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### **China's Belt and Road Initiative – Implications for Air Transport**

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#### **Abstract**

China's Belt and Road Initiative (BRI) has drawn attention in the global community, sparking discussions about its geopolitical implications and potential impacts on global trade. China asserts that the BRI aims to expand its geopolitical influence by fostering stronger economic ties and enhancing infrastructure among participating countries. The initiative is framed as a means to promote regional stability and security by addressing economic disparities and fostering mutual reliance among nations. China aims to position itself as a key player in global economic development and cooperation, demonstrating its commitment to multilateralism and globalization. Regarding concerns about sovereignty raised by other nations, China emphasizes its pledge of non-interference in the internal affairs of participating countries, presenting the BRI as a mutually beneficial partnership founded on respect for each nation's sovereignty and autonomy. However, critics from Western countries express concerns about debt sustainability, arguing that the large-scale infrastructure projects financed by Chinese state-owned banks could lead participating nations into unsustainable debt levels. Instances such as Sri Lanka's Hambantota Port, where China assumed control due to repayment difficulties, highlight the risks associated with such debt burdens. Furthermore, questions about transparency and governance surround many BRI projects. Critics raise concerns about the lack of transparency in project contracts and financing terms, leading to suspicions about the true intentions behind these initiatives. There are also worries about corruption and the potential for BRI projects to exacerbate governance challenges in participating countries rather than address them. Organizations like Transparency International stress the importance of increased

transparency and accountability in BRI endeavors to mitigate corruption risks. Undoubtedly, there is a necessity for the international aviation community to analyze the BRI's potential impact on air transport, particularly concerning the International Civil Aviation Organization (ICAO). This article explores specific aspects of the BRI that could affect air transport, with a particular focus on potential implications for ICAO.

Keywords: air cargo; air transport economics; airports; Belt and Road Initiative; China; dispute resolution; ICAO; sustainability

## **1. Introduction**

**T**he Belt and Road Initiative (BRI) encompasses six land routes and one sea route dedicated to fostering economic cooperation. In February 2023 the Council on Foreign Relations stated that 147 countries—accounting for two-thirds of the world's population and 40 percent of global GDP—had signed on to projects or indicated an interest in doing so<sup>1</sup>.

The BRI aims to link approximately half of the world's population. Central to the BRI are infrastructure developments, supported by various collaboration mechanisms focusing on policy, infrastructure, trade, finance, and socio-cultural ties. This initiative represents a new era of globalization, aiming to bridge both land-based and sea-based economies, a departure from previous maritime-centric globalization phases. China expects to establish a significant geostrategic footprint across Eurasia, both on land and sea, through the BRI.

China has long marketed the BRI as a vast network of overland and maritime routes linking China with Southeast and South Asia, Central Asia, the Pacific Islands, Africa, and Europe. Departing from its previous low-key international stance, China now aims to bolster infrastructure and industrial growth by enhancing connectivity and cooperation to serve its long-term national interests. The BRI's objectives for China include boosting regional development, upgrading Chinese industries while exporting these upgraded standards, and tackling issues stemming from excessive industrial capacity.<sup>2</sup>

While the BRI is promoted as a means to realize China's national rejuvenation and foster a regional “community of common destiny,” it also serves strategic and domestic objectives. These include boosting development in China's western and central regions and creating investment opportunities abroad, particularly for state-owned enterprises.

Chinese investments in the BRI are anticipated to surpass \$1 trillion, far exceeding previous geopolitical investments made by the United States and the Soviet Union.

It has been argued that the BRI is poised to become a tool for leveraging the global supply chain and securing technological supremacy. By positioning itself at the heart of Eurasian trade networks, China aims to wield disproportionate influence in regional markets, compelling neighboring countries to align with Chinese interests. This strategy will enable China to shape the political trajectories of regional actors within an expanding sphere of Chinese Communist Party influence, characterized by prioritizing short-term economic gains over democratic values and human rights.

Furthermore, BRI is considered to lead to China's capacity to set global regulatory and technical standards that will grant Chinese companies and state-owned enterprises significant market advantages. Despite potential concerns, many countries are drawn to the BRI due to the perceived benefits of global connectivity and Chinese investment, which seem to offer solutions to domestic challenges in the developing world. Some nations may feel they have no viable alternatives and are willing to bear the political and social costs associated with participation. Additionally, certain countries may lack credibility on the international stage due to past actions, making them ineligible for targeted investment from the United States or its allies.<sup>3</sup>

The economic impact of BRI investments is becoming increasingly evident. Studies indicate that BRI mechanisms have led to a surge in Chinese investments in BRI countries compared to non-BRI nations. However, there are growing concerns about the environmental consequences of BRI projects. Chinese scholars acknowledge that these concerns could pose challenges to China's BRI aspirations.<sup>4</sup>

BRI holds considerable implications for air cargo transport, although its impact is not as direct as it is for maritime and land transportation modes. Several avenues exist through which it may affect air cargo: firstly, through infrastructure development. The BRI entails extensive infrastructure endeavors spanning Asia, Africa, and Europe, encompassing airport construction and expansion. Enhanced airport facilities stand to bolster air cargo handling capacities, thereby streamlining, and economizing the transportation of goods via air. Secondly, the BRI endeavors to bolster connectivity and trade among participating nations, resulting in heightened trade volumes. Consequently, the demand for air cargo services may surge, particularly for valuable or time-sensitive commodities, as businesses seek swift and reliable transportation options.

Moreover, while the BRI primarily concentrates on enhancing land and maritime routes, it could indirectly prompt a shift toward air cargo for specific goods. Escalating trade volumes and increasingly intricate supply chains may incentivize businesses to opt for air transport to meet stringent deadlines or surmount challenges in alternative transportation modes. Additionally, the BRI stimulates competition among transport

providers, including air cargo carriers. Airlines may extend their routes or invest in modern aircraft to leverage emerging prospects along BRI corridors.

Furthermore, there could be a rise in collaboration between airlines and logistics firms to furnish integrated solutions for BRI-related cargo movements.

However, operating in countries along BRI routes may present regulatory and operational hurdles for air cargo carriers. Disparities in customs procedures, infrastructure standards, and airspace regulations may impact the efficiency and cost-effectiveness of air cargo operations. In summary, while the BRI's primary objectives do not explicitly target air cargo, its overarching aims of bolstering connectivity and fostering trade have the potential to reshape the air cargo domain, influencing facets ranging from infrastructure investment to market dynamics and operational approaches.

China's ambitious BRI, also referred to as the One Belt One Road (OBOR) initiative, stands out as a monumental endeavor in 21st-century development and infrastructure. Spearheaded by Chinese President Xi Jinping in 2013, the BRI aims to reinvigorate ancient trade routes while fostering economic collaboration and bolstering connectivity across Asia, Africa, and Europe. This extensive initiative encompasses a diverse array of infrastructure ventures, spanning over 70 countries and encompassing projects ranging from roadways, railways, and ports to pipelines and telecommunications networks.

At its essence, the BRI comprises two primary elements: the Silk Road Economic Belt and the 21st Century Maritime Silk Road. The former seeks to link China with Central Asia, the Middle East, and Europe via land-based trade corridors, while the latter focuses on fortifying maritime trade routes connecting China with Southeast Asia, South Asia, Africa, and Europe.

The driving force behind the BRI lies in China's aspirations to foster economic progress, facilitate trade and investment, and bolster its geopolitical influence globally. By investing in infrastructure ventures in partner nations, China endeavors to spur economic development, generate employment opportunities, and uplift living standards in regions historically neglected by conventional development efforts.

Central to the BRI is its emphasis on connectivity and collaboration. Through the establishment of new transportation and logistics networks, alongside the forging of trade and investment agreements, the BRI seeks to nurture enhanced integration and cooperation among participating nations. This interconnectedness aims to facilitate the smooth flow of goods, services, capital, and people, ultimately fostering mutual prosperity and sustainable growth.

Furthermore, BRI extends beyond physical infrastructure, encompassing broader initiatives such as policy coordination, financial cooperation, and cultural exchanges.

China has established various multilateral mechanisms, including the Belt and Road Forum for International Cooperation, to promote dialogue and collaboration among participating nations and international bodies.

The BRI has encountered criticism and skepticism from various quarters. Concerns have been raised regarding the environmental ramifications of large-scale infrastructure projects, as well as the potential for partner countries to become overly reliant on Chinese investment, leading to debt dependency. Geopolitical anxieties also exist, centered on China's expanding influence and the possibility of the BRI exacerbating regional tensions or undermining established international norms and institutions.

One could summarize that the BRI presents a bold vision for reshaping global economic and geopolitical landscapes through infrastructure development, trade expansion, and international cooperation. While holding the promise of significant benefits for participating nations, it also poses challenges and risks that necessitate careful management and mitigation. As the BRI progresses, its impact on the global economy and international relations is poised to be profound and far-reaching. Air transport and air law are not exempted from the effects of the BRI.

The BRI carries substantial implications for air law, particularly concerning regulatory structures, airspace administration, and agreements on international air transport. To begin with, standardization of airspace regulations should be addressed. Given the involvement of numerous nations with diverse aviation regulations and airspace management practices, there may be initiatives to standardize these regulations along BRI routes. This harmonization aims to ensure uniformity and compatibility, thus facilitating seamless air operations across borders.

There would also be a need to look at enhanced air traffic management and safety protocols. With the anticipated rise in air traffic along BRI corridors, there will be an increasing demand for improved air traffic management systems and safety measures. Collaboration among BRI nations may result in the establishment of shared standards and protocols to guarantee the secure and efficient movement of aircraft through jointly utilized airspace.

Bilateral and multilateral air services agreements, as they exist, may have to be reconsidered and renegotiated. The BRI's emphasis on enhancing connectivity between nations may prompt the negotiation of fresh bilateral or multilateral agreements on air services. These agreements regulate airlines' rights to operate flights between countries, encompassing matters such as route allocations, capacity, and pricing structures.

Airport infrastructure development would be another consideration, as a significant aspect of the BRI entails extensive infrastructure projects, including the construction and expansion of airports along strategic transportation routes. Airports play a pivotal

role in facilitating air travel and cargo transport, necessitating adherence to international aviation standards and regulations during their development.

The anticipated surge in trade facilitated by the BRI could lead to a corresponding increase in air cargo operations. Consequently, there may arise the need for the formulation of new legal frameworks governing air cargo transportation. These frameworks may encompass regulations pertaining to security protocols, customs procedures, and liability provisions in case of accidents or incidents.

The BRI would also bring to bear the relevance of dispute resolution mechanisms. The heightened air traffic and international collaboration fostered by the BRI may necessitate the establishment or reinforcement of mechanisms for resolving disputes related to aviation matters. These mechanisms might include arbitration procedures or specialized tribunals aimed at addressing disputes arising from air law issues.

The BRI has the potential to revolutionize the legal landscape of international aviation by fostering increased cooperation, standardization, and regulation among participating nations. However, effectively addressing the legal implications of the BRI on air law will require careful coordination and collaboration among governments, international organizations, and stakeholders within the aviation industry.

## **2. China's Justification for BRI and Criticisms from Others**

### *A. Justifications*

China has offered various rationales and explanations, covering political, legal, and economic aspects, to support the inception and execution of the BRI. In the context of political considerations, the geopolitical impact is the most significant. China's objective is to widen its geopolitical footprint by nurturing stronger connections with participating nations through economic collaboration and infrastructure enhancement. The BRI is portrayed as a mechanism to bolster regional stability and safety by tackling economic disparities and fostering mutual reliance among nations. China aims to assert itself as a key player in worldwide economic advancement and international collaboration, showcasing its dedication to multilateralism and globalization.

As for legal justifications and concerns of the rest of the world on issues of encroachment on sovereignty of nations, China underscores its commitment to non-interference in the internal affairs of participating nations, framing the BRI as a mutually beneficial partnership rooted in respect for each country's sovereignty and autonomy.

China also points out that in implementing BRI China would strictly comply with international standards while at the same time insisting that all BRI activities would

adhere to international law and conventions, including principles of free trade, openness, and transparency. In this context China underscores the creation of legal frameworks and agreements to regulate BRI endeavors, ensuring alignment with the laws and regulations of participating countries.

As for economic expansion promotion, China presents the BRI as a catalyst for fostering economic growth and progress, both domestically and among participating nations, by encouraging investment, trade, and infrastructure advancement. The BRI provides an avenue for China to utilize its surplus industrial capacity, particularly in sectors like construction, steel, and manufacturing, by exporting equipment, materials, and expertise to involved nations.

In terms of market resource access, it is claimed that the BRI grants China entry into new markets for its products and services, along with access to natural resources and raw materials in resource-rich areas along BRI routes.

The official text of the BRI says that the BRI aligns with the concept of a global community of shared future, embodying ideas pertinent to contemporary times such as global development, security, openness, cooperation, civilization, and governance. It not only offers a conceptual framework but also presents a practical roadmap for nations to achieve mutual development and prosperity.<sup>5</sup>

The text goes on to say that the BRI is built upon the principles of inclusivity, collaboration, and mutual benefit. It advocates for win-win cooperation for the collective good and shared interests. It emphasizes the equal participation, contribution, and benefits of all countries, fostering economic integration, interconnected development, and the sharing of achievements.

Inclusivity underscores that the BRI is not solely China's endeavor but a collective endeavor involving all stakeholders. This principle encourages genuine multilateralism, promoting collective decision-making while respecting the diverse levels of development, economic structures, legal systems, and cultural traditions of participating nations. It emphasizes equal participation, effective communication, collective wisdom, and voluntary engagement to maximize consensus. Regardless of size, strength, or wealth, all countries participate on equal terms, contributing opinions and proposals in bilateral and multilateral cooperation.

Under this principle, economies at different stages of development will enhance communication, jointly establish innovative cooperation mechanisms, and provide a platform for dialogue, cooperation, and participation in global governance.

China claims that the principle of collaboration highlights that the BRI is not merely China's aid program or geopolitical tool but a collaborative effort for mutual development. It aims to complement existing regional mechanisms rather than



supplanting them and leverages complementary strengths. This principle stresses the participation of all involved parties, coordination with the development strategies of relevant countries and regions, and the identification and utilization of their respective development potential and comparative advantages. The goal is to collectively create new opportunities and drive growth by capitalizing on each party's strengths.

To encourage broad participation, this principle promotes various forms of cooperation such as bilateral, third-party market, and multilateral cooperation, creating synergy for development. Market forces are valued, and market-oriented operations are promoted to serve the interests of all parties involved. Businesses play a central role, while governments focus on building platforms, establishing mechanisms, and providing policy guidance.

The principle of mutual benefit emphasizes win-win cooperation, identifying common interests and cooperation grounds, addressing development needs, and real concerns. It emphasizes sharing development opportunities and outcomes among all participating countries, ensuring that none are left behind. Most participants are developing countries seeking to address challenges such as inadequate infrastructure, industrial development, and limited capital and technology. Through the BRI, China aims to support partner countries within its capabilities, genuinely assisting other developing countries while fostering all-round opening up and creating a mutually reinforcing dynamic between domestic and international engagement.<sup>6</sup>

In essence, China's rationale for the BRI encompasses geopolitical ambitions, legal principles, and economic incentives, portraying the initiative as a platform for mutual collaboration, progress, and prosperity among participating nations. However, these justifications are open to examination and discussion, with critics raising concerns regarding issues such as debt sustainability, environmental consequences, and the geopolitical implications of China's expanding influence.

### ***B. Criticisms***

China's ambitious BRI, aimed at infrastructure and economic development, has evoked both praise and criticism worldwide, notably from Western nations. While some perceive the BRI as a catalyst for global connectivity and economic expansion, others have voiced substantial concerns and reservations.

A primary area of concern raised by Western critics revolves around the issue of debt sustainability. They contend that the extensive scale of BRI infrastructure projects, often financed through loans from Chinese state-owned banks, risks burdening participating nations with unsustainable debt levels. Such debts could potentially lead to financial instability, undermining the sovereignty of these countries. Instances like

Sri Lanka's Hambantota Port, where China assumed control due to repayment difficulties<sup>7</sup>, serve as cautionary examples.

Moreover, questions regarding transparency and governance surround numerous BRI projects. Critics argue that the lack of transparency in project contracts and financing terms raises suspicions about the underlying intentions of these initiatives. There are also apprehensions about corruption and the potential for BRI projects to exacerbate governance challenges in participating countries, rather than addressing them. Organizations such as Transparency International have emphasized the necessity for enhanced transparency and accountability in BRI endeavors to mitigate corruption risks.

Another significant area of contention is environmental sustainability. Many BRI projects entail large-scale infrastructure development in ecologically sensitive areas, such as forests, wetlands, and biodiversity hotspots. Concerns abound regarding the ecological impact of such projects, including deforestation, habitat destruction, and pollution. Additionally, the focus on fossil fuel-based infrastructure, like coal-fired power plants, raises apprehensions about aggravating climate change and impeding global efforts toward renewable energy transition.

Human rights issues have also emerged in relation to the BRI, particularly concerning labor rights and social impacts. Reports of forced labor and substandard working conditions in BRI-related projects have drawn condemnation from human rights advocates. Additionally, there are concerns about the displacement of local communities and insufficient compensation for those affected by BRI infrastructure development.

Furthermore, broader geopolitical apprehensions encompass the BRI. Western nations, notably the United States, perceive the BRI as a mechanism for China to expand its influence and challenge the existing global order. The strategic positioning of several BRI projects, including ports and transportation hubs, has raised fears of “debt-trap diplomacy” and China's military ambitions in regions crucial to global trade routes.

In summary, the BRI has encountered significant criticism from Western nations across multiple fronts, including concerns regarding debt sustainability, transparency, environmental impact, human rights, and geopolitical implications. While the BRI holds potential for fostering economic growth and connectivity, addressing these criticisms, and ensuring responsible and sustainable implementation are imperative to garner broader international support and realize the initiative's potential for mutual benefit and cooperation.

### **3. Effects of BRI on Air Transport**

#### *A. Market Access*

The BRI holds considerable implications for air transport market access. Through infrastructure enhancement, particularly airports and air transport networks, the BRI seeks to bolster connectivity and collaboration among nations. This initiative stands to transform market access in air transport in several ways.

To begin with, the BRI could be a conduit for enhanced air connectivity. With the construction of new airports and expanding existing ones along the Belt and Road routes, the BRI is poised to elevate air connectivity among participating countries. This expansion would offer airlines a broader array of options to reach these markets. There could also be the possibility of the introduction of new air routes where development along the Belt and Road routes could prompt airlines to establish fresh air routes, linking previously underserved or inaccessible regions. This shift would create opportunities for airlines to extend their reach and operations.

Facilitation of trade is another aspect that could be linked to market access. A core objective of the BRI is to streamline trade between involved States through transportation infrastructure enhancements. Improved air transport links would expedite the movement of goods and people, thus invigorating trade and economic activity. Airlines would experience heightened demand for both air cargo and passenger services. This development could bring to bear evolving competition and market dynamics. With heightened connectivity and the introduction of novel air routes, competition among airlines operating within BRI regions may intensify. To thrive in these burgeoning markets, airlines would need to adapt their strategies, including pricing and route optimization, to meet evolving market demands.

Governments participating in the BRI might enact regulatory and policy modifications to foster the growth of air transport infrastructure and operations. These adjustments could encompass initiatives aimed at streamlining customs procedures, enhancing airport facilities, and harmonizing aviation regulations, thereby facilitating easier market access for airlines. The BRI has therefore the potential to substantially influence market access in air transport by bolstering connectivity, fostering trade, and reshaping competitive dynamics among airlines operating along the BRI routes.

On the downside, China may have an advantage over the States participating in the BRI in air services negotiations, as, often, other economic factors come to play in negotiations for market access between economically more powerful States and less powerful States. In this context one has to go back to the philosophy of market access which is embodied in the Preamble to the Chicago Convention which calls for air

transport to be conducted in a safe and orderly manner with equality of opportunity for all concerned and operated soundly and economically. It will be recalled that in August 1945, at the first meeting of the Opening Session of the Interim Council of the Provisional International Civil Aviation Organization (PICAO), the Hon. C.D. Howe, Minister of Reconstruction, Canada said:

We (Canada) believe that there must be greater freedom for development of international air transport and that this freedom may best be obtained within a framework which provides equality of opportunity and rewards for efficiency.<sup>8</sup>

Dr. Edward Warner, Representative of the United States of America (later the first President of the ICAO Council) said at the same meeting:

Our first purpose will be to smooth the paths for civil flying wherever we are able. We shall seek to make it physically easier, safer, more reliable, more pleasant; but I believe it will be agreed also that we should maintain the constant goal that civil aviation should contribute to international harmony. The civil use of aircraft must so develop as to bring the peoples closer together, letting nation speak more understandingly unto nation.<sup>9</sup>

Dr. Warner had notably stressed on the purpose of civil aviation to be the promotion of international harmony and dialogue between nations. He had also made it clear that the seminal task of civil aviation is to bring the people of the world together through understanding and interaction. At this stage at least, civil aviation was recognised more as a social necessity rather than a mere economic factor. In addition, through the statements of Minister Howe and Dr. Warner, one can glean the attitude of the international community towards aviation at that time:

- a) that civil aviation was based on equality of opportunity: and,
- b) that it was a social need rather than a fiscal tool.

The above notwithstanding, the American approach at the Conference to market access, particularly in terms of air traffic rights, is embodied in the statement of Adolf Berle, the Assistant Secretary at that time in the State Department when he said:

I feel that aviation will have a great influence on American foreign interests and American foreign policy than any other non-political consideration...it may well be determinative in certain territorial matters which have to do with American defence, as well as with transportation matters affecting American commerce, in a degree comparable to that which sea power has had on our interests and policy.<sup>10</sup>

This certainly goes above and beyond using air transport as a social need based on equality of opportunity.

The preceding discussion clearly directs attention to the central issue: how should regulators shape the future of air transportation? How can they offer guidance? This brings to bear the economic relevance of ICAO and its possible role in considering ramifications of BRI on air transport. ICAO could initiate a comprehensive global study spanning from the present time to 2050. This study would analyse various factors such as global trends, market economics, technological advancements, tourism and trade growth, consumer demands, competition rules, taxation, and economic aspects of air travel. Additionally, it would explore future regulations concerning airports, air navigation service providers, airlines, and corporate social responsibility principles. These endeavours fall within the mandatory and permissive functions of the ICAO Council as outlined in the Chicago Convention.<sup>11</sup>

The outcomes of this proposed study, which are well within the legal framework of the Chicago Convention, could serve as a blueprint for a 30-year action plan. This living document would undergo regular reviews and revisions every five years. While not intended to be prescriptive like a law, the plan would offer guidelines that member States could choose to adopt bilaterally or multilaterally in the absence of specific market access and economic guidance from ICAO.

A key focus of the study would be the impact of information technology on future air travel demands. It would address capacity constraints both in airspace and on the ground, including factors like airport and airspace capacity, runway adequacy, environmental considerations, and air traffic management limitations. The study could also explore innovative approaches, such as airborne self-separation and efficient airport surface management, to mitigate capacity limitations and operational challenges.

Ultimately, leveraging ongoing drivers like information technology, ICAO could aim to develop practical guidelines that integrate various elements of the transportation system into a seamless chain. This approach seeks to establish a multilateral regime promoting the interoperability of air transportation on both global and regional scales.

### ***B. Infrastructure Developments and Airports***

The BRI would necessitate considerable infrastructure development particularly in the building and improvement of airports. In this area States (together with possible Chinese involvement) may face many challenges requiring foresight. Foresight can be divided into several key components: *anticipatory intelligence*, which involves providing early warnings and background information on emerging developments; *direction-setting*, which establishes broad corporate strategy guidelines; determining priorities, which involves identifying the most important areas for research and development funding; *strategy formulation*, which involves participating in the creation

and implementation of strategic decisions; and *innovation catalysing*, which stimulates and supports innovation processes among partners.

From the perspective of an airport, anticipatory intelligence should encompass various potential disaster scenarios, such as: the inability to accommodate flights due to frozen runways; strain on infrastructure from a sudden surge in passenger numbers; security threats leading to traffic slowdowns and system congestion; and adverse weather conditions disrupting ground handling operations. Weather-related issues are often predominant in airport challenges. Direction setting for airport management should involve developing a corporate strategy that doubles as a contingency plan. This plan should include staff training, pre-organized backup support, and fair compensation for staff dealing with stressful situations and upset customers. Effective communication and additional services are crucial in such circumstances.

Determining priorities at an airport hinge on always maintaining an effective safety and security system. Strategy formulation involves developing alternative routes and transportation methods, ensuring additional accommodations, collaborating with airlines for meal provisions, and maintaining communication with consulates and local authorities.

Innovation catalysing stands out as a creative aspect of corporate foresight. It involves examining existing planning documents like ICAO's Airport Planning Manual, which offers guidance on various planning aspects such as project sizes, task identification, budget preparation, consultant selection, and contract provisions.<sup>12</sup> Unfortunately, studies on corporate foresight indicate that the transportation sector often overlooks innovation.<sup>13</sup> Therefore, it's imperative for the airport industry to streamline corporate development and strategic planning processes. ACI could lead an effort to bring together forecasters, technical experts, and airport planners to develop disaster management guidelines.<sup>14</sup>

States participating in the BRI would also have to focus on the prudent management of their airports and infrastructure. The management styles of airports, along with their evolution, are predominantly influenced by economic, political, and social factors. Consequently, a variety of ownership and management models exist globally for airports. However, changing the ownership and management structure alone may not resolve all the challenges faced by airports or airport groups. Poorly planned changes could lead to long-term harm. Therefore, clear objectives should underpin any change initiative.

Prior to privatization or private involvement, states must address several critical issues. An exhaustive analysis of the current aviation infrastructure, including a detailed financial assessment, is essential. This analysis should also incorporate growth

projections. Decisions need to be made regarding the management and financing of remaining airports and services concurrently, with a focus on identifying profitable airports separately. Furthermore, the regulatory body must be reinforced to handle the increased responsibilities associated with private management.

Successful privatization or private involvement hinges on meticulous planning. Transparency is paramount, with tender documents meticulously prepared to furnish decision-makers with all necessary information. Careful consideration should be given to selecting suitable bidders. Contractual arrangements should include provisions for contract termination and the resumption of control in critical situations without undue compensation to the private sector. Given the complexity of private involvement in airport services, seeking external consultancy may prove beneficial for many states lacking expertise in this area.

Privatization should primarily align with aviation's core tenets of safety, security, and efficiency. These principles should not only guide the privatization process but also adapt to the chosen model for individual airports. Regardless of organizational structure or legal status, the state bears ultimate responsibility for safety and security.

Two additional terms pertinent to private involvement in airports are corporatization and autonomy. Corporatization involves establishing a legal entity outside government control to manage airports and/or air navigation services. While ownership typically remains with the government, private sector participation is feasible depending on statutory provisions and governmental policy. Corporatization defines the legal structure for operating airports and/or air navigation services, but management approaches vary based on statutory and policy frameworks.

Autonomy pertains to the authority granted to airport and air navigation service managers in utilizing generated revenues and making independent managerial decisions within their organizational mandates. Autonomy is not tied to a specific organizational format but is commonly associated with government-owned facilities and services, such as civil aviation authorities or wholly government-owned companies managing airports and air navigation services.

### *C. Air Cargo Operations*

Air freight services can be provided by either multi-service air carriers or all-cargo carriers and gained prominence in the post-World War II era, particularly in the 1940s and 1950s. The distinction between “freight” and “cargo” is pertinent here. While technically synonymous, “freight” typically refers to property transported exclusively by aircraft dedicated to cargo, while “cargo” refers to property transported alongside passengers and their baggage. Air cargo plays a crucial role in establishing global

supply chains, facilitating swift and efficient connections between distant markets. This enables businesses to manage inventory effectively and streamline production processes to meet specific orders.<sup>15</sup> The efficiency of air cargo transport is influenced by various factors such as market access, liberalization policies, and fair competition regulations.

Arguably, the most important consideration in the BRI would be cargo security. In this context to Annex 17<sup>16</sup> to the Chicago Convention, suggests that every Contracting State should actively encourage the research and development of advanced security equipment, methods, and protocols to enhance civil aviation security goals. Furthermore, states are urged to collaborate with other Contracting States in this endeavour. The Annex emphasizes that in the development of new security equipment, human factors principles should be considered. Additionally, states are advised to explore innovative processes and procedures that permit operational customization of screening and security measures, guided by well-defined criteria.

Harmonization of cargo document layouts and contents across BRI States as well as regulations on the release of cargo across BRI States would also be important. Annex 9 to the Chicago Convention contains regulations concerning air cargo, falling within the jurisdiction of ICAO. In efforts to streamline the release and clearance of air cargo, Contracting States are mandated to establish and implement regulations and procedures suited to air cargo operations, aiming to prevent unnecessary delays. These standards and practices initially endorsed by the Council on March 25, 1949, were designated as Annex 9 under the title “Standards and Recommended Practices<sup>17</sup> — Facilitation” as per Article 37 of the Convention on International Civil Aviation (Chicago, 1944). They took effect on September 1, 1949.

States are advised to ensure that regulations and procedures for cargo transported by both air and surface means under an air waybill align with those applied solely to air cargo. When introducing or amending regulations for cargo release and clearance, Contracting States are required to consult aircraft operators and relevant stakeholders to achieve the objectives outlined in the Annex. Additionally, States must develop procedures for pre-arrival and pre-departure submission of import and export declarations to facilitate prompt release and clearance of goods.

In cases where consignments may attract attention from various authorities such as customs, veterinary, or sanitary controllers, Contracting States should endeavour to delegate release and clearance authority to customs or other appropriate agencies. If delegation is not feasible, measures should be taken to ensure coordinated release and clearance with minimal delay. Contracting States are generally discouraged from mandating physical examination of imported or exported cargo and are urged to employ



risk management to determine examination necessity and extent. Where feasible, modern screening techniques should be utilized to expedite cargo inspection.

Contracting States with international airports are encouraged to establish, operate, or authorize free zones and customs warehouses, with detailed regulations specifying permissible operations therein. In cases where such facilities are unavailable at the airport but exist nearby, arrangements should be made for air transport to utilize these facilities on par with other modes of transport.

For information required by public authorities, Contracting States should facilitate electronic submission of cargo data prior to arrival or departure. Data requirements should be limited to essentials for release or clearance, and statistical data collection should not impede cargo release. Documents for import or export, including cargo manifests and air waybills, should be accepted in electronic format where technologically feasible.

Responsibility for producing and presenting cargo manifests and air waybills lies with the aircraft operator or their authorized agent, while other necessary clearance documents are the responsibility of the declarant. Contracting States should refrain from holding aircraft operators accountable for compliance with additional document requirements unless the operator is also the declarant. Paper documents should follow UN layout key guidelines for consistency.

To promote trade facilitation and security, Contracting States are urged to encourage the implementation of compatible electronic data interchange systems using internationally accepted standards. Electronic information systems should cover cargo transfer between air and other modes of transport. Procedures for obtaining supporting documents should be convenient and preferably electronic, and consular formalities or charges for cargo clearance documents are prohibited.

Regarding export cargo clearance, Contracting States should prioritize examinations for live animals, perishable goods, and urgently needed items. Simplified procedures should apply to personal effects transported as unaccompanied baggage, provided they meet certain criteria. Special procedures, based on advance information supply, should be established for authorized importers meeting specified criteria.

Contracting States are encouraged to process requests for part consignments' release promptly and to facilitate transfer of unloaded goods to designated customs offices. Penalties or charges for unloading errors or omissions are prohibited if timely notification and valid reasons are provided. Similarly, penalties are waived for unlisted goods unloaded at international airports, provided proper notification and arrangements are made with customs authorities.

#### *D. Dispute Resolution Under the BRI*

In the context of the BRI, the methods for resolving disputes can vary based on the agreements between China and the participating nations. Nonetheless, there are certain common approaches and principles where negotiation and consultation are concerned, where typically, disputes are expected to be settled through discussions and consultations between the involved parties. This method is often seen as the primary and preferred approach for resolving disputes within the BRI framework. In terms of mediation and conciliation, parties may opt to resolve disputes through mediation or conciliation, utilizing either designated organizations or third-party mediators. This strategy focuses on achieving a mutually agreeable resolution with the aid of an impartial mediator. There is also the possibility of arbitration where it is frequently employed as a dispute resolution method under the BRI. Parties may agree to submit their disputes to arbitration, either through ad hoc procedures or through established arbitration institutions. The selection of the arbitral body and applicable laws may vary based on the terms agreed upon by the parties.

In certain instances, parties may pursue litigation in domestic courts to settle disputes. However, this is generally viewed as a less favourable option due to potential jurisdictional complexities, prolonged legal proceedings, and challenges in enforcement across different jurisdictions. Some BRI projects may institute specialized dispute resolution mechanisms tailored to meet the specific demands and characteristics of the project. These mechanisms might involve designated dispute resolution entities or expert panels appointed by the involved parties. Overall, the guiding principles of flexibility and cooperation are paramount in the dispute resolution provisions of the BRI. The emphasis is placed on resolving disputes in a collaborative and efficient manner to facilitate the smooth execution of projects within the BRI framework.

There is also recourse available to ICAO member States participating in the BRI to invoke dispute resolution provisions of the Chicago Convention on any matter pertaining to the invocation of the provisions of the Convention. Dispute resolution provisions pertaining to the ICAO Council are contained in Articles 84 to 87 (inclusive) of the Chicago Convention. Article 84 explicitly outlines that any dispute between two or more States concerning the interpretation or application of the Convention and its Annexes, which cannot be resolved through negotiation, will be settled by the Council. Article 54 (n) allows the Council to consider any matter referred to it. However, a strict interpretation of Article 54 (n) raises a dilemma, as a disagreement between two States under Article 84 could potentially fall under the broad scope of “any matter” in Article 54 (n). This creates ambiguity and possible overlap between the two provisions.

The Council may choose to merely consider a matter presented to it, even if a decision is sought by one of the States involved, as Article 54 (n) is perceived to outline the Council's mandatory functions comprehensively. Unfortunately, this ambiguity obscures the Council's arbitral functions, which are clarified in Article 14 of the Rules of Settlement established by the Council in 1957. These rules allow the Council to encourage direct negotiations between disputing parties at any stage, emphasizing conciliation over adjudication.

Interpreting Article 84 of the Chicago Convention requires careful examination of its terminology. According to the Vienna Convention on the Law of Treaties,<sup>18</sup> which is applicable to the Chicago Convention, treaties must be interpreted in good faith, considering the ordinary meaning of the terms in their context and in light of the treaty's objectives. The ordinary meaning of Article 84 grants the Council the authority to “decide” on disputes between parties. However, the Council's decision-making process has been criticized for lacking legal justification, as highlighted by the International Court of Justice (ICJ). In the context of a case that was remanded by the ICAO Council to the ICJ on a matter pertaining to the closure of some airports in the Middle East.<sup>19</sup> The ICJ suggested that Council decisions should provide legal reasoning to validate their authority. In a specific case involving Qatar's application, the Council's decision was questioned due to its alleged lack of jurisdiction. The dispute was linked to political decisions of the States involved, rather than aviation matters, and raised concerns about airspace closure discrimination. The Council's failure to address these issues effectively undermined the legal validity of its decision.

The main argument presented in the appeal to the ICJ centred on the contention of the appellants that the ban imposed on Qatar was a political issue concerning the security and sovereignty of their respective states, which fell outside the jurisdiction of the ICAO Council to address. However, the claims made by Bahrain and Egypt would undermine this argument, as Article 84 of the Convention grants the ICAO Council the authority to adjudicate disputes involving the interpretation of the Convention's provisions, even if such authority is implied.

An illustrative example supporting the notion that the ICAO Council possesses jurisdiction over matters of State security in the realm of civil aviation is the adoption of Resolution A28-7 by the ICAO Assembly during its 28th Session in 1990. This resolution underscored the belief that international civil aviation can foster friendship and understanding among nations but cautioned against its misuse, which could pose a threat to global security. The ICJ observed that the Council's jurisdiction *ratione materiae* (in terms of subject matter) was delineated by the provisions of Article 84 of

the Chicago Convention, specifically pertaining to the nature of the disagreement between Qatar and the four appellant states.

The ICJ referenced its previous decision in the *India v. Pakistan* case,<sup>20</sup> where it held that a disagreement relates to the interpretation or application of the Chicago Convention if resolving it necessitates the Council to interpret and apply the Convention's provisions, thereby dealing with matters falling squarely within its jurisdiction.

#### **4. Conclusion**

This article has discussed the pros and cons, justifications, and criticisms of BRI, as well as some aspects of air transport that could come under discussion in the context of the implementation of BRI. It has also discussed ways and means available to the ICAO Council to study this wide-ranging initiative of China with a view to determining the economic, political, and legal implications it could have on global air transport.

China holds a significant position within ICAO, not only due to its robust presence in the global economy but also as a permanent member of the ICAO Council. Acknowledging the necessity to enhance safety and efficiency in flight operations in Asia, the ICAO Council sanctioned the establishment of a Regional Sub-Office (RSO) of the Asia Pacific (APAC) Office in Beijing on November 14, 2011. The primary objectives of this initiative were to augment airspace capacity and efficiency to accommodate the burgeoning aviation sector in Asia and to optimize Air Traffic Management (ATM) operations through collaborative traffic flow management. The inauguration of the Regional Sub-Office (RSO) occurred on June 27, 2013, with the Civil Aviation Administration of China (CAAC) hosting it in Beijing. Regional officers, seconded by APAC<sup>21</sup> States such as China, India, Japan, Malaysia, Republic of Korea, Singapore, and IATA, are stationed there.

Functioning as a Regional Sub-Office (RSO) under the Asia and Pacific (APAC) Office headquartered in Bangkok, the RSO in Beijing shoulders the responsibility of supporting enhanced Airspace Organization and Management (AOM) to optimize Air Traffic Management (ATM) performance across the Asia Pacific Region. The RSO's mandate includes facilitating efficient airspace and international air traffic flow management through AOM, Collaborative Decision Making (CDM), and Air Traffic Flow Management (ATFM) to accommodate traffic growth without compromising safety. This involves assisting in improving ATFM capability, implementing Performance-Based Navigation (PBN) in enroute and terminal airspace, enhancing airspace utilization (both civil and military aspects), and optimizing traffic flows (reviewing ATS route networks) in the Asia Pacific Region. The RSO collaborates

closely with states, international organizations, and industry partners to support the implementation of ATM and air navigation service improvements necessary to meet the demands of the rapidly expanding region.

The RSO's focus on ATM implementation in the APAC Region aligns with the APAC Seamless ANS plan endorsed by APANPIRG. This encompasses Air Traffic Flow Management (ATFM), Civil-Military Cooperation (CMC), Performance-Based Navigation (PBN), and ATS route structure. RSO's outreach efforts to various APAC States include conducting seminars, workshops, providing technical assistance online and onsite, and hosting webinars.

Throughout ICAO's history, there has been a perceived inconsistency and inadequacy in its approach to air transport, contrary to its vision and mission to achieve the sustainable growth of the global civil aviation system and to serve as the global forum of States for international civil aviation respectively. While ICAO develops policies, standards, conducts compliance audits, studies, and analyses, and provides assistance to build aviation capacity, the sub-regional office's exclusive focus on the technical aspects of air navigation and safety diverges from ICAO's broader aims and objectives. Under Article 44 of the Chicago Convention, one of the two broad aims and objectives of ICAO is to foster the planning and development of air transport by ensuring that the people have access to safe, reliable, efficient, and economical air transport. Therefore, it is essential for both regional and sub-regional offices of ICAO to incorporate an economic component to keep ICAO informed of economic activities and policies impacting air transport within their regions. This would provide the ICAO Council with valuable insights into economic, safety, and geopolitical developments, guiding its functions in appointing study groups and panels to address megatrends affecting air transport.

## Endnotes

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<sup>1</sup> James McBride, Noah Berman, and Andrew Chatzky, China's Massive Belt and Road Initiative, Council on Foreign relations, February 2, 2023. See <https://www.cfr.org/backgrounders/chinas-massive-belt-and-road-initiative>.

<sup>2</sup> See generally, Daniel Lindley, Assessing China's Motives: How the Belt and Road Initiative Threatens US Interests, *Journal of Indo-Pacific Affairs*, Aug. 1, 2022. <https://www.airuniversity.af.edu/JIPA/Display/Article/3111114/assessing-chinas-motives-how-the-belt-and-road-initiative-threatens-us-interests/>

<sup>3</sup> *Ibid.*

<sup>4</sup> See generally, Hoong Chen Teo, Alex Mark Lechner, W. Walton, Faith Ka Shun Chan, Ali Cheshmehzangi, May Tan-Mullins, Hing Kai Chan, Troy Sternberg, Ahimsa Campos-Arceiz, Environmental Impacts of Infrastructure Development under the Belt and Road Initiative, <https://www.mdpi.com/2076-3298/6/6/72>.

<sup>5</sup> Full text: The Belt and Road Initiative: A Key Pillar of the Global Community of Shared Future

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Xinhua, October 10, 2023, The State Council Information Office, Peoples Republic of China. See [http://english.scio.gov.cn/whitepapers/2023-10/10/content\\_116735061\\_4.htm](http://english.scio.gov.cn/whitepapers/2023-10/10/content_116735061_4.htm).

<sup>6</sup> *Ibid.*

<sup>7</sup> Jonathan E. Hillman, Game of Loans: How China Bought Hambantota, CSIS, April 2, 2018. See <https://www.csis.org/analysis/game-loans-how-china-bought-hambantota>.

<sup>8</sup> *PICAO Documents*, Montreal, 1945, Volume 1, Doc 1, at 3.

<sup>9</sup> *Id.* Doc 2, at 2.

<sup>10</sup> David Mackenzie, *ICAO – A History of the International Civil Aviation Organization*, University of Toronto Press: Toronto, 2010, at 3. . In considering liberalization of market access, States invariably face two basic issues: the extent of liberalization, i.e. how open the market access should be in terms of the grant of traffic rights; and the approach to liberalization, i.e. whether liberalization should be national, bilateral, regional, plurilateral, or multilateral and the pace with which liberalization should be pursued.

<sup>11</sup> Under permissive functions of the Council Article 55 c) of the Chicago Convention states that the Council may conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters. Article 55 d) provides further that the Council may study any matter affecting the Organization of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto.

<sup>12</sup> Airport Planning Manual, *Doc 9184-AN/902*, Part 3.

<sup>13</sup> *Id.* 1.3.1-1.3.5.

<sup>14</sup> *Id.* Chapter 2.2.1.

<sup>15</sup> Impact of Air Cargo on Economic Development, ICAO Information Paper, May 2015. See [https://www.icao.int/Security/aircargo/Documents/AirCargo\\_EconomicDevelopment.pdf](https://www.icao.int/Security/aircargo/Documents/AirCargo_EconomicDevelopment.pdf).

<sup>16</sup> Annex 17 Safeguarding International Civil Aviation Against Acts of Unlawful Interference Tenth Edition, April 2017.

<sup>17</sup> The Standards and Recommended Practices on Facilitation encompass both restrictive and facilitative measures. The restrictive aspect entails limitations imposed by states, such as maximum paperwork requirements and restrictions on freedom of movement. Conversely, the facilitative aspect entails minimum facilities provided by states for passenger convenience and transient traffic. In cases concerning restrictive measures, states are expected to minimize requirements below the maximum stipulated in the Standards and Recommended Practices whenever feasible. Conversely, regarding facilitative measures, States are encouraged to exceed the minimum standards outlined in the Standards and Recommended Practices whenever possible.

<sup>18</sup> Vienna Convention on the Law of Treaties 1969, done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331.

<sup>19</sup> In June 2017, Qatar Airways experienced significant disruptions as a result of Saudi Arabia and the United Arab Emirates (UAE) closing their airspace to Qatari aircraft. This action appeared to be a response to allegations of Qatar's support for Islamic militants and Iran. Subsequently, Saudi Arabia, the UAE, Egypt, and Bahrain jointly announced the indefinite closure of their airspace to Qatari planes, following Saudi Arabia's lead. This blockade imposed substantial inconvenience and expenses on Qatar's national airline, necessitating the rerouting of its flights. For instance, flights between Doha and Muscat had to detour through Iranian airspace to circumvent the UAE, which extends into the Persian Gulf, resulting in an additional hour of flight time compared to the usual one hour and forty minutes. See Ruwantissa Abeyratne, Politics of Air Transport: The Qatar Issue, *Issues in Aviation Law and Policy*, Vol 17:2 (2021), 179-192.

<sup>20</sup> Appeal Relating to the Jurisdiction of the ICAO Council (*India v. Pakistan*), Judgment, I.C.J. Reports 1972, para. 36.

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<sup>21</sup> APAC countries are those located within the APAC geographical region. The APAC region is loosely defined but generally considered to encompass the area in and around the western Pacific Ocean. APAC stands for Asia-Pacific. The term rose to favor during the 1980s and is used most often in a political or commerce-related context.