

Building Good and Green Governance Infrastructure along the Belt and Road

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What is the Belt and Road Initiative?

- Ambitious “Belt and Road Initiative” (BRI) concept proposed 2013 and centered on lofty ideals to build trade and infrastructure network to connect:
 - Asia, Europe and Africa and adjacent seas – now expanded to the Arctic, Latin America, South Pacific and other areas
 - With enhanced trade and investment, and
 - Complemented with soft infrastructure – education, culture, skills training, legal exchanges, etc.
- Xi Jinping has characterized BRI in various speeches as building:
 - Win-win cooperation promoting common development and prosperity
 - A community of shared interests, destiny and responsibility
 - Taking social responsibility to protect local biodiversity, eco-environment
 - A “Green Belt and Road”
 - Imbed ecological civilization, eco-environmental protection and green development in entire BRI
 - Foster green, low-carbon infrastructure construction and operation

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BRI Achievements

- Foreign Minister Wang Yi , July 3, 2018: “BRI has become the largest platform for international cooperation and the most popular public good in the world”
- In first five years (2013-18):
 - Over 100 countries and international organizations signed on to BRI;
 - 82 economic cooperation zones set up in BRI participating countries;
 - Promoting industrial capacity cooperation, connectivity and building economic corridors;
 - China’s goods trade with BRI countries over \$5 trillion; direct investment in BRI countries of \$80 billion, creating more than 240,000 local jobs; 81 educational institutes and 35 cultural centers

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BRI Criticisms

- But BRI has engendered much criticism of China:
 - BRI as strategy to align BRI countries’ interests with its own, gain political, strategic foothold in strategic locations, spread its own standards (“new colonialism”)
 - Export its industrial surpluses and outdated (including polluting) technologies, as well as excess labor services
 - Often inflating project value, fostering corruption and leaving countries struggling to repay their debts (“debt-trap diplomacy”)
 - Aided by closed and opaque project bidding and implementation with little local inputs

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BRI Governance Concerns

- BRI's implementation and problems encountered along Belt and Road raise concerns regarding governance, often voiced internationally:
 - Lack of open and competitive procurement process
 - General lack of transparency about BRI, processes, results
 - Fiscal sustainability and corruption issues (economic governance) due to "predatory lending"
 - Ignoring Chinese and internationally-accepted environmental and social standards (environmental governance)
 - Local opposition, often driven by lack of local participation and voice

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BRI Governance Challenges

- Xi Jinping promotes *global governance* under BRI with "equal consultation, cooperation, joint contribution, shared benefits between countries"
 - Building a "community of shared future for mankind"
 - All good principles, but involve primarily *state-to-state* relations
- Good infrastructure governance must involve transparency and collaboration, not only with governments, but also with businesses and, importantly, *impacted communities*
- As China has learned in its own domestic development, infrastructure investment is complex
- Poor governance is a major reason why infrastructure projects often fail to meet timeframe, budget and service delivery and may be cancelled altogether – as has happened domestically and overseas

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Good Infrastructure Governance; Open Government Procurement

- Some studies indicate 60-80% or more of China-funded overseas projects have gone to Chinese companies
- Affording *open procurement process* that gives recipient country and other non-Chinese companies chance to participate would:
 - Enhance competition to result in better, more cost-effective projects
 - Further increase local and international support for BRI
- China has sophisticated government procurement and competitive tender system for construction projects, with contracts publicly available, for domestic purposes
 - However, not always open to foreign competition
 - Draft Foreign Investment Law promises national treatment in procurement opportunities of both companies and their goods

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Good Infrastructure Governance: Transparency

- *Transparency and information disclosure* also critical for successful project development
 - Builds trust within impacted community as well as with recipient government and business community
 - Helps evaluate financial risks and benefits, curtail corruption
 - Helps ensure environmental and social sustainability, which directly impacts local populations
- Greater transparency would help ensure BRI is truly contributing public goods and benefitting host countries, while enhancing China's reputation
- BRI may well be “best-known, least-understood foreign policy effort underway” (*CSIS Jonathan Hillman*)
 - Lack of information on government-to-government MOUs, BRI project information and procedures, Chinese lending and its terms
 - No detailed, centralized official Chinese BRI database
 - Indeed, not even clear what is a “BRI country” or “BRI project”

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Good Infrastructure Governance: Transparency

- China has nationwide **information access** statute effective 2008 making government budget, environmental, licensing, major construction project, government contracts and other government-held information publicly available
- Government hosts online corporate information, investment, public-private partnership, natural resources and similar open databases
 - But no similar open, detailed BRI database
 - Little foreign loan information made public
 - Foreign aid information treated as state secret
- Current laws and policies do not extend information disclosure requirements overseas
 - December 2017 State Council directive to enhance transparency of major project approvals and implementation *expressly excludes* overseas investment and foreign aid projects from its extensive information disclosure requirements

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Good Infrastructure Governance: Environmental Transparency

- China requires disclosure of **environmental information** proactively and on request
 - Environmental authority has special open environmental information (OEI) rules implemented since 2008
 - Require OEI disclosure by government *and by polluting companies*
 - Environmental Protection Law (EPL) revised in 2014 added chapter on information access and public participation
 - Recognizes right of public to access OEI in accordance with law and to participate in and oversee environmental protection
 - Imposes duty on authorities to disclose OEI, including full text of environmental impact reports, and to improve public engagement procedures
 - Establishes right of qualified social organizations to bring public interest lawsuits against pollution and ecological damage

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Good Infrastructure Governance: Public Participation

- While studies and experience show good projects may fail without well-managed local consultation, conversely effective public participation by impacted communities:
 - Facilitates provision of valuable data and local experience
 - Enhances legitimacy of project
 - Fosters sense of shared ownership
- China has laws and regulations requiring public participation in lawmaking, rulemaking, decision-making, including on major projects
 - Minimum 30-day notice-and-comment procedure for most laws and regulations
 - Public participation in decisions involving public's vital interests or having major impact on rights and obligations is required in many localities and under draft State Council procedures for major project decision-making
 - Methods must be convenient for the public, including written comment submission, hearings, workshops, surveys and investigations – but not yet at national level

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Good Infrastructure Governance: Environmental Public Participation

- Failures to inform and consult residents about major environmental projects like power, chemical, waste treatment plants in advance of decision-making are a major cause of large-scale protests in China
- 2014 EPL grants right to participate in and oversee environmental protection, requires government to improve public participation procedures
- Environmental Impact Assessment Law specifically requires public participation in EIAs for projects with major environmental impacts
- Revised Measures on Public Participation in EIAs specify minimum 10 business days' comment period, require newspaper publication
 - Construction companies must hold public hearings if public has clear concerns about environmental impact of a project
- Implementing legal requirements difficult, but they reflect high-level recognition that public participation in environmental matters is critical

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Evolving Chinese Foreign Economic Cooperation Regulation

- China's overseas business activities of course pre-date BRI, preceded by a 1999 "going out" strategy promoted by the Chinese Communist Party
- Chinese central agencies have issued many regulations and policies governing conduct of and reporting by state-owned (SOE) and private Chinese enterprises in overseas project contracting and investment activities
 - Most more recent measures expressly apply to BRI projects
 - But no law or legal framework devoted to BRI
 - Multitude of policy documents relating specifically to BRI

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Evolving Chinese Foreign Economic Cooperation Regulation

- General principles increasingly require Chinese companies to:
 - Pay attention to financial, environmental, social, integrity and other risk factors;
 - Utilize Chinese and host country legal, tax and other professional consultants;
 - Comply not only with local laws and regulations, but also more recently:
 - Chinese law and regulations
 - international treaties and conventions,
 - United Nations resolutions
 - industry best practices

Especially where relevant local legal requirements are underdeveloped

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Evolving Chinese Foreign Economic Cooperation Regulation: Environmental and Social Factors

- **2008 State Council Foreign Contracting Regulations**
 - Foreign project contractor to abide by local law where construction project located, respect local customs and habits, protect ecological environment and promote the local economic and social development

- **2014 Ministry of Commerce (MOFCOM) Overseas Investment Measures**
 - Chinese companies must require their overseas invested enterprises to be law-abiding, respect the local customs, honor social responsibilities, do a good job of environmental protection, labor protection, etc.

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Evolving Chinese Foreign Economic Cooperation Regulation: Environmental Factors

- **2013 MOFCOM-Ministry of Environmental Protection (MEP) Guide on Environmental Protection in Foreign Investment and Cooperation**
 - Follow local law on environmental protection, encourage publishing environmental information and dialogue with community and social groups on social responsibility and environmental impacts, per local law

- **2015 MOFCOM Notice on Enhancing Environmental Protection Work of Foreign Investment and Cooperation Enterprises**
 - Strengthens guidance to overseas companies on:
 - Environmental protection measures and compliance;
 - Communicating with local governments, communities, NGOs to learn concerns;
 - Adopting environmental protection standards of international organizations or multilateral agencies where no local law, and environmental protection measures conducive to ecological development of recipient countries;
 - Threaten to punish non-compliance with host country environmental protection laws

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Evolving Chinese Foreign Economic Cooperation Regulation: Environmental and Social Factors

- **2017 National Development Reform Commission (NDRC), MOFCOM, People’s Bank of China (PBOC) overseas investment code of conduct**
 - Emphasizes fulfilling social responsibilities, including information disclosure and communication with public as well as government
 - Emphasizes environmental protection, specifically requires companies to conduct *environmental impact assessments*
 - Prohibits bribing officials, unfair competition
- **2018 NDRC, MOFCOM, PBOC, Ministry of Foreign Affairs (MFA), etc. overseas operations corporate compliance guidelines**
 - Specifies compliance with environmental protection regulations, as well as labor rights, anti-bribery measures, etc.
- Both documents call for following relevant international and multilateral requirements and practices, professional ethics, codes of conduct; and preventing and controlling risks

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Evolving Chinese Foreign Economic Cooperation Regulation: Environmental and Social Factors

- “Green finance” policies from bank regulator and individual banks apply to policy as well as commercial banks:
 - Help control **environmental and social risks (ESR)** and support transformation of economic growth mode
- 2012 Green Credit Guidelines of bank regulator require banks to
 - Strengthen ESR management for overseas projects and ensure project compliance with local law on environmental protection, land, health, safety, etc.
 - Commit publicly to follow appropriate international practices or international norms relating to overseas projects
- February 2016 Asia Infrastructure Investment Bank (AIIB) Environmental and Social Framework: making social and environmental sustainability integral part of routine decision-making

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Evolving Chinese Foreign Economic Cooperation Regulation: Environmental and Social Factors

- **Guidance on Promoting Green Belt and Road**, issued by NDRC, MEP, MFA and MOFCOM (2017)
 - Urges companies to:
 - observe international regulations on economy and law as well as laws, regulations, policies and standards of host countries on eco-environment protection
 - Attach great importance to local residents appeals on environment protection
 - Commits China to:
 - Support environmental NGOs to build partnerships for advancing environmental protection in BRI countries
 - Share environmental information
 - Formulate relevant standards and codes for environmental protection

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Evolving Chinese Foreign Economic Cooperation Regulation: Environmental and Social Factors

MEP **Belt and Road Ecological and Environmental Cooperation Plan** (2017) calls generally for:

- Diverse participation of business and society, with government guidance
 - Whole society to actively participate in environmental governance, with the business sector bearing main responsibility, market playing due role
- Building environmental information sharing platforms with big data for eco-environmental protection
- Facilitating disclosure of corporate environmental information
- Advocating companies communicate with stakeholders on environmental protection matters in timely manner, form harmonious social atmosphere
- Encouraging exchange and international cooperation of environmental NGOs and think tanks
- Encouraging “green corporate behavior,” industry associations to formulate codes of conduct on eco-environmental behavior for overseas investment

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Evolving Chinese Foreign Economic Cooperation Regulation: Enforcement?

- Strengthened **reporting requirements for overseas projects** being implemented by NDRC, Ministry of Finance and MOFCOM
- 2015 MOFCOM guidance on enhancing environment protection work in overseas activities promised to punish noncompliance by Chinese enterprises with host country environmental protection laws and regulations “in accordance with laws and regulations”
- China also introduced dispute resolution services targeted at overseas economic activity, including under BRI
 - New international commercial “courts” within Supreme People’s Court to hear major cross-border disputes, eventually over Internet
 - Mediation and arbitration services available
- However, most overseas requirements relating to environmental protection framed in voluntary terms, difficult to enforce in China unless specified in project contracts

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Evolving Chinese Foreign Economic Cooperation Regulation: Enforcement?

- Encouraged overseas corporate good behavior now backed by **social credit blacklist** system with publicity and joint punishment by 28 Communist Party and State authorities of specified “seriously dishonest conduct” in foreign economic cooperation adopted in October 2017
 - Covers fraud, unfair competition, non-compliance with relevant law or regulation of China or the cooperative country, international convention, or United Nations resolution
 - Relating to overseas investment and foreign contracting, finance and trade
 - Specifically covers conduct relating to BRI or that has a seriously adverse impact on implementing BRI
 - Consequences can include debarment from participating in domestic and overseas projects, negative impacts on financing, government procurement, public-private partnership and other corporate and professional endeavors
- Not expressly related to environmental non-compliance; nor does 2016 environmental sector social credit MOU apply to overseas activities

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Suggestions to Enhance Good Infrastructure Governance Overseas

- Foregoing indicates China has been on steep learning curve and seeks to better ensure mutually beneficial results for China and recipient countries
- Further infrastructure governance improvements might include:

Open and Competitive Government Procurement

- Xi in April 2018 at Bo'ao Forum indicated China would accelerate China WTO Government Procurement Agreement accession process
- In meantime make BRI procurement process follow Chinese law
 - Require open, competitive bidding under Chinese policy bank financing, as required, for example, by China-initiated AIIB
 - Make BRI project opportunities more transparent and easily accessible internationally and in host countries
 - E-procurement

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Suggestions to Enhance Good Infrastructure Governance Overseas

- Require project, contract and environmental transparency for BRI projects, with at minimum same standards as for domestic procurement, infrastructure investment and contracting
- Require public participation/local consultation in environmental impact assessments and ongoing transparency and local consultation for BRI projects, at minimum in same manner as for domestic projects
- Consider AIIB (and other multi-lateral development bank) environmental and social policy requirements, including for information disclosure and meaningful consultation requirements, as guides for improvement

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Concluding Thoughts

- BRI has evolved into Xi Jinping’s signature foreign policy program, enshrined in charter of Chinese Communist Party in October 2017
 - BRI now dominates discourse about Chinese overseas economic behavior and contributions
- But negative results around the world, including unsustainable debt, corruption, damage to environment and adverse social impacts, are putting BRI and China’s reputation at risk
- To bring the BRI under control, some “branding” seems necessary, with:
 - More organized, centralized set of requirements to qualify as a “BRI” endeavor
 - Specific consequences for failing to comply in implementation, to drive home importance to participants of compliance, particularly on environmental protection, transparency, anti-corruption
 - Matrix to evaluate success of projects and BRI

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Concluding Thoughts

- Drawing on, applying China’s own developmental experience and regulations, as well as international standards, to make BRI projects more open, transparent, green, clean and inclusive of local impacted communities would help build trust and ensure project success
- Moreover, China could help lead global efforts to develop global good infrastructure governance standards that seek to harmonize international, regional and country-specific standards and best practices

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Concluding Thoughts

- To summarize, BRI 2.0 “branding” should include requirements for:
 - Open and competitive project procurement
 - Transparency, including disclosure of bidding, project, financing and environmental information on an early and continuous basis
 - Meaningful and informed local participation and engagement on environmental impact assessments and other project matters to address concerns
 - Success evaluation matrix
- BRI promises to deliver much-needed physical and soft infrastructure to foster connectivity and economic development
- Introducing and building effective, green and clean governance mechanisms – green governance infrastructure – along the Belt and Road will help ensure BRI’s sustainability and contribution to common development, a genuine “win-win” situation for all

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