

Environment Risks and Their Responses to Chinese Companies Investing in Countries along the “Belt and Road”: Solutions Based on the International Investment Law

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Abstract: In recent years, China’s investment in countries along the “Belt and Road” has gradually expanded. Minerals, energy, manufacturing, infrastructure, engineering construction, etc. are key industries for Chinese companies to invest in countries along the road. Legal deficiencies in the host country’s environment, behavioral defects of overseas investment companies, and the lack of regulatory norms and weak supervision of environment risks in China increase the potential environmental liability risk of Chinese companies. On the purpose of reducing the occurrence of environment risks, this paper takes the international investment law as the entry point, adopts the literature review method and data induction method, and combines a large number of environment risk treatment cases of Chinese companies in the project investment, and proposes five solutions: include environmental protection clauses when signing international treaties with host countries; Strengthen companies’ environmental responsibilities and environmental disclosure obligations; Special legislation for overseas investment by companies; Fully use the role of overseas investment insurance and establishing a diversified mechanism for resolving international environmental disputes.

Keywords: environment risks, Belt and Road, international investment law

1. Introduction

With the proposal and deep development of the “Belt and Road” and the continuous promotion of China’s “going global” strategy, the investment cooperation between Chinese companies towards the “Belt and Road” countries has been a new regional economic growth point. In the construction of the “Belt and Road”, investment activities of countries along the line may cause damage to ecological resources in the host country to a certain extent, and then cause environment risks. For example, in the case of happened in the Sinarmas Paper in Singapore, Sinarmas Paper has cut over 2 million hectares of trees on the island of Sumatra since 1984, which directly or indirectly damage more than one-third of the trees with a high protection value and seriously disrupt the balance of the local ecological environment. In the end, the company was jointly resisted by all parties of the host country, and the investment failed, causing huge economic and reputational losses to the company.

It is necessary to classify the type of environment risk, deeply analyze the cause of environment risks, and put forward legal countermeasures based on this.

2. Types of Ecological Environment Risks in Chinese Companies' Investment in Countries along the "Belt and Road"

In the process of investing in countries along the "Belt and Road", large -scale investment projects involving infrastructure construction and energy and mineral development may cause damage to the biodiversity and soil in the countries and regions along the line, such as [1]. Project investment and operation are faced with high environment risks, and the occurrence of environment risks is inevitable in a sense.

Overall, the ecological environment risks can be classified into two types according to the subject of risk generation: environment regulation risk of the host country and company behavior risk. The environment regulation risk of the host country refers to the sudden introduction of overly strict environmental protection standards or the failure of the host country to fulfill preferential commitments, which leads to weakened or even restricted support for project development, leading to unexpected changes in the project; The company behavior risk refers to the damage to the ecological environment of the host country during the operation of the companies, which leads to litigation in the host country's court or arbitration tribunal, and the failure of the lawsuit leads to the termination of the project. Alternatively, due to the potential environmental pollution behavior of companies during project operation, local people and institutions have become concerned. Under various pressures of opposition or protest, the government has imposed high environmental taxes and even suspended the issuance of company licenses and cancelled business rights.

3. Analysis on the Causes of Environment Risks Caused by Chinese Companies' Investment in the "Belt and Road" Project

3.1. Legal Deficiencies in the Host Country's Environment

As most host countries are developing countries, they have backward awareness of environmental protection, and there are defects in environmental laws. They are willing to lower environmental standards or even set access thresholds to attract foreign investment, so as to pursue rapid economic development, which leaves the operating space for overseas investment companies to interpret laws and regulations at will, and also foreshadows the risk of environment regulation in the host country. In addition, even if the host country has some written laws on the environment, there are differences in economic development level, political culture and other aspects of the host countries. National systems and relevant laws are also relatively fragmented. It is difficult for companies, especially SMEs, to uniformly predict and assess the investment environment and environmental protection standards of host countries. At this point, if China only conducts a broad formal review before companies make external investments, it will to some extent increase the probability of triggering environment risks.

3.2. Behavioral Defects of Overseas Investment Companies

The maintenance of the public interests of the host country's environment requires investors to actively fulfill their corporate social responsibilities to promote. However, the nature of capital makes many companies tend to seek "pollution shelters" and pursue high profits at the cost of the host country's ecological environment, while neglecting to fulfill their social responsibilities [2].

For a long time, some companies in China have lacked attention to environmental protection when making overseas investments, and there is also a misconception that "investment is a

redemption of the local economy for the host country, and environmental protection is a charity for the company”. Events that cause damage to the ecological environment and environmental pollution in the host country occur from time to time. Moreover, even if China imposes strict environmental responsibility and standards on investors in areas with high pollution risks such as minerals, energy, manufacturing, infrastructure, and engineering construction, small and medium-sized companies may find it difficult to afford high environmental protection costs due to their insufficient strength, and therefore tend to avoid environmental protection laws in the host country, leading to environment risks.

In addition, many companies currently rarely disclose information related to environmental protection during project implementation, which has led to some companies that have already improved environmental issues not being transparent enough in dealing with sensitive environmental issues. In addition, a few negative environmental pollution cases have been recycled by foreign media year after year, causing doubts among host countries about Chinese companies. The public is also easily misled by the views promoted by the media due to their long-term exposure to media propaganda, leading to internalization of public opinion into their own ideas. Under the influence of nationalist sentiment, they join in activities to boycott project operations, which is highly susceptible to environment risks [3]. In fact, even though some industries may damage the local environment, this harm always comes with some signs and is not enough to threaten national security, and the two cannot be compared [4].

3.3. Lack of Regulatory Norms and Weak Supervision of Environment Risks in China

At present, there are no laws specifically targeting overseas investment in China, and the “Foreign Investment Law” is still in the legislative argumentation stage. At present, China’s regulations on the environmental behavior of overseas investment by companies are scattered in investment and operation policy documents or comprehensive environmental protection policy documents, such as the “Regulations on Foreign Engineering Contracting” and “Management Measures for Overseas Investment”, lacking unified legal norms.

On December 26, 2017, China issued the “Measures for the Management of Overseas Investment by Companies”, which emphasizes “improving the supervision of overseas investment”. The “Measures” regulate enterprise investment behavior from several aspects such as the application, approval, filing procedures, and legal responsibility bearing of enterprise investment projects, especially emphasizing the regulation of “sensitive industries”, which is a good start to guide companies to avoid environment risks in overseas investment [2]. However, it is worth noticing that the current legislative bodies for overseas investment in China are mostly at a lower level, with scattered regulations and mainly focused on approval, which stipulate specific environmental protection requirements for applying for overseas investment projects.

In addition, although China has realized the importance of environmental protection in the process of overseas investment, the management responsibility for overseas investment is still unclear, and there is no specific regulation on the supervision of environmental protection for overseas investment. The main content of the annual inspection and supervision of overseas investment companies by relevant departments in China is still the production and operation status of the companies, while neglecting the supervision of their environmental behavior. Even though relevant laws have been introduced in China to constrain overseas investment companies to pay attention to environmental protection during the implementation of projects, in practice, examining whether investors have truly implemented environmental protection content and whether there are violations of terms is in a state of “no basis”. At the same time, China still attaches great importance to approval and neglects management in overseas investment. The approval process is complex but rarely involves environmental protection supervision. Once the project is implemented, it is easy to

cause environment risks, and various departments will also shirk responsibility at that time, which making it difficult to solve the risks.

4. Legal Countermeasures for Environment Risks of China's Foreign Investment under the Background of the "Belt and Road"

4.1. Include Environmental Protection Clauses When Signing International Treaties with Host Countries

While more and more countries are aware of environmental protection in global, China, which is becoming a major foreign investment country, is more likely to attract attention when it comes to environmental conflicts with host countries in overseas investment. Obtaining economic benefits at the cost of sacrificing the environment clearly doesn't fit the long-term development goals of China. In the situation of lacking environmental laws in the host country, China should actively respond to environmental protection issues when signing free trade agreements or revising bilateral treaties with them, introduce environmental protection clauses after joint consultation with the host country, and adhere to the concept of sustainable development, rather than taking the development mode of resource plundering [5]. But introducing environmental protection clauses is never at the cost of sacrificing economic development. While valuing environmental protection, we still need to be aware of the current stage of China's development. We cannot overly focus on environmental protection while neglecting the protection of investor interests, nor can we overemphasize China's international responsibility as a major country while neglecting its own ability to bear too much international responsibility [6].

In addition, due to the ecological sensitivity of Chinese companies' investment industry, host countries also need to make efforts for environmental protection in situations where environment risks are highly likely to occur. At present, the host country's implementation of various regulatory measures against foreign investors can rely on "general exception" clauses rather than being seen as "expropriation", which poses a huge crisis for Chinese overseas investment companies. In the signing of existing and future international treaties, it is necessary to re-examine and optimize the inclusion of environmental clauses, such as emphasizing the importance of sustainable development and environmental protection in the preamble clauses, strengthening public participation and transparency of information in procedural clauses, and limiting the protection objectives of "general exceptions" clauses to national fundamental security interests and prohibiting expanded interpretations.

4.2. Strengthen Companies' Environmental Responsibilities and Environmental Disclosure Obligations

In international investment treaties, economic development and environmental protection can be coordinated with each other [7]. The government should play a role in clarifying the environmental and social responsibilities of domestic multinational corporations [8]. For overseas investment companies that lack respect for the ecological environment, relevant departments in China should regularly educate them based on actual cases of environment risks, and fundamentally eliminate the idea of "promoting economic growth at the cost of sacrificing the environment". At the same time, relevant departments should also strengthen the cultivation of the concept of "a community with a shared future" for overseas investment companies, linking the achievement of organizational goals of companies with the construction of ecological civilization in the host country. Companies should be encouraged to actively participate in and support local environmental public welfare activities and actively communicate with various non-governmental organizations, in order to shape a good image of Chinese investors. In addition, companies should regularly report environmental

information and measures during project operation to the host country's government and the public under the supervision of relevant departments, and promptly disclose the proposed solutions when environmental pollution occurs [9].

4.3. Special Legislation for Overseas Investment by Companies

In addition to the efforts of the host country to avoid environment risks, China, as the home country of investors, should play a supervisory and management role, integrate the current regulations and rules of various departments, and carry out special legislation to solve the environmental protection problems caused by overseas investment by companies. Special legislation needs to first determine preferential policies and security guarantees for "going global" companies, develop specialized and detailed management systems, regularly publish country guidelines for foreign investment and cooperation, provide risk coefficient information services for countries along the route, and maximize the ability to protect the rights of "going global" companies [10]. For example, Singapore has a good investment environment, while investing in India may bring high environmental risks [11]. At the same time, for the phenomenon of weak operability of current regulations in specific implementation, special legislation should also cover the following content: first, strengthen environmental compliance management. Companies should have a clear understanding of the environmental legal risks unique to different stages of project approval, project construction, and project completion and operation. They should be prepared in advance for environmental supervision from different regulatory departments and be prepared and prevented from potential environmental legal issues. Encourage Chinese companies to adopt relatively high environmental standards between China and the host country in practice, in order to minimize environment risks. Secondly, introducing incentive mechanisms to encourage companies to consciously implement environmental protection plans. In fulfilling its environmental responsibility, China should take measures to proactively help companies reduce pollution control costs, while implementing incentives for the environmental performance achieved by companies in actively controlling pollution. In addition, it is also possible to build a case library of overseas investment environment risks along the "Belt and Road". By studying and analyzing relevant cases, draw lessons, summarize experiences, refine risks, and classify management.

4.4. Fully Use the Role of Overseas Investment Insurance

Overseas investment insurance can reasonably disperse the environmental accident risks of companies' overseas investment. Although China established an export credit insurance company in 2001, with the rapid development of companies' overseas investment, it is difficult for the company's business to cover all kinds of environment risks encountered by companies in host countries, and the fees to be paid are too high. If some cases of indirect expropriation are not included in the insurance coverage, the host country government is easily identified as indirect expropriation due to environmental factors. It is very clear that the insurance business cannot meet the insurance needs of Chinese companies for foreign investment. In this regard, China must expand the coverage of overseas investment insurance, such as increasing environmental pollution liability insurance, while reducing insurance premiums. At the same time, China also needs to introduce relevant laws to regulate the use and evaluation of overseas investment insurance, making environmental assessment a key consideration factor in reviewing whether overseas investment insurance is qualified, in order to make up for the lack of regulation in the field of overseas investment insurance in China.

4.5. Establishing a Diversified Mechanism for Resolving International Environmental Disputes

At present, the environment risks caused by companies' overseas investment are very likely to lead to environmental disputes. Whatever the outcome of the settlement, it will greatly affect the relationship between China and the host countries and the operation of projects. At the same time, it will also consume a lot of manpower, material resources, time and various other hidden costs. But in fact, many times resolving international environmental disputes does not require intense confrontation, and a diversified international environmental dispute resolution mechanism should be formed. When overseas investment companies damage the ecological environment of the host country during their operation, they can first proactively contact the host country's government's ecological environment regulatory department, relevant social groups, local communities, and other institutions, and seek reconciliation through various communication methods such as symposiums, hearings, and dialogues [12]. At the same time, companies can seek to cooperate with local companies in the host country who are familiar with the laws or industry practices of the host country, share risks, discuss ecological restoration matters, or consult third-party institutions with high credibility in the host country to obtain solutions for the negative environmental consequences of their investment and operation [12].

Once the above measures are ineffective and eventually lead to environmental disputes, China, as the initiator of the "Belt and Road", should establish a settlement mechanism for the investment environmental disputes, including arbitration, prosecution and mediation. In this process, firstly, there should be a clear judicial interpretation of the applicability and effectiveness of multilateral treaties involved in investment; Secondly, in the selection of litigation connection points, it is necessary to further improve the legal application system, clarify whether litigation disputes fall within the jurisdiction of China as much as possible through the connection points, clarify the judicial sovereignty over the discretion of Chinese enterprise investment disputes, improve the fairness of case trials, and protect the interests of Chinese enterprises in overseas investment [13]. In order to further attract parties to dispute resolution in China, China's judicial authorities should also make full use of modern technological methods such as the Internet to solve problems such as remote cross-border parties and difficulties in providing evidence, and encourage parties to choose online mediation and arbitration [13]. Thirdly, China should also strengthen judicial cooperation with countries and regions along the road, strengthen the information exchange between China's existing foreign law identification center and countries along the road, so that China can effectively use foreign environmental laws when dealing with environmental disputes [14]. In addition, the recognition and enforcement scope of judgments and rulings should be expanded, and the ecological environment dispute mediation agreement signed by the parties should be included in the scope of judicial confirmation procedures to enhance the enforceability of the case and assist the parties in resolving disputes [14].

5. Conclusions

The environment risks of countries along the road are closely related to the interests between countries and the reputation of companies. Based on the perspective of International Investment Law, this paper analyses the causes of environment risks caused by Chinese companies' investment along the road: the legal deficiencies in the host country's environment, the behavioral defects of overseas investment companies, as well as the lack of regulatory norms and weak supervision of environment risks in China. Then, this paper adopts the literature review method and data induction method, combined with a large number of environment risk treatment cases in the project investment, and proposes five solutions: include environmental protection clauses when signing

international treaties with host countries; Strengthen companies' environmental responsibilities and environmental disclosure obligations; Special legislation for overseas investment by companies; Fully use the role of overseas investment insurance and establishing a diversified mechanism for resolving international environmental disputes. However, it is obvious that the elimination of environmental risks in countries along the road will not be achieved in one day. Only by keeping pace with the times, adhering to the concept of sustainable development and implementing the CPC's instructions on the establishment of the Green Silk Road, can the probability of environmental risks and the harm they bring be minimized.

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