

On the Impact of Chinese Experimentalism on International Law

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Abstract: It has been 10 years since the Belt and Road Initiative (BRI) was proposed. As China's exploration of how to carry out international cooperation and global governance among countries in the world in the current era, it is China's conceptual declaration of how to build a peaceful, inclusive and win-win world, and is also an important content of China's experimentalism at the level of foreign cooperation. As a product of the combination of experimentalism and China's national conditions, Chinese experimentalism is the methodology of Chinese practice and the fruit of Chinese experience and wisdom, and it has a certain role to play in the improvement and development of the world's systems and norms, such as international law. Chinese experimentalism not only provides new materials for the development and expansion of international law in concrete practice, but also provides Chinese methodology for the improvement and even formulation of international law. This paper takes part of the macro-level content in the process of BRI as the research object and explores the influence of Chinese experimentalism on international law through literature research method.

Keywords: the Belt and Road Initiative, China's experimentalism, international law

1. Introduction

Experimentalism is a philosophical perspective and methodology that emphasizes the validation and development of knowledge through experimentation and experience, which is accepted by many countries today and is applied in the conduct of domestic and foreign affairs. The specific approach is to implement the program being explored regionally or partially and based on the results of the operation of the program in the pilot areas, to adjust, modify or even replace the current program, and ultimately to obtain a program that meets the expected requirements or maximizes the achievement of the objectives and is fully implemented. Throughout its decades of development, China has been exploring the path of domestic construction and international interaction through practical methods, wanting to find a path of peaceful development that would allow it to realize equal exchanges and mutual benefits with any country in the world, whether it is a so-called big country or a small one. The Belt and Road Initiative (BRI), as an important practice and grand concept in China's foreign cooperation, has received great attention from the international community due to its vast geographical coverage and the large number of participating countries. This paper will further analyze

the role of Chinese experimentalism in international law by exploring the experimentalist content of the Belt and Road Initiative and its impact on international law.

2. Chinese Experimentalism

2.1. Connotation of Experimentalism

Experimentalism requires the equal importance of experience, process and experiment, and it's as a methodology, it requires the use of scientific methods and attitudes to deal with the problem, experimentalism emphasizes the usefulness of the results compared with pragmatism and emphasizes the importance of the experimental process more [1]. According to the summary of Dewey's thought by Mr. Hu Shi, a student of Mr. Dewey, the representative of experimentalism, it is to give full play to wisdom to think about the solution of the problem and to confirm the reliability and effectiveness of the solution through rigorous experiments [2]. In a word, experimentalism is to solve problems in experiments, to combine theory with concrete reality through practical methods, and finally to find the optimal solution to the problem.

2.2. Interpretation and Concrete Embodiment of Experimentalism in China

Experimentalism, fundamentally, is the highlighting and combination of actuality and practice, which inherently contains diversity, that is, in different countries and regions, the specific content and performance of experimentalism will show differences [3]. For example, the expansion of experimentalism in the United States in accordance with the realities of its own country and other realities combined with the methodology of experimentalism can be called American experimentalism. From this, it can be seen that Chinese experimentalism is a theoretical approach formed by the Chineseization of experimentalist methods in accordance with China's national conditions, traditional culture, foreign relations and other realities.

As a principle and methodology for dealing with affairs and solving problems, Chinese experimentalism is very clearly reflected in domestic policies and foreign cooperation and exchanges. Since the early days of China's reform and opening-up, the Chinese government has adhered to the principle of taking the lead in the development of coastal areas and then feeding back to other areas, creating a series of special economic zones along the coasts, and promoting the rapid development of the coastal areas through policy and financial support, and has achieved very satisfactory results in the development of the coastal areas at the present stage, and is now docking the developed coastal cities with the other less-developed cities to drive their common development. As China's comprehensive national power and international status continue to improve, China is also strengthening international cooperation, and the Belt and Road Initiative is an important practice for China to promote its own concept of peaceful development and deepen its openness to the outside world. At present, more than 100 countries around the world have joined the Belt and Road Initiative and have entered into multi-level and wide-ranging cooperation with China, enabling all parties to enjoy the dividends of cooperation and development.

3. The Belt and Road Initiative

3.1. Background and Objectives of the BRI

The Belt and Road Initiative refers to the "Silk Road Economic Belt" and the "21st Century Maritime Silk Road", which were formally proposed by Ferdinand von Richthofen, a famous geographer in modern times, but whose historical origins can be traced back to the Qin and Han dynasties in China in the first two thousand years. For more than a thousand years, it served as a link between China and

neighboring Asian countries and even European countries, while the contemporary Belt and Road Initiative has reinvigorated and revitalized it and given it a new meaning.

In the current world, the economic growth rate of developed countries in Europe and the United States is gradually slowing down, more emerging developing countries have emerged and put forward their development aspirations, and the economic landscape is complex, with both cooperation and competition among many economies. From the perspective of globalization, the frequent occurrence of anti-globalization and anti-globalization phenomena has caused great obstruction to the inevitable trend of globalization. From China's point of view, we can see that China's domestic economic transformation is underway, and it is the current period of China's high-speed development and strategic transformation, the traditional development model and some pillar industries can no longer support China's current development, and there are many problems that can not be ignored, such as the financial sector bubble, environmental damage caused by highly polluting industries, and the development of the crude economy resulting in slow and waste of resources. In addition, as a new type of developing country that is developing rapidly, China lacks the ideas that can be used as a reference for the rest of the world in its development at the beginning of the 21st century, so the proposal of the BRI has been put forward without any delay [4].

The Belt and Road Initiative has been put forward in order to accelerate the completion of industrial transformation, realize a freer flow of factors of production and a more effective allocation of resources, coordinate and communicate with other countries in various political, economic and cultural fields, carry out regional cooperation on a wider scale, at a higher level and at a deeper level, and jointly build an open, inclusive, balanced and universally beneficial framework of regional economic cooperation, and put forward China's idea of peaceful development to the world [5]. This is not only a solution to China's domestic development problems and the need for external cooperation, but also a Chinese answer to the question of what kind of cooperation China should strengthen with other countries and international organizations in the world and how it cooperates with them, as well as a Chinese attempt to achieve win-win cooperation and common development.

3.2. Status of the BRI

Since the Belt and Road Initiative was launched, China has carried out exchanges and cooperation with 152 countries and 32 organizations along the route, covering a wide range of fields including finance, trade, culture, science and technology, and people's livelihood. In 2021, China signed agreements on mutual recognition of academic degrees with 54 countries and regions around the world, and more than 70 countries have incorporated Chinese into their national education systems. The initiative's implementation over the past decade has also highlighted the huge potential of two-way investment, with two-way investment between China and countries along the route having exceeded \$270 billion by the end of 2022. In terms of infrastructure construction, it has completed the Phase I and II projects of upgrading the Karakoram Highway in Pakistan, the Karachi k-2 nuclear power unit project, the Padma Bridge in Bangladesh and other important infrastructure construction.

While considerable results have been achieved, we should also see that there are many problems in the implementation of the initiative, such as the risk of investment and construction, conflicts caused by cultural differences and transparency in cooperation. These problems need to be avoided and mitigated through further measures in subsequent cooperation.

4. The Impact of the Experimentalism Content of the BRI on International Law

As a methodology, Chinese experimentalism runs through the entire implementation process of the Initiative and is reflected in various fields of cooperation with other countries and international

organizations, and this paper will discuss some of the macro-level contents in the advancement of the BRI.

4.1. Development of the BRI

A study of existing international and regional organizations and agreements reveals that, at the time of their inception, a normative and complete institutional framework already existed to regulate and discipline the affairs and members of the organization. At the same time, it must be recognized that different cultural backgrounds can lead to differences in perspectives and subjective overtones, which can affect the development of theories and the formulation of norms [6]. In traditional Chinese culture, the emphasis is on “peace is precious”, and we are not keen on forcing others to change, because on the one hand, we do not consider this to be in line with the so-called morality, and on the other hand, we consider it to be an additional burden for ourselves, which is fundamentally different from the expansionist tendency of Western civilization [7].

System predetermination refers to the formulation of a rigorous and ambitious framework for the eventual formation of a system after analyzing various issues, including modes of operation, means of decision-making, and possible obstacles, before the system has even emerged and developed. It is clear that such a system based on human wisdom and experience is procedurally convincing and can be a good solution to some of the common problems among the participating subjects, the most representative example of which is the Trans-Pacific Partnership Agreement (TTP) [8]. However, the macro-system often neglects the specific problems and demands of the participating subjects, and even if similar problems have been taken into account at the outset of the formulation, they cannot really be covered because of the conflict between the interests of various parties. For this reason, China’s BRI does not adopt the method of directly launching the established system, but rather adopts the method of one-on-one consultation under the premise of giving a loose framework, so as to reach a consensus on cooperation in many other areas besides politics, thus eliminating the concern of BRI participating countries about the domination of big powers that may be implied by the adoption of the established system, and truly taking into account the interests of both sides of the cooperation and realizing mutual benefit and reciprocity, and then finally, on the basis of the one-on-one cooperation, it will be expanded to a multi-party joint collaboration, and finally, it will be possible to realize the cooperation of all the countries that joined the initiative and, in the process, a mature system of rules will be produced.

An established and mature system is very important for regional cooperation, especially across a wide range of regions, but forcing a system that is applicable in one region to be applied to other regions can be disastrous, as in the case of the European Union, where the system of regional organizations cannot be applied to Central Asia, where cultural and ethnic issues are very complex, and where overall norms are difficult to achieve, communication at the individual level can achieve surprising results.

In the application of regional and even global normative systems, such as international law, it is also necessary to take into account the diversity of different regions and even subjects, or at least to adapt the application of norms to regional differences. At the same time for the development of a new normative system can be considered in the first application of the original norms on the premise of the first delineation of the general framework, and then through individual communication and other progressive methods of practice, in practice to improve, improve and develop, and ultimately get the new normative system, rather than by a number of countries led by the one-time realization of the normative system of the development.

4.2. Expansion of Participating Subjects in the BRI

Diplomatic relations are the content of a State's external relations and, in principle, can only be established and developed by the State, and the right to diplomacy is an important part of State sovereignty and should be exercised by the State. But in cases where the State does not adequately safeguard the interests of its citizens, the city should play a complementary function or even be subrogated to the interests of its citizens, a concept that used to be more applicable to local governments under a federal system because of the greater autonomy that they enjoyed.

Based on this concept, the foreign affairs activities in which cities are involved mainly include project cooperation, activities based on global governance, and cooperation for conflict avoidance and stability [9].

China has basically adopted the strategy of national rather than local participation in its previous foreign affairs, which is in fact the strategy adopted by most countries. However, in the course of BRI implementation, it was found that the form of cooperation along the route involving only the state was too single, while the city-region cooperation approach attracted more attention from the Chinese government, and it was explicitly pointed out that importance should be attached to utilizing the role of this type of cooperation. The Chinese government signed a Memorandum of Understanding (MOU) on BRI cooperation with the Victorian government of Australia in 2018, and Chinese cities and regions along the route, such as Guangdong Province, Henan Province, and Xi'an City, have set up their own special BRI funds at different times [10]. Due to the nature of the BRI, the participating cities and regions do not cooperate at the political level, but only at other levels. Nevertheless, this is undoubtedly an expansion of the subject of participation in foreign affairs, and to a certain extent contributes to the development of the concept of the subject of international law.

4.3. The BRI and Soft Law Governance

In international cooperation, especially trans-regional cooperation such as the BRI, which is very large in volume and has many participating countries, the international rule of law must be the guardian. The international rule of law can be broadly categorized into hard law and soft law according to the process of formulation and binding effect. The core of hard law is that all parties involved must agree to the provisions of hard law and be willing to receive its constraints, once detached from this core, the regulatory function of hard law becomes a piece of paper, such a common will means that hard law naturally has a strong binding force. On the other hand, the cost of creating hard law is quite huge, and the great difficulty of reaching a consensus among multiple subjects through various consultations and the extremely cumbersome procedures of formulating, approving and signing mean that hard law has a strong sense of rigor, stability and authority. By contrast soft law, because of its loose form, does not have the binding force that hard law enjoys, and hard law norms are favored over soft law in resolving disputed issues [11].

It is undeniable that hard law governance cannot be absent in international cooperation and international governance, but as a brand-new platform for international cooperation, BRI has a more prominent complexity, which leads to the fact that simple hard law governance cannot achieve the expected governance effect. The complexity of the hard law-making process and the difficulty of obtaining the consent of States imply a long development cycle and huge negotiation costs, and the BRI is not in a position to develop a more effective system of hard law norms in a short period of time. The current situation in the world's political and economic spheres is characterized by the diversification of forces and frequent changes, the rapid development of domestic societies, the contradiction between the rapid transformation of the status quo and needs and the stability of hard law, and the lag in the realization of the regulatory function of hard law, which means that there are deficiencies in the ability of hard law to govern [12].

Most of the BRI agreement countries are developing countries, and when they participate in international cooperation, they are naturally concerned about whether big countries will dominate the rule-making. There are concerns about whether the big powers will dominate the rule-making. This is also the biggest challenge China faces in promoting the BRI, that is, how to win the trust of the partner countries along the route and dispel the misunderstanding that China is promoting the BRI in order to seek political influence in the Asia-Pacific region, to pursue colonialism, and to gain a new hegemonic position. For this reason, China has abandoned the use of a system of hard rules, or so-called hard law, and has adopted soft law, which is less coercive but more liberal, to bind the two parties and serve as a basis for future dispute settlement. The source of this binding force comes from the common will and consciousness of both parties, truly reflecting respect for the partners' right to free choice [13,14].

In cooperating with BRI participants, China has chosen to adopt a large number of soft laws to fill in the gaps where hard laws are not effective, and has signed a number of soft laws such as memorandums of understanding, initiatives and declarations of cooperation, such as the cooperation agreement signed between China and Sudan, and the memorandum of understanding on cooperation signed between China and South Africa. China does not engage in the formulation of hard law, but rather emphasizes the importance and potential of soft law governance while affirming the role of existing international hard law, which enriches the content of international law and improves and promotes the development of the relatively weak international soft law system.

5. Problems of the Practical Process of the BRI

At present, the implementation of BRI is still in the stage of practical exploration, and the experimental contents mentioned above are not the mature products and final results of this exploration process, which means that there are still many problems with the contents of these experiments themselves. In addition to the problems of conflicting customs in specific areas such as economic and trade, culture, infrastructure construction and human resources training, pollution and ecological damage caused by infrastructure construction, as well as conflicting cultural concepts including human rights, there are also some problems in the development of the macro-level content of the BRI mentioned above, which need to be further elaborated here.

5.1. Incompleteness of the Entity Rule System

The Belt and Road Initiative only gives loose initiatives, but there is no systematic system of physical rules. On the one hand, this means that some of the concepts related to the BRI proposed by China have not been established at the rule level, and many of the documents developed and released are more conceptual and aspirational, i.e., the BRI is currently more of a conceptual statement rather than a mature and well-established organization. On the other hand this leads to a looser cooperation between the various subjects, without clear overall rights and obligations [15].

5.2. Absence of Hard Law and Ambiguity in Its Application

The absence of hard law and ambiguity in its application cannot be ignored. Some scholars have argued that most of the relevant documents issued of BRI have a non-binding thrust rather than hard law, and that there is no clear delimitation of the exact international norms, standards or applicable laws that can be put into effect for the projects in the BRI, which may make it difficult for the regions adversely affected by the BRI to raise effective concerns and complaints, and lead to a loophole in the protection of local human rights [16]. As to how to respond to such concerns, China can further clarify the applicable international rules and common standards, actively recognize the non-criminal and non-political judgments of the courts of other regions on the premise of conforming to the

common jurisprudence and recognized principles, and at the same time, join hands with the main bodies of the BRI parties to accelerate the formulation of regional hard laws, so as to obtain a fair and just legal system that is accepted by all parties.

6. Conclusion

In the implementation of the BRI, the Chinese experimentalism has expanded the subjects of international law and emphasized the importance of soft law to international law and enriched the system of international soft law in terms of specific contents. In terms of methodology, the idea of completing a complete system in a short period of time has been replaced by the idea of gradual progress and the formulation of perfect laws after the material has been enriched and a certain degree of consensus exists among all parties, while the principles of tolerance, respect and mutual benefit have been incorporated into all practices. The BRI, which is the content of China's pragmatism in foreign cooperation, has shown international law in general that it is an approach that adapts to the circumstances of the people, the time, and the place, and that it does not blindly adopt the strategy of applying the existing system directly to a certain region. Of course, China should also solve the various problems arising in the current practice as soon as possible under the guidance of experimentalism, and learn from the experience to enrich further Chinese experimentalism, so as to continuously contribute Chinese wisdom and provide Chinese impetus for the perfect development of the international law system.

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