

Feasibility Analysis of China's Overseas Interests Protection from the Perspective of Belt and Road of Rule of Law

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Abstract: The rule of law is not only the largest common denominator of global and regional governance models, but also an important foundation and guarantee for the Belt and Road Initiative. The Chinese presidency attaches great importance to the role of the rule of law in building the Belt and Road. Therefore, China has taken the construction of a Belt and Road based on the rule of law as the implementation of the concept of global governance and the rule of law. In recent years, as the Belt and Road initiative has been steadily promoted, trade, investment and humanistic exchanges among countries along the route have been increasing, and the risk of Chinese enterprises and individuals encountering commercial risks, natural disasters, traffic accidents, terrorist attacks and even military coups in countries along the route has also been on the rise. The construction of the Belt and Road initiative under the rule of law has accordingly become a new initiative for the protection of overseas interests.

1. Introduction

In September and October 2013, the President of China proposed the establishment of the New Silk Road Economic Zone and the 21st-Century Maritime Silk Road, respectively. The rule of law is therefore an important foundation and guarantee for the Belt and Road Initiative. President highly values the important role of the rule of law in the construction of the Belt and Road. In a letter to the China Rule of Law International Forum on November 10, 2019, he stated that the rule of law is a necessity for jointly promoting the construction of the Belt and Road. The implementation of the Belt and Road has now entered a new phase. In this new stage of development, in order to promote high-quality development through integrated planning,^[1] establish a new development model, an open, green, and clean Belt and Road must be established, and joint efforts must be made to promote the Belt and Road towards the rule of law.

The deployment and implementation of the Belt and Road Initiative has achieved significant results in promoting cooperation and benefiting citizens of countries along the route. At the same time, the personal and property security risks to which Chinese enterprises and citizens traveling abroad are exposed have become a growing concern. In some Belt and Road countries, there is uncertainty about government changes that threaten the interests of Chinese investors in the region.

The risks posed by this uncertainty are unexpected, unpredictable and disruptive. Once this happens, Chinese investors' overseas projects, assets and even personal safety can be seriously affected, as in the case of Sri Lanka and Pakistan.

2. Review of Established Literature

2.1 Research on the protection of China's overseas interests

Wang Duanyin began his research on the strategic positioning of different countries' interests abroad and found that there are large differences among countries, specifically in terms of national strength, level of participation in international affairs and degree of internationalization.^[2] It is also the differences that determine the initiatives and paths chosen by different countries in protecting their interests abroad. In this regard, he concludes and suggests that when China formulates initiatives to protect its overseas interests, while meeting the development needs of China's overseas interests^[3], it should also be consistent with the changes in China's status and role in international affairs. Xiao He, for his part, proposes initiatives that break with the principles of international law, suggesting that the establishment of private security companies be promoted to implement more direct and effective protection of the country's overseas security interests.^[4] The two scholars put forward suggestions on the protection of overseas security interests from two directions, and carried out jurisprudence discussion and feasibility analysis with good reference value. Li Zongmin started his research from the risks faced by overseas economic interests and categorized the risks into six types, namely political risks, policy risks, economic risks, social risks, natural disasters and operational risks.^[5] Some scholars have also conducted case studies on overseas interests.

2.2 Studies on the construction of Belt and Road and international law

Domestic scholars have conducted a considerable amount of research on the construction of the Belt and Road Initiative and international law, but most of them remain at the level of general international law. Some representative scholars, such as Li Ming, believe that the Belt and Road Initiative, as an important concept for deepening international economic and trade cooperation, has special significance at the level of international law.^[6]

2.3 Research on Belt and Road by foreign scholars

According to Tatyana Kolpakova and Tatiana Kuchinskaya, scholars at the Institute of Oriental Studies at Zabaikalye State University, China's Belt and Road Initiative (BRI) is a strategy of "new regionalism". The initiative seeks to expand its influence and economic development in Eurasia through a variety of political, economic, and cultural means^[7]. The essence is the development of a regional development network that reflects China's interests and requirements, utilizing the interaction of economic, political, cultural and security relations. Therefore, Initiative is essentially a regional integration strategy proposed by China to realize its dominance over the development of the Asian region and to counterbalance the United States-led Asia-Pacific strategy.

3. Risks to China's Overseas Interests in the Construction of Belt and Road

China's overseas interests refer to China's national interests, which are created by the Chinese government, businesses, social organisations and citizens through global linkages and which exist outside China's sovereign jurisdiction.^[8] In the process of developing the Belt and Road, citizens, enterprises and other entities outside the country are exposed to economic, security and political

risks.

3.1 Political risks

In terms of the types, political interests occupy the most important position among overseas interests, with specific contents including national sovereignty and territorial integrity, national image and international status.

China's Belt and Road construction involves a vast area and complex situation, so its overseas interests are facing severe political risks, and its geostrategic game between major powers outside the region also exists. To some extent, the Belt and Road Initiative is regarded by some countries as an act of reconstructing the international system and establishing the international order dominated by China. Some countries are even trying to use such remarks as "debt trap" and China's "Marshall Plan" to discredit and misinterpret China, so as to confuse the global vision.

After China proposed the Belt and Road initiative in 2013, the U.S. saw it as a serious challenge to its global dominance. The 2017 US National Security Strategy Report positioned China as a strategic adversary. The ASEAN Indo-Pacific Business Forum on November 4, 2019 proposed the "Blue Dot Network". Since the program, like China's Belt and Road Initiative, is related to infrastructure development, it was seen as part of the Indo-Pacific strategy used by the United States to contain China when it was proposed, and would be the U.S. version of the Belt and Road.

At the same time, China and India are playing strategic games more frequently. India will undoubtedly see this as China's strategic containment of India. The strengthening of Pakistan, the biggest beneficiary of China's "Belt and Road" construction in South Asia, has made India worry about its central position in South Asia. Political uncertainty remains in some parts of the region.

3.2 Security risks

Security interest is the core, but also the weaker part of China's overseas interest protection. In the construction of Belt and Road, due to the complexity of the situation in the countries along the route, the risk factor increases, especially in countries where terrorism is prevalent and armed conflicts are ongoing, in addition to the risk of project construction and investment, the personal security interests need to be raised to a new level of overseas interest protection.

The route of the Belt and Road covers three continents: the Belt crosses the Eurasian continent, the Road passes through South-East Asia, South Asia, the Persian Gulf, the Red Gulf and the west coast of the Indian Ocean. According to the Global Terrorism Database (GTD) map of global terrorist attacks from 1970 to 2016^[9], it is intuitive that North Africa - Middle East - West Asia - Central Asia - South Asia - South Asia - South-East Asia is the region with the most frequent and intense terrorist attacks worldwide, and the Belt and Road passes through some of the countries with the most serious terrorist activities.

3.3 Economic risks

Economic interest is an important element, involving trade, investment, project cooperation, labor export and other fields. It is the focus of overseas interest protection. In China's practice of Belt and Road construction, economic interests are the top priority of overseas interest protection, which is related to the continuous promotion of the construction.

International economic and trade risks. For the sake of protecting their own industries, competing with China and realizing trade balance, countries along the route will implement different degrees of trade protectionism and set up non-trade barriers such as green barriers and technical barriers against China.

Secondly, the risk of international investment. On the one hand, the investment risk. Over-concentration of investment in the field of energy, minerals and infrastructure will increase the risk of Chinese enterprises, and the risk of political changes and government changes will often be transmitted to the government's effectiveness, which will lead to the occurrence of policy adjustments, state expropriations, invalid contracts and other problems for foreign-funded enterprises, and exacerbate the risk of enterprises' investment^[10]. On the other hand, the return risk of infrastructure investment. Infrastructure construction has a long lifespan and high investment, but it has a low rate of return and may even incur losses. Overall, the definition of "investment" in BITs that have been signed is overly broad and vague. Therefore, in the event of disputes, dispute resolution will be more difficult under the premise of unclear definitions. Between 2006 and June 2015, 31 of the 43 failed projects of China's investment in countries along the Belt and Road were infrastructure investments, involving 47.78 billion US dollars, accounting for 72.09% of the projects and 62.21% of the amounts.

Thirdly, the risk of the international financial system. At present, China is facing two challenges in the financial field: most of the countries along the Belt and Road are underdeveloped, with unsound financial systems and inadequate supervision; China has little experience in the management and operation of its financial system, and its ability to cope with financial risks needs to be improved. Once the financial crisis occurs in the countries along the route, China's financial system will also face the impact. Furthermore, the risk of the monetary system is also a cause for concern. The economic foundation of the countries along the route is weak, and most of them are mainly exporting energy and mineral resources, and are obviously affected by the international economic environment, with greater exchange rate risks and a fragile monetary system.

3.4 Social risks

Social risk is another important type of risk facing China's overseas interests in the Belt and Road construction. It mainly includes the host country's cognitive lag and cognitive bias toward China, conflicts caused by cultural differences, and conflicts between China's Belt and Road construction and local interests.

Firstly, due to malicious incitement by some media and interest groups, some people regard China as a threat and boycott China's "Belt and Road" construction. Secondly, the cultural diversity and complexity of the regions along the Belt and Road, the intertwining of multiple civilizations, the complexity of the ethnic and religious composition, and the obvious differences in the management concepts of enterprises are factors that can easily lead to conflicts. Thirdly, China's Belt and Road construction will change the existing social power structure and benefit distribution pattern in the region, and may create conflicts with some stakeholders, leading to the opposition of a certain part of the local social group.

4. The Belt and Road Construction under Rule of Law Provides Realistic Value for the Protection of Overseas Interests

In today's increasingly globalized world, where countries are interdependent and intertwined, States are compelled to engage in active cooperation in order to respond to and resolve the global and regional problems they face, which requires them to shift from passive "coexistence" to active cooperation.

4.1 The principle of common cause and shared responsibility bridges the governance gap in traditional international law.

At present, global governance, which aims at solving global problems and maintaining a normal international political and economic order, is often based on binding international regulations and effective international cooperation. In particular, it is weak in regulating international trade, which has become increasingly complex and volatile, and is difficult to balance the contradictions between domestic differences and the emerging international economic order, facing great challenges in terms of stability. At the same time, the reality of increasingly intense national games in the era of great changes also makes the traditional international law coordination mode centered on treaties encounter a bottleneck. In contrast, the Belt and Road under law of rule construction model is more in line with the governance needs of the Belt and Road construction, and shows more and more unique value and advantages.

In practice, due to the different legal systems and diverse languages of the countries along the Silk Road Economic Belt^[11], it is almost impossible to smoothly resolve foreign-related cases. In this case, the establishment of judicial cooperation system has become one of the important ways to solve this problem in the countries along the Silk Road Economic Belt. For example, the countries along the route can sign bilateral or multilateral judicial cooperation treaties to make clear provisions on the jurisdiction of foreign-related cases, application of laws, identification of foreign laws, recognition and enforcement of judgments, etc. This will reduce the difficulties caused by different legal systems and language complexity, and provide legal safeguards for the smooth resolution of civil.

4.2 The principle of consultation, joint contribution and shared benefits makes up for international disputes brought about by confrontation and sanctions.

In responding to international problems, traditional international law tends to take a backward approach, that is, when an international dispute arises, confrontation and sanctions are used to respond to it. In our view, this approach has been increasingly criticized. Sanctions alone, even under domestic law, do not produce a good governance effect, but on the contrary are counterproductive. Sanctions, however, not only fail to achieve their objectives in the field of international law, but are even more unpopular, because they are not an expression of the essence of law, but more a manifestation of authority. This undoubtedly contradicts the absence of political authority over States in international law, and thus renders punishment illegitimate.

In fact, people do not obey the law because of sanctions, but out of a belief in "legitimacy". That is, it is only when people believe it to be law that it can actually be obeyed, and sanctions simply do not achieve that goal. When a community endorses a law, people will consciously abide by it without being sanctioned. It was more oriented towards problem-solving, while at the same time enhancing the cohesion of the community and thereby contributing to the realization of global governance.

4.3 The principle of consultation, joint contribution and shared benefits develops the rule of law system

The legal system of free trade zones under the Silk Road Economic Belt initiative is currently being developed in China, which plays an important role as a model in the practice of market access liberalization. In turn, the appropriate liberalization of legal regulation at the level of market access is the first step in promoting the rapid development of the countries of the Silk Road Economic Belt.

Infrastructure development is an important part of the construction of the Silk Road Economic Belt. It determines the extent and quality of the development of the strategy. The financing methods of infrastructure construction, investment risks and related legal issues involved in the investment process, such as labor issues, environmental issues, contract formation issues, etc., are all problems faced by governments and enterprises of various countries are unavoidable issues in the legal field. The innovative development of a complete legal normative system is the institutional basis for building a rule of law country.

5. Conclusion

The idea of building a community of human destiny answers the questions of reasons, goals and paths of strengthening global governance, and has therefore become an important theoretical basis for China's comprehensive participation in global governance. We should give full play to the role of the rule of law in building consensus and coordinating the will of various parties. On this basis, it is also necessary to clarify the multilateralism stance of the Belt and Road construction, dispel the intention of Western countries to smear China, and make efforts to change the unjust international rules constructed by the established powers.

The formation of the rule of law is not fragmented. We emphasize that countries along the border should express their demands based on their true will, and in particular uphold the value of international justice. It is necessary to guard against deliberate obstruction by some of the major countries and to prevent the major countries along the route from influencing the smaller ones. Smaller countries should be allowed to put forward different views and seek common ground while reserving differences and building consensus through peaceful means. At the same time, China should also assume the responsibility of a major country and take the lead in proposing a plan for the formulation of procedural rules for the creation of the system, and explore a set of procedures for the creation of the system that is universally accepted by the countries along the route by absorbing and drawing on the procedural justice concept of the modern rule of law, with a view to continuously upgrading and safeguarding the procedural justice of governance.

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