

International Approaches to Environmental Protection in Chinese Enterprises' Overseas Investment under the Silk Road Economic Belt

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Abstract: Against the backdrop of the in-depth advancement of the Silk Road Economic Belt initiative, environmental protection in the overseas investment of Chinese enterprises has increasingly attracted the attention of the international community. From the perspective of international environmental law governance, this paper systematically examines the basic principles that should be established for the environmental legal system of the Silk Road Economic Belt. It points out that current international environmental governance is characterized by two parallel trends: unilateralism and cooperative governance. Environmental cooperation under the Silk Road Economic Belt should adhere to the principle of cooperation, which can be further specified into four subsidiary principles: the principle of identity based on sovereign equality, as the basic principle of identity; the principle of process centered on joint management; the principle of sustainable development as the objective; and the principle of fairness aimed at promoting the sharing of governance outcomes. These principles should not only reflect the political foundation of regional cooperation, but also embody the basic characteristics of environmental governance; they should not only conform to the general laws of global environmental governance, but also adapt to new trends in environmental cooperation in the new era. Through the establishment of the above principles, this paper aims to provide environmental legal guidance for the overseas investment of Chinese enterprises, promote the development of a green Silk Road Economic Belt, advance environmental justice and good governance in the region, and provide institutional support for the implementation of the 2030 Agenda for Sustainable Development.

Keywords: Silk Road Economic Belt; overseas investment of Chinese enterprises; environmental protection; principles of international law; sustainable development

1. Introduction

The environmental legal system of the Silk Road Economic Belt must be established on certain basic principles. These basic principles should reflect both the political foundation supporting the development of regional cooperation and the basic characteristics of environmental governance; they should both conform to the general laws of global environmental governance and adapt to new trends in environmental cooperation in the new era. With regard to international environmental law governance, two parallel trends currently exist. The first is unilateralism, which has a significant negative impact on international environmental cooperation and protection. The second is cooperative governance, or the principle of cooperation. That is, the resolution of international environmental problems cannot be achieved through sanctions or zero-sum competition; instead, cooperation should be pursued and problems should be resolved through cooperation. The necessity of adhering to specific basic principles in environmental cooperative governance is primarily attributable to the fact that states engaging in transboundary or international activities do not operate on the basis of complete autonomy. They must first examine their own preferences, interests, and governance needs within a legal system in which states stand on an equal footing, respect the basic obligations of equal coexistence, mutual respect, and joint management arising from the modernity of international law, and appropriately balance policy and legal considerations across the three dimensions of history, reality, and the future. At the same time, all states must respect the overall interests of the international community toward which environmental governance is directed, so that individual actions are subordinated to the common efforts of all states to achieve global or regional environmental justice and good governance. This is not only a basic requirement arising from the principle of international cooperation, but also reflects the fact that humanity constitutes a community.[1] In this regard, the principle of cooperation can be further specified into the following subsidiary principles.

2. The Principle of Identity Based on Sovereign Equality

This principle first means that states adhere to the principle of sovereignty in environmental protection and resource development. In view of the fundamental legal rationale of sovereign equality, states must also assume the basic obligation

not to cause environmental harm to other states. Sovereignty and the precautionary principle constitute the basic position of ecological and environmental governance, and the development of the Silk Road Economic Belt based on respect for sovereignty is a concrete manifestation of this principle. The principle of sovereign equality first requires that, in accordance with the Charter of the United Nations and international law, all states have the right to adopt ecological and environmental policies appropriate to their specific circumstances and to manage and develop domestic natural resources in accordance with domestic needs. According to the basic principles established by the Declaration of the Human Environment and the Rio Declaration, states or regions are not only required to fulfill mutual obligations of precaution, which derive from the international obligations and bilateral responsibilities assumed by states toward one another. In addition, states have international obligations to prevent harm to and protect the so-called “global commons” or the global environment, obligations that fundamentally derive from the responsibilities undertaken by states toward the interests of the international community as a whole and humanity. The intersection and overlap of these types of obligations also reflect the evolving pattern of environmental governance in the international community. Governance processes at the national level and interactive governance are embedded in the process of community governance and perform fundamental governance functions, while responsive and holistic governance constitute the basic direction of international ecological and environmental governance. They not only respond to ecological and environmental challenges or global risks involving global interests, but also coordinate ecological and environmental policies and manage ecological and environmental protection activities from the perspective of the agency of the international community or humanity, thereby preventing states, non-state actors, or individuals from causing harm to the “global commons” belonging to all humanity and to the environment as a whole.

3. The Principle of Process Centered on Joint Stewardship

In environmental cooperation under the Silk Road Economic Belt, based on the fundamental principle of identity of sovereign equality, the principle of joint stewardship should also be established as an important framework principle for sovereign equality and mutual respect among states. This principle applies to international cooperation in addressing governance issues of common concern to states in the region and generally arises on the basis of international treaties or international arrangements. The principle of joint stewardship in international governance can be understood as an institutionalized arrangement made by multiple international actors with respect to specific fields or thematic matters. Its core lies in the public nature of the objects of governance involved and the shared authority of the governance process, while joint stewardship must be achieved through international cooperation among states within the region. The principle of joint stewardship derives from the collective responsibilities and shared powers that international law imposes on states with respect to international public goods. States need to jointly represent humanity in managing ecological security, a sound environment, property commonly owned by humanity, and other matters. Such management is characterized by commonality and indivisibility. The principle of joint stewardship requires states to conduct governance through multilateral rather than unilateral approaches, and no state should monopolize power in the management of such public resources. From a negative perspective, the principle of joint stewardship prohibits states from claiming or exercising exclusive jurisdiction over the environment and natural resources commonly owned by humanity; from a positive perspective, the Silk Road Economic Belt requires states in the region to act in good faith and jointly determine, through negotiation and consultation, the process of ecological and environmental governance involving the interests of all parties. In the context of joint stewardship, the principle of international cooperation is indispensable. Advancing the governance process through the governance concept of “extensive consultation, joint contribution, and shared benefits” is a basic requirement for ensuring the elimination of unilateral will and the establishment of common will. Environmental cooperation and governance under the Silk Road Economic Belt emphasizes that governance power is jointly exercised by states in the region, with all states in the region occupying a symmetrical relationship based on the principle of sovereign equality. As indicated in Chapters 1 and 2 of this study, the governance structure formed through such joint stewardship is also referred to as coercive multilateralism.[2]

Specifically, environmental protection cooperation under the Silk Road Economic Belt can be understood from two perspectives: actors and content. First, cooperation actors. Cooperative governance of the ecological environment includes official cooperation among states, as well as, to a greater extent, private cooperation among enterprises and nongovernmental environmental organizations. Of course, there is overlap among governance actors in their cooperation with one another, and they form a green cooperation network under the Silk Road Economic Belt centered on the environment. Second, cooperation content. Governments reach political consensus on environmental cooperation under the Silk Road Economic Belt and establish a cooperation framework, thereby providing guidance and legal protection for cooperation among enterprises in specific areas such as resource development, technology research and development and sharing, ecological restoration, and environmental protection. On this basis, non-governmental normative guidelines or industry standards also constitute

important components of ecological and environmental cooperation. In terms of modes of cooperation, environmental governance under the Silk Road Economic Belt is closely related to the regional, bilateral, or multilateral cooperation mechanisms existing within the region. States in the region achieve policy coordination and behavioral adjustment through bilateral, regional, or multilateral international cooperation mechanisms. Of course, this is premised on the good-faith performance by countries along the route of treaty and agreement obligations or “soft law” norms, and capacity building for governance constitutes an important component of regional ecological and environmental cooperation.[3]

4. The Principle of Objectives for Achieving Sustainable Development

Environmental cooperation and governance concerning overseas investment under the Silk Road Economic Belt should take the achievement of sustainable development as a fundamental governance objective. As a fundamental principle, sustainable development runs throughout the entire process of environmental governance, requiring countries in the region to integrate the environment, society, and technology into the governance process through cooperation. On the one hand, consideration should be given to both the positive and negative effects of new technologies and their applications on ecological and environmental protection, while also taking into account the need for economic development to promote green technologies. On the other hand, social, cultural, and technological development requires ecological and environmental governance to be considered from a more modern perspective, advancing the process of ecological and environmental governance through innovation and upgrading, thereby achieving the goals of sustainable development. From the perspective of integrating the ecological environment, society, and technology, the Silk Road Economic Belt is a process in which greening and modernization are advanced together. Social activities and technological development are not ends in themselves; rather, they must be considered in light of the social, economic, and environmental impacts they produce. Cooperation among stakeholders and its ecological and environmental effects must play a central role in the process of technological revolution. Sustainable development goals, such as reducing the wealth gap, eliminating absolute poverty, eliminating discrimination, and achieving a sound ecological and environmental condition, must guide the entire governance process.[4]

The United Nations Department of Economic and Social Affairs, Development Policy and Analysis Division (DPAD), once collaborated with China to assess the effects of the Silk Road Economic Belt on sustainable development and concluded that the principles of sustainable development articulated in the 2030 Agenda for Sustainable Development are universal and holistic. Environmental governance is an important component of the Agenda, and the implementation and achievement of its Sustainable Development Goals depend to a large extent on specific measures adopted by states at the regional level. The Silk Road Economic Belt is committed to bringing together the ecological and environmental capacities and resources of multilateral international institutions, governments, private enterprises, civil society, and other relevant actors, thereby forming a driving force for regional ecological and environmental development and concretely implementing the contents set forth in the Sustainable Development Agenda, as shown in the following table. In fact, the five major areas of cooperation advanced by the Silk Road Economic Belt are closely related to the 17 Sustainable Development Goals, particularly environmental issues, which have become fundamental sustainable development goals that underpin the entire development of the Silk Road Economic Belt.[5]

Table 1. The 2030 Agenda for Sustainable Development and Ecological and Environmental Governance

Sustainable Development Goals (SDGs)	Ecological and Environmental Issues	Related Goals
Goal-6	Ensure availability and sustainable management of water and sanitation for all	Clean water sources and sanitation
Goal-7	Ensure access to affordable, reliable, sustainable and modern energy for all	Sustainable modern energy
Goal-9	Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation	Sustainable modern industrialization
Goal-11	Make cities and human settlements inclusive, safe, resilient and sustainable	Sustainable cities
Goal-12	Ensure sustainable consumption and production patterns	Sustainable consumption and production
Goal-13	Take urgent action to combat climate change and its impacts	Climate change
Goal-14	Conserve and sustainably use the oceans and marine resources	Marine resources
Goal-15	Sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss	Terrestrial ecosystems, forests, desertification, land degradation, and biodiversity
Goal-17	Strengthen the means of implementation and revitalize the global partnership for sustainable development	Global partnership for sustainable development

In terms of policies and international cooperation, the principle of sustainable development requires adherence to the concept of green development, promotion of green and low-carbon operation and management of infrastructure, strengthening of ecological and environmental cooperation throughout the entire process, protection of biodiversity, and mitigation of climate change through regional efforts. Ecological and environmental cooperation under the Silk Road Economic Belt creates new momentum and development opportunities for implementing the 2030 Agenda for Sustainable Development. It can promote policy communication among countries in the region on ecological and environmental protection and facilitate the policy-level alignment of the green Silk Road Economic Belt with the Sustainable Development Goals; at the same time, it can actively establish green ecological and environmental risk prevention mechanisms and governance systems to prevent and restore ecological damage and environmental risks arising from infrastructure construction; third, it can promote green trade based on the principle of sustainable development and advance the concrete implementation of the principle of sustainable development in areas such as production, consumption, financial support, investment, and energy development. In particular, sustainable development requires the green Silk Road Economic Belt to effectively promote capacity building in developing countries and least developed countries in the field of ecological and environmental protection.[6]

5. The Principle of Fairness for Promoting the Sharing of Governance Outcomes

As noted above, the construction and development of the Silk Road Economic Belt can be regarded as a “new civilizational or cultural movement” jointly promoted by China and other countries in the region amid changes in the balance of international power and a reflective process concerning the international relations landscape. Its objective is to reform the prevailing cultural trends and concepts of civilization in the traditional international relations structure, such as the dominance of developed countries and neoliberal economic policies, and to develop an international relations culture and concept of civilization that better meets the governance needs of contemporary international society. The reform objectives of this new culture and concept of civilization are concentrated in two aspects. The first is the state of relations in traditional international relations in which benefits are defined by power, governance is dominated by power, and mutual relations are determined by competition and strategic interaction. The second is the state of relations in international governance in which powerful countries exploit weaker countries, developed countries exploit developing countries, and major powers arbitrarily interfere in the internal affairs of other countries. The Silk Road Economic Belt initiative is committed to developing a cooperative, progressive, fair, and equitable pattern of international relations and, on the basis of mutual respect for sovereignty and non-interference in internal affairs, establishing a new type of international relations and international governance characterized by international cooperation and the advancement of global governance.[7]

As indicated in the introduction to this paper, the Silk Road Economic Belt is committed to promoting ecological and environmental governance in a manner consistent with the principle of fairness and transforming regional ecological and environmental cooperation into an international cause of green justice. Developed and developing countries have conflicts of interest and differences regarding global environmental issues. These differences mainly concern how to share the costs and benefits of environmental action, how to allocate environmental responsibilities and assistance, and how to establish effective environmental governance mechanisms. Developed countries, relying on their economic strength and prominent position in international discussions, occupy a dominant position in addressing global environmental issues. Developed countries frequently incorporate ecological and environmental provisions into international trade or investment negotiations in order to consolidate their position within the global green governance framework and promote the spillover effects of environmental regulations. There is nothing inherently problematic about incorporating ecological and environmental governance into the rule-of-law processes of international trade or investment. However, traditionally, such provisions have exhibited strong non-neutral characteristics and have often served as a customary means for developed countries to intervene in the domestic ecological and environmental policies, institutions, and rule-of-law practices of developing countries. As a result, the relevant environmental rules have failed to reasonably reflect their own ecological governance needs and environmental protection requirements, while causing the countries concerned to lose their autonomy and flexibility in ecological and environmental governance. Adhering to the principle of fairness in ecological and environmental governance under the Silk Road Economic Belt means, on the basis of the fundamental principles of sovereign equality and joint stewardship among members, enabling all members of the region to jointly assume responsibility for protecting the ecological environment and jointly promote green governance consistent with their common interests, preventing countries with a first-mover advantage from engaging in “ecological exploitation” through existing unreasonable institutions and mechanisms, ensuring that the new model of ecological and environmental governance is compatible with the development levels, governance capacities, and governance needs of countries in the region, and enabling their respective peoples to fairly enjoy the outcomes of ecological and environmental governance. Ecological and environmental governance under the Silk Road Economic Belt actively

responds to the “green deficit” formed and perpetuated throughout history. President Xi Jinping pointed out that “many of the problems facing the world today are, in the final analysis, problems of development.” Uneven development constitutes the greatest form of unfairness in the current process of global governance, while the ecological and environmental deficit is one of the most typical manifestations of such unfairness. Given the characteristics of countries along the route, including their relatively weak ecological and environmental foundations, substantial historical environmental deficits, and concentrated ecological and environmental deficits, the principle of fairness plays an important guiding role in the development of the green Silk Road Economic Belt.[8]

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