

Study on the Rule of International Commercial Laws of the Belt and Road Initiative — From the Perspective of the Supply of Institutional Public Goods

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Abstract: Faced with the fragmentation of international commercial rules and disorderly competition in the supply of relevant institutions, the theory of public goods supply provides a new idea for promoting legal innovation within the Belt and Road Initiative. It requires that the principle of “co-construction” be followed; it also resists exclusive and malicious competition in the realization of product offerings. In order to solve the problems of biased use of public goods, insufficient income and worsening competition, and escalate the ability of the rules of international commercial laws of the Belt and Road Initiative, it is necessary to cooperate with international organizations, such as the UN, UNIDROIT, and ICC, to continuously expand the application of International Uniform Commercial Law in China, and contribute institutional public products with co-construction characteristics. Specifically, we could clarify the functions of the Belt and Road Initiative’s soft law, focus on financial integration and infrastructure positioning, enrich and innovate the provisions of the international commercial legal system, and further optimize the Belt and Road Initiative’s commercial dispute settlement mechanism to highlight the advantages of the Belt and Road Initiative in supplying public goods.

Keywords: The Belt and Road Initiative (BRI), International Commercial Laws, Co-construction, International Public Goods

I. INTRODUCTION

Ever since the proposal of the Belt and Road Initiative (BRI), China has achieved various bilateral and multilateral outcomes through “policy coordination” with countries along the Belt and Road route. However, the task of consistently strengthening the establishment of international uniform commercial rules remains challenging, especially in the areas of modifying critical industrial

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chains policies and creating a new international business environment. In particular, against the background of the growing unilateralism and protectionism which are drastically changing the commercial rules internationally, it is vital for China to offer innovative solutions for the reform of International Commercial Law by answering the following questions: how to construct legal frameworks to fit the BRI objectives, and how to provide more inclusive institutional international public goods for the global community? Public goods can be categorized into different types, such as physical, institutional, and conceptual types. Institutional public goods mainly refer to international rules that ensure, maintain, and expand trade and the division of labor between countries.¹ Studying this type of public goods in the context of legal regimes for international trade requires the traits of traditional public goods to be considered firstly, although they are not inherently purely non-rivalrous and non-excludable at a global level.² Therefore, this paper will start by clarifying the features of public goods to prove that international commercial laws could be regarded as international public goods, and then highlight the distinctiveness of relevant public goods. In the second part, this paper will reveal the difficulties and challenges facing the supply of such public goods over the course of the construction of the BRI commercial legal system. In the last part, it will attempt to provide recommendations for advancing the formal recognition of the BRI as a kind of public goods of international constitution and improving China's capacity in the rule of law of the International Commercial Laws.

II. QUALITATIVE ANALYSIS OF INSTITUTIONAL PUBLIC GOODS BASED ON THE INTERNATIONAL COMMERCIAL LAWS

With fiction as a distinct characteristic, institutional public goods based on international commercial laws represent a reduction from brute fact to legal fiction. Therefore, the qualitative analysis of the corresponding public goods can

1 Ma Tao and Chen Xi, Building an Inclusive Global Value Chain for the Belt and Road Initiative — From the Perspective of the Relationship between Supply and Demand of Public Goods, *World Economics and Politics*, No. 4, 2020, p. 140.

2 Shi Jingxia, The Belt and Road Initiative and International Law: An Analysis from the Perspective of the Supply of International Public Goods, *Social Sciences in China*, No. 1, 2021, p. 156.

be carried out from three perspectives, namely, concept and characteristics, basic functions, and special properties.

A. Concept and Characteristics of Institutional Public Goods Based on International Commercial Laws

At present, there is still controversy in the discussion about the concept of international public goods, which leads to some ambiguity in the definition of its connotation and extension. Some scholars do not distinguish public products from common resources, classifying fishery resources on the high seas as international public goods.³ Some scholars simply modify the scope of the concept of traditional public goods and directly define international public goods as “non-exclusive and non-rival goods whose consumer groups are distributed in different countries”.⁴ Regardless of how it is qualified, it can at least be confirmed that in the field of the rule of law of international commerce, the non-rivalrous and non-excludable attributes of public goods should be conditionally limited. International laws possess both public and private law norms,⁵ and public goods in domestic economic law and international law exhibit significant differences: firstly, non-rivalry and non-excludability are not absolute. The goods themselves may set thresholds for potential users, and existing users of these products are generally entities with transnational or foreign-related elements engaged in international commercial transactions; secondly, in the process of using public goods (applying laws), users have the freedom to use or not use them, but they still need to be bound by principles like *pacta sunt servanda* (agreements must be kept), the non-discrimination principle, etc.; thirdly, the public characteristics of the goods require not only the factual behavior of the supply of the goods but also the confirmation by the users of the goods.

Institutional public goods based on international commercial laws possess

³ Public goods can be categorized into public products and common resources based on the concept itself; the purely natural things, such as the sky and rivers, should not be included in the specific connotation of the former. See Li Hanwen, *Study on the Demand of Public Goods*, China Financial & Economic Publishing House, 2010, p. 2.

⁴ Huang He, “One Belt One Road Strategy”: From a Perspective of Public Goods, *World Economics and Politics*, No. 6, 2015, p. 140.

⁵ Booyesen Hercules, Is International Law Relinquishing its Exclusively Public Law Nature? *Tulsa Journal of Comparative & International Law*, Vol. 4, No. 4, 1997, pp. 219-232.

the characteristics of general public goods. The concept of public goods originated in the relationship between national finance and taxation,⁶ and its application is limited by specific conditions: firstly, the supply of public goods is not boundless. Public goods only function effectively within a relatively fixed spatial range, and the supply environment can affect the behavior of public goods supply; secondly, the functions of public goods work against a certain historical background, and typically only bring non-retroactive utilization effects to users; thirdly, there is a certain interdependence between the supplier and the demander of public goods. Even in the realm of domestic public goods supply, users are expected to pay for the use of public goods, albeit the actual payments may be obscured by the tax system or diluted by the social welfare system.

Furthermore, the emergence of international public goods is the result of rectification of international market failures, promotion of global social welfare, and elimination of international illegal monopolies.⁷ The theory of international public goods supply applied in the field of legal research should conform to the unique values of fairness and freedom in the rule of law, and be able to coincide with the standardization, guidance, and other functions of the law. During research on public goods under the international commercial law system, the imbalance within the development of international commerce should be considered, and the gap between “natural facts” and existing “legal fictions” should be paid attention to. Therefore, in the supply of the international commercial law system, the characteristics of international public goods are supposed to be based on the public nature. Firstly, users of public goods should not be subject to discriminatory differentiation; secondly, users of public goods should abide by the necessary “instruction manual” and cannot derogate from public laws, including public policies, etc.;⁸ thirdly, the supplier of public

6 The concept of public goods was first proposed by Lindahl in his 1919 doctoral thesis, “The Justness of Taxation”, and after the definitions of non-rivalry and non-excludability were proposed by Richard Abel Musgrave, the current mainstream concept of public goods was shaped. See Jiang Qingyong, *Research on Provision Mechanism of Public Goods*, Intellectual Property Publishing House, 2016, p. 5.

7 Similarly, some scholars believe that the determining factors for public goods are the common needs of society, and they have analyzed related issues from the perspectives of competitiveness, exclusivity, and market failure theory. See Qin Ying, On the Nature of Public Goods — A Discussion on the Limitations of Public Goods Theory, *the Economist*, No. 3, 2006, p. 79.

8 Dolinger Jacob, World Public Policy: Real International Public Policy in the Conflict of Laws, *Texas International Law Journal*, Vol. 17, No. 2, 1982, p. 167.

goods should be attentive to the variations in competitive capabilities among countries at different stages of development; fourthly, unless the legal rules that the public goods refer to are inherently inconsistent, the supplier cannot exclude the use of similar or previously valid public goods.

B. Functions of Institutional Public Goods Based on International Commercial Laws

Despite the numerous discussions surrounding the connotations of international public goods, there has been a scarcity of analysis concerning the functions of institutional public goods based on international commercial laws. In view of the considerations regarding the compatibility of Public Law with the traditional paradigm of Private International Law,⁹ this paper summarizes the functions of institutional public goods, based on international commercial laws, as follows:

Firstly, as international public goods, the international commercial law systems not only possess basic legal functions such as regulation, guidance, and prediction, but also coordinate or harmonize the commercial legislations of various countries. They provide optional tools for regulating international commercial transactions without discrimination or exclusivity. As stated in the preamble of the Principles of International Commercial Contracts (PICC), they shall be applied when the parties have agreed that their contract be governed by them. Actually, the PICC serve as an applicable law when adjusting pertinent legal relationships. Additionally, the PICC further state that they may be applied when the parties have not chosen any law to govern their contracts. Therefore, whether the parties explicitly choose to be governed by the PICC or not, their roles in interpreting or supplementing domestic laws cannot be

⁹ Steinhardt Ralph G. believes that the paradigm of private law has explained most of the international public principles, such as treaty law, state responsibility, and inheritance, from a traditional perspective. In the mid-20th century, state practice turned from a private law orientation to shared and authentic public dynamics. The division between international public law and state private law is just a traditional temporary scheme. See Steinhardt Ralph G., *The Privatization of Public International Law*, *The George Washington Journal of International Law and Economics*, Vol. 25, No. 2, 1991, pp. 526-527. Matthias Goldmann further argues that a distinction between the public and private is both desirable and feasible in times of global governance, which is beneficial to the turning of hard law and the diversified world order. See Matthias Goldmann, *A Matter of Perspective: Global Governance and the Distinction between Public and Private Authority (and Not Law)*, *Global Constitutionalism*, Vol. 5, No. 1, 2016, p. 48.

ignored. For this reason, the PICC, as important institutional public goods based on international commercial laws, are highly inclusive.

Secondly, as international public goods, international commercial law systems can make up for the failure of existing market competition rules, limit blind competitions, balance the development demands of developing countries, and promote the allocation of market resources. The relevant system of special and differential treatment granted by the WTO for developing countries can be seen as a typical example of public good that takes into account the interests of developing countries. Indeed, with regard to the scope of adjustment of legal relations, the private law norms governing international commercial transaction relations are extremely limited in their ability to regulate market competition relations. Yet, from the standpoint of legal resource supply, the significance of the principles in International Commercial Law and some mandatory rules in maintaining equilibrium among market relations cannot be denied. At the very least, certain mandatory rules in International Commercial Law serve to support vulnerable groups and foster a competitive market environment, which stems from the careful decision-making of states after balancing the interests of all business entities.

Thirdly, as international public goods, international commercial law systems can consolidate the consensus of various countries on uniform rules. International Commercial Law formed through the long-term practices of international commercial transactions. It could be obeyed and upheld by most trade entities, and recognized and accepted by most countries as well. The establishment of modern international commercial law systems is usually driven by international organizations represented by the United Nations (UN), the International Institute for the Unification of Private Law (UNIDROIT), and the International Chamber of Commerce (ICC). The legislative process involved in this endeavor is rigorous, aiming to seek the greatest common denominator of coordination and consistency of institutions of international commercial law across countries, and to pursue the unity of international commercial rules.

Furthermore, institutional public goods based on international commercial laws can also reduce users' legislative costs, improve the efficiency of contracting for commercial entities, and optimize the international business environment. However, since these functions are not exclusive to international

commercial law systems, they will not be analyzed individually.

C. Particularities of Institutional Public Goods Based on International Commercial Laws

Institutional public goods based on international commercial laws comprise various legal relationship adjustment tools, including uniform legislation by international organizations, international commercial conventions, and international dispute resolution mechanisms. Predicated on the existing practices in adjusting international commercial relationships, the particularities of institutional public goods, based on international commercial laws, can be concluded as follows:

Firstly, such public goods contain both international soft law and hard law. International Commercial Law is designed to adjust legal relations among cross-border commercial entities; thus, the peculiarities of users should be factored in when studying the uniqueness of institutional public goods based on international commercial laws. Marco Ferroni posits that the treaties signed by states supplying transnational public goods can be considered as public goods, but these treaties must be self-enforcing.¹⁰ This implies that non-self-enforcing treaties may potentially be excluded from public goods. Within the scope of international commercial laws, The Montreal Convention (Convention for the Unification of Certain Rules for International Carriage by Air) and the Agreement Concerning International Carriage of Goods by Rail (CMIC) are mandatory in contracts and are not allowed to be self-excluded by commercial entities. Instead, the United Nations Convention on Contracts for the International Sale of Goods (CISG) adopts an automatic application model, allowing parties to expressly exclude its application. Therefore, these treaties undoubtedly fall into the scope of international public goods. However, there is a question still: do commercial rules and international trade conventions, which do not possess self-enforcing characteristics and solely rely on the choice of the parties, fall into the scope of international public goods? From the perspective of respecting the autonomy of the parties, the author maintains an affirmative stance based on the reason that self-enforcing treaties usually belong to the area of hard law.

¹⁰ Marco Ferroni and Ashoka Mody, *International Public Goods*, Kluwer Academic Publishers, 2002, p. 50.

However, in the field of international commercial arbitration, the soft law that can be chosen as the applicable law also provides the non-rivalrous and non-excludable characteristics of public goods. Due to the existence of a combination of soft and hard legal measures,¹¹ one cannot simply judge whether a particular international commercial system is a public good based on the categorization of soft or hard law.

Secondly, international commercial law system-oriented public goods are often jointly built by many countries, and the legislations by international organizations directly promotes their formation. As an independent sector of international law,¹² modern international commercial law is showing a trend of international unification.¹³ Institutional public goods based on international commercial laws have been integrated into the legislation, choice of law, and judicial practices of many countries. Compared with national law, the application of International Uniform Commercial Law in domestic areas faces significantly fewer obstacles. On the one hand, relevant legal systems are directly applied by the international merchant community in contract conclusion and dispute resolution. On the other hand, relevant commercial principles and rules have been widely recognized in bilateral and multilateral legislation or treaty-making based on their multilateral characteristics.¹⁴ Though the theoretical debates on substantive norms and conflict norms in international commercial affairs have not yet been settled, the practice of UNIDROIT in promoting the formulation of uniform law instruments, principles, and rules has never stopped. It must be admitted that the legislative practice of international commercial organizations has led to the rapid spread of directly applicable international commercial rules across the globe at an unprecedented speed, and the legislations of international commercial organizations have been strongly supported by most countries.

Thirdly, institutional public goods, based on international commercial

11 Trubek David M. and Trubek Louise G., Hard and Soft Law in the Construction of Social Europe: The Role of the Open Method of Co-ordination, *European Law Journal*, No. 11, Vol. 3, 2005, p. 343.

12 Zuo Haicong, International Commercial Law Is an Independent Sector of Law — A Discussion that the Study of International Commercial Law Is an Independent Sector of Jurisprudence, *Studies in Law and Business*, No. 2, 2005, p. 36.

13 Wang Rui, *Basic Theory of Commercial Law and Special Research*, China University of Political Science and Law Press, 2017, p. 128.

14 For similar provisions, please refer to Article 1.2 of the Principles of International Commercial Contracts.

laws, possess the characteristic of stability, and their maintenance expenses are comparatively lower than those of general physical public goods. Institutional public goods based on international commercial laws are inductions and summaries of common practices in international commercial transactions. Unlike physical public goods, the performance of institutional public goods based on international commercial laws, does not deteriorate with the increased usage or extended terms once they are formed. Even if some international commercial rules or usages are updated in accordance with the newest trends, the old ones will not be obsolete and invalid immediately. The parties to international commercial contracts can still choose the previous version of the rules or usages as the governing law out of the parties' autonomy. For example, the INCOTERMS (International Rules for the Interpretation of Trade Terms) have been updated several times, and commercial entities are still able to adopt their preferred version based on the consensus of the parties. The formation of international commercial law system-oriented public goods is based on the independent development of international commercial laws. They focus on the sale, transportation, and payment of goods, and possesses a highly stable user group. From the perspective of the application of the CISG, the Case Law on UNCITRAL Texts (CLOUT) has now collected about 1,000 cases for its documents database and, in recent years, China alone has applied CISG in over 100 cases, maintaining a double-digit growth rate each year.

III. THE SUPPLY CHALLENGES OF INSTITUTIONAL PUBLIC GOODS BASED ON INTERNATIONAL COMMERCIAL LAWS

The institutional international commercial public goods face both general supply contradictions and realistic challenges caused by differences in the supply environment. From the general supply situation of legal institutional international commercial public goods, such goods face the contradictions of single supply of public goods caused by user preferences, weakening of the public welfare attributes of public goods driven by interests, and the disorderly competition of supply of similar public goods.

A. Single Supply of Public Goods Caused by User Preferences

With a view to maximizing benefits, users tend to show obvious preferences in their choice of public goods. These preferences are partly due to the scarcity of the supply of such public goods, and partly due to the high cost of the changing users' usage habits. From the perspective of changes in the supply of international commercial laws, after basically solving the general problem of the shortage of institutional tools for international commercial transactions, the quantity of the supply of such public goods is gradually leveling off. Suppliers will consider more on how to improve the existing public goods rather than creating new ones. Generally speaking, it is neither reasonable nor practical to create new legal systems simply for the sole purpose of increasing diversity of the products. However, when the related market environment changes and the usage preferences of existing public goods are no longer suitable for new commercial relationships, it is necessary to supply more diverse public goods.

Changes in the relationship between the supply and demand for public goods are a key reason for the difficulty in innovating existing international economic law rules. The relationship between the supply and demand is not always static; when consumers' awareness is awakened or the international community offers alternative goods, the new supply-demand relationship will foster advancements in both the quantity and quality of similar public goods. For one thing, emerging economies are more frequently involved in international commercial transactions, which benefits the compatibility of previous international public goods. For instance, the BRI provides essential service platforms and developmental concepts by supplying institutional and conceptual public goods in order to build value chains along its route.¹⁵ For the other, the providers of the existing international public goods lack sustainable supply capacity, and thus the risk of privatization of public goods continues to rise, resulting in a shrinking range of product end users and an amplification of the demand for pure public goods among the international business community. In fact, countries at

15 Ma Tao and Chen Xi, Building an Inclusive Global Value Chain for the Belt and Road Initiative — From the Perspective of the Relationship between Supply and Demand of Public Goods, *Social Sciences Digest*, No. 7, 2020, p. 47.

different stages of development do not have the practical contradictions between the supply and use of goods when offering institutional public goods based on international commercial laws. Conversely, establishing the supply of public goods through value-based trade will alienate the functions of public goods and pose a risk of fragmentation for international commercial systems.

Confronted with the predicament of innovating existing rules due to the bias in the use of public goods, the international public goods supply strategies launched by various countries are distinctly different, with developing countries seemingly more proactive in innovating public goods. The representative theories in the field of international economic law, namely, Jackson's institution managerialism theory, Petersmann's normative commitment theory, and Cass's trade democracy theory, can explain the concepts of international law in the US, EU, and India, while the concepts and principles in China can be summarized through the sharing responsibility theory.¹⁶ In the author's view, co-constructing the BRI as a kind of international public good, the idea proposed by China, is the most direct embodiment of the sharing responsibility theory. Therefore, based on the reality of the users' preferences for the public goods, the co-construction feature of the international commercial law systems should be maintained, the actual value of the existing multilateral public goods should be balanced, the user markets for new goods should be continuously explored, and the institutional stickiness and stock of basic users should be ensured in the process of innovating institutional public goods based on international commercial laws.

B. Weakening of the Public Welfare Attributes of Public Goods Driven by Interests

In the globalized world, public goods are largely provided by non-governmental organizations and non-state regulators.¹⁷ However, states also have the capacity to provide international public goods. In terms of the states' relativity, there are two ways to adapt to globalization and universalization: one is to advance in

16 Zuo Haicong, Strength Change, Legal Traditions, and the Evolution of Trade Policies of the United States, European Union, India, and China, *Journal of Political Science and Law*, No. 1, 2022, pp. 64-74.

17 Jean-Bernard Auby (France), *La globalisation, le droit et l'État (second edition)*, Translated by Zhang Li, China University of Political Science and Law Press, 2016, p. 174.

the form of unilateral enforcement through the extension of the hegemonic paradigm; the other is to reach a harmony in the form of plurality.¹⁸ The former may neglect the pursuit of the public welfare objective of international public goods because it is obviously contrary to the original intention of public goods construction. Though there are “1+N”, “2+N”, “3+N”, and “N+N” models for the supply of international public goods now,¹⁹ regardless of the models, they cannot be excluded and the original designer of public goods should take more responsibility in the early stages. Also, it cannot be denied that it is important for the potential builders of the public goods to participate in the co-designing of the systems.

Despite profitability is not the primary goal of the supply of international public goods, its positive external appearance has an optimistic influence on promoting states' participation in the construction of public goods. Objectively, the suppliers of international public goods have a basic assessment of the profitability of international public goods. Even though China's cost-benefit analysis regime has not yet been formed systematically²⁰ and quantifying the “cost expenditure” of institutional public goods is hard, as long as the relevant public goods contribute to expanding transactions in the market and do not have obvious negative appearances, the evaluation of their benefits should be favorable. From the perspective of transaction cost theory, it is advantageous for specific countries to provide a pre-existing international commercial legal framework in order to reduce upfront costs and facilitate optimal outcomes in the overall cost control.

When states provide international and domestic public goods, they will make judgments on the profitability of the supplied goods. For the supply of purely domestic public goods, the national financial and taxation system is a prerequisite for ensuring the supply continuity of public goods, but the supply process of this type of public goods can be seen as part of the redistribution system, so the supplier of public goods does not need to consider the relevant

18 Mihai-Derlmas-Matti (France), *Marcher Ensemble Vers un Droit Commun Mondial: L'unité et la Pluralité*, Translated by Liu Wenling and Liu Xiaoyan, Peking University Press, 2019, p. 335.

19 Ma Bin and Wang Runqi, The Belt and Road Initiative and the Restructuring of the Regional Public Goods Supply System in the Eurasian Region, *Fudan International Studies Review*, No. 1, 2018, p. 250.

20 Wang Yanming and Dai Yan, The Application and Improvement of Cost-benefit Analysis Method in Local Economic Legislation in China, *Academic Forum*, No. 6, 2019, p. 86.

revenue situation. However, as the performance of international public goods is gradually formed driven by market interests,²¹ the sovereign states will not only stop supplying international public goods, but also make decisions detrimental to other economic entities, thus undermining the existing rules for the supply of international public goods.²² Over time, the supply models based on unipolarity or hegemonic stability²³ will constantly disrupt the existing international trade order. Therefore, to avoid the distortion in the supply of international public goods, states should refrain from interfering, actively maintain market order and the public welfare nature of the goods, proactively create new models for the supply of public goods based on the existing ones,²⁴ and seek the Pareto optimality of benefits from international institutional public goods.

C. Competition in the Supply of Similar Public Goods or Quasi-public Goods

The non-rivalrous nature of public goods means that the users will not be affected by other users' behaviors, but it does not mean that there is no competition among external institutional public goods. In the market of international commercial transactions, even similar international commercial public goods may present a variety of choices. For example, users are free to choose the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, or the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, or the United Nations Convention on the Carriage of Goods by Sea when their businesses involve water transportation. However, essential international public goods possess both a public welfare nature (attracting other states to participate and maintaining the state of the group of audience) and a public nuisance nature

21 Hu Jian, The Functions of International Public Goods for the Belt and Road Initiative and the Improvement of China's Soft Power, *Social Sciences International*, No. 3, 2020, p. 6.

22 Han Liangqiu, Analysis of the Supply of International Public Goods from an Economic Perspective in the Context of the Belt and Road Initiative, *New West*, June, 2020, p. 54.

23 Liu Chuanchun and Li Yuan, The Belt and Road Initiative and the Improvement of Global Governance — An Analysis from the Perspective of Effective Supply of International Public Goods, *Journal of Socialist Theory Guide*, No. 10, 2019, p. 110.

24 Chen Hui and Wang Shuang, The Belt and Road Initiative and China's Solution for Supply of Regional Public Goods, *Fudan International Studies Review*, No. 1, 2018, pp. 181-182.

(maintaining the stability of its own profit structure).²⁵ Therefore, international public goods should also comply with the requirements of the international market transactions order itself. When the public nuisance nature of a particular international public good threatens the development interests of most members of the international community, the supply of such public goods should be restricted or improved.

The emergence of inappropriate competitive behavior in the supply of similar public goods or quasi-public goods is grounded in certain realities. First, the international market is not a sheer singular market, and there is no separate fiscal supply entity. Second, the concepts of quasi-public goods and public goods can coexist at the international level, leading to the dilution of the attributes of public goods. For instance, SWIFT, as the international financial messaging system, falls into the category of quasi-public goods, yet it is not solely non-rivalrous and non-excludable, because the supplier of SWIFT has the rights to exclude certain entities (such as Russia) from using the services. Third, international public goods are still in a state of relative scarcity and dynamic adjustments. In consideration of national security, a state's participation in the construction of institutional international public goods can help enhance its voice in international governance and avoid risks triggered by institutional information asymmetry.

Free trade owns sufficient attributes of public goods and its policies also have non-rivalrous and non-excludable features.²⁶ Therefore, the restrictions on competition of similar public goods can be justified on the basis of whether or not an exclusive usage restriction has been imposed. In the field of International Commercial Law, the typical competitive public goods in cross-border overland transportation of goods are the CMIC and the Convention concerning International Carriage of Goods by Rail (COTIF). The railway transportation rules and waybill tools formulated by the aforementioned two treaties are essentially the same at the qualitative level. Although the member states of the

25 Liu Yi, The Strategic Orientation of International Public Goods: New Theory on the Belt and Road Initiative, *Expanding Horizons*, No. 3, 2019, p. 117.

26 Gregory Shaffer, Recognizing Public Goods in WTO Dispute Settlement: Who Participates? Who Decides? The Case of TRIPs and Pharmaceutical Patent Protection, In Keith E. Maskus and Jerome H. Richman (Eds.), *International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime*, Cambridge Press, 2010, p. 887.

CMIC and the COTIF display obvious geopolitical biases because of different historical contexts, none of them preclude a member state from joining both treaties simultaneously. Therefore, if a product involved in competitive supply sets discriminatory exclusive conditions, it may lose its potential to function as a public good.

As a vital participant in the rules of International Commercial Laws, a state needs to contemplate not only whether the construction of related systems can maximize its own interests, but also the thoughts of potential competitors when constructing international public systems. From a competitive perspective, the supply of institutional public goods based on international commercial laws may face more uncertainties, namely, the consequences of resistance to “free-riding” behaviors and the reactions to realpolitik and military conflicts. Hence, guided by the motive of resisting unfair competition, during the construction of institutional public goods based on international commercial laws, the stability of goods supply should be considered, the public welfare nature should be enhanced, the public nuisance nature should be reduced, and the construction of exclusive and discriminatory quasi-public goods should be opposed.

IV. REALISTIC CHALLENGES IN CO-CONSTRUCTION OF THE INSTITUTIONAL PUBLIC GOODS BASED ON INTERNATIONAL COMMERCIAL LAWS OF THE BRI

As a commercial law system-oriented public good, in addition to the general supply contradictions, the BRI also faces many realistic challenges. Among them, internal challenges lie in the lack of sustained innovation in the construction of related public goods, while external challenges take the form of criticisms by non-participants in the BRI on the business model, transparency, etc. of the BRI.

A. Internal Challenges: Lack of Sustained Institutional Innovation

Given that the legal relationships adjusted by the international commercial systems are relatively stable, and the fundamental theory of cross-border trading is relatively mature, the space for innovation in the supply of institutional public

goods based on international commercial laws of the BRI is limited. From an internal perspective, the lack of innovation is reflected in the following aspects:

1. Unsatisfactory Connection between International Soft Law and International Hard Law

The construction of commercial law norms and systems is being advanced by the BRI through a more proactive soft law supply mode.²⁷ Compared with hard law, which serves as a formal system, soft law lacks the hard constraints guaranteed by state coercion, and instead has soft constraints that rely on voluntary compliance.²⁸ In contrast to hard law, international commercial soft law is more friendly to the suppliers of public goods. On the one hand, the threshold for entry into international soft law is relatively low, and there are fewer restrictions on the entities that formulate and apply commercial law rules, with strong inclusiveness. On the other hand, soft law is expressed in assorted forms, such as rules, guidelines, norms, codes, model laws, explanations, and guides.²⁹ But in cases where there are realistic difficulties in concluding formal commercial treaties and agreements, the soft law can be used as a transitional solution. On April 21, 2021, the Australian Minister for Foreign Affairs announced the termination of the Memorandum of Understanding and Framework Agreement of the BRI signed between China and the Victorian state government of Australia. This decision directly jeopardizes a series of commercial cooperation projects between the two countries. Therefore, international soft law should serve the signing of formal trading agreements and the expansion of regional trading partnerships, so as to gradually advance the strategy from

27 Tao Kaiyuan, a secondary justice and the deputy chief of the Supreme People's Court of China, believes that it might be considered to start with soft law and model law and begin in the areas that need coordination the most. By drawing on the experience of international organizations, such as the United Nations Commission on International Trade Law and the International Institute for the Unification of Private Law, we can jointly negotiate and establish model laws and principles for the Silk Road commercial laws. These would serve as the templates for the legislations and legal reforms in various countries, and form the foundations for further integration. See Li Wanxiang, The Supreme Court Planning to Establish a BRI International Commercial Court to Expand the Coverage of International Judicial Assistance, <https://www.yidaiyilu.gov.cn/xwzx/gnxw/29904.htm> (Last Visited on November 12, 2023).

28 Long Changhai, The Solution to Trust Dilemma: Informal Inst Supply and Soft Law Cooperation of China-Mongolia-Russia Economic Corridor Construction, *Seeking Truth*, No. 4, 2019, p. 96.

29 Wang Hui, Multi-dimensional Thoughts on the Governance of Soft Law in International Commercial Arbitration, *Chinese Yearbook of Private International Law and Comparative Law*, Vol. 23, 2018, p. 287.

bilateral arrangements to mini-multilateral arrangements and eventually towards a unified free trade zone.³⁰ In the process of advancing the innovation of commercial system-oriented public goods in the BRI, even though it's not possible to directly evaluate the BRI's predominant public goods supply model based on soft law, strengthening the connection and interaction between soft law and hard law is beneficial for expanding the functions of related goods.

2. Insufficient Practice in the Supply of Standardized and Demonstrative Public Goods

The charm of the public goods theory lies in the fact that it can provide undifferentiated services for consumers in related fields without hindrance, while ensuring maximum convenience and transparency. As international commercial law systems mature, the role of relevant standardized or demonstrative public goods in the market also becomes more prominent. The Conditions of Contract for Construction, the PICC, and the International Standard Demand Guarantee Practice (ISDGP) for URDG 758 are typical public goods shaped in their respective fields. After undergoing legal integration at the formulation stage, model laws can avoid or resolve legal conflicts to a certain degree and are easy to be accepted by sovereign states and other entities,³¹ and their roles in the construction of the BRI are widely supported. However, it is worth noting that in the realm of institutional construction, there remains a scarcity of instances where standardized and demonstrative legislations for the institutional innovation of the BRI are co-constructed. Moreover, the provisions of the international commercial law system-oriented public goods are predominantly carried out by international commercial organizations. There are significant differences among the levels of development of countries along the BRI route; so, at the current stage, promoting the application of existing international commercial law system-oriented public goods is more cost-effective than pursuing innovation in the supply of related public goods. This could be the reason why the BRI is not sufficiently practiced in providing standardized and exemplary public goods.

30 Wang Guiguo, Legal Challenges to the Belt and Road Initiative, *Journal of International and Comparative Law*, Vol. 4, No. 2, 2017, p. 327.

31 Jiang Xinmiao and Zhu Yan, The Legal Supply in the "Belt and Road" Establishment, *Journal of Northwest University (Philosophy and Social Sciences Edition)*, No. 3, 2018, p. 86.

3. *Insufficient Continual Openness of Related Dispute Resolution Mechanisms*

Constructing the BRI's dispute resolution mechanism is an important component of China's efforts to enhance its capacity to supply institutional public goods based on international commercial laws. Through the establishment of the China International Commercial Court (CICC), China offers a "one-stop" dispute solution mechanism for the BRI. However, the stringent jurisdictional requirements and conservative institutional design of the CICC do not align with its needs, combining litigation and arbitration, thus rendering it less appealing to foreign investors who want to resolve disputes.³² The Supreme People's Court of the PRC specified the scope of jurisdiction for cases accepted by the CICC in Article 2 of the Provisions Concerning the Establishment of the China International Commercial Court, requiring a connection between the chosen courts and the cases, which is inconsistent with the functional positioning of the CICC in resolving the BRI disputes.³³ The threshold for jurisdiction of cases has directly excluded quite a lot of international commercial disputes from eligibility for jurisdiction, which may undermine the CICC's status as an institutional public good based on international commercial laws. The approach for the governance of state centrism³⁴ diverges largely from the idea of the co-construction of the BRI. The lack of openness in the related dispute resolution mechanisms may stem from their limited range of services, the weak openness in the later stages of the co-construction of the public goods. Therefore, it is imperative to clarify the functional position of the relevant dispute resolution mechanisms to ensure their purity as institutional public goods based on international commercial laws.

B. External Challenge: Malicious Competition from Non-participants

In existing world economic governance platforms, international organizations play an irreplaceable role in associated institutional construction. It could even

32 Julien Chaisse and Xu Qian, *Conservative Innovation: The Ambiguities of the China International Commercial Court*, *American Journal of International Law*, Vol. 115, 2021, p. 17.

33 Cai Wei, *International Commercial Court: Institutional Comparison, Rule Conflict and Path Construction*, *Global Law Review*, No. 5, 2018, p. 186.

34 Jon Pierre (Sweden) and B. Guy Peters (USA), *Governance, Politics, and the State*, Translated by Tang Xianxing and Ma Ting, Truth & Wisdom Press, 2019, p. 166.

be said that their main function is to provide public goods for states, and when they are unable to do so, they might suffer opposition.³⁵ Although the goal of the co-construction of institutional public goods based on international commercial laws of the BRI is to provide non-rivalrous and non-excludable services to all countries along the route, as previously analyzed, competition may still exist among suppliers of international public goods. For example, the US B3W policy is often viewed as an alternative to the BRI. The BRI is currently being deliberately smeared by the external competitors, which manifests mainly in two aspects, namely, the concoction of state capitalism and the construction of debt traps.

1. Fabrication of Double Standards for State Capitalism

During the construction of the BRI, some countries and scholars have deemed that China is practicing state capitalism and have criticized China's development model. They believe that Chinese state capitalism has been treated as essentially synonymous with state-owned enterprises³⁶ and suggest that the Chinese government has granted state-owned enterprises fiscal and regulatory advantages,³⁷ thus disrupting the normal order of international market competitions. In effect, while state capitalism serves as an important tool for latecomer countries to catch up and surpass developed countries and possesses the versatility of general tools,³⁸ it presents a natural conflict with the laissez-faire capitalism when more emerging developing countries use state capital to participate in international market competition. China's socialist market economy system is not related to alleged state capitalism at all. The fabrication of double standards for state capitalism is actually an attempt to negate the public good attributes of the BRI from the outside. The differences in the concepts of state development are evolving into a competition over the correctness of the development of state-owned enterprises, with developing countries paying more

35 Li Zenggang, Public Goods and International Organizations — The Evolution of Functions of the World Bank and International Monetary Fund as an Example, *Economic Review*, No. 3, 2005, p. 86.

36 Milhaupt Curtis J. and Zheng Wentong, Beyond Ownership: State Capitalism and the Chinese Firm, *Georgetown Law Journal*, Vol. 103, No. 3, 2015, p. 665.

37 Du Ming, China's State Capitalism and World Trade Law, *International and Comparative Law Quarterly*, Vol. 63, No. 2, 2014, p. 448.

38 Hu Leming, Liu Zhiming and Zhang Jiangang, State-capitalism and the Chinese Model, *Economic Research Journal*, No. 11, 2009, p. 36.

attention to the protection of state-owned enterprise investors,³⁹ while some countries that defend liberal markets emphasize more on investment security reviews. For example, the United States adopts various policy measures to restrict investments by Chinese state-owned enterprises within its borders.⁴⁰ Some non-participants in the BRI deliberately bind together the theories of the State Capitalism Threat and the China Threat. This is an intentional attempt to prevent enterprises (especially the Chinese state-owned enterprises) along the route from entering the international commercial competition market and to eliminate the diversified market economy system. Consequently, the construction of institutional public goods based on international commercial laws will inevitably be subject to the arrangements of the single market competition system.

2. Propagation of Debt Trap

The debt trap theory surrounding the BRI originated in India⁴¹ and has gradually evolved into an available tool for political confrontation through the deliberate exaggeration of US officials and scholars. Proponents of the debt trap theory believe that China is providing huge loans to developing countries through the BRI and asking the debtor states to use strategic assets as the mortgage, thereby increasing the risk of default and making it extremely easy for those states to fall into a debt crisis. Objectively speaking, both the infrastructure construction and investment, as important elements of the BRI, require substantial fundings. Even in China, massive infrastructure investment has resulted in a heavy debt load.⁴² The debt trap theory of the BRI only focuses on the debt burdens of numerous low and middle-income countries, but fails to pay attention to the pre-existing realistic issues of these countries. Such judgement lacks an economic basis⁴³ and does not correspond with the desire of China to mitigate

39 Liu Hongxue, Protection of State-owned Enterprise Investors under the State Capitalism Theory, *Law Science*, No. 5, 2018, p. 15.

40 Tu Xinquan and Zhou Jinkai, The Influence of the USA National Security Review of Foreign Merger and Acquisition towards State-owned Enterprises of China and the Related Suggestions, *Journal of Tsinghua University (Philosophy and Social Sciences)*, No. 5, 2016, p. 74.

41 Yang Siling and Gao Huiping, "Debt Trap Theory": India's Logic of Power Politics and Implications, *South Asian Studies*, No. 1, 2019, p. 55.

42 Sheng Jin, The "One Belt, One Road" Initiative as Regional Public Good: Opportunities and Risks, *Oregon Review of International Law*, Vol. 21, 2020, p. 77.

43 Zhong Feiteng and Zhang Shuai, Regional Competition, Election Politics, and BRI Debt Sustainability — An Analysis of the "Debt Trap Diplomacy" Allegation, *Foreign Affairs Review*, No. 1, 2020, p. 20.

debt risks in these countries. In 2019, the Ministry of Finance of China released the Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative. This Framework was designed to conduct a debt sustainability analysis and assessment of relevant countries, aiming to manage their debt risks by type, and use the classification as a significant reference for loan decisions based on the assessment results. Although the debt crises faced by some countries along the BRI route are the results of a combination of factors, including Western quantitative easing and tightening of global liquidity,⁴⁴ some Western countries persistently use this misconception as a diplomatic tool to fundamentally weaken the extensive nature of the BRI public services. In turn, from the perspective of shaping international commercial law system-oriented public goods, the concoction of the debt trap theory will directly affect the normal functioning of commercial financing rules along the BRI route and the model laws in the infrastructure construction.

V. PROMOTION OF THE RULE OF INTERNATIONAL COMMERCIAL LAWS OF THE BRI

The co-construction of the BRI commercial law system-oriented public goods requires addressing both the inherent contradictions of public goods and the internal and external challenges that arise during the construction of the BRI as a global public good. To deal with the simplification of supply and the insufficient public welfare nature of public goods, it is worth considering strengthening the coordinated development of international soft law and international hard law. Additionally, efforts should be made to enrich and innovate the supply of international commercial law systems. To resolve the disorder of external competition in public goods, it is necessary to adhere to the diversity of public goods supply, optimize the BRI international commercial dispute resolution mechanism, and highlight the external competitive advantages of the international commercial law system-oriented public goods.

A. Clarifying the Functional Position of the BRI Commercial Soft Law

The flexibility and soft constraints of international commercial soft law are

⁴⁴ Xu Shaomin and Li Jiang, The Emergence and Fallacy of “China’s Debt-trap Diplomacy” Narrative, *China International Studies*. Vol. 81, 2020, pp. 69-84.

inherently similar to the non-rivalrous and non-excludable traits of public goods. Therefore, promoting the role of international soft law in the co-construction of the BRI commercial public goods is of positive significance in enhancing the operational feasibility of the BRI.⁴⁵ In the process of clarifying the functional position of international commercial soft law, the first thing that should be done is to distinguish the varying strengths of non-formal agreements, self-implementing formal agreements, general formal international organizations, and supranational organizations in restraining the opportunistic behavior of contracting states. From the perspective of the spectrum of institutionalization in international governance structures, the higher the level of institutionalization and the stronger the ability to deal with post-event opportunistic behavior, the lower the cost of governance between countries will be.⁴⁶

In the early stages of the construction of the BRI, promoting the construction of soft law is necessary based on the need for platform expansion. However, in the long term, in order to promote the diversification of the supply of international commercial law system-oriented public goods, it is necessary to ensure the co-development of soft codified commercial laws and hard codified commercial laws, to facilitate the transformation of soft law rules to hard law rules, and to promote the synergy between the bilateral and multilateral free trade rules.⁴⁷ Specifically, three methods can be considered. The first method is to work with the states along the BRI route to promote the update of the existing international commercial soft laws. For example, the evolution from the Basel I Accords to the Basel III Accords demonstrates more stringent provisions that bind its members under the updated terms. It can be said that there is a possibility for international soft law to be transformed into international hard law. When there are difficulties in negotiating or concluding conventions, agreements, or treaties, promoting the update of international commercial soft

45 Michael M. Du, China's "One Belt, One Road" Initiative: Context, Focus, Institutions, and Implications, *Chinese Journal of Global Governance*, Vol. 2, No. 1, 2016, pp. 30-43.

46 Tian Ye, *Institutional Choice in International Relations — From a Transaction Cost Perspective*, Shanghai People's Publishing House, 2018, p. 125.

47 Zheng Dongchao and Zhang Quan, The BRI Providing Four Major Public Goods for the World, *Contemporary World*, No. 5, 2017, p. 41.

law documents and gradually adding more binding rules can serve as a beneficial attempt at advancing the diversification of international commercial laws. The second method is to consider providing temporary hybrid public goods (i. e., goods that do not possess both non-rivalry and non-excludability at the same time) for countries along the BRI route. In some less developed countries, efforts can be made to promote exemplary international commercial contract laws, carry out simple arbitration system trials, jointly establish the mechanisms for interpreting cross-border commercial transaction rules, and relax the application restrictions of principles such as risk compensation and good faith. The third method is to affirm the application status of uniform international commercial law as the proper law, and actively promote the national judicial support of some mature uniform international commercial rules. Due to the continuous expansion of the scope of uniform law, some systems related to the application of uniform law will appear in private international law, such as the interpretation of uniform law, and the reservation system of uniform law.⁴⁸ Therefore, it is worth considering the establishment of a judicial cooperation mechanism to ensure consistent international commercial laws along the BRI route. Additionally, there should be an active exploration of a unified approach to applying exemplary international commercial soft laws.

B. Enriching and Innovating the Supply of Institutions of International Commercial Laws

Innovations in institutions of international commercial laws play a positive role in improving the efficiency and safety of commercial transactions. Specifically, promoting the construction of international standard laws and model laws contributes to shaping institutional public goods based on international commercial laws with BRI characteristics. To enrich and innovate the supply of institutions of international commercial laws, the following three measures can be considered:

Firstly, it is beneficial to refer to the *Fédération Internationale Des*

⁴⁸ Li Shuangyuan and Xu Jianguo, *The Theoretical Construction of New International Civil and Commercial Order — Reorientation and Theoretical Transformation of Private International Law*, Wuhan University Press, 2016, p. 86.

Ingénieurs Conseils (FIDIC) conditions of contract to establish the lightweight FIDIC conditions of contract for developing countries and clarify the responsibility allocation among parties at the pre-launch financing phase, the construction phase, and the phase of operations and maintenance. The legal challenges in the practical implementation of construction contracts under the BRI often revolve around issues of jurisdiction, contract validity, and payment settlement,⁴⁹ and the types of cases predominantly involve disputes related to sub-contractors in construction and labor disputes. Some issues mentioned above are technical and legal challenges, while others fall into the category of high-incidence risks in developing countries. Given the widespread use of the FIDIC conditions of construction contracts in the relevant fields, promoting similar standardization and demonstration can start with the amendment of China's Construction Contract (model text) to graft the content of the domestic law clauses into the demonstrative contracts.

Secondly, it is essential to lower the usage threshold for financing tools and enhance the transparency of financial regulation and collaboration. The public nature of the supply of institutional public goods based on international commercial laws requires that the acquisition and usage of the goods should not be burdened with extra restrictions. This concept can also be applied to the specific process of designing international financing systems. In the process of improving the reliability of financing tools, the Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative can be further supported to play a more significant role in the countries along the route, and promote the debt regulation cooperation among those countries.

Thirdly, it is necessary to perfect the assessment of supply capacity in the construction of institutional public goods based on international commercial laws.⁵⁰ Although the public welfare nature of the institutional public goods based on international commercial laws determines whether the suppliers can

49 Pan Junfeng, Study on Difficult Issues in the Trial of International Construction Engineering Cases against the Belt and Road Background, *Journal of Law Application*, No. 9, 2018, pp. 85-87.

50 Yang Jian and Zheng Yingqin, The Clarity of Property Rights and the Provision of Public Goods in the "Belt and Road Initiative": The Combination Modes of Pure Public Goods and Shared Goods, *Pacific Journal*, No. 8, 2019, p. 45.

benefit from institutional monopolies, the institutional evaluation methods for Sociological Jurisprudence and Jurisprudence of Interests offer initial approaches to understanding the supply capacity of the institutional public goods. On the one hand, assessing the effectiveness of institutional construction is contingent upon the interconnected interests of domestic merchants. Therefore, the evaluation of international commercial law system-oriented public goods can be completed through the profit measurement of related business entities or the tax statistics of corresponding national projects. On the other hand, evaluations should be conducted from the perspective of the sustainability of institutional operation, taking into account specific factors such as the frequency of selection for application, the reflection of the commercial laws' value, and the economic benefit output of the international community.

C. Optimizing the Operation of Corresponding International Commercial Dispute Resolution Mechanisms

The co-construction of the BRI's commercial dispute resolution mechanisms is a basic requirement for promoting the construction of institutional public goods based on international commercial laws. Despite several institutional innovations and accumulated experiences in handling international commercial disputes achieved by the CICC and the BRI's one-stop dispute resolution mechanism, the narrow provisions for jurisdiction and the limited operability of the enforcement mechanism prevent them from becoming qualified institutional public goods based on international commercial laws. Therefore, the operation of the BRI commercial dispute resolution mechanisms can be optimized based on the construction of institutional openness.

On one hand, it is necessary to expand the jurisdictional range of the CICC at the appropriate time, acknowledge the agreements on jurisdiction made by parties that do not have actual connections with the case but meet other requirements like the amount of the case, and consider promoting the openness of equivalent judicial resources between countries. Although the CICC is a part of the BRI's commercial dispute resolution mechanisms and institutions, the Provisions of the Supreme People's Court on Several Issues Regarding the

Establishment of the International Commercial Court also set out the functions of the CICC in serving and supporting the BRI. Yet, based on the current institutional structure and selection of judges, the CICC is not a specialized public good tailored to the BRI. National judicial resources are exclusive to the citizen, and judicial institutions do not have the right to open distinct ones to external users in an unrestricted manner. However, owing to the potential for cooperation and sharing of judicial resources between countries, consideration can be given to prioritizing the reciprocal opening of judicial resources, strengthening the characteristic functions of the CICC as a kind of international commercial public good, and engaging in judicial cooperation with the BRI's pivot states by virtue of bilateral or multilateral agreements.

On the other hand, it is necessary to emphasize the differentiated competition strategy of the one-stop diversified dispute resolution mechanism for international commercial cases, promote the co-construction of information liaison offices affiliated to the BRI's arbitration institution, and facilitate the trading entities along the BRI route. Given the presence of several international commercial dispute settlement bodies along the BRI route, to promote the one-stop diversified dispute resolution mechanisms to cater to a broader range of scenarios, it is recommended to give precedence to guiding international arbitration and mediation institutions towards the collaborative establishment of off-site information liaison organizations under the premise of respecting the market demands of commercial arbitration and mediation institutions. The emphasis should be placed on cooperation for facilitating commercial dispute procedures in developing countries along the route. Besides, efforts should be made to promote the effective implementation of the New York Convention and the Singapore Convention on Mediation in developing countries along the BRI route. Additionally, there is a need to collaborate in developing the law markets along the route, with the aim of creating a more flexible and efficient business environment for small and medium-sized enterprises (SMEs) to thrive.

D. Highlighting the Differentiated Competitive Advantage of Corresponding Public Goods

Public goods embody both the public welfare and public nuisance nature in the

international commercial transaction market. The US and India, among others, criticize the BRI's development model using the guise of debt trap diplomacy and state capitalism in order to undermine cooperation on the BRI and diminish China's influence in the supply of international public goods. The BRI, positioned as a public good, fundamentally differs from the Indo-Pacific Strategy and the US B3W policy. In the face of malicious external competition, China should return to the principles of "co-construction" and "public" inherent in its system and earnestly implement the five-pronged approach of the BRI. Specifically, the following aspects can be considered:

The first is to rely on the mutual understanding and affinity of the masses and constantly guide the merchant community to join the "governance" of the BRI's business environment. The expansion of the BRI's commercial activities holds positive significance for the co-construction of a consensus on international commercial rules. As a norm with evident attributes of private law, International Commercial Law has extremely inclusive origins. It encompasses international commercial treaties, international commercial customs, international commercial restatements, general principles of law, private law, and arbitral precedents.⁵¹ Therefore, in order to reinforce the public nature of the BRI's legal norms, priority should be given to working with developing countries to promote the construction of transparent and open commercial communities.

The second is to utilize institutional soft connectivity as a pivotal approach for promoting the role of bilateral trade agreements in the field of industrial protection in developing countries while clearly resisting exclusive institutional goods. It is necessary to promote soft institutional connectivity with multilateral international rules as a model, reconcile the development concepts of countries along the BRI route by virtue of diverse cooperation on commercial systems, pay attention to the sustainability of development and cooperation in commercial trade, and enhance the construction of relatively stable international commercial law system-oriented public goods.

The third is to implement the consensus on the Global Development Initiative and the Global Security Initiative in the field of commerce and trade, and strengthen in-depth cooperation with international organizations such as the UN,

51 Zuo Haicong, *International Business Law*, Law Press, 2013, p. 15.

UNIDROIT, and ICC. The BRI involves numerous countries with significantly different political environments, and some pivotal states can easily become public relations targets for external competitors. Therefore, for the co-construction of the BRI, a commercial public good, efforts should be based on strengthening the exchanges with uniform international commercial law legislative institutions to enhance the cohesion of international security and development.

VI. CONCLUSION

The modern law of international commerce can be traced back to the *lex mercantis* in autonomous cities along the Mediterranean coast in the Middle Ages.⁵² As time passed, the relevant legal systems achieved more beneficial progress with the assistance of modern information technology. Constructing the BRI into an international public good hinges on broadening development opportunities and improving development quality and efficiency. International commercial law system-oriented public goods are both the outcomes of the development of international commercial laws and the joint promotion of the Non-aligned Movement. In an era dominated by unilateralism and hegemonism, collaboratively advancing the construction of international commercial legal systems with attributes of international public goods bears significant meaning for maintaining an open, equal, and inclusive world order. The analysis methods of supply theory, competition theory, and transaction cost theory provide various perspectives for the study of institutional public goods, whereupon a relatively unified conclusion can be drawn: even if some institutional public goods based on international commercial laws face the risk of privatization, their vitality remains robust. The construction of soft law for the BRI is creating more development opportunities and consolidating development consensus. In the report of the 20th National Congress of the Communist Party of China, the goal of constructing the BRI as an international public good was put forward, and the efforts for advancing the construction of the related legal system was made. Promoting a phased and prioritized transition from soft law and model law to bilateral and multilateral rules is a long-term strategy for institutional construction. Utilizing and properly developing uniform international

52 Zhou Liming, *International Business Law: Theory and Practice*, Peking University Press, 2014, p. 2.

commercial laws along the BRI route can play a beneficial role in resisting exclusive, discriminatory and malicious competition, and in enriching and stabilizing the multilateral economic and trade order.