任，现有专职研究人员 34 人，具有博士学位人员 23 人。研究院拥有 600 平方米的专门办公场所、独立的图书馆和资料信息中心、独立的学术报告厅和会议室。研究院设有国际运输与物流法律研究所、上海合作组织法律研究所、丝绸之路金融合作法律研究所、海上丝绸之路法律与政策研究所、航空与空间法研究所、国际贸易与投资法律研究所、中国与中亚国家法律比较研究所、国际电子商务法律研究所、中国西北内陆自贸区法律问题研究所、丝绸之路商务风险研究所、国际能源法律与政策研究所。在国际民用航空运输和国际物流法律问题、航空航天法律实务研究、国际经贸往来与跨国融资法律实践、电子商务与网络法律问题、国际招投标与政府采购法律实务、边界争议解决与跨境能源合作开发、国际能源法律与政策、国际民商事争议解决、极地海洋等领域的研究方面，已形成自己的研究特色，在全国产生了广泛的影响。

研究院专职研究人员整体外语水平较高，大多具有赴海外攻读学位和访问交流的经历，与法国巴黎第二大学、美国耶鲁大学法学院、日本京都大学、韩国西江大学、武汉大学、厦门大学等国内外名校具有较为紧密的联系。先后承担国家社科基金项目 10 项，省部级项目 28 项以及其他课题 30 余项，在国内外著名的荷兰 Nijhoff 出版社、欧洲大学出版社、法律出版社等出版中英文学术专著 25 部，在《中国社会科学》《中国法学》等法

学权威与核心期刊以及香港《亚太法律评论》等 SSCI 国际源期刊上发表中英文论文 200 余篇，其中被《人大复印资料》《中国社会科学文摘》等全文转载 20 余篇。获得省部级奖励 25 项，其中包括陕西省哲学社会科学优秀成果一等奖 3 项，司法部优秀科研成果一等奖 2 项。研究院立足西北，面向全国，着眼世界，已成为我国服务国家“一带一路”建设的卓越涉外法律人才培养基地及社会服务中心和国际法信息资料中心。

目 录

Contents

专题一 “一带一路”发展倡议与法治创新问题

Conceptual Analysis of China's Belt and Road Initiative: A Road towards

a Regional Community of Common Destiny Zeng Lingliang /3

关于“一带一路”倡议实施的若干法律思考 徐国建 /37

“面向‘一带一路’的中国法治创新、法学研究和法学教育”

座谈会上的发言和重要观点 王瀚 /46

西安“丝绸之路经济带”新起点建设中的政策法律问题

——基于国际法视角的思考 刘亚军 刘冰 /50

国际贸易规则新趋势与中国“一带一路”倡议的法律

应对 杨松 周佳楷 /64

概论我国“一带一路”倡议建设的法治保障 樊林波 /75

“一带一路”创新型合作机制法律问题研究 刘雪红 /85

“一带一路”框架下的国际经济法律战略问题论析 周亚光 /98

专题二 “一带一路”国家安全与反恐合作问题

“伊斯兰国”在中国周边的活动态势及对策分析 贾宇 /109

“伊斯兰国”在阿巴地区的扩张及对地区恐怖势力的

影响 张金平 郑迪 /114

沙特“去极端化”反恐策略评析 姜昱同 /126

开展反恐警务国际合作的分析与建议

——从新安全观角度推进“一带一路”建设 曹雪飞 /136

专题三 “一带一路”民族宗教法律问题

依法治国背景下新疆生产建设兵团的法律地位研究 ... 姬亚平 王嘉兴 /149

哈萨克斯坦宗教法对我国宗教立法之启示 陈彤 /163

中亚诸国国族建构中的政教关系问题 常安 /178

专题四 “一带一路”金融税收国际合作法律问题

区域多边发展银行的运行规则对亚投行的启示 曾文革 刘珈利 /195

“一带一路”倡议下的人民币国际化 刘冰 /208

“新丝绸之路经济带”与国际区域经济协作中的税收政策与

法律问题 席晓娟 /215

“一带一路”与中国商法国际化的新挑战 范健 张虹玉 梁泽宇 /223

专题五 “一带一路”贸易投资便利化法律问题

殊途同归——“一带一路”上的自贸区与“TPP” 赵恒宇 /239

“一带一路”框架下经济与贸易发展合作中的法律问题

研究 白莉 唐龙 /250

法律与外交视角下“一带一路”建设中我国海外投资利益的

维护 宋瑞琛 /263

“一带一路”贸易纠纷在线非诉讼解决机制研究 倪楠 /284

“一带一路”下中国与中亚国家双边投资协定中“投资”

定义之重构 张光 /294

专题六 “一带一路”国家互通互联法律保障机制问题

论国际铁路运输公约对“一带一路”的重要性 莫世健 陈石 /307

论“一带一路”倡议下的军舰无害通过权	潘俊武 /326
丝绸之路经济带航空运输公约的协调问题	师怡 /334
试论我国与中亚国家的航权交换	时杜娟 /340
丝绸之路经济带背景下通用航空产业发展法律对策 研究	燕福民 张享维 /348
论我国与中亚国家航空旅客运输的法律适用	张望平 /356
中国渔船及渔民被韩国扣押法律问题浅议	蒋围 /362

专题七 “一带一路”国家能源安全和能源合作法律问题

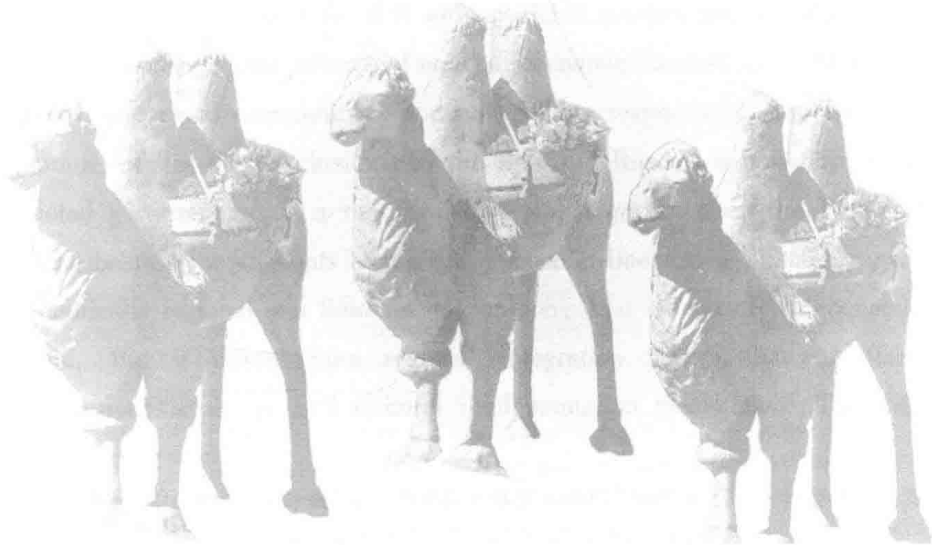
中缅能源投资风险事件评析	陈臻 周章贵 /379
“一带一路”框架下我国区域能源合作的战略选择与 策略应对	周强 周亚光 /387
共建“丝绸之路经济带”背景下中国与中亚国家能源 合作法律制度：现状、缺陷与重构	杨泽伟 /395
秩序、革命与制度创新：全球能源变革对丝绸之路经济带 能源合作的挑战与应对	吕江 /411

专题八 丝绸之路环境保护与文化遗产法律问题

丝绸之路经济带环境合作的困境及推进路径	陈学敏 /431
丝绸之路经济带生态环境保护区域合作法律保障制度的 构建	郝少英 /444
“一带一路”视角下中国水下文化遗产法律保护与发展 路径初探	裴首怡 刘丽娜 /456
丝绸之路文化遗产及其合作保护机制	王兆平 /465
“一带一路”倡议背景下我国劳动法若干问题 初探	胡充寒 杨浩楠 /471

专题一

“一带一路” 发展倡议与法治创新问题



Conceptual Analysis of China's Belt and Road Initiative: A Road towards a Regional Community of Common Destiny

Zeng Lingliang *

Abstract

The Chinese Initiative of jointly building the Silk Road Economic Belt and the 21st Century Maritime Silk Road (The Belt and Road) has drawn a world - wide attention. Since 2012, especially in the current year. Although the Chinese Government just recently made public the Document on Vision and Actions of the Belt and Road, discussion and comments have been speedily and increasingly abundant among politicians, economics, enterprisers and scholars in various disciplines both at home and abroad. In spite of the hardness at moment to define the Belt and Road conceptually, especially from the legal point of view, this article tries to make a conceptual analysis of it with available sources and by comparison with the concepts and patterns of regional economic integration, partnership arrangement and community of common destiny respectively. Finally, the author reaches the conclusion that the Belt and Road is a new formula of global governance. As a new model of global governance, the Belt and Road bears some elements of regional economic integration, namely, geographically regional and fields of cooperation, that is, mostly in economic field. But it differs from regional integration that it has no fixed institutional structure and uniform implementation mechanism. The Belt

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and Road resembles to some extent the partnership arrangement between states in aspects of values pursued, close cooperative relationship to be established and broad fields of cooperation to be covered. But partnership is often an arrangement of bilateral cooperation, while the Belt and Road construction is designed in the framework of the region and even beyond the region. The Belt and Road takes the patterns of regional integration and partnership arrangement both as its basis and priorities with a far-reaching view of building a regional community of common destiny. This new type regional community aims at building a “community of shared interests” “a community of shared destiny” and “a community of shared responsibility”, and it is in essence a part of the community of common destiny of the whole mankind.

I. Introduction

(1) The idea of jointly building the Silk Road Economic Belt and the 21st Century Maritime Silk Road (the Belt and Road)^① is based on the historical, empirical and practical considerations by the Chinese government. Historically, The Silk Road began thousands of years ago and has lasted ever since. Empirically, the Silk Road Spirit of “peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit” has passed from generation to generation, promoted the progress of human civilization, and contributed greatly to the prosperity and development of the countries along the Silk Road, as pointed out in the preface of the Vision and Actions on Jointly Building Silk and Road Economic Belt and 21st Century Maritime Silk Road (the Belt and Road Initiative).^② Practically, there are three dimensions in the mind of the top Chinese leaders. Firstly, theme of the current century is

① The Silk Road Economic Belt focuses on bringing together China, Central Asia, Russia and Europe (the Baltic); linking China with the Persian Gulf and the Mediterranean Sea through Central Asia and the Indian Ocean. The 21st Century Maritime Silk Road is designed to go from China's coast to Europe through the South China Sea and the Indian Ocean in one route, and from China's coast through the South China Sea to the South Pacific in the other.

② “Vision and Actions on Jointly Building Silk and Road Economic Belt and 21st Century Maritime Silk Road”, jointly released by the National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce with the authorization of the State Council, the People's Republic of China on March 28, 2015. http://news.xinhuanet.com/english/2015-03/28/c_134105435.htm.

almost the same as that of “Silk Road” in history, namely, “peace, development, cooperation and mutual benefit”. Secondly, the international and regional situations faced by all countries have become more and more complicated. Thirdly, the recovery of global economy has been weak and slow since the financial crisis began in 2008. Therefore, the Belt and Road is created as a new strategy to carry forward the spirit of the ancient Silk Road, and cope with international political, economic and social challenges in the world of globalization and global governance.

(2) The Belt and Road proposal was first initiated by the Chinese President Xi Jinping during his visits in the Central Asia and Southeast Asia in September and October of 2013. In November of the same year the Third Plenary Session of the 18th Central Committee of the CCP called for accelerating infrastructure links among neighboring countries and facilitating the Belt and Road initiative. In March 2014, Premier Li Keqiang reaffirmed accelerating the Belt and Road construction in his annual government work report the Chinese People’s National Congress; at Beijing APEC meetings in November, President Xi announced that China will contribute 40 billion U. S. dollars to set up the Silk Road Fund and the fund to provide investment and financing support for infrastructure, resources, industrial cooperation, financial cooperation and other projects in countries along the Belt and Road; in December the Economic Work Conference of the CCP sketched out priorities for the coming year, which include the implementation of the Belt and Road strategy. On March 28, 2015, after President Xi Jinping highlighted the strategy at the opening ceremony of the 2015 annual conference of the Boao Forum for Asia (BFA), the formal the Belt and Road Initiative as mentioned in the beginning was made public.^①

(3) For the past year and half, especially after the announcement of the Belt and Road Initiative recently, discussions and comments on the Belt and Road Initiative have been carried on in various circles both at home and abroad, such as politicians, diplomats, scholars of international relations, economists, journalists, jurists and sociologists, etc. Each circle has been trying to understand this newly proposed strategy in terms of his or her professional observation. However, before the Chinese official document “Vision and Actions” was made public, all comments

① BEIJING, March 28, 2015 (Xinhua), “Chronology of China’s Belt and Road Initiative”, http://news.xinhuanet.com/english/2015-03/28/c_134105435.htm.

and explanations had been made largely on assumption except for some sporadic empirical examples.^①

(4) At present, although the Belt and Road is roughly designed and its building is just at very beginning, we can still expound its theoretical and practical implication from legal perspectives mainly in accordance with this official Chinese document available and some concrete actions adopted so far. The first section below tries to make analysis of the Silk Belt and Road in contrast to existing regional integration. Discussions in the second section will focus on the comparison of the Belt and Road with international partnership arrangements. The further comments on the Belt and Road will be set within the framework of the new conception of community of the human common Destiny. Finally, the author intends to make a preliminary summary assessment of the Belt and Road in the context of global governance as a conclusion.

II. The Belt and Road in the Perspective of Regional Economic Integration

1. Legal definition and hierarchy of regional integration

(1) The theory of integration has gradually become popular among scholars of international relations, economics and jurists of regional studies since the end of the Second World War. There exist two different views concerning the origin or integration. One view is that the development from city States in the Middle Ages to modern sovereign States had been the remark of integration in international relations and its theoretical evidence originated from the political thoughts of Thomas Aquinas and others in that time; the other view is that integration started with the German

^① For instance, in October 2013, President Xi in his speech at the Indonesian parliament proposed establishing the Asian Infrastructure Investment Bank (AIIB) to finance infrastructure construction and promote regional interconnectivity and economic integration. During the Beijing APEC meeting in November 2014, Xi announced that China would contribute 40 billion U. S. dollars to set up the Silk Road Fund to be used to provide investment and financing support for infrastructure, resources, industrial cooperation, financial cooperation and other projects in countries along the Belt and Road. By Bai Ming, Will Asian Infrastructure Investment Bank become a reality, China Today, October 16, 2014, http://www.china.org.cn/opinion/2014-10/16/content_33780011.htm.

Customs Union in the mid 19th century and it originated directly from economics.^① Nevertheless, contemporary integration commenced in Europe after the World War II, such as the Marshall Plan, OEEC (currently the OECD), NATO, Warsaw Treaty Organization, Council of Europe, Comecon, Shuman Plan, ECSC, EEC, EURATOM, ERTU, EFTA, EU, etc. Nowadays, various patterns of regional integration spread all over the world. Talking of integration, it often refers to economic integration. However, it may also mean integration initiative or movement in political, military and social fields or sectors. Furthermore, in accordance with neo-functionalism,^② in spite of regional dimension, integration may also present at global level, such as the WTO, IMF and other UN specialized agencies.

(2) The concept of integration often refers to some forms of cohesiveness between states in economic, social and even political fields at regional level, while worldwide cohesiveness or cooperation either in specific areas or in comprehensive fields is largely put into the intercourses of globalization. Further more, talking of either regional integration or globalization, the thematic concentration seems to be economic area and its related fields.

(3) Then, how to define economic integration, especially in legal sense, and what main features and trends it presents? According to the free encyclopedia of Wikipedia, economic integration is the unification of economic policies between different states through the partial or full abolition of tariff and non-tariff restrictions on trade taking place among them prior to their integration. This is meant in turn to lead to lower prices for distributors and consumers with the goal of increasing the combined economic productivity of the states.^③ As a legal form of economic cooperation between states or entities related, regional economic integration may be conducted in various types in terms of cohesiveness.

(4) The most popular type of regional economic integration are Free Trade Areas (FTAs) in which participants remove trade barriers in goods between them,

① Peter, Hay, "Federalism and Supranational Organizations: Patterns for New Legal Structures", University of Illinois Press, 1966; P. Pescatore, The Law of Integration—Emergence of a new phenomenon in international relations, based on the experience of the European Communities (Sijthoff, Leiden, 1974).

② J. Caporaso, Regional integration theory: understanding our past and anticipating our future. Journal of European Public Policy 1988, 1988 (1): 1-16; JR. L. Claude, The Functional Approach to Peace, in *Swords into Plowshares*. 4th ed. New York: Random House, 1971: 378-407.

③ http://en.wikipedia.org/wiki/Economic_integration#cite_note-5.