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Analysing Local Environmental Disputes and Governance in Belt and Road Host Countries: Establishing Legitimacy through the Social License to Operate (SLO)

ZIWEI ZHANG

Abstract While the "Belt and Road Initiative (BRI)" infrastructure projects bring socio-economic benefits to host countries, they also come with the risk of triggering environmental issues within local environmental disputes and governance challenges. Utilizing a combination of theoretical analysis and case studies, this paper investigates the role of the Social License to Operate (SLO) framework in addressing environmental conflicts within Belt and Road Initiative (BRI) infrastructure projects, and how the BRI environmental legal system can be utilised to help BRI projects gain SLOs from local residents in terms of environmental aspects. The findings propose an integrated governance model combining hard and soft law approaches, with specific recommendations for achieving this through improved host country environmental regulation, international investment agreements and oversight responsibilities for Chinese overseas investors, including enhanced public participation and improved environmental impact assessments.

Keywords: • local environmental disputes • environmental governance • social license to operate • Belt and Road initiative • soft law

CORRESPONDENCE ADDRESS: Ziwei Zhang, Ph.D, Assistant Professor, Xi'an Jiaotong University, Faculty of Law, Institute for Belt and Road Initiative and International Legal Studies, No. 28, Xianning West Road, 710049, Xi'an, Shaanxi Province, China, Email: ziwei.zhang@xjtu.edu.cn.

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1 Introduction

1.1 The phenomenon of infrastructure conflict in the BRI projects

The Belt and Road Initiative (BRI) is based on the economic and trade connectivity of countries along the routes (China Daily, 2019). The main types of BRI infrastructure investments are mega infrastructures, including transportation, energy communications, and network sectors, for example, roads and railways, ports and harbours, hydroelectric and thermal power stations, oil and gas pipelines, and communications and networks (China International Contractors Association, 2019). Mega infrastructures are public works facilities with large investment commitments, complex organisations, novel technologies, and lasting economic, environmental, and social impacts (Brookes & Locatelli, 2015). But while mega construction projects can have significant economic benefits for society, they can also have some negative effects. For instance, nuclear power facilities, chemical plants, and waste management systems may carry potential environmental consequences, while high-speed railways and dams might alter regional social dynamics and employment opportunities (Langbroek & Vanclay, 2012; Yang Wang, Han, De Vries, & Zuo, 2016).

The negative effect may lead to a local community protest, which, in the international context of the BRI, is more likely to trigger resistance from the community than a domestic project. Cultural differences frequently influence BRI investments, often highlighting gaps in understanding market structures and the varying levels of economic development between China and host countries. If any misconduct occurs, the local community in the host country may oppose Chinese investments. Media coverage can intensify this effect. However, Chinese investors often lack experience in effectively maintaining their own public relations and are more reliant on the government and official organisations when dealing with the conflict. This means that they often lack methods to react to unfavourable public opinion. As a result, there is a risk that these infrastructure projects will lead to protests by locals and local organisations in the host country.

Protests often take the form of conflicts between host country residents or other local organisations and Chinese companies or employees, or with the host government. The resulting reassessment, suspension or even cancellation of projects can then rise to the diplomatic level and become a factor affecting bi-national or multilateral relations (Li, Chen, & Wohlfarth, 2022). Conflicts are often characterised by the following features: first, the stakeholders in the conflict are diverse, including not only the inhabitants of the host country, but in a broader sense, host country governments at all levels, relevant international organisations, international NGOs, host country NGOs and the general public, international and host country media, Chinese companies, the Chinese government, relevant

Chinese organisations, and so on. Second, this conflict manifests itself in different ways. In addition to host country residents, NGOs, civil society groups, etc. achieving their goals through collective demonstrations and blockades, there are also substantive protests by NGOs, etc., for example through the intervention of the judiciary, as well as public opinion campaigns by the media. Third, the conflicts often focus on issues related to tendering procedures, labour conditions, and environmental concerns. Among these conflicts, environmental issues are often the most prominent (C. Liu & Tang, 2020).

1.2 Local environmental conflicts over BRI infrastructure

The BRI involves more than 60 countries. In terms of economic structure, the share of value added in agriculture and industry is significantly higher than the world average, while the share of value added in services is significantly lower than the world average, and the overall level of economic development is low. The ecological environment is fragile in many countries along the BRI (China Entrepreneurs Forum, 2020). And China's investment cooperation with countries along the BRI mainly involves infrastructure construction, such as transportation, ports, bridges, communications, water conservancy, urban water supply and drainage, gas and electricity supply, energy and mineral resource development and exploitation. Nevertheless, infrastructure projects that yield socio-economic advantages can also generate adverse environmental consequences, stemming from various intricate elements, such as insufficient governance expertise (Hayes, 2014). Transport infrastructure, such as roads and railways, can have detrimental effects on plant and animal habitats in the construction area. It can also lead to noise pollution and impact wildlife protection. Large-scale mining activities have the potential to destroy land and generate pollution in the form of dust, wastewater, and residue. Power plants can negatively impact water quality and harm fragile ecosystems. Additionally, certain dams and coal-fired power plants can contribute to greenhouse. While China is implementing stricter environmental regulations, reducing pollution and adopting new green technologies, many low-income BRI countries and regions are focused on economic growth, but lack experience in environmental governance (Ascensão et al., 2018).

An important observation is that China's strategy places great importance on the requirement for investors in BRI infrastructure investment projects to adhere to the laws of the country where the project is taking place. Nevertheless, there are instances where Chinese investors may attain legal status in the host nation, yet fail to adhere to internationally acknowledged environmental standards and achieve environmental fairness. Consequently, the citizens of the host country raise concerns about this matter. And it is worth noting that this attitude of the host country's residents is not continuous, but flows with the development of time and events. These situations can lead to conflicts between investors and stakeholders,

with some projects being called off by the host government due to penalties and compensation for environmental liabilities. This can be linked to alterations in the host country's legal system, a deficiency in enforcement capacity, and the inexperience of Chinese investors themselves.

China's investment in the Letpadaung Copper Mine project in Myanmar is a good example of the aforementioned issues. The Letpadaung Copper Mine project underwent multiple stages of regulatory changes, with increasingly stringent environmental regulations posing higher requirements for the project's compliance. The project experienced three main stages (He & Tian, 2019), each closely related to changes in Myanmar's environmental regulations and the actual environmental impact of the project.

In the first stage (June 2010 to November 2012), Myanmar's legal framework included the Environmental Conservation Law of 1994 and the Mines Law of 2012. These regulations had relatively low requirements for Environmental Impact Assessments (EIA), and public participation procedures were not well-developed (Aung, 2017). However, the project's development strictly adhered to international and Myanmar's laws and regulations, and the necessary permits were obtained, including the Ministry of Mines license and the land lease permit. The land compensation standards were also approved by the local government. During this stage, about 500 households received land compensation totalling approximately $1.5 million. Although the compensation amount was approved by the local government, many villagers felt that the compensation did not adequately reflect the actual market value of the land, leading to initial dissatisfaction and protests. According to a report by the Asian Development Bank (Raitzer, Samson, & Nam, 2015), during this stage, the project also led to the clearance of about 2,000 hectares of forest, prompting some stakeholders in Myanmar to believe that the project did not align with Myanmar's economic and social development norms, raising concerns about local environmental issues, and threatening the livelihoods and safety of local residents. As a result, the project implementation did not receive widespread approval.

During the second phase (December 2012 to December 2014), Myanmar's environmental regulations experienced significant changes. In 2013, Myanmar adopted a new Environmental Conservation Law and stricter Environmental Quality (Emission) Guidelines. The new law imposes higher EIA requirements on the project and emphasises the importance of public participation. Meanwhile, the project faced some questions. The criticism has mainly focused on the effectiveness of the environmental impact assessments carried out by the project and the investors, as well as the legality of the contracts signed. The resettlement plan also lacked transparency and villagers were not properly informed before their land was mined. The project received negative publicity and criticism, and

demands from Myanmar stakeholders called for the project to be cancelled. There has been a marked increase in numbers of villagers participating in demonstrations and in their frequency, with large demonstrations averaging over 3000 people twice a month. In 2013, under protest pressure, the Myanmar government held several hearings and published reports questioning the project's legality and environmental impact. Until the project met new environmental standards, it was forced to suspend operations for more than 18 months.

In the third phase (from 2015), the Myanmar government also introduced the 2014 Environmental Impact Assessment (EIA) process. This tightened up project regulation, requiring more public participation and transparency. Subsequently, investors addressed stakeholder concerns in Myanmar by publicly acknowledging the issues, renegotiating agreements with relevant entities, and taking corrective action. During this phase, in addition to increasing the land compensation standards to $2.5 million, the investors also launched a series of social welfare programs in the local community, including education, health and infrastructure development. Investors also adopted a transparent and open approach, actively engaging with Myanmar's civil society, demonstrating social responsibility and engaging in social activities to build support. The Myanmar government conducted a survey before and after the resumption of the project, and found that the initial approval rating for the project stood at 35%, but after the remedial measures and improved community relations, the approval rating rose to 60%.

Overall, the progress of the Letpadaung Copper Mine Project was linked to changing regulations at each stage. Similar cases include the Lamu coal-fired power plant project in Kenya, the Santa Cruz River hydropower project in Argentina (Borsellino & Pereira, 2009), and the Bui Dam construction project (Bogojević & Zou, 2021; Boulle, 2019; Jetter, 2015; Negatu, 2017). The LS2 hydropower plant in Cambodia (Baird, 2016) has also been plagued by similar problems. These cases show that if Chinese companies do not pro-actively go beyond the sometimes-inadequate regulations of host countries to address the environmental concerns of local communities, their infrastructure projects are likely to be met with increasing opposition.

1.3 Research methods

This research will utilise a theoretical analysis methodology. The study will evaluate the existing legal procedures that regulate the environmental and social effects of BRI projects, using the Social Licence to Operate (SLO) framework. This analysis enables a comprehensive analysis of how these frameworks either support or impede the attainment of SLOs, laying the groundwork for suggesting more efficient legal and governance systems.

This study aims to devise methods to effectively get Social Licences to Operate (SLOs) from the community for the BRI infrastructure projects, with a specific focus on environmental conservation. The research effort aims to investigate how the legal system may be utilised to support the achievement of SLOs. It will focus on identifying the limitations in current legal frameworks and provide a comprehensive governance model that combines both hard and soft law approaches. The proposed model seeks to resolve environmental conflicts and strengthen the environmental standards of host nations as well as international investment agreements. This method aims to enhance the social acceptability of BRI projects by aligning them with local expectations and international norms for environmental and social governance. This will help encourage sustainable and conflict-free development.

2 Literature review: From NIMBY to Social License to Operate

The literature review shows that in the Chinese literature, a research trend has been developing in recent years that analyses the issues related to BRI host country resistance based on the NIMBY theory. For instance, C. Liu and Tang (2020) used the NIMBY theory to examine the resistance of BRI host country residents, focusing on the occurrence mechanism, prevention, and strategies. Pu (2020) also investigated the mechanism of neighbourhood risk diffusion in BRI energy investments. Additionally, studies specific to BRI countries exist, such as Social Amplification and Diffusion Governance of NIMBY Risk in Chinese Investment in Myanmar (Zheng, 2023) and Survey on NIMBY Aversion Communication Environment and Communication Status of Chinese Investment Enterprises in Vietnam (Wu, 2023). Wu Yue conducted a study on the communication environment and the current status of Chinese investment enterprises operating in Vietnam, among other topics. In fact, this is the most commonly used theory when analysing community resistance (including infrastructure resident resistance occurring within China).

The term NIMBY is used to describe the opposition of local communities to the construction of certain facilities or developments in their area, despite their recognition of the broader societal need for such projects. English literature uses NIMBY to describe an oppositional attitude to new development that acknowledges the need for a facility but opposes its location in the local area (Burningham, Barnett, & Thrush, 2006). "NIMBY refers to the protectionist attitudes and opposition tactics adopted by community groups in the face of unpopular development projects (Dear, 1992)." These NIMBY facilities may have negative impacts on nearby neighbourhoods, such as environmental, health, safety, and economic impacts, but the wider public will share in the benefits (Inhaber, 2018; Lake, 1993). NIMBY conflicts can delay or even cancel planned projects

and lead to mistrust between the local government and citizens (Botetzagias & Karamichas, 2009; O'Garra, Mourato, & Pearson, 2008).

However, over the last decade, the concept of NIMBY has been criticised as being too simplistic to understand the true motivations of most opponents. It is argued that the concept of NIMBY can be used in academic research, but attempts are made to avoid labeling genuine protesters as such. Being labeled as "NIMBY" is responded to by participants in such disputes as a pejorative and disruptive label. Describing certain protests or protesters as NIMBYs is likely to exacerbate conflict and lead to those labeled feeling excluded and distressed (Burningham, 2000). Other researchers hold similar views, suggesting that NIMBYs are selfish, emotional, and irrational, and that the prevalence of the view that NIMBYs are 'the biggest obstacle to the project' obscures the real reasons for local opposition (Devine-Wright, 2005, 2011; Ek, 2005; Ellis, Barry, & Robinson, 2007; Hansen, Hammarlund, Sorensen, & Christensen, 2003).

Several studies have questioned the existence of NIMBYs, arguing that NIMBYs based on self-interest may be relatively rare and that the evidence for their existence is not as conclusive as much of the literature suggests. The concept of NIMBY fails to be empirically supported. It has been argued that NIMBY is an inaccurate and unhelpful way of describing objections to siting, and that empirical research suggests it is difficult to find people who are pro-renewable energy in practice but who oppose local siting for reasons of calculating personal costs and benefits (Bell, Gray, Haggett, & Swaffield, 2013; Devine-Wright, 2005; Waldo, 2012; Wolsink, 2000).

Returning to the topic context of the BRI, as public awareness of risks, rights, and participation has gradually increased in countries along the BRI, especially in developing countries, other elements such as value claims and dialogue have become a new focus for local residents. However, based on the analysis above, we can conclude that the NIMBY theory is becoming less effective in analysing complex conflict dilemmas, making it challenging to guide practice. First, existing NIMBY studies mainly take public acceptance as a single linear indicator to measure social acceptance, and it is difficult to accurately reflect the complex, non-linear attitudes and behaviours of residents towards infrastructure projects in community protests in the BRI host countries. Secondly, while NIMBY research concentrates on the process of forming and developing supportive or opposing views, it lacks a practical analysis of how to facilitate and assess this process in the context of community acceptance. Therefore, the author posits that the study of this issue requires a new research paradigm.

Alongside research on NIMBY infrastructure projects, the Social Licence to Operate research paradigm, which emphasizes the need for community approval

and ongoing acceptance of development projects, has attracted considerable international academic attention.

Originally, Cooney (2017) used the term "Social License to Operate" to emphasize that social acceptance of mining activities was just as important as their legal license. Over 20 years of research and development have led to the international expansion of the term, encompassing the forestry, oil and gas, marine, and hydropower industries, and its widespread study and application in numerous countries. Currently, there is no unanimity in the research community regarding the concept of SLO. SLO is defined as the demands on and expectations for a business enterprise that emerge from neighbourhoods, environmental groups, community members, and other elements of the surrounding civil society. It can also be defined as a set of concepts, values, tools, and practices that represent a way of viewing reality for industry and stakeholders. Broadly, it refers to the continued acceptance or recognition of an action by stakeholders who are affected by it or may be affected by it. It is argued that the local community's social acceptance of the resource development project is the foundation for achieving such acceptance or endorsement, which can occur at multiple levels (Gunningham, Kagan, & Thornton, 2004; Nelsen, 2006; Joyce & Thomson, 2000). At the same time, SLOs come from the beliefs and perceptions of the local community or stakeholders and are granted by the local community or stakeholders. Nowadays, scholars are increasingly using SLO concepts to describe changes in the relationship between enterprises and communities, as well as the degree of acceptance of the local community's acceptance of "potential harm" production and operation activities (Bice & Moffat, 2014; Boutilier, 2014; Brueckner & Eabrasu, 2018).

Unlike formal legal licenses, SLOs are intangible and unwritten. Threats to a company's reputation, brand, and profits are the main drivers for companies to acquire SLO (Boutilier, 2014; Hall & Jeanneret, 2015; Tetrault Sirsly & Lvina, 2019). SLO considers communities, governments, and businesses as partners in an ongoing informal relationship based on mutual trust and is often seen as an informal social contract that exists between companies and local communities. It is important to note that SLOs are not one-off processes and may be gained or lost in uncertain and complex processes (Hurst, Johnston, & Lane, 2022; Mercer-Mapstone, Rifkin, Moffat, & Louis, 2017). As a result, the acquisition of SLOs cannot be seen as a short-term achievement; it requires long-term maintenance and improvement.

Advocates can use the SLO theory to gain public recognition for their efforts and generate business value across various factors, including improved reputation, increased revenue and market entry, cost efficiencies, increased productivity, access to capital, enhanced risk management, and access to human resources

(Esteves & Vanclay, 2009; Vanclay, Esteves, Aucamp, & Franks, 2015). It also helps to minimise harm to neighbouring communities.

A comparison of the NIMBY theory and the SLO theory reveals that the former is primarily concerned with resident opposition to particular infrastructure projects, especially when these projects may have adverse impacts on the local environment, health, safety or economy. While the public is aware of the need for these facilities, there is a general preference for siting them outside the immediate vicinity of the community concerned. NIMBY theory generally views such opposition as self-serving, emotional and irrational. It is limited in that it does not capture well the changing attitudes of the people in the community, and in addition, NIMBY does not suggest a good way of governance. In contrast, the SLO theory addresses some of the limitations of the NIMBY theory. SLO approach by building a trust-based relationship between the enterprise and the community, SLO ensures that the project receives long-term operational acceptance at the societal level. SLO addresses the lack of dynamic limitations of the NIMBY theory by incorporating dynamic social interactions, trust, legitimacy, and credibility as key factors. SLO recognises the non-linearity and complexity of community attitudes, and employs a flexible framework to capture the diverse community responses to projects and adaptively manages these changes. In addition, SLO provides effective risk management tools to help companies identify potential social risks in advance and take steps to address them, thereby avoiding project failure due to community resistance.

Environmental conflicts on the BRI show that Chinese investors have faced resistance from the host country's communities despite their compliance with minimum environmental standards in host countries. And these resistances are not linear and continuous; rather, they flow with time and events. Such facts reflect current governance deficiencies in the relationship between infrastructure projects and host community residents. As a review of the SLO concept notes, mere legal compliance with environmental regulations has become increasingly insufficient to meet societal expectations on mining issues (Prno & Scott Slocombe, 2012). In a sense, SLO, or Social Licence to Operate, refers to the expectation of specific voluntary actions from corporations that go beyond the legal obligations they have in their planned or present operations.

However, even when SLO is viewed as recognition beyond legal requirements, formal regulations and procedures are still directly related to SLO, as the development of any infrastructure project occurs within a legally regulated context. This relationship is based on the distinction between hard law and soft law. Hard law refers to legally binding obligations, typically established through treaties, statutes, or international agreements, that mandate specific actions and are enforceable by courts or other institutions. Non-compliance with hard law leads to

legal sanctions, making hard law a crucial component of formal legal systems. On the other hand, soft law consists of non-binding norms such as guidelines, principles, or declarations that, while not legally enforceable, still influence the behavior of states and organizations through moral or political weight. This flexibility allows soft law to gradually shape the development and interpretation of norms, especially in areas where formal agreements may be difficult to achieve. Therefore, hard law and soft law play complementary roles in governance, with hard law providing enforceable rules and soft law offering adaptable guidelines to address complex issues in international relations. Given that the development of any infrastructure project takes place within a legally regulated context, both hard law and soft law will inevitably influence the behavior of companies and communities. Hard law ensures compliance with mandatory regulations, while soft law, through non-mandatory guidelines, provides a framework for voluntary actions, thereby facilitating corporate behavior. This section will further explore these interactions in more detail in the following subsections.

3 Research: Applying SLO theory to the environmental governance of BRI Infrastructure

3.1 Thomson & Bouutilier Social Licence to Operate Model

The legitimacy, credibility, and trust SLO model (Figure 1) was developed by Thomson & Boutilier in 2011. It provides an overall conceptual framework for understanding the acquisition of SLOs. It is the most commonly used model in the literature discussing SLOs. In the Thomson and Bouutilier model, SLOs are regarded as a progression of four different stages: withheld; acceptance, approval, and psychological identification. The lowest level of community acceptance occurs in situations where the SLO (Social License to Operate) was never granted, either because it was withheld or revoked. The lack of SLO becomes apparent when local communities openly criticize a project, often manifesting in various forms of protest, as demonstrated in a study (Jijelava & Vanclay, 2017).

Figure 1: The legitimacy, credibility and trust SLO model

Successfully reaching the acceptance level requires the project's capability to convince the local community of its legitimacy. This legitimacy includes not just compliance with national laws and regulations (legal and administrative legitimacy) but also convincing people of the project's economic viability and societal benefits, thus leading them to believe that endorsing the project is the appropriate course of action.

Conversely, the approval level requires projects to foster trust within the local community. The company builds this trust by providing precise, open, and trustworthy information, as well as fulfilling its commitments.

The highest level of SLO entails psychological connection, previously referred to as "ownership" in a previous version of the model. To authentically create community identification with a project, various prerequisites need to be fulfilled. These encompass building substantial trust, fostering a robust bond between the project initiator and the local communities, and ensuring that both sides view each other as collaborative partners with mutual interests.

Some scholars have further developed the above theories. The applicability of the SLO concept in practice was considered, clarifying the meaning of the terms of legitimacy, credibility, and trust so that they can be used in the operationalization of the SLO model. This explanation was applied to the analysis of Khudoni HPP in Georgia (Jijelava & Vanclay, 2017, 2018). Additionally, eight case studies

conducted in Northern Europe, with two mining projects in each of Norway, Finland, Russia, and Sweden, were chosen to assess the effectiveness of the SLO analytical framework (Koivurova et al., 2015).

This paper mainly aims to solve the problem of the environmental conflicts of the BRI projects, so in the following section, the contents are analysed based on Thomson & Bouutilier's work towards solving this problem.

Legitimacy ultimately hinges on fairness, which encompasses equitable distribution of benefits as well as fairness in the procedural aspects (Jijelava & Vanclay, 2017). If a project loses legitimacy, it risks rejection, opposition from the community, and closure. Legitimacy is defined as the belief that authorities, institutions, and social arrangements are appropriate, proper, and just (Tyler, 2006). In order for a project to gain recognition from the local community, it must establish legitimacy across legal, economic, and social dimensions.

Legal legitimacy means that the company has all the necessary legal authorizations and complies with official legal norms. It means that all project-related procedures are legally carried out in a fair and reasonable manner (Jijelava & Vanclay, 2017). This point illustrates that, firstly, the law under discussion is a hard law, meaning it has mandatory norms, and any violation of these norms carries legal consequences. Secondly, the legitimacy of the law is based on a fair and reasonable legal norm. A question that can be raised here is: if the law itself is imperfect, unreasonable, and fails to achieve substantial fairness, it will affect the acquisition of SLO. For instance, if a country's environmental law does not include provisions for public participation, it becomes evident that a company's failure to participate in a public process, while seemingly meeting legal legitimacy requirements, does not ensure a substantively fair distribution of benefits and fairness in the process, thereby casting doubt on the acquisition of SLOs. The author argues that if the law itself is imperfect and fails to ensure substantive fairness, it will inevitably impact the acquisition of economic and social legitimacy, ultimately affecting the acquisition of SLOs. Therefore, it can be argued that in order for SLOs to be allowed in BRI infrastructure projects, including environmental conflicts—the subject matter of this paper—there must exist an environmental legal framework that safeguards and governs environmental procedures and rights. The above considerations can be illustrated by a few specific examples. In some BRI countries, environmental laws may only require enterprises to submit an environmental impact assessment (EIA) report to the government during the project planning and approval process, without mandating that information be made available to affected members of the public or that opportunities to participate in project decision-making be provided. This means that companies only need to fulfil the government's approval requirements without having to communicate or consult with local communities or other

stakeholders. Due to the lack of legal requirements for public participation, companies can bypass interaction and consultation with communities while fully complying with legal requirements, resulting in a lack of equity in project benefits, process fairness, and social trust. Another hypothetical example is a BRI country where both land acquisition and environmental protection laws have significant shortcomings: the law provides the government with the right to acquire land and build projects in the 'national interest', but does not explicitly provide for adequate financial compensation for farmers whose land is expropriated. In addition, the law does not have strict environmental protection standards and lacks special protection for ecologically sensitive areas, especially when critical ecosystems such as wetlands, forests and water resources are involved. The law also has no provisions for resettlement, re-employment support, or ecological compensation for farmers and communities whose livelihoods have been damaged as a result of land acquisition and environmental destruction. In this hypothetical scenario, even if a company appears to be legally compliant, its project's social licence (SLO) may still be seriously challenged due to its failure to safeguard the economic interests and ecology of communities. These two hypothetical scenarios emphasise the importance of legal integrity and enforcement in BRI projects to ensure smooth implementation and long-term success.

To achieve economic legitimacy, the community must reap economic benefits (Thomson & Boutilier, 2011). For instance, the company achieves this by employing a large number of locals and offering them good wages and other material benefits, such as additional medical compensation. Alternatively, the company generates significant local revenues and secures them. If the project impacts the surrounding community, it should provide financial compensation that is sufficient to meet the community's needs. Resettlement or economic relocation due to the project's impact on livelihoods, along with the provision of training or capacity development programs, are some examples.

Social legitimacy means that the project contributes to the well-being of the area, respects local ways of life, and acts in accordance with the community's view of equity (Thomson & Boutilier, 2011). It encompasses the perspectives of local residents on matters such as the potential environmental impact of the project in their living area, its contribution to their overall well-being, respect for local lifestyles, thorough exploration and communication of alternatives to the community, inclusion of the affected individuals' voices, comprehensive consideration of their views, and the perception of fair and reasonable treatment (Jijelava & Vanclay, 2017). Project investors and builders must reasonably involve local communities in project decision-making through public participation and conduct both an Environmental Impact Assessment (EIA) and a Socio-Economic Impact Assessment (ESIA).

3.1.1 Credibility

To achieve approval levels along the SLO continuum, a project company must have the trust of local community members. Building credibility involves consistently providing truthful, clear, and reliable information and fulfilling all commitments made to society. To establish credibility within the local community, it is crucial to possess a high level of technical expertise and skills, along with a commitment to social responsibility. Convincing the community of the company's proficiency in technical aspects and skills is essential. Good social performance means finding and fixing social, environmental, health, and human rights problems throughout the project's life cycle, following through with mitigation and monitoring plans, giving communities real and long-lasting social benefits, meeting at least the bare minimum of international social and environmental standards, showing dedication to openness, transparency, and good governance, putting in place effective community participation mechanisms, and carrying out resettlement and livelihood restoration plans in a fair and effective way (Jijelava & Vanclay, 2017).

To achieve credibility, the most important are public participation systems and EIA/EISA. As Arnstein's "public participation" ladder shows, there are different levels of civic participation, from non-participation to tokenism to civic power (Arnstein, 1969). The transformation of the public participation ladder into an SLO context models employing both public participation theory and SLO theory to rank stakeholder participation from low (manipulation) to high (citizen control) (Eabrasu, Brueckner, & Spencer, 2021). The study revealed that public participation not only enhances the substance of decision-making by allowing community members to meaningfully participate in resource management decisions that impact them, leading to the design of better and more equitable solutions, but also serves as an end in itself, improving the decision-making process by providing community members with the opportunity to learn about the potential impacts and benefits of a project, express concerns, and discuss potential challenges and opportunities. The quality of an EIA or EISA determines whether a business is able to effectively identify and address social, environmental, and project issues at all stages of the life cycle; how it designs and implements a monitoring programme for mitigating environmental issues; and whether it behaves in a way that meets international standards. In the context of the BRI, Arnstein’s Ladder of Citizen Participation provides a useful lens for understanding the role of public involvement in BRI projects and its impact on obtaining a SLO. At the lower rungs, such as manipulation and therapy, public engagement is largely superficial, often aimed at managing perceptions rather than addressing real concerns. This minimal participation tends to breed distrust and opposition, making it difficult to secure SLO. As participation moves to informing and consultation, where communities are either updated or asked for feedback without

any real influence, the relationship between project leaders and local stakeholders improves, but the engagement remains insufficient for genuine community buy-in. Meaningful progress occurs at the placation level, where community members may be included in advisory roles, though decision-making power still lies with the authorities. The shift to partnership, where decision-making is shared, represents a more balanced form of engagement and significantly increases the likelihood of achieving SLO. At the highest levels, delegation and citizen control, the community assumes direct control or a majority stake in decision-making, fostering deep trust and ensuring that local interests are fully integrated into project governance. These higher levels of participation are crucial for securing long-term legitimacy and acceptance of BRI projects.

Trust, as described by Jijelava and Vanclay (2017), is achieved at the highest level of SLOs, i.e., psychological identification, by becoming the property of the project or company and perhaps being seen as trustworthy. Establishing trust necessitates the development of a long-term relationship between the local community and the project sponsor, in which they see each other as partners. Without a substantial degree of legitimacy and credibility, the foundation for trust is absent. Trust is cultivated through the quality of interactions between supporters and local communities, rather than the sheer quantity of interactions. Genuine trust-building involves the active participation of local community representatives in decision-making and monitoring. As long as trust is present, local communities and supporters view themselves as being aligned on the same side.

Summarising the above analyses, the acquisition of legitimacy is directly related to the quality of the law (hard law), and it can be said that a sound environmental legal system is the basis for achieving the legitimacy of SLOs. In environmental laws, social acceptance is more closely related to public participation, information disclosure, environmental impact assessment/social impact assessment, compensation mechanisms for residents' interests, social supervision mechanisms, and investor blacklisting systems. The better, more flexible, and more reasonable the relevant legislation is, the more it can contribute to a higher level of community acceptance of the enterprise. These recognised systems are typically provided by soft-law mechanisms. Myanmar's Kyaukphyu deepwater harbour project provides strong evidence for this view. The project conducted a comprehensive environmental and social impact assessment at an early stage, which not only met legal requirements (hard law), but also proactively disclosed the results to the public and adjusted the project design accordingly (soft law). This approach not only ensured the legality of the project, but also increased social acceptance through information disclosure and positive response, demonstrating the effectiveness of combining hard and soft law. Similarly, the case of the Javan High Speed Rail project in Indonesia highlights the importance of combining hard and soft law. The project implemented a compensation programme for residents

that went beyond what was required by law, providing not only financial compensation in line with the law (hard law), but also vocational training and employment opportunities for residents whose land was expropriated (soft law). This approach has greatly increased the project's social recognition and exemplifies how SLOs can be enhanced through flexible compensation mechanisms. These recognised systems are usually provided by soft law mechanisms, but their effects are often based on hard law. Therefore, the author believes that BRI infrastructure projects require a new governance paradigm to effectively avoid environmental conflicts. The concept of SLO can serve as the foundation for developing this new paradigm, guiding companies to reduce environmental conflicts with host country communities and achieve environmental justice in projects. A combination of soft law and hard law in environmental regulation can serve as governance tools to provide SLO.

3.2 SLO in law

Some countries or regions have already incorporated the concept of SLO into their laws.

In national laws, we can see that a number of recent mining laws around the world, such as those on Indigenous peoples in Australia and Canada, as well as in a growing number of African countries, have incorporated SLO into their legislation (Nwapi, 2016). A Community Development Agreement (CDA) or Impact Benefit Agreement (IBA) must be negotiated and signed by mining companies with host communities before any development work can begin (Nigerian Minerals and Mining Act, 2007, Cap. M12, § 116; The Mines and Minerals Act, 2009, Sierra Leone Supplement Vol. CXLI, No. 3 § 139, Sierra Leone; Mining Act 2012, No. 36, § 128, South Sudan; 2011 Mining Code, § 130, Guinea; Mining Law No. (20), 2014, art. 8(2)(f), Mozam.; The Mining Acts, No. 12, 2016, Kenya Gazette Supplement No. 71, § 109, Kenya). As an example, Kenya's Mining Act 2016, in Section 109(1), mandates that holders of mining licenses must enter into an agreement with the community where mining activities are planned. The specific procedures for forming these agreements are outlined in the accompanying regulations. The overarching goal is to establish a legal foundation for ensuring that mining operations are carried out in a way that benefits the communities impacted by them. Many of these mining laws not only make these agreements mandatory and legally enforceable, but they also provide guidelines on what should be included in the agreements and how any disputes in their formation should be resolved.

Furthermore, there are three-party agreements that include the government, the investor, and the community, as seen in environmental agreements like the one in Canada. The environmental agreement between the Government of the Northwest

Territories, local communities, and De Beers Canada Inc. serves as an illustration of this phenomenon. In South Australia, the government, investors, and indigenous groups with native title claims negotiate exploration agreements in compliance with the Native Title Act 1993 (Cth), providing a parallel example. As highlighted by Gathii and Odumosu-Ayanu (2016) in their work on the global extractive industry, such three-party contracts signify a shift towards contractual responsibility. Essentially, these emerging regulations can be seen, at least partially, as a mechanism leveraging contract law to facilitate mining companies in obtaining an SLO.

The concept of SLO has also emerged in international soft law.

Within the framework of the United Nations Guiding Principles on Business and Human Rights (UNGPs), the concept of SLO has gained growing prominence as a crucial element of Corporate Social Responsibility (CSR). The UNGP applies the SLO concept to assess the economic and social consequences of human rights violations linked to business activities. In this context, they establish connections between societal expectations, voluntary corporate adherence, and government regulations in both soft and hard law forms. The formulation of SLOs was part of a discursive process leading to the adoption of the non-binding UNGPs and the UN Framework (Buhmann, 2014), which, in turn, prompted the revision, development, and customisation of more detailed public regulations in soft and hard law. This process signifies the "judicialization" of SLOs, wherein the term encompasses not only enforceable hard law but also soft law and hybrid forms such as guidance and incentives. Consequently, SLOs are increasingly subject to public regulation through a combination of hard law, soft law, and hybrid legal mechanisms (Buhmann, 2016).

With this backing, the United Nations successfully navigated traditional limitations, pioneering a new type of transnational regulation. This initiative aimed to tackle issues stemming from governance gaps and the negative social consequences of economic activities that eluded the scope of many conventional international or national regulations. To accomplish this objective, innovative forms of regulation, breaking free from the territorial confines of traditional public law, were introduced or endorsed. By intertwining SLOs, societal expectations, UN soft law guidance, and the emerging hard law, it is demonstrated how ethics, politics, and law interact and contribute to legitimizing concerns such as CSR (Buhmann, 2016).

Returning to the theme of this section, the examples above show that it is possible to help companies achieve SLOs through legislation. SLOs are not paper or tangible certificates obtained from the government or community after application, nor are they the result of a regulatory process. Neither international nor local law

explicitly requires mining companies to obtain SLOs. Instead, SLOs are a standard of behaviour that "emerge as the industry's response to opposition and as a mechanism to ensure industry viability." SLOs are obtained through specific behavioural mechanisms to gain the acceptance and trust of relevant stakeholders to carry out the project in question. And the law can guide (soft law) and safeguard (hard law) these behavioural mechanisms.

3.3 Environmental regulation of the BRI infrastructure projects

This section will analyse the environmental legal system of the host countries, the regulation of the environmental aspects in international law, and the legal system of the environmental aspects of China's regulation of overseas investment: Can a hard law system meet the legitimacy criteria of the Thomson and Boutilier SLO model? Secondly, can a soft law system create a conducive environment for firms to secure SLOs?

3.3.1 The regulation of the BRI host country concerning local community environmental governance

Firstly, as China's policy requires Chinese enterprises investing abroad to comply with the environmental laws and regulations of the host countries, the political will and ability of the BRI host countries to formulate, implement, and enforce stringent environmental laws and regulations will have a significant impact on the environmental sustainability of the BRI. The environmental laws across the 64 countries along the BRI route exhibit significant variation, encompassing a variety of legal systems such as socialist law, Indian law, Islamic law, civil law, and maritime law. These countries primarily comprise emerging economies and developing nations. Environmental law in developing countries has been criticised for "prioritising national economic development over environmental protection and setting weak environmental standards to attract Foreign Direct Investment (Gray, 2002). Here, the discussion focuses first on the existence of environmental laws in the BRI countries and whether there are "hard laws" that guarantee basic environmental procedures, such as public participation and EIA/EISA mechanisms, which are necessary to obtain SLOs. According to an Environmental Democracy Score report, this is not the case, and another interesting aspect of the top ten performers is that wealth is not necessarily a determinant of strong environmental democracy laws. Panama and Colombia are resource-poor countries, and South Africa is an upper-middle-income country; despite this, they are committed to strong environmental laws. Of the ten countries with low scores, most lack provisions requiring government agencies to proactively disclose environmental information. In countries such as the Philippines, the Republic of Congo, and Pakistan, citizens are required to make time-consuming or expensive requests for information to obtain key information such as air or drinking water

quality statistics. Governments may or may not honour these formal requests. National governments in Ethiopia, Nicaragua, Guatemala, Bangladesh, and Thailand do not actually ensure that factories, mines, and other facilities do not endanger people or the planet. In these countries, the requirements for public participation are almost always limited to environmental impact assessments, ignoring other important decisions such as the development of forest management plans, protected area policies, or environmental protection laws (Zeng, 2021).

Second, the legal system in developing countries does not seem to provide a supportive environment for SLO acquisition. Unlike Western participatory practices that emphasise public consultation and analysis throughout the entire project cycle (i.e., planning, design, construction, operation, and decommissioning of a PIC facility), public participation in developing countries only applies to those schemes that are subject to an EIA (Li et al., 2022). In addition, participation practices often take the form of informing the public of the final plan or design rather than inviting them to express their views before a decision is made (Shan & Yai, 2011). This "token" approach to participation simply places the burden on people to cooperate and support the government in implementing the project. This undoubtedly runs counter to the true spirit of public participation, which emphasises the rights of ordinary people (Arnstein, 1969; Creighton, 2005).

A relevant study indicates that several nations, particularly in South and Southeast Asia, have made significant progress in implementing organized EIA legislation. However, challenges such as regulatory non-adherence, limited civil society engagement, and the influence of EIA findings on decision-making hampered the efficacy of EIAs. To ensure the successful execution of the BRI and strengthen the capacity for local EIA, the countries in this group require extensive assistance and cooperation from China are required for the countries in this group. Mongolia, Brunei, Kyrgyzstan, Turkmenistan, Uzbekistan, Iran, Iraq, Jordan, the Maldives, Azerbaijan, Armenia, Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, and Belarus have inadequate legal bases and unclear guidelines for their EIA systems. Most of the Central Asian countries along the BRI are newly independent former Soviet Union states. Although all countries have EIA legislation, there is still a considerable gap between law and enforcement across the region. These countries are generally characterised by the absence of Strategic Environmental Assessment (SEA), limited public engagement and transparency, insufficient supervision of EIA enforcement, and inadequate resources. The primary deficiencies within the Middle East's EIA frameworks include (1) the failure to adhere to Strategic Environmental Assessment (SEA), (2) the exclusion of public participation in decision-making, and (3) the absence of a robust follow-up system and governmental backing. With the exception of the oil-rich nations, most countries in the region fall into the low-middle income category and exhibit

limited regulatory mechanisms and enforcement capabilities (Aung, Fischer, T. B., & Luan, 2020).

3.3.2 Environmental regulations in International Investment Treaties

To answer the first question, it is necessary to analyse the environmental provisions in International Investment Treaties (IIAs). Generally speaking, laws protecting foreign investment, whether domestic legislation or international treaties, are "hard law" and have the force of law. Of the 145 investment treaties signed by China, very few BITs address environmental issues. Specifically, China's BITs with Singapore, Sri Lanka, New Zealand, Turkey, Mauritius, Guyana, Madagascar, Uzbekistan, Japan, the Republic of Korea, Canada, and Tanzania either use environmental language in the preamble or have specific environmental provisions. However, there are significant differences in the structural arrangement, form of expression, content of expression, and applicable standards of the environmental provisions in the 18 BITs. The marked differences in environmental issues in the IIAs signed during the same period further demonstrate the lack of systematic consideration of environmental issues (Jia 2021).

In addition, FTAs, such as the China-Chile FTA, the China-Pakistan FTA, and the China-Peru FTA, have broader environmental provisions, and usually the preamble only makes a general reference to environmental protection as an important way to implement the agreement, stating that it is "recognised that the implementation of this Agreement is to ....., to promote sustainable development in a manner that protects and preserves the environment." Although the China-Iceland FTA was signed in 2013, the environmental provisions appeared in the form of a single preamble, which, unlike earlier FTAs, explicitly stated that environmental protection was an integral part of sustainable development and stated that closer economic partnership could contribute to sustainable development but did not specify how it should do so. Using 2013 as a dividing line, new practices about environmental provisions have emerged in subsequent FTAs, such as the creation of an environmental chapter in the China-Switzerland FTA. This chapter describes the background and objectives of the agreement, reaffirms important environmental principles, and provides for procedural dispute settlement on environmental issues, including negotiated cooperation provisions. Overall, however, there is a lack of environmental procedural provisions (Ning & Qi, 2016).

In regional investment agreements, such as the China - ASEAN Investment Agreement (CAIA), the preamble to the agreement focuses more on sustainable economic development and growth, given that China was at that time in an international environment where it was still in the early stages of exploring

environmental protection, both in terms of concepts and in terms of measures. On the issue of how to deal with investment and the environment, the agreement still adopts the internationally recognised provisions of the general exceptions clause, and the wording is not much different from that of the environmental exceptions clauses in most investment agreements. The China - Japan - South Korea Free Trade Agreement, on the other hand, makes direct reference to the environment and is the investment agreement with the most environmental language. First, the agreement indicates that all three countries recognise that health, safety, and environmental standards should not be lowered and that the purposes and objectives of the agreement can be achieved without lowering the relevant standards, and that they recognise that it is desirable for investors of the contracting parties to comply with the environmental laws and regulations of the locality in which the investment activity takes place in the context of their cross-border investment, and that compliance with the laws of the locality in which the investment activity takes place is of paramount importance. The statements in the agreement are more explicit and specific than the general statements in the investment agreement, such as the willingness to strengthen cooperation and the desire to promote sustainable economic development, and are more indicative of the parties' commitment to protecting the environment (E. Liu, 2015). Finally, under the BRI, in November 2020, China, Japan, South Korea, Australia, New Zealand, and the 10 ASEAN countries signed the Regional Comprehensive Economic Partnership (RCEP). The establishment of RCEP, the world's largest FTA, integrates the FTAs of previous member countries and builds a broad-coverage and inclusive regional economic integration framework in East Asia. However, China is also faced with environmental policy choices when pursuing its FTA strategy. The absence of an environmental chapter in the Regional Comprehensive Economic Partnership (RCEP) leaves China's largest FTA strategy without a defined environmental policy. This is also in consideration of the fact that RCEP covers countries that are less developed, and the difficulty of upgrading environmental cooperation is an obstacle to economic and trade cooperation (Yuesheng Wang, Bian, & Zhang, 2021).

Analysing the second question in terms of specific procedural provisions is necessary. In general, these AIIs lack provisions on investors' environmental responsibilities, environment-related procedural provisions, and public participation in investment and environmental affairs. The environmental clauses in the BRI investment agreements are mostly substantive clauses, with only a few, such as the China-Canada BIT, having consultation clauses, and the China-Australia FTA, having expert report clauses and thus simple procedural clauses. At the same time, none of the BRI IIAs have embodied the relevant content of public participation. For instance, although the China-Canada BIT includes provisions for environmental consultation, its implementation in BRI projects has been limited. Some Canadian mining projects have sparked environmental protests

due to a lack of public participation and environmental assessment mechanisms. A similar issue was observed in projects under the China-Australia FTA, where expert reporting requirements on environmental matters were not fully enforced (Table 1).

Table 1: Overview of environmental clauses and procedural provisions in China's FTAs and BIT

Treaty Type	Treaty	Environmental Clause Type	Procedural Provisions	Public Participation
FTA	China-Chile FTA	Preamble	None	No
FTA	China-Pakistan FTA	Preamble	None	No
FTA	China-Peru FTA	Preamble	None	No
FTA	China-Iceland FTA	Preamble	None	No
FTA	China-Switzerland FTA	Environmental Chapter	Dispute Settlement Provisions	No
FTA	China-Australia FTA	Environmental Chapter	Expert Report Clauses	No
FTA	RCEP	No Environmental Chapter	None	No
IIA	China-Singapore BIT	Preamble	None	No
IIA	China-Sri Lanka BIT	Preamble	None	No
IIA	China-New Zealand BIT	Preamble + Specific Provisions	None	No
IIA	China-Turkey BIT	Preamble	None	No
IIA	China-Mauritius BIT	Preamble	None	No
IIA	China-Guyana BIT	Preamble	None	No
IIA	China-Madagascar BIT	Preamble	None	No
IIA	China-Uzbekistan BIT	Preamble	None	No
IIA	China-Japan BIT	Preamble + Specific Provisions	None	No
IIA	China-South Korea BIT	Preamble + Specific Provisions	None	No
IIA	China-Canada BIT	Preamble + Specific Provisions	Consultation Clauses	No
IIA	China-Tanzania BIT	Preamble	None	No
IIA	China-ASEAN Investment Agreement	General Exceptions Clause	None	No

3.3.3 The legal regime of China's outbound foreign investment on the environmental aspects

According to international law's theory of state responsibility, a state is not directly responsible for an individual's behaviour, but the home state has a duty of "due diligence" to prevent its nationals or enterprises from infringing on the private interests of other states or their nationals. If the home state fails to exercise its "duty of due diligence" or fails to take the necessary measures to stop the

infringing act when it occurs and fails to provide the infringed subject with appropriate remedies, it will be required to bear the state's responsibility (Allott, 1988). Therefore, the home state is not a vacuum in the legal regulation of the environmental behaviours of the enterprises that have invested abroad. On the contrary, home states bear important environmental responsibilities in the context of outbound investment.

In general, China currently has no specialised (hard) laws on environmental protection in overseas investments, but with regard to environmental protection on the BRI, China has introduced a series of policies in an attempt to "activate" its own legal system to regulate its overseas investments (Huang, 2013). Most of the current environmental protection regulations for overseas investment exist in administrative regulations, departmental rules, and local government regulations. These sectoral regulations encourage Chinese companies to comply with host country laws, international treaties, and higher international standards. The overall logic of these sectoral regulations is broadly as follows: while recognising relevant international rules, the relevant national authorities set guiding principles and guidelines (Han, 2018).

The state places emphasis on the environmental and social impacts of Chinese organizations' outbound investment processes through the Guidelines on Environmental Protection for Outbound Investment Co-operation, jointly issued by the Ministry of Commerce and the Ministry of Environmental Protection in February 2013, the Guidelines on Green Credit by the CBRC in February 2012, and the Guidelines on Corporate Social Responsibility for China's Banking Financial Institutions by the China Banking Association in January 2009. The Guidelines on Environmental Protection for Overseas Investment Cooperation guide and regulate the environmental behaviour of Chinese enterprises investing abroad in three aspects: firstly, it advocates the establishment of an environmental protection concept; secondly, it requires enterprises to comply with the host country's environmental protection laws and regulations; and thirdly, it encourages enterprises to align themselves with international standards and learn from international norms. In addition to this, there are a growing number of guidelines for Chinese enterprises investing abroad, but they still lack important details of regulation. Furthermore, the host country's laws and regulations primarily govern the conduct and application of environmental impact assessments and environmental permits for overseas investments. Although EIA is required by China's domestic legislation, there is no clear regulatory body or procedure for EIA outside China, and there is a lack of mandatory regulatory measures to penalise or compel Chinese companies that fail to comply with these obligations. Chinese investors cannot enforce compliance with environmental impact assessment requirements for their overseas investments in the absence of monitoring, incentives, and penalties. In addition, China has incorporated some

CSR provisions in the form of a legalisation of social responsibility as a mandatory legal obligation for enterprises, but the provisions do not make it clear whether they extend to outbound investments by profit-making legal persons, nor do they clarify the legal liability that may be incurred for breach of the obligation. Recently China has introduced key policies to optimize its legal framework for foreign investment, as highlighted in the Beijing Regulation on Optimizing Foreign Investment Environment (2024) and State Council Policies on Foreign Investment (2023). These initiatives focus on providing R&D support, encouraging the establishment of regional headquarters, and managing secure cross-border data flows. Additionally, China has implemented stricter environmental guidelines, such as the Green Development Guidelines for Foreign Investment and Cooperation (2021) and Green Credit Guidelines. These policies enforce higher environmental protection standards and corporate social responsibility, bolstering China's global environmental reputation (Table 2).

Table 2: Key Chinese regulations and guidelines on environmental protection for outbound investments

Policy/Regulation	Issuing Authority	Key Focus Areas
Guidelines on Environmental Protection for Outbound Investment Co-operation (2013)	Ministry of Commerce, Ministry of Environmental Protection	Environmental protection concepts, compliance with host country laws, alignment with international standards
Guidelines on Green Credit (2012)	China Banking Regulatory Commission (CBRC)	Encourages banks to finance environmentally friendly projects
Guidelines on Corporate Social Responsibility for China's Banking Financial Institutions (2009)	China Banking Association	Corporate social responsibility in outbound investments
Green Development Guidelines for Foreign Investment and Cooperation (2021)	Ministry of Commerce	Environmental protection in foreign investment, adherence to international norms
Green Credit Guidelines	China Banking Regulatory Commission	Finance sector's role in green projects
Beijing Regulation on Optimizing Foreign Investment Environment (2024)	Beijing Municipal Government	Optimization of foreign investment environment, including R&D support and secure data management
State Council Policies on Foreign Investment (2023)	State Council of China	Stricter environmental regulations for outbound investment, corporate social responsibility

The preceding analysis indicates that the current state of environmental legislation pertaining to the BRI is as follows: Firstly, it should be noted that the level of environmental legislation in host countries varies considerably. In countries with a high degree of environmental democratisation, legislation is more likely to ensure

public participation, environmental impact assessment, compensation of local residents and disclosure of environmental information. Conversely, in countries with low levels of environmental democratisation, the number of environmental laws is relatively limited, and the protections they afford are consequently reduced. To elaborate further, the laws of some countries within the BRI can serve as a foundation for the legal framework of SLOs, ensuring the integrity and transparency of such arrangements. Furthermore, they can also provide guidance and support for the acquisition of SLOs in a manner that adheres to the highest standards of conduct. Nevertheless, the absence of a legal system in some countries and the absence of relevant legislation mean that foreign investors do not contravene the laws of the host country. However, this does not mean that equity is achieved, which conflicts with the concept of SLO. In this scenario, an enterprise's adherence to the legal requirements of the host country may be insufficient to satisfy the legal requirements of the SLO. Secondly, it is notable that the environmental provisions in significant IIAs tend to concentrate on fundamental principles and omit details regarding the practical implementation of these principles. Thirdly, the Chinese government currently exercises regulatory control over overseas investment. However, this legislation is deficient in that it lacks a comprehensive hard law guarantee and only has a limited number of soft law regulations. Consequently, it is unsuitable as a basis for a law guaranteeing SLOs. An example could be a BRI project in Laos, where environmental laws are limited, and public participation is minimal. A Chinese company building a dam might fully comply with Laos' legal requirements, but since these laws lack comprehensive environmental impact assessments (EIAs) or public consultations, local communities may still protest due to unaddressed concerns. Although legally compliant, the project fails to meet SLO standards. In contrast, a similar project in Malaysia, with stricter environmental laws and required EIAs, would better align with SLO principles, highlighting the role of stronger legislation in securing an SLO.

4 Discussion: How to facilitate SLO for BRI projects through the improvement of legislation?

Given the preceding analysis, managing large foreign investment projects with adverse environmental impacts and avoiding conflict with local communities may pose additional challenges for China and the project countries. China and the BRI host countries may need to make additional efforts to ensure that the implementation of the BRI is environmentally sustainable and accepted by local people. To address these challenges and help projects achieve SLO, gaining local recognition and trust will be key to developing sustainable strategies along the BRI. National environmental legislation in the host country should be improved, relevant international treaties should be improved, and environmental legislation

should be introduced from the perspective of investor regulation in China (Table 3).

4.1 Improve BRI host countries' environmental legislation

The environmental legislation in the host countries, in particular in the developing countries where environmental legislation is weak, could be improved in the following ways:

Firstly, it is necessary to implement a legislative framework that facilitates the disclosure of environmental information. Drafting environmental disclosure legislation should cover both substantive issues, such as the scope of environmental information to be disclosed, and procedural issues, such as how to protect the public's right to know about environmental information through legal processes. In addition, emphasis should be placed on the disclosure of environmental impact assessment reports, the disclosure of information on the siting of infrastructure, the disclosure of procedural information, and the disclosure of environmental monitoring information.

Secondly, it is necessary to legislate for a mechanism to compensate for environmental problems. The establishment of a systematic and legally binding compensation mechanism that covers all aspects of reparations, compensation and incentives. The mechanism should be designed so that local people can benefit from the returns, for example by setting up a fund and investing in shares. Establish a system for insuring infrastructure against environmental damage and for compensating environmental damage.

Thirdly, to establish and legislate for a stronger system of public participation. Widening the scope of public participation and enhancing the level of public participation. To actively encourage the participation of social groups, including NGOs, in environmental impact assessments and to ensure that equal and full communication is provided to all. Improve the environmental information disclosure system, enhance public opinion monitoring, and further regulate the behaviour of government and enterprises in disclosing environmental information. Carry out public participation throughout certain processes, with particular emphasis on public participation in the approval phase of the project, and further improve the mechanism for expressing public opinion. Provide an adequate legal remedy for public participation and clarify legal responsibilities and consequences.

Fourth, legislate a mechanism to underline EIA/ESIA. Host country legislation should require investors to use appropriate methodologies and tools to conduct an accurate, objective, and comprehensive EIA/ESIA for each proposed project. The level of assessment should be tailored to the potential impacts and risks, with

high-risk projects requiring a more rigorous and comprehensive EIA/ESIA. The EIA/ESIA consultant, the expert engaged by the developer during the project's scoping phase, should identify and evaluate environmental and social impact risks. They should engage stakeholders in an inclusive, gender-sensitive, and culturally appropriate manner. The EIA/ESIA consultant is responsible for presenting their findings, recommendations, and conclusions in an EIA/ESIA report. Once the consultant has prepared a draft and final version, the investor should share the report with the financier and the host government. Additionally, it should be shared with key stakeholders, including affected populations, civil society organisations (CSOs) and non-government organisations (NGOs), the media, and researchers and experts, for their consideration, review, and approval. In many BRI projects, countries have successfully mitigated the environmental impacts of projects through the effective implementation of EIA procedures, enhancing social trust and promoting sustainable development. For example, in the Nanning-Kunming Railway project, a strict EIA process ensured minimal impact on the ecological environment while gaining community recognition and enhancing the project's social legitimacy. Additionally, Indonesia's Bali Green Energy project successfully reduced carbon emissions by integrating clean energy technology, achieving both economic development and environmental protection goals. Thus, host country laws should require investors to adopt appropriate methods and tools to conduct accurate, objective, and comprehensive Environmental Impact Assessments for every proposed project. The level of assessment should be determined based on potential impacts and risks, with higher-risk projects requiring stricter and more extensive EIA procedures. EIA/ESIA consultants should identify and assess environmental and social impact risks, ensuring stakeholder participation in an inclusive, gender-sensitive, and culturally appropriate manner.

Fifth, the host country's legislation can provide the legal basis for SLO through contractual regulation, drawing on existing practice, to ensure the implementation of BRI-related infrastructure projects that benefit the affected communities. Examples include setting new rules for project contracts, such as the tripartite agreement between the host country, the local community, and foreign investors.

4.2 Improving environmental regulation in International Investment Agreements

First, relevant procedural provisions should be included in IIAs. These include provisions on public participation and corporate social responsibility. Reference could be made to Article 20.8 of the CPTPP (Opportunities for Public Participation) and Article 24.5 of the US-Mexico-Canada Agreement to include relevant provisions on public participation, such as the obligation of Parties to endeavour to cooperate with requests for information related to public

participation and to use existing or establish new consultative mechanisms to seek the views of persons with relevant experience. Contracting Parties shall receive and consider public comments, and, where appropriate, respond to and publicize them in accordance with domestic procedures. Reference could also be made to Article 20.10 (Corporate Social Responsibility) of the CPTPP, with the addition of a reference to corporate social responsibility, e.g., Parties shall encourage enterprises to voluntarily adopt and incorporate into their corporate policies and practices principles of corporate social responsibility relating to the environment that are consistent with internationally recognized standards and norms endorsed or supported by the Parties.

Secondly, soft law governance can be highlighted. Other forms of law are also needed for BRI, in addition to making full use of the existing system. The top-level design must be a consideration of how and what kind of new institutional arrangements should be in place. In view of the fact that the BRI has no basis in large-scale multilateral mechanisms, the creation costs are high, and the construction of a strict hard law governance model is a rather long process, starting with multiple rounds of negotiations on the draft treaty. The procedural costs of treaty entry into force are enormous, from the multiple rounds of negotiations that lead to the formation of a draft treaty to the review and ratification of the text by states after the treaty is signed. In addition to the existing legal mechanisms, the non-binding but legally effective international soft law mechanism has become an inevitable choice for China to promote international law on the BRI. With its own unique advantages, international soft law provides new ideas for solving problems.

In order to legalise SLO, the concept of SLO can be introduced in the form of international soft law. With reference to the SLOs in the United Nations Guiding Principles on Business and Human Rights (UNGPs), the legalisation of SLOs in the context of BRI international soft law can be considered. Legalising SLO involves not only hard, enforceable law, but also soft and hybrid forms of guidance and incentives provided by public regulation of hard, soft and hybrid forms of law.

Another way forward is for companies to get involved in developing international soft law on individual industrial standards. Enterprises are important participants in the BRI, and the industry environmental standards set by participating companies are critical in solving the problem of inconsistent standards across countries. Specifically, we can provide a knowledge exchange platform to enterprises from various countries, enabling them to raise specific environmental issues in response to practical difficulties. By communicating and sharing with each other, it will be possible to develop more specific international soft law rules,

promote consensus between companies in different countries and maximize cooperation for the benefit of both sides.

4.3 China's supervision of outbound foreign investment companies

It is the responsibility of the home country of the investor to regulate and monitor companies that invest in foreign countries in such a way that the investment is in the general public interest and helps to direct the companies in question towards industries that contribute to the sustainable development of the host country.

First, establish an environmental approval system for overseas investment. The Ministry of Commerce may require specific and clear environmental assessment reports and environmental protection implementation plans from investing enterprises when approving investment projects. It should also examine the authenticity and feasibility of the relevant documents. Then, after examination and approval, the environmental protection implementation plan of the investing enterprise should be disclosed to China and the host country for public supervision.

Second, information disclosure, public participation, and environmental impact assessment in the BRI projects should be ensured through forms of supervision under China's domestic laws. Strengthening the guidance and supervision of investors in the event of the absence of environmental laws or insufficient enforcement capacity in host countries, for example, by stipulating in the law that Chinese investors should conduct an environmental impact assessment in accordance with the requirements of the Espoo Convention if their outbound investment projects are likely to have significant adverse transboundary impacts.

Third, establish a reward-and-punishment mechanism to strengthen supervision of the environmental impact assessment of China's overseas investments. The government can require investors to provide relevant reports and information on the environmental impact assessment of overseas investment projects in the host country; establish a blacklist and whitelist system and also announce demonstration projects for environmentally friendly enterprises; set up environmental inspectors in enterprises investing abroad to manage environmental risks arising from overseas investment and identify existing problems in a timely manner; and establish an early warning mechanism for environmental risks.

Table 3: Categorized to-do list for enhancing environmental regulations in BRI host countries, international treaties, and China

Category	Focus Area	Key Actions
Host Country	Environmental Information Disclosure	Legislate for comprehensive disclosure requirements (e.g., EIA reports, infrastructure siting, monitoring data)
Host Country	Compensation Mechanism	Develop a legally binding compensation mechanism (e.g., funds, insurance systems, incentives for local people)
Host Country	Public Participation	Legislate for public participation throughout project phases, particularly approval stages; establish legal remedies for participation
Host Country	EIA/ESIA Implementation	Mandate accurate and comprehensive EIA/ESIA for high-risk projects; ensure inclusive stakeholder engagement
International Treaties	EIA/ESIA Implementation	Mandate accurate and comprehensive EIA/ESIA for high-risk projects; ensure inclusive stakeholder engagement
International Treaties	IIA Procedural Provisions	Include public participation and corporate social responsibility provisions in IIAs (e.g., CPTPP Article 20.8, USMCA Article 24.5)
China	SLO Legal Basis	Establish SLO through contractual regulation, using tripartite agreements between host countries, communities, and investors
China	Soft Law Governance	Introduce SLO through soft law mechanisms in international agreements, leveraging UNGPs framework
China	China's Supervision of Outbound Investment	Create an environmental approval system for outbound investment projects; establish a reward-punishment mechanism

5 Conclusion

The BRI infrastructure projects are more prone to environmental risks and resistance from host communities than the infrastructure projects in the interior of the country, in the context of the fragile natural environment of the host country and the inexperience of Chinese investors. This kind of resistance and conflict has a more complex character than the conflict that occurs within a country. The long-established NIMBY theory falls short in explaining and resolving this type of conflict, as it fails to account for the community's non-linear attitudes and behaviours. In contrast, the SLO theory effectively explains the community's resistance to Chinese firms, even when they adhere to the host country's minimum environmental standards, and offers theoretical direction. By analysing the judicialization of SLO in some national and international laws, the author believes that law can help enterprises gain acceptance and trust from relevant stakeholders by guiding and protecting their behavioural mechanisms.

Based on the concept of SLO and Thomson & Bouutilier's SLO model, this paper analyses the environmental regulation of infrastructure along the BRI and finds that the relevant current legal regulation is inadequate and therefore insufficient to serve as a legitimacy criterion in the SLO model and to provide a supportive

environment for companies to get SLOs from the local community. Therefore, the author proposes a new paradigm for the prevention of environmental conflicts in the BRI based on the SLO theory, which combines soft and hard law governance. While the hard law is responsible for providing the basic SLO legitimacy assessment criteria for projects, the soft law is responsible for guiding organisations to obtain SLOs more effectively. The author proposes to provide a more feasible behavioural mechanism for SLO by upgrading the environmental regulations of host countries and international investment agreements, and the environmental regulation of China's overseas investment, including adding the concept of SLO to the environmental regulations of host countries and helping to achieve SLO through contractual management, proposing the concept of SLO in international investment treaties through the mechanism of soft law, and innovating the mode of international environmental governance by combining hard and soft law; and creating a new paradigm for the prevention of environmental conflicts in host country laws and international agreements by combining soft law and hard law. The SLO concept should be implemented through contract management; the concept of SLO should be introduced in international investment treaties through soft law mechanisms and the innovation of international environmental governance through a combination of hard and soft law; the rules of public participation, environmental information disclosure, environmental impact assessment/social impact assessment, environmental social supervision mechanisms, and blacklisting of environmental investors in the laws of the host country and international investment treaties should be improved; and the supervision of foreign investment in China should be strengthened to ensure a higher degree of acceptance by the stakeholders in the infrastructure projects, so that a wider range of Chinese investors can obtain SLO from residents of the host country. In addition to the legal framework, social, cultural and economic factors also have a significant impact on the implementation of SLOs. Cross-cultural management and project localisation are key to achieving SLOs, and investors should promote understanding and cooperation through enhanced communication with local communities. This not only helps to reduce project resistance, but also enhances the long-term legitimacy of the project.

6 Limitation

While the SLO theory has significant advantages in enhancing the legitimacy of BRI projects, its application also faces certain limitations. First, the SLO theory is primarily based on Western governance models, which may not be fully applicable in some BRI host countries. For instance, public participation, as emphasized by the SLO theory, may be difficult to implement in authoritarian regimes or tribal societies where the social structures and power distribution mechanisms differ significantly from those of Western countries.

Second, the SLO theory may be insufficient in addressing the complexity of transnational projects. BRI projects often involve multiple stakeholders, including host country governments, local communities, international organizations, and parent companies. Coordinating legitimacy requirements among these diverse stakeholders may go beyond the original scope of the SLO theory. Therefore, in BRI projects, the SLO theory may need to be integrated with other governance theories and tools, such as stakeholder theory and conflict management strategies, to better address the complexity of such projects. Future research should explore combining the SLO theory with other governance tools to provide a more comprehensive governance solution.

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