
REMEDY TO OVER COME ENVIORNMENTO-LEGAL ISSUES FACED BY THE BELT AND ROAD PROJECT

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ABSTRACT: *The Belt and road initiative is one of the mightiest project human race has ever witnessed in recent human history. It is true where the project of such a nature brings economic growth and prosperity on one hand; on the other hand it brings numerous challenges of different kinds and dimensions. The Environmental legal issue are one of those problems which are required to be resolved before it cause serious trouble for the project itself. Hence, this paper will shed light on the aforementioned issue so that the environment could be protected and conjointly, the possibility of legal litigation could be curbed. Thereby, there is less room left for any hindrance which could hinder the smooth pace of such an important project.*

KEYWORDS: belt and road, environmental and legal issues, measures to increase protection, international statutes

INTRODUCTION

The two most major countries of the world United States and China are known to be the most polluting countries of our world. However, China made tremendous progress to overcome this issue. Starting from the year 2012 when the 18th national congress of the communist party of the People's Republic of China, starts a new era for China. During the third plenary session of this congress, the ambition to establish an « *ecological civilization* » was announced in China¹. This objective thus became one of the five important pillars of the socialism construction. The amendment to the Law on the environmental protection in April 2014, as well as the various reforms that have emerged concurrently in other parts of this Law heralds a new era.

The legal regime of environmental Law has undergone many changes since its development. Each and every single step is heading towards its current version which

¹ The « *ecological civilization* » concept first appeared in 2007 during the 17th National People's Congress.

includes many advances in order to adapt international standards and it would be interesting to realize a panel of different progressions over the years and clarify the differences between national environmental Law and international environmental Law and how Chinese Law could be brought closer to international Law. This step is essential in order to have a better overview about legal scope of BRI. We know that this large-scale project concerns more than 60 countries, therefore, it will be a matter of time to understand whether it is following the international Law or the national Law of each State in the event of a dispute. But before that, it is necessary to establish the legal framework of the BRI project more precisely to define the alleged litigants if it is not possible to establish preliminary list. This step requires attention to detail every aspect, therefore the project could be easily launched within next 28 years in 2049. Therefore, it will be necessary to anticipate as much as possible by including or excluding States from project BRI.

Legal Arrangement Of Environmental Law

The study of environmental Laws legal regime has two components. The national environmental Law and its recent emergence make it a very recent Law, especially since it is a few decades old. Paradoxically, other countries have a recent national environmental Law, probably because the emergence of an environmental Law constitutes a phenomenon that affects the industrialized countries since the second half of the twentieth century because of scientific findings that were made on the subject of environment.

China's first participation in the first United Nations conference on the environment in 1972, as well as its involvement during the severe flooding in 1998, helped elevating the subject of environment to the center of social, political and legal life. Beyond national environmental Law as the same is naturally the international Law of the environment. It provides an answer to national Laws when they are unable to respond legal problems and impose guidelines to different States². This international Law has so far never directly mentioned the BRI project³, but it could have an influence on it in the coming decades in particular with even more drastic measures that may be required to be taken in the future.

The Rise Of National And Environmental Law

Chinese National Environmental Law was introduced in the 1970s even if some elements existed in particular in Article 6§2 of the 1954 Constitution “*mines, rivers, state-owned forests, wasteland, other sea and land resources are collectively owned by all people*”⁴. This new environment Law, supposed to answer ecological problems have to fulfill its role in most cases, that's why the legislator must always ensure that it does not become outdated and always meets current standards. Furthermore, it is also a question of apprehending Belt and Road Initiative through the environmental Law. This is where appears the modernization of an effective environmental Law the revisions

² See [The Paris Agreement | UNFCCC](#) The Paris Climate Agreement being an example.

³ As previously said, international environmental law is of general scope.

⁴ See QU (F), SUN (R), GUO (Z), YU (F), *Ecological Economics and Harmonious Society*, ed. Springer, 2016.

that have emerged over the years show the legislator's concern about an effective environmental Law and its relationship with BRI.

Since the proclamation of the People's Republic of China in 1949, the process of elaborating a Chinese Environmental Law has undergone various stages⁵: after the first phase which started from 1949 to 1973, a second development attempt was made between 1973 and 1989 but despite making numerous attempts of advancement, the same could not bring the required result which results into ineffectiveness⁶. The real beginnings of a true modernization era appears in the late 1990s following the very serious flooding that occurred in 1998, the Chinese government invested more than 40 billion yuan in flora and environment between 1998 and 2002.

During the first phase, the State became aware of the need to protect the environment, but only through measures to protect State property. During this period, various by-Laws were adopted⁷: Mining Protection Regulations in 1950; Soil Requirements for National Constructions in 1953; Regulation of the Protection of Mineral Resources in 1956; Water Protection Regulations and soils in 1957. Regarding the prevention and control of pollution, the Ministry of Health and the National Construction Commission jointly published in 1956 environmental hygiene standards but without any binding force. At the same time, the State Council also issued various documents relating to certain types of environmental pollution : Safety and Health Protection Procedures in Factories in 1956 and domestic water consumption in 1959.

The second phase then began in August 1973 with the first National Conference on Environmental Protection, set up following the return of the Chinese delegation to the first United Nations Conference on the Protection of the Environment. On December 13, 1978, during the third plenary session of the 11th National Congress of the Party, Deng Xiaoping underlined the importance of development legislation dedicated to the protection of the environment⁸.

Environmental protection as a fundamental value also appears for the first time in the March 5, 1978 Constitution Article 11 which requires the State to "*protects the environment and natural resources and prevents and eliminates pollution and other hazards to the public*". The first version of the Environmental Protection Act was adopted in 1978. This first general Law is then supplemented by the adoption of more specific Laws and regulations, aimed at the prevention and control of the various sources of environmental pollution⁹.

⁵It is important to note here that the various periods marking the environmental law evolution vary according to the authors but also according to the advances in environmental law which tends to modify the scale of evolutions.

⁶See CANFA (W), *Chinese environmental law enforcement: current deficiencies and suggested reforms*, ed. Vermont Journal of Environmental Law, 2007.

⁷ See LOUIS EDMONDS (R), *Patterns of China's lost harmony – A survey of the country's environmental degradation and protection*, ed. Routledge, 1994.

⁸ See DENG (X), *Selected works of Deng Xiaoping (Vol. II)*, ed. Foreign Languages Press, 1995.

⁹See XIN (Z), *Water Pollution Control in China: Review of laws, regulations and policies and their*

Detail Of Numerous Environmental Acts

Prevention of Pollution Prevention Act : Water Pollution (1984); Air Pollution Prevention and Control Act (1987); The Management and Protection of Natural Resources: Forest Act (1984), Steppe Act in (1985) and Fisheries Act (1986); Water Act (1988); Wild Animal Species Protection Act (1989).

The adoption in 1989 of the revision of the Environmental Protection Act is the beginning of a third period. In the 1990s, the main Laws of Chinese environmental Law were produced, through new Laws such as the Law on the Prevention and Control of Waste (1995); the Law on the Prevention and Control of water pollution (1995); air (1996) and marine environments (1999). At the same time, many regulations appear¹⁰ on the prevention and control of noise pollution (1989) or on air pollution (1991) for example. This legislative creation is still improving from the early 2000s with the adoption of the Environmental Impact Assessment Act (2002); the Promotion of the Circular Economy Act (2008) and the renewable energies (2009).

The drafting of a new environmental protection Law has been progressive. From 1995 to 2011, a total of 78 proposals were submitted to the National People's Congress. A public draft first released on August 31, 2012 but considered as weak in terms of environmental protection. What changed between the December 26, 1989 and the April 24, 2014 environmental protection Law ?

The environmental Law is divided into 7 chapters : Chapter I – General Provisions, Chapter II – Supervision and Management, Chapter III – Protection and Improvement of the Environment, Chapter IV – Prevention and Control of Pollution and Other Public hazards, Chapter V – Information Disclosure and Public Participation, Chapter VI – Legal Liability, Chapter VII – Supplementary Provisions. The comparison with the previous Law shows there is one Chapter more added to the new Law which talks about “*Information Disclosure and Public Participation*”.

The first change can be seen in the Article 6. The previous revision merely referred to “*all units and individuals*” using a general word but without ever designating them whereas the new article deal with “*Local people's governments at various levels (...)* *Enterprises, public institutions and any other producers / business operators (...)* *Citizens*” The second change is about the using of a new vocabulary. The introduction of the term “*sustainable development*” was absent in the previous revision even though it had been employed in 1987 by the United Nations World Commission on Environment and Development in its report “*Our Common Future*”. The introduction of “*ecological civilization*” although not being a new formula since it had already been used for the first time in 1987 by a Chinese economist shows the government willingness to seize environmental leadership and pioneer in the field by developing

implementation, ed. Institute for Global Environmental strategies (IGES), 2009.

¹⁰See MORTON (K), *International Aid and China's Environment – Taming the Yellow Dragon*, ed. Routledge, 2005.

the first ecological civilization.¹¹

DETAILED ANALYSIS OF BELT AND ROAD CONNECTION WITH ENVIRONMENTAL LAW

Beyond the rule of Chinese Law, it is a question of understanding the relation between Belt and Road Initiative and the environmental Law. This relationship is explained in the Belt and Road's Ecological and Environmental Cooperation Plan. According to the plan, China has made significant progress in the field of eco-environmental cooperation. The eco-environmental information support services was reinforced as well as advancing cooperation on environmental standards, technologies and industries. The drafters precised the Belt and Road Initiative which will be guided by the philosophies of ecological civilization and green development and will be advanced in an environment friendly way in order to improve green competitiveness, covering policy coordination, facilities connectivity, unimpeded trade, financial integration and people-to-people bonds.

This relationship appears in the preamble of the environmental protection Law with the aim of *"promoting ecological civilization improvement and facilitating sustainable economic and social development"*. The drafters of the Belt and Road ecological and Environmental Cooperation Plan used two of the most important terms in the environmental Law preamble and integrated them in the development goals. The term *ecological civilization* appears in the first development goals as the following : *"By 2025, we will integrate the concepts of ecological civilization and green development into Belt and Road Initiative and create a favorable pattern of well grounded cooperation on eco-environmental protection"*. Why wait until 2025, 11 more years after the promulgation of the environmental protection Law in 2014 for integrating the concepts of ecological civilization and green development into BRI ? The implementation of environmental protection Law may require time in order to efficiently enter into force especially it is not only about ensuring ecological civilization and green development in China but worldwide through Belt and Road Initiative.

The term *sustainable development* appears in the second development goals as the following : *"By 2030, we will promote cooperation on eco-environmental protection with higher standards and at deeper levels to accomplish the Sustainable Development Goals"*. The sustainable development appears in the environmental protection Law preamble as well as the first article : *"This Law is formulated for the purpose of protecting and improving environment, preventing and controlling pollution and other public hazards, safeguarding public health, promoting ecological civilization improvement and facilitating sustainable economic and social sustainable development"*.¹²

The relationship between Chinese national Law and Belt and Road Initiative goes

¹¹ See VIÑUALES (J), *The Rio Declaration on Environment and Development: A Commentary*, ed. OUP Oxford, 2015.

¹² *Ibid.*

further and goes beyond the borders by encouraging other countries to improve their national Law. According to the following statement *“With full respect for the development needs of countries along the Belt and Road, we will strengthen strategic alignment and policy communication and cooperate on eco-environmental protection based on consensus, to build a community of shared interests, responsibility and future and create a win-win situation for economic development and environmental protection”*. Furthermore, it is about using Chinese environmental Law concepts and sharing it worldwide. The third part of the plan is about highlighting the Concept of Ecological Civilization and Strengthening Policy Coordination. The aim is to share the concept and practice of ecological civilization and green development worldwide. In the part dedicated to green development, the drafters talks about *“environment-friendly technologies”* which is exactly the same formula used in the article 35 in the environmental protection Law : *“The State encourages and guides citizens, legal persons and other organizations to procure environmental-friendly products and recycled products to reduce waste generation”*.

Chinese Law directly applies to the Belt and Road Initiative through the relationship between Chinese environmental Law and protection environmental Law in the Belt and Road Initiative. This relationship is at first difficult to perceive but a deep analysis of texts shows an obvious correlation between the terms used in the environmental Law, the wording of sentences, the dedication of new terms and their usage by the drafters when it comes to promoting environmental Law through the Belt and Road Initiative.

Participation of China on Different World Forums

China has been participating in numerous conferences of the United Nations since 1972 and is part of several treaties¹³: Treaty series on the depletion of the ozone layer (1987); the convention on biological diversity (1992); the United Nations convention on climate change (1992); United Nations convention to combat desertification (1994); the Stockholm convention on persistent organic pollutants (2001); the Kyoto protocol (1997); the Rotterdam convention on the prior informed consent procedure for certain hazardous chemicals and pesticides (1998). In recent years there has been a significant assertion of China on the international scene.

China has also played a positive role in the adoption of the Paris agreement by signing it as early as September 2016, thus overtaking the United States as the European Union. While hosting COP13 on combating desertification in September 2017 and COP15 on biodiversity in 2021, China could take international leadership on environmental and climate issues in the coming years. The Chinese premier said commitments made when signing the agreement in 2015 will be respected. On the other hand, the French president declared in the French press that *“the Paris Agreement would not have survived without China”*¹⁴.

¹³*Ibid.*

¹⁴See L'Accord de Paris n'aurait pas survécu sans la Chine - The Paris agreement would not have survived without China [Online] Updated on January 8, 2018 [Consulted 2019.02.01] Available at the following address: <https://www.novethic.fr/actualite/environnement/climat/isr-rse/l-accord-de-paris->

Hence, China's compliance with the Paris Agreement is a positive sign and China is largely helping to improve its image especially since it is the first country to emit greenhouse gas. As in the BRI project, China promotes the general interest with a winning spirit. Politically, China has everything to gain by respecting the Paris Agreement and by becoming a good “*teacher*” because it is about convincing countries are interested in the BRI project and side by side it can prove China's ability to carry out this project economically and environmentally.

As China is directly concerned by the Paris Agreement as well as Belt and Road Initiative Project. Unlike the Kyoto Protocol in which we will have the opportunity to clarify, the Paris Agreement have a binding effect and China is directly concerned by international environmental Law. The Paris Agreement's goal is to contain the rise in the level of the average temperature of the planet “*below 2°C*”. Article 2 gives a numerical objective: it is about “*holding the increase in the global average temperature to well below 2°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change*”. Article 4 specified furthermore that in order to achieve this long-term temperature goal, parties aim to : “*reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country*” and “*undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty*”.

What is the international environmental Laws application to BRI ? As mentionned previously, the only agreements with more than 100 signatories are Paris Agreement and Kyoto Protocol even if China is not concerned by the latter. Other agreements directly concern China but with three shortcomings : they do not directly deal with global warming ; they do not have any binding effect ; they relate to a very specific field as the scope is narrower than a universal agreement on climate so that it will be necessary to choose the agreements within the framework of the BRI project and exclude others. Furthermore, it is impossible to constrain a country to respect its commitments, especially since the Agreement Paris has supplanted other Agreements, the latter being considered as a new Kyoto Protocol.¹⁵

However, can be mentionned the International Tropical Timber Agreement concluded on November 18, 1983¹⁶. Article 1 lists objectives : “*To provide an effective framework for co-operation (...), To encourage the development of national policies aimed at sustainable utilization and conservation of tropical forests and their genetic resources, and maintaining the ecological balance in the region concerned (...), To promote the expansion and diversification of international trade in tropical timber and the*

n-aura-pas-survecu-sans-la-chine-selon-emmanuel-macron-145278.html.

¹⁵ *Ibid*

¹⁶ See International Tropical Timber Agreement – 1983 [Online] [Consulted 2019.04.26]

Available at the following address:

[https://treaties.un.org/doc/Publication/UNTS/Volume%201393/volume-](https://treaties.un.org/doc/Publication/UNTS/Volume%201393/volume-1393-I-23317-English.pdf)

1393-I-23317-

English.pdf.

improvement of structural conditions in the tropical timber market, by talking into account, on the one hand, a long-term increase in consumption and continuity of supplies, and, on the other, prices which are remunerative to producers and equitable for consumers, and the improvements of market access“.

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on September 10, 1998¹⁷. Article 1 asserts *“The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties“.*

China is party to the conventions mentioned above and the need to promote *“international trade“* is reminded every time in the first article as a mandatory condition even though these are texts intended to protect the environment. We can establish a relationship between these texts which are an integral part of international environmental Law and the Belt and Road Initiative which aims to expand external markets and trade relations.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal from 22 March 1989¹⁸ aims to manage *“the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites“* according to article 2. The Annex I lists categories of wastes to be controlled, Annex II is about categories of wastes requiring special considerations whereas Annex III gives the list of hazardous characteristics. China is a signatory since December 17, 1991. This convention prohibits substances considered dangerous and in the context of Belt and Road Initiative, China must respect this convention even if to a lesser extent, wastes are not exported outside the borders, it will then be necessary to interpret this convention in order to observe the organic constitution of the exported elements and their constitution.

International environmental Law applies to China as well as to the Belt and Road Initiative. The previous agreements are legally binding for China which formally ratified them. According to the following definition, an international environmental agreement is *“an intergovernmental document intended as legally binding with a primary stated purpose of preventing or managing human impacts on natural resources“*¹⁹. Article 26 of the 1969 Vienna Convention on the Law of treaties to which

¹⁷ See The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade [Online] [Consulted 2019.04.26]
Available at the following address: https://treaties.un.org/doc/Treaties/1998/09/19980910%2007-22%20PM/Ch_XXVII_14p.pdf.

¹⁸ See Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Basel, 22 March 1989 [Online] [Consulted 2019.04.26]
Available at the following address: https://treaties.un.org/doc/Treaties/1992/05/19920505%2012-51%20PM/Ch_XXVII_03p.pdf.

¹⁹ See NORICHIKA (K), *Governance with Multi-lateral Environmental agreements : A healthy or ill-equipped fragmentation?* ed. Hoffmann, 2007

China is party since September 3, 1997 puts forward the principle “*pacta sunt servanda*” according to which : “*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*”²⁰.

Gaps in International Rules for Dealing With Belt and Road

The international and environmental Laws are criticized for their ineffectiveness due to its non-bindingness effect. The drafters of international treaties have so far made no mention of the Belt and Road initiative, it is unfortunately impossible to establish any direct relationship between the two. The main reason international environmental Law is general and numerous conferences, treaties and declarations are addressed to every States²¹. Why should international Law be addressed to one State ? particularly China ? The answer is it is for two reasons:

- Firstly, China is the first country in the world to emit greenhouse gases with just over 20%
- Secondly, the need for international environmental standards has never been stronger and that they do not stop at borders. The Chernobyl accident of 1986 as well as that of Fukushima in 2011 constitute a perfect example.

The objectives of the Paris agreement concerns China as a whole but only partially the BRI project. What about waste, pollutants, the construction of infrastructure and their place and materials used for infrastructure construction ? Even in the absence of personal recommendations, a positive point can be noted. This international Law allows States to become fully aware of environmental problems and to improve their national Law. In the absence of an international environmental Law, would national Law be developed ? China views the establishment of the Paris Agreement as an inherent part of its own sustainable development. Chinese State Counselor and Foreign Minister Wang Yi said China will continue to focus on improving global climate governance, deepening cooperation in the struggle against climate change, and the “*importance to debt sustainability and green environmental protection*”²².

Why the Paris Agreement is a major step forward? Why are other treaties considered as being minor improvements in comparison? The Paris Agreement is the first environmental universal agreement with a binding effect. The other major international environmental agreement is the Kyoto Protocol which is the first binding agreement.

²⁰ See Vienna Convention on the Law of Treaties 1969 Online] [Consulted 2019.04.29]

Available at the following address:

http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

²¹See ÉDOUARD (T), *The modernisation of environment law: what is/are the direction(s) for legal rule-makers*, p139-164, ed. Les Annales de droit, 2016.

²² See Wang Yi Talks About Joint Construction of the “Belt and Road”: To Pave a New Path for Various Countries to Achieve Common Development and Prosperity [Online] Updated on May 5, 2018 [Consulted 2019.02.07] Available at the following address:
https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/xos_664404/xwlb_664406/t1560913.shtml.

Since 1997, an increasing number of countries joined the agreement on November 18, 2005, 156 countries ratified it. Its objective was the reduction of greenhouse gases by 5% by 2012 in accordance with its article 3 *"the Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxin equivalent emissions of the greenhouse gases listed in Annex A (...) with a view to reduce their overall emissions of such gases at least 5 percent below 1990 levels in the commitment period 2008 to 2012"*.

The binding effects of this protocol are specified in Article 18 : *"The Conference of the Parties serving as the meeting of the Parties to this Protocol shall (...) address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under the Article entailing binding consequences shall be adopted by means of an amendment to this Protocol"*.

Annex 1 does not include China, which is considered as a developing country. Therefore, this major shortcoming jeopardizes the protocol in its entirety since there is no qualified commitment to reduce emissions and this concerns China. Therefore, in order to find binding provisions that directly concerns China and the BRI, it is necessary to take greater consideration regarding Paris Agreement and the same is required to be considered as the new Kyoto Protocol²³.

Legal Scope and Legal Aspect of Belt and Road Initiative

The legal scope of the BRI project is quite significant as On the one hand, its legal framework is new and not definitive. These include national international Laws, with the difference that it is not only about environmental Law but also contract Law, social Law or commercial Law. The main problem is about the interconnection of these Laws which are extremely linked and special importance will be devoted to the drafting of the contract itself. The geographical delimitation on the other hand deserves the greatest attention because of its extensive scope because of different legal systems. The question is will it be necessary to apply the international Law or the national Law of each state in this aspect ? The contract drafting allows to avoid a lot of interrogation including on the applicable Law.

Theoretically, at each stage of the BRI projects development, China have to comply with each national Law. China may have to face resistance from States demanding compensatory measures by setting up mechanisms. These measures would be taken by States which believe that China must pay a transit tax but for now, this remains a subject of study and China must as much as possible negotiate with other States. The setting up of a special economic zone with the application of a special legislation favorable to China is the most positive alternative. These last elements are reminiscent of the fact that these are primarily State interests in which private Law persons have no place to the extent that the emergence of a dispute between two States is primarily a matter of international public Law. That being said, people deprived of any activity should also

²³ See ESPAGNE (É), *Climate Finance at COP21 and After: Lessons Learnt*, ed. Policy Brief CEPIL, 2016.

be included in certain situations.

Compliance of National Laws in Accordance With Belt and Road

Three periods in the development of the BRI project can be distinguished:

- Prior to its development when it comes to the acquisition or redemption of infrastructure on foreign territories and belonging to foreign third parties²⁴
- During its elaboration when it comes to building facilities on foreign territories²⁵
- After its elaboration once it enters into the framework

China will have to comply with every national Law and will use all legal tools: concession; lease; purchase; joint venture; merger-acquisition; conglomerate; subsidiary in order to manage its facilities. As previously said, some States will pass special Laws in order to create economic zone where a derogatory Law will apply. Some States may take advantage of it to vote for ecotax on China, a custom zone in order to demand compensation for environmental damage. Ecotax or ecological taxation can be defined as an autonomous fiscal measure which is characterised by its environmental objective and its specific tax base²⁶. This principle appear in environmental protection Law article 21 *"The State adopts policies and measures in terms of fiscal assistance, taxation, prices and government procurement to encourage and support the environmental industries such as environmental protection equipment, comprehensive utilization of ressources technics, environmental services and ect."*. Article 22 states *"Where enterprises, public institutions and other producers and business operators achieve further pollution reduction beyond statutory discharge standards, relevant people's governments shall extend encouragement and support thereto with policies and measures in terms of fiscal assistance, taxation, prices, government procurement, ect. In accordance with the law"*.

It is not certain that China will have to pay such a tax in each country and the negotiations between China and the different countries can prove to be fructuous. However, several countries have shown their disapproval about the project. India and Japan in particular are developing infrastructure projects in Asia and the rest of the world. The project is called *"Asia-Africa Growth Corridor"*.

It is poles apart from the BRI project and it focuses on *"sustainable development"* rather than trade, and relies exclusively on *"low cost"* shipping routes²⁷. An in-depth analysis

²⁴See On december 9, 2017, *"China Mercants"* has obtained a 99-year concession on the commercial activities of the port of Hambantota in Sri Lanka

²⁵In Malaysia, China is helping to build a railway line between Kota Bharu on the Thai border and Port Klang near the capital Kuala Lumpur. This line should be operated from 2024.

²⁶See DE SADELEER (N), *EU Environmental Law and the Internal Market*, ed. OUP Oxford, 2014

²⁷See BHATTACHARYA (A), *Journeys on the Silk Road Through Ages - Romance, Legend, Reality*, ed. Zorba books, 2017.

of this project shows that the objectives are not as ambitious as the BRI project and both countries will face hard time convincing the world towards the relevancy of their project. Contrary to the latter project, China contributes greatly to international environmental Law. The Belt and Road Ecological plan provides more support to green demonstration projects in cooperation with countries along the road. In a part entitled “*Implement Green Silk Road Envoys Program*“, the drafters reminded the exchange of environmental management personnel and professional technical personnel with the improvement of management. The plan is very specific and the objectives of environmental protection are honorable. And in this regard, there is no need to fear about the lack of respect for the environment of the various national jurisdictions when Chinese standards are already very high. The Belt and Road Initiative project allowed the raising of these standards and not only nationally but internationally as well through countries along the road with the sharing of the concept and practice of ecological civilization and green development. About the sharing of ecological civilization concept, the drafters included the “*joint development of bilateral, multilateral, sub-regional and regional strategies and action plan for eco-environmental protection*“. Every possibilities are mentioned, including bilateral cooperation between two countries or multilateral cooperation between more than two countries without forgetting that “*Eco-environmental protection will be cultivated as a new engine of green transformation in countries and regions along the routes*“.

Gaps in International Law With Regard to Belt and Road

The first difficulty in international Law is that we have not developed a general theory of juridical personality and we solve it on the basis of cases²⁸. There is no explicit, conventional rule that determines what a Legal person is ? What are the parties that could be involved in the BRI project ? Who would be involved in, for example, a railway accident involving China and the State of Romania? Will the litigation be between Chinese State and the Romanian State ? Or will it be between private Legal persons, in this case with the Chinese railway company ? What will be the applicable Law in this case ? Will it be Chinese Law, Romanian Law or European Union Law ?

We know that the Chinese railway companies²⁹ as well as shipping companies are under the direct control of the Government of the People's Republic of China and it is almost certain that these companies will remain under the control of the government for the next 30 years, the latter needing the level of competence to be able to carry out the BRI project. That is why it can be said that Chinese private companies are excluded from any international cases that might arise between States, public enterprises being in the forefront of the BRI project. In addition, CRRC's purpose is the study, construction, repair, sale and rental of railway equipment. Without any doubt, this company will play a major role in the years to come.

Furthermore, the Belt and Road Initiative plan drafters used an extensive scope in order to include as much countries as possible, that's why the sentence “*countries along the Belt and Road*“ is used.

²⁸See FLEUR (J), *International Legal Personality*, ed. Routledge, 2016.

²⁹CRRC; COSCO; CREC.

Geographical Delimitations For Belt and Road Project

The construction of infrastructures in foreign countries as part of Belt and Road Initiative project has already been planned since Mr XI Jinping delivered his speech in 2013. Although the project has already started recently, it is clear that there is still a considerable number of clarifications to be made in this area, the unknown being the types of infrastructure, their quantity, costs as well as date and place of construction. Beyond the material and quantitative requirements is the question of the BRI projects geographical limitation.

Infrastructure Building Issues in Foreign Countries

Whether at sea or on land, infrastructure construction is planned with the same goal to favor the safety and efficiency. According to the National Development and Reform Commission in its document published on March 2015³⁰: *“At sea, the initiative will focus on jointly building smooth, secure and efficient transport routes connecting major sea ports along the Belt and Road (....). To be specific, they need to improve the region's infrastructure, and put in place a secure and efficient network of land, sea and air passages, lifting their connectivity to a higher level”*.

The lack of infrastructure is a clear statement that is made. For this purpose, the Chinese government must address this by building infrastructure for the BRI project to succeed but this is not the only solution. Indeed, advice is formulated to other countries: *“they should promote policy coordination, facilities connectivity, unimpeded trade, financial integration and people-to-people bonds to their major goals, and strengthen cooperation”*.

The drafter list 5 essential objectives that different countries must reach: policy coordination; facilities connectivity; Unimpeded trade; Financial integration; People-to-people bond. Facilities connectivity is described as being *“a priority area for implementing the Initiative. On the basis of respecting each other's sovereignty and security concerns, countries along the Belt and Road should improve the connectivity of their infrastructure construction plans and technical standard systems (...). At the same time, efforts should be made to promote green and low-carbon infrastructure construction and operation management, taking into full account the impact of climate change on construction”*.

By reconciling economic and environmental policy, the government adopts a pragmatic approach. Environmental concerns are an integral part of the BRI project and even in the case of a foreign country, the focus is on the environment but this is not the point. The sovereignty of the different countries is also mentioned. This element is very important because it removes an ambiguity that may still exist in some western countries while it is a win-win bet in which each party wins.

³⁰ See Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road [Online] Updated on march 28, 2015 [Consulted 2019.01.24] Available at the following address: http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html.

Limitations and Advantages of Bri Project for World in General

According to the National Development and Reform Commission: “*The Belt and Road Initiative aims to promote the connectivity of Asian, European and African continents and their adjacent seas*”. We know that the European, Asian and African continents will be fully involved in the BRI project. What about America? Like India and Japan, the United States has shown its disapproval for this project and even want to counter it by offering its own services to Asian countries³¹. However, there is no way that such approach could create a win-win situation with governments and people. Since, the BRI project would also extend to America, specifically in the northern Arctic and Latin America. China would offer Latin American countries the advantage of the free debt financing normally implied by the traditional conditions of the International Monetary Fund. The conditions are not determined and it is not established the infrastructure that will connect China to America.

According to the National Development and Reform Commission, China will be connected with Central Asia, Russia, Europe, Persian Gulf, Mediterranean Sea, West Asia as well as Southeast Asia, South Asia and the Indian Ocean. The goal is to connect continents by land routes: “*On land, the initiative will focus on jointly building a new Eurasian Land Bridge and developing China-Mongolia-Russia, China-Central Asia-West Asia and China-Indochina Peninsula economic corridors by taking advantage of international transport routes*”. The “*transport routes*” as mentioned concern the construction of bridges, ports, railways, and highways throughout the world.

It is impossible to provide a complete list of the countries concerned, however, it is confirmed that these infrastructures will impact : Kazakhstan, Russia, Pakistan, Belarus, Poland, Austria, Germany and France. The BRI project will not only concern the terrestrial domain but also the maritime domain according to the following declaration: “*At sea, the initiative will focus on jointly building smooth, secure and efficient transport routes connecting major sea ports along the Belt and Road*”.³²

A Way Towards the Application of International Environmental Law

The important question in contrast with this project is what could be the practical application of the belt and road project on different states ? In a more practical and less theoretical perspective, it is a question of glimpsing the way in which States apply this international environmental Law and on this point, the balance is much more contrasted. Will China, who is signatory to many international treaties, take this into account during its BRI project ? Previous developments tend to show that at national level it is ready to take necessary measures to protect the environment, including within the framework of the BRI project. Admittedly, on paper, it is pleasant to notice that States are gathering around environmental issues and being signatories of the measures. However, in practice the reality is somewhat different as States tend to apply the measures they want

³¹See DENOON (D), *China, The United States, and the Future of Latin America – U.S. China Relations, Volume III*, ed. New York University Press, 2017.

³² See NANDA (V), *Climate Change and Environmental Ethics*, ed. Transaction Publishers, 2011.

or can apply and avoid others. Beyond the application of environmental standards in the framework of the BRI project, there is the question of how to resolve conflicts in the event that a dispute arises between China and a foreign State. Particular attention should be paid in a way in which States regulate their differences according to the customary international Law. As the BRI project is intended to extend to all continents, it seems more logical for reasons of simplicity for each party to apply international Law.

It is true that despite international environmental Laws improvements, despite the success of the Paris Agreement, the fact remains that international Law have the marks of its inefficiency . The Copenhagen conference in 2009 was a failure and failed to renegotiate an international climate agreement after the Kyoto Protocol³³.

Therefore, if international environmental Law is not very effective, how can China respect it, especially in the context of its BRI project ? Beyond the international environmental Law deficiencies, we must mention its growing influence on an international scheme because it could well be imposed more to the national Law in the case where other treaties with greater influence would be signed. Indeed, environment is gradually returning to morals, including internationally and there is a clear correlation between the place of the environment in society and the legal provisions that are elaborated. For example, Chinese environmental protection Law in its article 12 designated June 5th as the environmental day.

ICJ, S Role in Recognizing the Right to Compensation Rule

On February 2, 2018, the International Court of Justice (ICJ) admitted that a State was required to repair the damage to the environment caused to another State³⁴. This decision is historic because for the first time, an international Court decided to award a compensation for the degradation of the environment: *“It is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage”*

The interesting thing about this decision is that the environment is itself considered as goods or services provided by nature and that their degradation generates repair costs. This compensation may include compensation for the degradation or loss of environmental goods and services and compensation for the restoration of the damaged environment. According to the decision, six categories of goods and services can be deduced: *“Impairment or loss of natural hazards mitigation and soil formation/erosion control not demonstrated (...); trees, other raw materials”*.

Therefore, how to estimate environmental damage ? The Court refused to assess the environmental damage, finding that international Law had no method for such an estimate. In addition, the Court affirms that the circumstances of each case must be taken into account and that each ecosystem is unique and that variations between

³³*Ibid.*

³⁴See International Court of Justice – Certain activities carried out by Nicaragua in the border area [Online] Updated on february 2, 2018 [Consulted 2019.02.20] Available at the following address: <https://www.icj-cij.org/files/case-related/150/150-20180202-JUD-01-00- EN.pdf>

different ecosystems may occur.

Another method is to estimate the replacement cost by another ecosystem: “*Nicaragua considers that Costa Rica is entitled to compensation to replace the environmental services that either have been or may be lost prior to recovery of the impacted area, which it terms the «ecosystem service replacement cost» or «replacement costs».* According to Nicaragua, the proper method for calculating this value is by reference to the price that would have to be paid to preserve an equivalent area until the services provided by the impacted area have recovered”.³⁵

CONCLUSION

The issue of conflict resolution naturally arises for a project of this magnitude. That being so, the context needs to be set again: the BRI project concerns more than 60 countries, which means that in the event of a dispute, it may be necessary to know the Law of all the countries concerned. In any event, the occurrence of a dispute first of all it requires the determination of the competent jurisdictions. In international Law, criteria exist to determine which jurisdiction will be competent.

This method already used in international business Law is a possibility under the Belt and Road Initiative project in the event that an environmental conflict could arise. The parties may also decide to submit their dispute to arbitration in order to avoid national jurisdiction. Arbitration has many positive points making it the preferred method of resolving disputes by business professionals. As Chinese companies have been encouraged to participate in the BRI project, professionals could resort to arbitration to resolve their dispute which is a probable solution for curbing any Legal conflict involving Belt and road project.

³⁵ *Ibid.*

