



From a 'Small Phrase with Big Ambitions'* to a Powerful Driver of Contract Law Unification? — China's Belt and Road Initiative and the CISG

Lutz-Christian Wolff†

China's Belt and Road (B&R) initiative was launched in 2013. Building upon the idea of the ancient Silk Road which connected China with many countries on the Eurasian subcontinent, the impact of the B&R initiative will be rather significant. It is said to cover over half of the world's population, 40 per cent of the world's gross domestic product, and 75 per cent of the known energy resources. China and some of the B&R countries are members of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 1980. This paper shows that the goals of the B&R initiative — to the extent that they have crystallised — mirror the goals of the CISG. The CISG could therefore play an important role in the implementation of the B&R initiative and, conversely, it is very likely that the B&R initiative will accelerate the expansion of the CISG.

Introduction

In September 2013 during a visit to Astana, the capital of Kazakhstan, the President of the People's Republic of China (PRC) announced the launch of China's 'One Belt, One Road' (OBOR) initiative.¹ The initiative builds upon the idea of the ancient Silk Road which had developed during the Han Dynasty (206 BC – 220 AD) for the export of Chinese silk to countries in India, Mesopotamia, Northern Africa and Europe.² The OBOR initiative is supplemented by the so-called '21st Century Maritime Silk Road' which was

* P Wong, *South China Morning Post* (SCMP), 26 May 2016, p A11.

† Wei Lun Professor of Law and Dean of the Graduate School, The Chinese University of Hong Kong, email: wolff@cuhk.edu.hk. The work on this article was generously supported by the Global China Research programme of The Chinese University of Hong Kong (CUHK). Special thanks go to Ms Xu Chang and Ms Jenny Chan for superb research support. Online sources quoted in this article were last visited on 9 May 2017. The original online links have been shortened with the help of a URL shortener to improve the readability. Footnotes have been omitted in word-for-word quotes throughout the article for the same reason.

1 For the following compare L-C Wolff, 'China's "Belt and Road" Initiative — An Introduction', in L-C Wolff and Chao Xi, eds, *Legal Dimensions of China's Belt and Road Initiative*, Wolters Kluwer Law, Hong Kong, 2016, pp 1–31; G Yeo, SCMP, 13 November 2015, p A13; B Westcott and S Zhen, SCMP, 3 November 2015, p A8; D Tsang, SCMP, 2 November 2015, p A4; A Leung, SCMP, 6 May 2016, p A13.

2 See K Sneader, SCMP, 18 May 2016, p A13; PRC National Development and Reform Commission (NDRC)/PRC Ministry of Foreign Affairs (MFA)/PRC Ministry of Commerce (MOFCOM) (with State Council authorisation), 'Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road', News Release, 28 March 2015, English version available at <https://goo.gl/uGK4me>, under IV Cooperation Priorities, Unimpeded Trade.

announced shortly afterwards with the goal to link China with countries along maritime waterways all the way to Europe.³ The Maritime Silk Road is meant to connect:⁴

China's east coast to ports including Colombo in Sri Lanka, Gwadar in Pakistan, across the Indian Ocean, through the Red Sea to Greece's Piraeus, ending in Venice.

Official Chinese statements nowadays refer to both initiatives jointly as the 'Belt and Road' (B&R) initiative,⁵ a term which is consequently adopted as well for this article. The B&R initiative will also create:⁶

six transnational China-centric economic corridors: a new Eurasian land bridge of freight trains connecting the port of Lianyungang in Jiangsu . . . province with Rotterdam; a Mongolia–Russia corridor; a Central Asia–West Asia corridor; an Indochina peninsula corridor; a Pakistan corridor; and a Bangladesh–China–India corridor.

China and about half of the countries along the 'Belt and Road' are members of the United Nations Convention on Contracts for the International Sale of Goods (CISG) which was signed in 1980 and which entered into force in 1988. China and some of those B&R countries which have become CISG member states have, however, declared reservations regarding the scope of applicability of the CISG. This article explores the status quo of the CISG in the B&R area and discusses the significance of the CISG for the B&R initiative as well as the possible impact of the B&R initiative on the CISG. It thus analyses the B&R initiative from a contract law perspective. It also serves as a case study of the CISG in the particular geographical region newly defined by the B&R initiative.

The section following this introduction first offers some general background information about the B&R initiative before briefly recalling core features of the CISG. The next section explores the status of the CISG in the various B&R countries. The main section then discusses the meaning of the CISG for the B&R initiative. This article concludes with a summary and an outlook.

Background

China's 'Belt and Road' Initiative⁷

As already mentioned,⁸ the B&R initiative was announced in autumn 2013.⁹ Despite the fact that the B&R initiative has been widely discussed and has led to many government and non-government initiatives, core aspects of the B&R

³ Sneader, above, n 2, p A13; Tsang, above, n 1, p A4; P Wong, SCMP, 26 May 2016, p A11; NDRC/MFA/MOFCOM, above, n 1, III Framework.

⁴ Leung, above, n 1, p A13; compare Tsang, above, n 1, p A4.

⁵ See in particular NDRC/MFA/MOFCOM, above, n 2, *passim*; however eg the 'Supreme People's Court's Opinion on One Belt One Road' (in Chinese) (promulgated on and effective since 16 June 2016) referring to 'One Belt, One Road'.

⁶ Leung, above, n 1, p A13; compare Tsang, above, n 1, p A4.

⁷ For the following also see L-C Wolff, 'The Flexibility of Chinese Law — Trick or Treat for the "Belt and Road" Initiative', in Wolff and Xi, above, n 1, pp 593–5.

⁸ Above, under 'Introduction'.

⁹ See Sneader, above, n 2, p A13; NDRC/MFA/MOFCOM, above, n 2, under 'IV. Cooperation Priorities, Unimpeded Trade'.

initiative are still rather unclear. In particular, until today the Chinese Government has not explained in detail what the B&R initiative actually entails and how exactly it will be implemented. Furthermore, a broad discussion has evolved as to what the rationale behind and the actual goals of the B&R initiative are. Finally, China has not yet officially defined which countries are covered by the B&R initiative and what the selection criteria are. These issues are further discussed below.

Chinese official statements have made it clear from the outset that the B&R initiative is not limited to trade or investment.¹⁰ Consequently, it is not just a new name for China's 'Going Out' policy¹¹ which had been started in the late 1990s to encourage Chinese enterprises to invest abroad.¹² In contrast, the scope of the B&R initiative is seen as being much broader, although again it remains unclear what this exactly means.¹³

An official document which was jointly issued by the National Development and Reform Commission (NDRC), the Ministry of Foreign Affairs (MFA) and the Ministry of Commerce (MOFCOM) on 28 March 2015¹⁴ identified five major B&R 'cooperation priorities',¹⁵ namely the promotion of policy coordination, facilities connectivity,¹⁶ unimpeded trade, financial integration¹⁷ and people-to-people bonds.

Commentators have speculated widely what these cooperation priorities entail and, in particular, what China's motivations behind the B&R initiative are. Some regard the B&R initiative as an attempt to reinforce China's geopolitical position.¹⁸ In fact, any increase of influence, in particular in Central and South-East Asia,¹⁹ could underscore China's new status as a global mega-power and counter the establishment of spheres of influence by the US and by Russia over the past decades.²⁰

Others have suggested that the B&R initiative is instead motivated by economic reasons. After years of breathtaking growth rates China's economy has encountered problems in recent years.²¹ Stimulus is therefore urgently

10 See NDRC/MFA/MOFCOM, above, n 2.

11 Compare L-C Wolff, *Mergers and Acquisitions in China: Law and Practice*, 5th ed, Wolters Kluwer, Hong Kong, 2014, pp 217–21; L-C Wolff, *China Outbound Investments — A Guide to Law and Practice*, CCH Hong Kong Limited, Hong Kong, 2011, pp 1–5.

12 Chen Shuang, Chief Executive of China Everbright Limited, quoted by SCMP, 3 November 2015, p A8.

13 Compare Belgian Consul General to Hong Kong Michelle Deneffe quoted by Westcott and Zhen, above, n 1, p A8 ('still not clearly defined'); Leung, above, n 1, p A13 ('little more than a buzz word'); Yeo, above, n 1, p A13 ('far more than a slogan'); P Wong, SCMP, 26 May 2016, p A11 ('a small phrase with big ambitions'); Sneider, above, n 2, p A13 ('ambitious diplomatic programme').

14 NDRC/MFA/MOFCOM, above, n 2.

15 Above, n 2, under 'IV. Cooperation Priorities'.

16 Compare Leung, above, n 1, p A13; Tsang, above, n 1, p A4.

17 Compare W Lau, SCMP, 11 April 2016, p S4; Lin Jingzhen, Deputy Chief Executive of Bank of China (Hong Kong), quoted by SCMP, 3 November 2015, p A9.

18 Compare Tsang, above, n 1, p A4; NDRC/MFA/MOFCOM, above, n 2, under 'III. Framework'.

19 Compare Tsang, above, n 1, p A4; NDRC/MFA/MOFCOM, above, n 2.

20 Compare J-P Lehmann, SCMP, 16 September 2016, p A11.

21 Above, n 20; F Ching, SCMP, 27 August 2016, p A14.

needed. It has been claimed that Chinese investments:²²

in the infrastructure and linkages associated with these 'Roads' . . . help bolster its overseas trade. This in turn will stimulate production and consumption demand at home . . . From Beijing's perspective, developments under 'One Belt, One Road' and via the AIIB are part of a bigger picture — to encourage further economic integration of participating countries and the formation of a new regional economic trading and investment bloc. Importantly, it will expand the global use of the Chinese currency, increasing the speed of the renminbi's internationalisation.

The above cited official document²³ links the B&R initiative to 'facilities connectivities' and 'people-to-people bonds'. One may therefore assume that the B&R initiative is also meant as a tool for China to provide development aid to B&R countries²⁴ and thus foster cultural ties between the people of different B&R countries. Finally, Michelle Miao has pointedly drawn attention to the fact that the B&R initiative could serve as a legitimisation tool for the Xi Jinping administration and the Chinese Communist Party whereas, in contrast, the failure of the B&R initiative may have de-legitimising effects.²⁵

Until today there is no official confirmation which countries are covered by the B&R initiative and why. While official statements indicate that the B&R initiative is open to any country,²⁶ according to the prevailing opinion, a total of 65 countries, including China, are covered; that is, 11 from South-East Asia, seven from South Asia, 11 from Central and Western Asia, 15 from the Middle East and Africa, and 20 from Central and Eastern Europe plus China.²⁷ Many of the B&R countries are:²⁸

population-intensive developing countries. They provide enlarged platforms for both sales [consumers] and resources [suppliers] markets with continuous development and long-term growth opportunities for the benefit of the country involved.

Since 2014 China has worked with many of these B&R countries to enter into different types of cooperation agreements to support the B&R initiative.²⁹ It is also important to note that many B&R countries are members of various international organisations and multilateral arrangements which serve as platforms for mutual cooperation.³⁰

Furthermore, in January 2015 China established the Silk Road

22 P Wong, 'China to Widen its Economic Influence by "One Belt One Road"', <https://goo.gl/AVE6Wh>.

23 NDRC/MFA/MOFCOM, above, n 2.

24 Compare eg Agence France Press, 'China to Unveil \$46bn Investment in Pakistan during Visit by Xi Jinping' (20 April 2015), <https://goo.gl/RjLJ3t>. As there are no viable investment options in Pakistan worth USD46 billion W H Overholt therefore described related Chinese investments as de facto development aid, on 15 December 2016 during a conference at The Chinese University of Hong Kong.

25 M Miao, 'Audacity and Dilemma — China's One Belt, One Road Initiative and Xi Jinping's Anti-Corruption Campaign', in Wolff and Xi, above, n 1, pp 557–8.

26 For the fact that apparently even Taiwan would be allowed to join see K Huang and E Li, SCMP, 1 December 2016, p A6.

27 See Sun Zhi Ming, 'One Belt One Road — a New Layout' (Western Region Development Division) (in Chinese), 26 December 2014, <https://goo.gl/r4HCbE>; Lehmann, above, n 20, p A11; also compare J Hollingsworth, SCMP, 19 September 2016, p B6.

28 Caesar Wong, quoted by Lau, above, n 17.

29 Wolff 2016, above, n 1, pp 7–19.

30 Above, n 29.

Infrastructure Fund through which US\$40 billion are provided to finance B&R projects.³¹ Additional B&R funding is available from the Asian Infrastructure Investment Bank³² and the New Development Bank established by the BRICS³³ countries.³⁴

While it must be emphasised again that core aspects of the B&R initiative remain undefined for the time being,³⁵ it is widely acknowledged that the political, economic and cultural implications of the B&R initiative could be enormous³⁶ given that:

China's belt and road plan covers over half of the world's population, 75 per cent of the known energy resources and 40 per cent of gross domestic product in the world.³⁷

The emphasis now is on investing massively in the laying of infrastructure to unify the Eurasian continent and link it with major arteries in other continents, including ports, railways, roads, telecoms and IT, with the establishment of an e-Silk Road.³⁸

According to China's President Xi Jinping the B&R initiative will increase the trade volume between China and the B&R countries to US\$21 trillion.³⁹ A study conducted by UBS in 2015 estimated that China will invest about US\$200 billion into B&R related projects over the next three years.⁴⁰ In fact, the financial volume of B&R:⁴¹

could be more than 12 times of America's Marshall plan to aid post-second world-war Western Europe, in comparable money-of-the-day terms.

The CISG⁴²

The United Nations Convention on Contracts for the International Sale of Goods (CISG) was adopted by the UN Conference on Contracts for the International Sale of Goods on 11 April 1980 and entered into force on

31 W Wu, SCMP, 2 November 2015, p A4; Sneider, above, n 2, p A13; Tsang, above, n 1, p A4; compare Wolff 2016, above, n 29.

32 Compare Lehmann, above, n 19, p A11.

33 Compare Brazil Russia India China South Africa, Ministry of External Relations, <http://brics.itamaraty.gov.br>; NDRC/MFA/MOFCOM, above, n 3, under 'IV. Cooperation Priorities, Financial Integration'.

34 Above, n 33; Leung, above, n 1, p A13.

35 Compare, however, with reference to the establishment of pioneer enterprises Caesar Wong, quoted by Lau, above, n 17, S4.

36 Leung, above, n 1, p A13; Yeo, above, n 1, p A13; Tsang, above, n 1, p A4; Westcott and Zhen, above, n 1, p A8; Wu, above, n 31, p A4; compare *Central Committee of the Communist Party of China (CPC), Recommendations for the 13th Five-Year Plan for Economic and Social Development*, Central Compilation and Translation Press, Beijing, December 2015, p 20; NDRC/MFA/MOFCOM, above, n 2, under 'VI. China's Regions in Pursuing Opening Up'.

37 Hollingsworth, above, n 27, p B6; compare Lan Shen, SCMP, 14 December 2016, p A13.

38 Lehmann, above, n 20, p A11.

39 Sneider, above, n 2, p A13; also compare Kwong Man-ki, SCMP, 17 November 2015, p A3.

40 S Zhen, SCMP, 27 October 2015, <http://app.scmp.com>; Lan, above, n 37, p A13.

41 Leung, above, n 1, p A13.

42 For the following see L-C Wolff, *The Law of Cross-Border Business Transactions — Principles, Concepts, Skills*, Kluwer Law International, Alphen aan den Rijn, 2013, pp 111–8.

1 January 1988. The CISG is an international convention⁴³ which applies to contracts of sale⁴⁴ between parties with places of business in different CISG contracting states⁴⁵ or when the rules of private international law lead to the application of the law of a CISG member state.⁴⁶ Contract parties have the opportunity to exclude the applicability of the CISG by way of an agreement.⁴⁷

It is:⁴⁸

[t]he purpose of the CISG . . . to provide a modern, uniform and fair regime for contracts for the international sale of goods. Thus, the CISG contributes significantly to introducing certainty in commercial exchanges and decreasing transaction costs.

The CISG consists of 101 articles and has four parts: Pt I Sphere of application and general provisions, Pt II Formation of the contract, Pt III Sale of goods, Pt IV Passing the risk and Pt V Final provisions.⁴⁹ The CISG provides unified rules on the conclusion,⁵⁰ the form,⁵¹ and the interpretation of contracts,⁵² the obligations of the seller⁵³ and the buyer,⁵⁴ as well as remedies in breach of contract situations.⁵⁵ Questions which are not addressed by the CISG are to be determined by the domestic law applicable according to the governing private international law rules.⁵⁶

43 The text is available at <http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>.

44 For the exclusion of the applicability of the CISG in certain scenarios also see arts 2, 3 CISG; compare P Huber/A Mullis, *The CISG — A new Textbook for Students and Practitioners*, Sellier, Köln, Sellier, 2007, pp 41–8; M Davies and D V Snyder, *International Transactions in Goods*, Oxford University Press, Oxford, 2014, pp 48–55; J Lookofsky, *Understanding the CISG*, 4th ed, Wolters Kluwer, Alphen aan den Rijn, 2012, pp 16–20; for the applicability of the CISG in relation to cross-border M&A transactions see Wolff 2013, above, n 42, pp 307–9.

45 Article 1 (1) (a) CISG; compare for a detailed commentary I Schwenzer, C Fountoulakis and M Dimsey, *International Sales Law*, 2nd ed, Hart Publishing, Oxford and Portland, 2012, pp 1–10.

46 Article 1(1)(b) CISG; compare Huber and Mullis, above, n 44, pp 52–4; L Spagnolo, *CISG Exclusion and Legal Efficiency*, Wolters Kluwer, Alphen aan den Rijn, 2014, pp 12–19. Note, however, that according to art 95 CISG member states can declare that they will not be bound by art 1(1)(b) CISG as further discussed below.

47 Article 6 CISG; compare P Schlechtriem, 'Requirements of Application and Sphere of Applicability of the CISG' (2005) 36 *Victoria University of Wellington Law Review* 781 at 785; Schwenzer, Fountoulakis and Dimsey, above, n 45, pp 39–42; Davies and Snyder, above, n 44, pp 64–6; Lookofsky, above, n 44, pp 24–7; for the fact that it is disputed if the declaration must be in express terms, Wolff 2013, above, n 42, p 114; for the question if parties can 'opt in' to the CISG see Huber and Mullis, above, n 44, pp 65–6.

48 UNCITRAL, United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), Text — Explanatory note, <https://goo.gl/EQAXhn>.

49 For the CISG-structure see generally Huber and Mullis, above, n 44, pp 4–6.

50 Articles 14–24 CISG.

51 Articles 11 and 96 CISG.

52 Article 7 CISG.

53 Articles 30–44 CISG.

54 Articles 53–60 CISG.

55 See for possible remedies of the buyer, arts 46–52 and 74–7 CISG, and for possible remedies of the seller arts 62–5 and 74–7 CISG.

56 Wolff 2013, above, n 42, p 115.

As of December 2016, the CISG had 85 contracting states.⁵⁷ All major trading nations, except for the UK, but including Australia, Canada, Brazil, the Russian Federation, China,⁵⁸ Germany, France and the USA,⁵⁹ are CISG contracting states. The CISG has also served as a model for the reforms of domestic contract law regimes in many countries. China,⁶⁰ Germany⁶¹ and Israel⁶² are just three examples in this regard.⁶³

‘Belt and Road’ Countries and the CISG

General

The previous sections have provided general information about China’s B&R initiative and recalled basic features of the CISG. This section now aligns both topics by discussing the adoption of the CISG in B&R countries with a special focus on reasons why particular B&R countries are not (yet) CISG contracting states.

CISG Contracting States along the ‘Belt and Road’

Out of the 65 B&R countries 36 are CISG contracting states. In addition to China there are two from South-East Asia, none from South Asia, six from Central and Western Asia, seven from the Middle East and Africa and 20 from Central and Eastern Europe.⁶⁴

What are the reasons for these countries to join the CISG? The potential advantages of the CISG have been widely discussed. They can be summarised as follows:

- (1) The CISG achieves unification and simplification of domestic sales law regimes and thus facilitates the cross-border sale of goods by avoiding uncertainty while at the same time saving time and money.⁶⁵

57 United Nations Commission on International Trade Law (UNCITRAL) at <https://goo.gl/glXfMv>.

58 Compare Wei Li, ‘The Interpretation of the CISG in China’ in A Janssen and O Meyer eds, *CISG Methodology*, Sellier, Köln, 2009, p 343.

59 Above, n 58.

60 G F Bell, ‘Harmonisation of Contract Law in Asia — Harmonising Regionally or Adopting Global Harmonisations — The Example of the CISG’ (2005) *Singapore Journal of Legal Studies* 362 at 365–6.

61 Compare for the changes of the German law of obligations in 2002, C-W Canaris, ‘Das allgemeine Leistungsstörungenrecht im Schuldrechtsmodernisierungsgesetz’ (‘The General Law Governing Impairment of Performance under the Law for the Modernisation of the Law of Obligations’) (2001) 34 *Zeitschrift für Rechtspolitik (ZRP)* 329; C-W Canaris, ‘Die Reform des Rechts der Leistungsstörungen’ (‘The Reform of the Law Governing Impairment of Performance’) (2001) 56 *Juristenzeitung (JZ)* 499.

62 See Pace Law School Institute of International and Commercial Law, Israel, at <https://goo.gl/LctthF>.

63 Also see for Japan H Sono, ‘Japan’s Accession to the CISG: The Asia Factor’ (2008) 20 *Pace International Law Review* 105 at 109 (‘natural that the CISG will have impact on this upcoming revision’).

64 UNCITRAL, Status — United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980), at <https://goo.gl/glXfMv>.

65 S Dholakia, ‘Ratifying the CISG — India’s Options’, available at

- (2) The CISG was drafted by international experts on the basis of up-to-date contract law knowledge and 'modern trade practices and realities'.⁶⁶ The CISG uses simple and easily understandable language.⁶⁷ The CISG therefore presents state-of-the art contract law.
- (3) Choice of law issues often prove to be difficult in practice. Within its scope of applicability the CISG avoids the need for any choice of law process.⁶⁸
- (4) The CISG is globally well known and supported by easily accessible secondary sources.⁶⁹ In fact, a broad body of case law and commentaries across jurisdictions offers a rich source of tools for the harmonised application of the CISG.⁷⁰
- (5) For the parties of international sales contracts it is advantageous if their contracts are governed by the neutral and well-known CISG rather than by the (potentially unknown) law of the country of the other party or by any third country law.⁷¹
- (6) The CISG allows the parties to opt out of its application⁷² and thus ensures absolute party autonomy.⁷³
- (7) The large number of CISG contracting states ensures broad application of the CISG. Non-contracting states may be disadvantaged by the 'being left out-effect'.⁷⁴
- (8) The domestic contract law systems of some important trading nations such as Germany and China have been modelled after the CISG⁷⁵ which should be regarded as a quality indicator.

It can be safely assumed that all these perceived advantages have been taken into account by those B&R countries which have already become CISG contracting states.

The CISG allows contracting states to make certain declarations in relation to its scope of applicability.⁷⁶ According to art 92 CISG a contracting state may declare that it will not be bound by Pt II or by Pt III of the CISG⁷⁷ which are titled 'Formation of the contract'⁷⁸ and 'Sale of goods' respectively.

<http://www.cisg.law.pace.edu/cisg/biblio/dholakia.html>, 186, at 186–7; Schlechtriem, above, n 47, at 782; compare Spagnolo, above, n 46, at 101–148, 149.

66 Dholakia, above, n 65, at 187.

67 Dholakia, above, n 65, at 187.

68 Wolff 2013, above, n 42, at 110–1; compare Schlechtriem, above, n 47, at 784.

69 U Anyamele, 'The United Nations Convention on Contracts for the International Sale of Goods: A Proposal for Nigeria', available at <https://goo.gl/DCz7Hv>, at 5.

70 Dholakia, above, n 65, at 186; Schlechtriem, above, n 47, at 781.

71 Dholakia, above, n 65, at 186.

72 Article 6 CISG.

73 Dholakia, above, n 65, at 186.

74 Dholakia, above, n 65, at 187.

75 Above, under 'The CISG'; compare Dholakia, above, n 65.

76 For a general assessment see U G Schroeter, 'Reservations and the CISG: The Borderland of Uniform International Sales Law and Treaty Law After Thirty-Five Years' (2015) 41 *Brooklyn Journal of International Law* 203.

77 Compare Lookofsky, above, n 44, pp 167–8.

78 Only Denmark, Finland, Norway and Sweden have eg declared that they will be bound by Pt II of the CISG, Pace Law School Institute of International Commercial Law — February 1997, *Declarations and State Interpretations*, at <https://goo.gl/yGcDsA>; compare Lookofsky, above, n 44, pp 167–8.

Article 93 CISG provides that a contracting state which has two or more territorial units with different systems of law may declare that the CISG shall apply in all its territorial units or only in one or more of them.⁷⁹ Article 94 CISG allows two or more contracting states which have the same or closely related legal rules on matters governed by the CISG to declare that the CISG shall not be applicable to contracts of sale or to their formation when the parties have their places of business in those states. Furthermore, a contracting state which has the same or closely related legal rules on matters governed by the CISG as one or more non-contracting states may at any time declare that the CISG shall not be applicable to contracts of sale or to their formation where the parties have their places of business in those states.⁸⁰ Article 95 CISG authorises contracting states to declare that they will not be bound by art 1(1)(b) CISG, which states that the CISG shall be applicable if rules of private international law lead to the applicability of the law of a CISG contracting state.⁸¹ Finally, art 96 CISG provides that a contracting state whose legislation requires contracts of sale to be concluded in or evidenced by writing may opt out of the freedom of form of contracts under the CISG.⁸² Article 96 CISG:⁸³

is an example of a clear public policy reservation and represents a compromise between the freedom of form requirement in CISG art 11 and the notion of form requirements which appealed to many States, especially those belonging to the Socialist bloc in place when the Convention was drafted.

None of the B&R countries have made declarations according to arts 92–4 CISG. Of those B&R countries which are CISG contracting states, five have made declarations according to art 95 CISG,⁸⁴ namely Armenia, China,⁸⁵ the Czech Republic,⁸⁶ Singapore⁸⁷ and Slovakia.⁸⁸

Ten B&R countries which are CISG contracting states had formerly made

79 Compare generally Lookofsky, above, n 44, pp 168–9.

80 Compare generally Lookofsky, above, n 44, p 169.

81 Compare in general M Wethmar-Lemmer, 'The Impact of the Article 95 Reservation on the Sphere of Application of the United Nations Convention on Contracts for the International Sale of Goods' (2010) 43 *De Jure* 362; Schlechtriem, above, n 47, at 782–3; Lookofsky, above, n 44, pp 169–170 and for the art 95 declaration of the US at 15–16. Article 95 CISG was originally meant to accommodate socialist countries with special regimes in place for contracts with foreign parties, compare Bruno Zeller, *CISG and the Unification of International Trade Law*, Routledge-Cavendish, Oxon, 2007, p 39.

82 See in particular arts 11 and 29 CISG.

83 Wang Xiaolin and C Baasch Andersen, 'The Chinese Declaration as to Form of Contracts under CISG — Time to Withdraw?', (2003) 8 *Unif L Rev* 870; compare U G Schroeter, 'The Cross-Border Freedom of Form Principle Under Reservation: The Role of Articles 12 and 96 CISG in Theory and Practice' (2014) 33 *Journal of Law and Commerce* 79 at 82.

84 See UNCITRAL, Status United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980), at <https://goo.gl/qQ8yXV>.

85 Compare Li Wei, 'On China's Withdrawal of its Reservation to CISG Article 1(b)' in Jichun Shi, *Renmin Chinese Law: Selected Papers of The Jurist*, Edward Elgar, Cheltenham and Northampton, 2014, pp 300–18.

86 Above, n 85.

87 Compare G F Bell, 'Why Singapore should Withdraw its Reservation to the United Nations Convention on Contracts for the International Sale of Goods (CISG)' (2005) 9 *Singapore Yearbook of International Law* 55 at 65; Attorney General's Chambers, UN Convention on Contracts for the International Sale of Goods — Review of Article 95 Reservation Consultation Paper, available at <https://goo.gl/J0m57L>.

declarations according to art 96 CISG. However, China,⁸⁹ Estonia,⁹⁰ Latvia,⁹¹ Lithuania⁹² and Hungary⁹³ have in the meantime withdrawn their art 96 declarations. This leaves Armenia, Belarus, the Russian Federation,⁹⁴ the Ukraine and Vietnam with art 96 declarations.⁹⁵

The option to make declarations and thus reservations to the scope of applicability of the CISG in full or in part is provided by the CISG itself. Some CISG contracting states have made additional 'interpretative comments' when accessing the CISG. The CISG does not provide a legal basis for these interpretative comments⁹⁶ and their legal nature is consequently disputed. While none of the B&R countries have made interpretative comments of this kind a French court⁹⁷ has regarded a declaration made by China upon Hong Kong's so-called 'handover' in 1997 as a 'formality equivalent' of an art 93 CISG declaration, thus casting doubt on the applicability of the CISG in Hong Kong, Macau and Taiwan as explained below.

Hong Kong had been a British colony for more than 150 years. On 1 July 1997 it became part of the PRC as a result of the so-called handover.⁹⁸ Macau, as a former Portuguese colony, was returned to the PRC as of 20 December 1999.⁹⁹ Under the concept 'One Country, Two Systems' introduced by the late Deng Xiaoping the legal systems of Hong Kong and Macau will remain unchanged and thus separate from mainland China's legal system for a period

88 The Czech Republic and the Slovakia (Slovak Republic) are since 1 January 1993 the successors of the former Czechoslovak Socialist Republic which had originally filed the art 95 declaration. For the question whether the declarations of succession deposited with the United Nations without a special declaration regarding the prior declaration renders that declaration ineffective, see Pace Law School Institute of International and Commercial Law, Czech Republic, at <https://goo.gl/3QRymn>.

89 Compare United Nations Information Service, China Withdraws 'Written Form' Declaration under the United Nations Convention on Contracts for the International Sale of Goods (CISG) (18 January 2013), at <https://goo.gl/N0Z2fe>; compare for background information Wang and Andersen, above, n 83; Schroeter 2014, above, n 83, at 87–9.

90 Pace Law School Institute of International and Commercial Law, Estonia, at <https://goo.gl/pbMRyz>.

91 Compare United Nations Information Service, Latvia Withdraws 'Written Form' Declaration under the United Nations Convention on Contracts for the International Sale of Goods (CISG) (15 November 2012), at <http://www.unis.unvienna.org>.

92 Compare United Nations Information Service, Lithuania Withdraws 'Written Form' Declaration under the United Nations Convention on Contracts for the International Sale of Goods (CISG) (4 November 2013), at <https://goo.gl/XAN05c>.

93 Compare United Nations Information Service, Hungary Withdraws 'Written Form' Declaration under the United Nations Convention on Contracts for the International Sale of Goods (CISG) (8 July 2015), at <https://goo.gl/KtFhdq>; Schroeter 2014, above, n 83, at 87–9.

94 The CISG had become effective for the former USSR on 1 September 1991. The Russian Federation 'is regarded as the successor to this treaty obligation' including the art 96 declaration, see Pace Law School Institute of International Commercial Law, at <https://goo.gl/d54ooH>.

95 See UNCITRAL, Status United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980), at <https://goo.gl/583u46>.

96 See art 98 CISG.

97 Cour de cassation (Telecommunications products case) 2 April 2008, available at <https://goo.gl/OCZgGr>.

98 L-C Wolff, 'Hong Kong's Conflict of Contract Laws: Quo Vadis?' (2010) 6 *Journal of Private International Law* 465 at 466–7.

99 T Chung and H Tieben, 'Macau: Ten Years after the Handover' (2009) 38 *Journal of Current Chinese Studies* 7, available at <http://d-nb.info/996068694/34>.

of 50 years from the date of handover.¹⁰⁰ Prior to the handovers the CISG was neither applied in Hong Kong nor in Macau. In contrast, as mentioned above,¹⁰¹ the PRC is a CISG contracting state. It is the official position of the Hong Kong Government that only those conventions newly apply to Hong Kong which are listed in the declaration deposited with the Secretary-General of the United Nations upon the handover and to which the French Cour d’Cassation had referred to as reported above.¹⁰² Because the CISG is not mentioned in the list, the Hong Kong Government holds the opinion that the CISG does not apply in Hong Kong. The situation of Macau is similar.¹⁰³

As for Taiwan, it is the official position of the central government of the PRC as well as of the Taiwanese Government that Taiwan is part of China. However, for historical and political reasons Taiwan operates its own legal system which is based on the law of the Republic of China in force on the Chinese mainland prior to the establishment of the PRC on 1 October 1949.¹⁰⁴ Taiwan does not apply the CISG.

Commentators have drawn attention to the fact that art 93 of the CISG requires an express declaration for the CISG not to apply in particular territorial units of a country. The PRC has not made such a declaration in relation to Hong Kong, Macau or Taiwan.¹⁰⁵ As far as Hong Kong is concerned at least two US courts have shared these concerns and consequently decided that the CISG is to be applied in Hong Kong.¹⁰⁶ It is unlikely that the uncertainty arising out of the contradicting viewpoints and decisions will disappear in the near future as this would require an art 93 CISG declaration of the PRC central government not only in relation to Hong Kong and Macau, but also to Taiwan, which may not be seen as politically opportune for the time being.

CISG non-contracting states along the ‘Belt and Road’

Twenty-nine B&R countries (approximately 45 per cent of the B&R countries) are not CISG contracting states. When considering why these countries have not yet joined the CISG framework one must consider general arguments which have been put forward against the CISG as well as country-specific arguments. General arguments against the CISG can be summarised as follows:

¹⁰⁰ Wolff 2010, above, n 98, at 466–7.

¹⁰¹ Above, under ‘The CISG’.

¹⁰² Compare Wolff 2010, above, n 98, at 478–80.

¹⁰³ U G Schroeter, ‘The Status of Hong Kong and Macao under the United Nations Convention on Contracts for the International Sale of Goods’ (2004) 16 *Pace International Law Review* 307 at 314, available at <https://goo.gl/xalTyv>.

¹⁰⁴ After the Communist revolution on the Chinese mainland and the establishment of the PRC in 1949 the government of the former Republic of China under Chiang Kai-shek and about two million of its followers had fled to Taiwan where in principle the legal system of the former Republic of China continues to be operated until today.

¹⁰⁵ Schroeter 2004, above, n 103, passim; Wolff 2010, above, n 98, at 478–80; compare Davies and Snyder, above, n 44, at 47–8; Lookofsky, above, n 44, p 169.

¹⁰⁶ United States, 3 September 2008, District Court (Illinois), *CNA International, Inc v Guangdong Kelon Electrical Holdings* Case Number 05 C5734; United States 23 December 2009 District Court, Eastern District of Arkansas, Western Division, *Electrocraft Arkansas, Inc v Super Electric Motors, Ltd*, Case Number 4:09cv00318 SWW.

- (1) Within the scope of its applicability the CISG replaces well-known and well-functioning domestic contract law systems. The adoption of the CISG means that domestic contract law notions which cater to domestic needs are replaced with foreign elements in a 'one size fits all' manner.¹⁰⁷
- (2) Regional harmonisation may be preferable to global harmonisation.¹⁰⁸
- (3) The adoption of the CISG will require investment of much time and money for all concerned parties who have to familiarise themselves with the CISG.¹⁰⁹
- (4) The CISG will lead to uncertainty as a stable implementation practice will — if at all — only develop over time.¹¹⁰
- (5) Uncertainty will be exacerbated by the fact that the CISG uses 'broadly formulated rules containing many undefined and new terms which have to be developed in the international arena by courts and arbitral tribunals without any hierarchy and no principles of stare decisis' or other underlying principles.¹¹¹
- (6) The CISG addresses contract law issues only to a limited extent¹¹² and is thus not able to achieve real harmonisation. In particular, the 'CISG does not deal with standard types of overseas sales, such as CIF or FOB contracts'.¹¹³
- (7) As the CISG attempts to incorporate core aspects of different jurisdictions it must be regarded as a compromise¹¹⁴ which is unable to address many of the real issues.¹¹⁵
- (8) The CISG is written law which lacks the 'flexibility'¹¹⁶ of case law systems and does not allow easy changes.¹¹⁷
- (9) Unification is not best achieved by way of static statutory law which cannot address the challenges arising out of the differences between various domestic contract law systems.¹¹⁸ This is evidenced by differing interpretations of the CISG norms in different jurisdictions.¹¹⁹

107 Compare Dholakia, above, n 65, at 188.

108 Anyamele, above, n 69, at 4; compare Bell 2005, above, n 60, at 367.

109 Dholakia, above, n 65, at 188; compare Sono, above, n 63, at 107–8.

110 Dholakia, above, n 65, at 188; compare Y Nomi, 'The CISG from the Asian Perspective' (22–23 September 2005), available at <https://goo.gl/V0UmgM>, under 'II. Why Japan Did Not Accept the CISG'.

111 Sono, above, n 63, at 106.

112 See for the CISG's scope of applicability above, under 'The CISG'; eg contract validity is not covered, Dholakia, above, n 65, at 188.

113 Dholakia, above, n 65, at 188, 189.

114 Compare the CISG preamble; Schroeter 2014, above, n 83, at 81; Zeller, above, n 81, p 8.

115 Dholakia, above, n 65, at 188, 190; S Eiselen, 'Adopting the Vienna Sales Convention: Reflections Eight Years Down the Line' (2007) 19 *SA Mercantile Law Journal* 14 at 17–24, available at <https://goo.gl/Q6E9tx>.

116 Compare in this context L-C Wolff, 'Law and Flexibility — Rule of Law Limits of a Rhetorical Silver Bullet' (2011) 11 *The Journal Jurisprudence* 549.

117 Dholakia, above, n 65, at 188; Eiselen, above, n 115, at 14–17.

118 Anyamele, above, n 69, at 8.

119 Dholakia, above, n 65, at 188, 189; compare Anyamele, above, n 69, at 5.

- (10) Interpretative differences are reinforced by the fact that authentic versions of the CISG exist in six languages, that is, Arabic, Chinese, English, French, Russian and Spanish.¹²⁰ Different language versions of legal regimes can never exactly match each other.¹²¹
- (11) In practice, many parties do contractually opt out of the CISG thus leaving it with little practical significance.¹²² Furthermore, declarations according to arts 92–6 CISG¹²³ by CISG contracting states limit the scope of the CISG and thus its practical value even further.¹²⁴
- (12) In England and in other common law countries there is a general preference for English law over the CISG.¹²⁵ Furthermore, the adoption of the CISG may deprive London of its competitive advantage as a place of international arbitration.¹²⁶

This article is not meant to contribute to the general discussion regarding the advantages and disadvantages of the CISG. It rather aims to assess significance of the CISG within the B&R area. However, most of the general criticism of the CISG can be dispelled easily.

It is the natural result of any international harmonisation effort that international features become more prominent than local characteristics. The CISG is just one, although a very important example in this regard. Furthermore, as explained above,¹²⁷ the different possibilities to opt out of the CISG allow contracting states and contract parties to determine the degree to which they wish the CISG to govern. Party autonomy is therefore guaranteed. Having said that, awareness of the CISG features and corresponding acknowledgment of the benefits of the CISG have increased over the years. Therefore, while ‘opt out rates’ may have persisted in some common law jurisdictions,¹²⁸ anecdotal evidence suggests that the overall rates are declining.¹²⁹

There have been suggestions that the CISG does not contribute towards uniformity and is not an important regime in practice. One of the reasons is that the CISG is often excluded in general conditions . . . The fact simply is that such a statement is backward looking. It ignores the trend to support uniform laws, which have the capacity to solve international disputes. It further ignores the fact that a new generation of lawyers is being educated and at one stage a critical mass of

120 See Pace Law School, CISG Database — Texts of the CISG, available at <https://goo.gl/Va2N86>.

121 Dholakia, above, n 65, at 189; Anyamele, above, n 69, at 6; compare C M Germain, ‘CISG Translation Issues: Reducing Legal Babelism’, available at <https://goo.gl/hcbBwg>.

122 Anyamele, above, n 69, at 4, 6; compare Zeller, above, n 81, at 7–8.

123 Above, under ‘The CISG’.

124 Anyamele, above, n 69, at 6.

125 Anyamele, above, n 69, at 4; Sono, above, n 63, at 106; compare A Azzouni, ‘The Adoption of the 1980 Convention on the International Sale of Goods by the United Kingdom’ (27 May 2002), available at http://theses.dur.ac.uk/16/1/Completed_Thesis.MA.pdf?DDD19.

126 Anyamele, above, n 69, at 4; Sono, above, n 63 at 106.

127 Above, under ‘The CISG’.

128 Compare Spagnolo, above, n 46, at 149–181, quoting at 150 ‘opt out’ rates of 55–71 per cent in the US and 45 per cent in Germany up to 2008.

129 Zeller, above, n 81, at 8.

internationally informed legal practitioners will take a completely different view on what will 'fulfill the parties' needs in international trade.

The adoption of the CISG does indeed require all concerned parties to familiarise themselves with the CISG rules. But the same is true for any changes of the law and this is a cheap price to pay for legal innovation. Furthermore, it is certainly correct that the CISG is drafted in broad terms and that it attempts to incorporate concepts from different systems. However, a comprehensive body of case law and commentaries has already been developed to support the implementation of the CISG.¹³⁰

In addition to general reasons which may have prevented 29 B&R countries from joining the CISG framework, country-specific reasons must be considered as well. In this regard it is firstly important that some of those B&R countries which are not (yet) CISG contracting states, namely Bangladesh, Bhutan, Brunei, India, Malaysia, Myanmar, Pakistan and Sri Lanka, belong to the Common Law legal tradition. While these countries may have their own reasons for not joining the CISG, it is noteworthy that they follow the UK which had actively participated in the drafting of the CISG, but never ratified it.¹³¹ A statement made in relation to India's stance may serve as a representative example for the reluctance of common law countries to adopt the CISG:¹³²

India's ratification of the CISG would mean that the CISG, and not the well-understood rules of the Indian Sale of Goods Act 1930 ('1930 Act'), would govern the rights of Indian buyers and sellers, when trading internationally. The 1930 Act is modelled on the English Sale of Goods Act of 1893. India's trading community and its legal advisers, assisted by well-developed case law, can predict with some precision the probable outcome of a course of action in the buying and selling of goods. For India, adopting the CISG would be advisable only if the advantages of doing so outweigh the disadvantages.

Having said that, the CISG is of course not incompatible with the common law legal tradition. In fact, two B&R common law countries, Singapore¹³³ and Israel,¹³⁴ have adopted the CISG and become CISG contracting states.

Similarly, any shared legal tradition of the states of the Commonwealth of Independent States (CIS)¹³⁵ does not present an obstacle to joining the CISG. The majority of the CIS states — namely Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Russian Federation, Ukraine and Uzbekistan — are CISG contracting states, while

130 Above, under 'The CISG'; also compare on 'gap filling' Zeller, above, n 81, at 9–11.

131 Compare S Moss, 'Why the United Kingdom Has Not Ratified the CISG' (2005) 25 *Journal of Law and Commerce* 483; S E Nikolova, 'UK's Ratification of the CISG — An Old Debate or a New Hope for the Economy of the UK on its Way out of the Recession: the Potential Impact of the CISG on the UK's SME's' (2012) 3 *Pace International Law Review Online Companion* 69; Azzouni, above, n 125; Anyamele, above, n 69, at 4; Sono, above, n 63, at 106.

132 Dholakia, above, n 65, at 1.

133 Compare Singapore Academy of Law Reform Committee, 'The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) — Should Singapore Ratify' (12 September 1994), available at <https://goo.gl/HbBeL8>.

134 Compare Y Adar, 'The CISG in Israel', available at <https://goo.gl/1azNPb>.

135 CIS countries are those which have succeeded the former Union of Soviet Socialist Republic (USSR).

Kazakhstan, Tajikistan and Turkmenistan are not. For the latter three countries the decision whether to adopt the CISG does therefore not depend on systematic or ideological reasons, but rather appears to be a matter of ‘sheer neglect’¹³⁶ or due to more pressing issues they have to deal with for the time being. Similar reasons apply to Afghanistan with its ongoing security issues.¹³⁷

Asian legal traditions have apparently not greatly influenced the drafting of the CISG.¹³⁸ But:¹³⁹

there has been a lot of discussion in Asia and ASEAN¹⁴⁰ about economic integration . . . [and] there have been calls for uniformisation of the commercial laws of Asia to facilitate this economic integration.

There has always been some discussion in Asia about whether regional harmonisation is preferable to global harmonisation as promoted by the CISG.¹⁴¹ In this context, Bell has correctly pointed out, however, that regional harmonisation would only be advantageous if required by any special features of Asian sales law or sales law culture.¹⁴² It is important in this regard, that:¹⁴³

[t]o a large extent, the commercial laws of Asia, particularly contract law, have been greatly influenced by Western law (either the common law or the civil law).

Furthermore:¹⁴⁴

many Asian countries have participated in the diplomatic conferences that led to the CISG and that . . . no reticence based on Asian specificity were ever raised at the diplomatic conferences . . . [O]ne must realise that Asia has many different cultural traditions and it is therefore likely that what is true about the under-use of courts in Japan will not be true in India, what is true about adat principles in Indonesia will not be true in China, and what might be true about Confucian attitudes in Singapore will not be true in Christian Philippines.

It may consequently be difficult to identify common features across Asia’s B&R countries which justify the preference of regional contract law harmonisation over the CISG. In this context it should also be noted that the modernised Cambodian Civil Code of 2008 borrowed heavily from the CISG,¹⁴⁵ while Cambodia is not yet a CISG contracting state. Moreover, representatives of other ASEAN countries, including Brunei, Indonesia, Laos PDR, the Philippines, Sri Lanka and Thailand, have already indicated that

136 Compare Anyamele, above, n 69, at 65, with reference to R Knieper, ‘Celebrating Success by Accession to CISG’ (2005–06) 25 *Journal of Law and Commerce* 477, available at <https://goo.gl/Ko3HVT>, at 477; compare for Japan’s situation prior to its accession to the CISG Sono, above, n 63, at 107; Nomi, above, n 110.

137 Compare L Tripodi, *Towards a New CISG — The Prospective Convention on the International Sale of Goods and Services*, Brill Nijhoff, Leiden and Boston, 2016, pp 6–7.

138 Bell 2005, above, n 60, at 362; compare Schroeter 2014, above, n 83, at 81.

139 That is, the Association of Southeast Asian Nations was founded on 8 August 1967 and has 10 member states, see About ASEAN at <http://asean.org/asean/about-asean/>.

140 Bell 2005, above, n 60, at 362.

141 Bell 2005, above, n 60, at 367.

142 Bell 2005, above, n 60, at 367.

143 Bell 2005, above, n 60, at 362.

144 Bell 2005, above, n 60, at 367.

145 I Schwenzer, P Hachem and C Kee, *Global Sales and Contract Law*, Oxford University Press, Oxford, 2012, p 32.

their governments are favourably considering joining the CISG.¹⁴⁶

After years of isolation Iran recently re-established relationships with the Western world.¹⁴⁷ As a consequence, previously existing political concerns regarding the adoption of the CISG may also disappear. In addition, researchers have demonstrated convincingly that the CISG is not contradicting the fundamental principles of Islamic law as applied in Iran.¹⁴⁸ In fact, other Islamic countries, that is, Egypt, Iraq, Lebanon, Syria, Turkey and — as a non-B&R country — Mauritania, have already become CISG contracting states.¹⁴⁹

To sum up, while arguments against the adoption of the CISG must be taken seriously, it appears to be the prevailing opinion that the advantages of the CISG carry much more weight. Consequently, the number of CISG contracting states has increased steadily over the years as have the positive comments in the legal literature.¹⁵⁰

All the negative predictions which were sources of reluctance in acceding to the CISG in the early 1990s turned out to be wrong. The number of Contracting States has more than doubled. With the emergence of the vast array of court and arbitral decisions, and the enormous amount of scholarly writings, doubts about the predictability of the CISG have diminished as well. This has impact both on the legal community and the business community.¹⁵¹

146 J Fong, 'The CISG: Will Widespread Adoption in ASEAN Result in the Growth of Arbitration?' (29 April 2015), available at <https://goo.gl/a14Z7j>. J Ribeiro, Head of UNCITRAL-RCAP mentioned on 13 December 2016 to the author that UNCITRAL is in CISG discussions with 10 of the 29 B&R countries which are not yet CISG contracting states.

147 N Knittlmayer, 'Doing Business in Iran — A Case Study of Business Risks in an OBOR Country', in Wolff and Xi, above, n 1, pp 73–75.

148 A Mona, 'The United Nations Convention on Contracts for the International Sale of Goods: Should Developing Nations Such As Iran Adopt the CISG?', available at <https://goo.gl/94yf1H>; also see F Akaddaf, 'Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?' (2001) 13 *Pace International Law Review* 1, available at <http://www.cisg.law.pace.edu/cisg/biblio/akaddaf.html>; K S Cohen, 'Achieving a Uniform Law Governing International Sales: Conforming the Damage Provisions of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Commercial Code', (2005) 26 *University of Pennsylvania Journal of International Economic Law* 601 at 615; A A Syed, 'A Comparison of the Shari'ah and the Convention on Contracts for the International Sale of Goods' (2015) 44 *American Bar Association (ABA) International Law* available at http://www.zawiyaperspective.org/ahamed_shariah; T S Twibell, 'Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG) under Shari'a Law: Will Article 78 of the CISG Be Enforced When the Forum is an Islamic State?' (1997) 9 *International Legal Perspectives* 25, available at <https://goo.gl/4XphXg>.

149 See for the Arab countries A Dawwas and Y Shandi, 'The Applicability of the CISG to the Arab World' (2011) *Unif L Ref* 813, available at <https://goo.gl/dLsWPh>, 5; also compare A Dawwas, 'Applicability of CISG to Kuwaiti Businesses', available at <https://goo.gl/ktlzQq>; H A El-Saghir, 'The Interpretation of the CISG in the Arab World', in Janssen and Meyer, above, n 58, p 355; for the fact that Islamic law was apparently not considered for the drafting of the CISG Bell 2005, above, n 60, at 363.

150 Compare Schroeter 2015, above, n 76, at 206; Schlechtriem, above, n 47, at 781; Sono, above, n 63, at 108; Eiselen, above, n 115, at 24–5; Nikolova, above, n 131, at 109–110.

151 Sono, above, n 63, at 108.

The Relationship between the ‘Belt and Road’ Initiative and the CISG

As highlighted in the previous sections it appears that the benefits of the CISG are nowadays widely acknowledged. Against this background this section now discusses more specifically how the CISG relates to the B&R initiative.

The precise goals of the B&R initiative are not yet clearly defined.¹⁵² According to the above-quoted official document¹⁵³ the B&R initiative aims to implement five major ‘cooperation priorities’,¹⁵⁴ namely the promotion of policy coordination, facilities connectivity,¹⁵⁵ unimpeded trade, financial integration¹⁵⁶ and people-to-people bonds. The declared CISG goal to remove barriers in international trade¹⁵⁷ finds its perfect match in the B&R ‘cooperation priority’ to achieve unimpeded trade. Moreover, unimpeded trade will indirectly promote facility connectivities, financial integration and people-to-people bonds. It can therefore be concluded that the CISG does in fact support the goals of the B&R initiative to the extent that they have crystallised so far.

If the adoption of the CISG across B&R countries will support the B&R initiative it must also be asked if the same is true in the reverse direction, that is, if the B&R initiative may have any (positive) impact on the CISG. Or could the B&R initiative even offer reasons which cause countries not to become CISG contracting states?

In considering the latter question first, it appears that there are two arguments which may count against the adoption of the CISG by those 29 B&R countries which are not yet CISG contracting states. First, the B&R initiative — if successfully implemented — will lead to some kind of economic integration. The question therefore is whether it makes sense to harmonise contract law (only) within the B&R context so as to establish a tailor-made B&R contract law system rather than promoting global harmonisation via the CISG. The development of a special B&R contract law system would, however, take much effort and it is not foreseeable if and with which result this goal could be achieved. Furthermore, geographically restricted harmonisation is only preferable over the global approach taken by the CISG if this is required by regional specifics.¹⁵⁸ In the B&R context uniform regional specifics of this kind do not exist as the B&R area spans many different countries and regions with very diverse legal systems and legal cultures.¹⁵⁹ Finally, China as the B&R initiator was and is a strong promoter of the CISG.¹⁶⁰ There are no reasons why China should change this position in favour of a B&R contract law regime.

¹⁵² Above, under ‘China’s “Belt and Road” Initiative’.

¹⁵³ NDRC/MFA/MOFCOM, above, n 2.

¹⁵⁴ NDRC/MFA/MOFCOM, above, n 2, under ‘IV Cooperation Priorities’.

¹⁵⁵ Compare Leung, above, n 1, p A13; Tsang, above, n 1, p A4.

¹⁵⁶ Compare Lau, above, n 18, p S4.

¹⁵⁷ See the CISG preamble.

¹⁵⁸ Compare above, under ‘CISG Non-Contracting States along the “Belt and Road”’.

¹⁵⁹ Above, n 158.

¹⁶⁰ Compare Bell 2005, above, n 60, at 366; Sono, above, n 63, at 113.

Second, as discussed above,¹⁶¹ commentators have voiced concerns regarding the reasons behind the B&R initiative. Some have considered whether the B&R initiative may aim to expand China's global power. Even if there was any truth in these general speculations they hardly apply in relation to the CISG. The CISG is a neutral¹⁶² contract law framework which cannot serve as a tool for any one country to implement geopolitical strategies. Like many other countries, China has contributed to the drafting and the further development of the CISG through secondary sources, but nothing else.

Other commentators have concluded that the B&R initiative is meant to solve existing problems of China's domestic economy.¹⁶³ The CISG would definitely be in line with such a B&R goal as it facilitates cross-border trade between China and other B&R countries which may indeed be beneficial for China's economy. However, the same is of course true for all other B&R countries and should therefore not be seen as a reason to reject the CISG.

Apart from the general advantages of the CISG as outlined above,¹⁶⁴ one additional aspect in favour of the adoption of the CISG deserves special attention. It has been reported that due to their strong bargaining power Chinese parties increasingly insist on Chinese law as the governing law in contracts with foreign parties.¹⁶⁵ For non-Chinese parties from CISG contracting states this would be advantageous when entering into sales contracts with Chinese parties as the choice of Chinese law should normally lead to the application of the CISG¹⁶⁶ and thus of a neutral, tried and tested contract law regime.

B&R-specific reasons not to adopt the CISG do consequently not exist. But does this mean that B&R countries will push for a further expansion of the CISG? Can it be assumed that those B&R countries which are not yet CISG contracting states will now join the CISG in order to be able to take full advantage of the benefits of the B&R initiative? For B&R countries which are already actively considering becoming a CISG contracting state, will the B&R initiative reinforce their efforts to join the CISG and thus accelerate the decision-making and ratification process?

It is rather obvious that the overlapping goals of the B&R initiative and the CISG alone will not automatically entice all those B&R countries which are not yet CISG contracting states to join the CISG framework. Other factors have to be considered as well. The political situation in Afghanistan, which requires the government's full focus on national security, is a good example in this regard. Furthermore, it has been claimed that (only) countries that are party to 'shallow' bilateral preferential trade agreements (PTAs)¹⁶⁷ or that

161 Above, under 'China's "Belt and Road" Initiative'.

162 Dholakia, above, n 65, at 186.

163 Above, under 'China's "Belt and Road" Initiative'.

164 Above, under 'CISG Contracting States Along the "Belt and Road"'.

165 Nomi, above, n 110, under '3. Change of power structure in world trading'. This report confirms the author's own observations when doing consultancy work in relation to Sino-foreign business projects.

166 Article 1(1)(a) CISG.

167 A Efrat, 'Promoting Trade through Private Law — Explaining International Legal Harmonisation' (2015) *Review of International Organizations*, available at <https://goo.gl/pRBDne>, at 2.

have few PTA partners are likely to ratify the CISG¹⁶⁸ whereas ‘a higher number of PTA partners or agreements similarly reduces the likelihood of CISG ratification’.

From the viewpoint of international trade law systems it may also be of relevance that the establishment of the most important multilateral trade system, that is, the World Trade Organization (WTO), which is also dedicated to pursuing the goal of trade liberalisation, did seemingly not cause any of the B&R countries to join the CISG framework.¹⁶⁹ Can an analogy be drawn, that is, is it mandatory to expect that the B&R initiative will likewise not motivate the ‘remaining’ 29 B&R countries to adopt the CISG? In this regard the major differences between the B&R initiative on the one hand and PTAs and the WTO on the other hand have to be taken into account. First, even if one acknowledges that the scope of modern PTAs and also the WTO are no longer limited (just) to trade it is rather obvious that the B&R initiative pursues much broader goals and is more inclusive.¹⁷⁰ Any comparison between PTAs and the WTO and the B&R initiative would therefore be flawed to a certain extent. Second, the B&R initiative is a Chinese initiative and — as already mentioned above — China is a strong supporter of the CISG. Finally and probably most importantly, the benefits of the CISG are nowadays much clearer and much more broadly acknowledged than in former times and definitely as compared with the time of the establishment of the WTO more than 20 years ago.

To conclude, while it is of course impossible to make exact predictions regarding the future of the CISG within the B&R area the better arguments speak for the assumption that the B&R initiative will lead to an expansion of the CISG along the ‘Belt and Road’. The practical significance of the CISG will increase accordingly with more case law and also more awareness and discussion of the CISG. As the CISG represents state-of-the-art contract law, its adoption by the 29 ‘remaining’ B&R countries will also strengthen their domestic contract law systems.¹⁷¹

Summary and Outlook

This article has explained the background and the current state of China’s B&R initiative. It is clear that the B&R initiative has the potential to lead to groundbreaking changes of the political, economic and intercultural landscape, not only regionally, but also at the global level.

Thirty-six of the 65 B&R countries are CISG contracting states with various reservations made in relation to its scope of applicability. The goals of the B&R initiative, as far as they have crystallised so far, are in line with the stated goals of the CISG. Vice versa, the stated goals of the CISG seem to support the idea of the B&R initiative. The B&R initiative and the CISG should therefore complement each other.

¹⁶⁸ Above, n 167, at 1.

¹⁶⁹ Of the 28 B&R countries which are WTO members 10 became CISG contracting states within 10 years of joining the WTO/GATT. Only five became CISG contracting states within five years of joining the WTO/GATT, see World Trade Organization, ‘Understanding the WTO: the Organization — Members and Observers’, at <https://goo.gl/n9eSMg>.

¹⁷⁰ Compare above, under ‘China’s “Belt and Road” Initiative’.

¹⁷¹ Compare Efrat, above, n 167, at 24; from the viewpoint of the non-B&R country Nigeria, Anyamele, above, n 69, at 11.

These conclusions are of course based on the assumption that the B&R initiative will be successfully implemented in due course. As also discussed above,¹⁷² many aspects of the B&R initiative are still not really clear. This vagueness may even be intended, as the B&R initiative does depend on the cooperation of many different parties inside and outside China¹⁷³ and it cannot be guaranteed that their unreserved support can be secured. Any clear definition of short-, medium- and long-term goals of the B&R initiative, as well as of the steps which need to be taken to achieve these goals, carries the risk of political sabotage. However, the lack of clearly defined B&R goals and of a detailed plan as to how these goals shall be achieved could also become a major obstacle to success as this may allow the B&R initiative to degenerate into an empty political slogan without the responsibilities of any party to take action at all.¹⁷⁴ From China's point of view the reputational risk and the potentially delegitimising effects of such an outcome cannot be underestimated.¹⁷⁵ In contrast, the success of the B&R initiative will not only strengthen China's current government, but also reinforce China's position as a global mega-power. And, as discussed in this article, this will boost the CISG as well.

172 Above, under 'The CISG'.

173 Lehmann, above, n 20, p A11.

174 Compare Lan Shen, above, n 37, p A13.

175 Miao, above, n 25, at 557–8.