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An Assessment of Environmental Policy Implications under the China-Pakistan Economic Corridor: A Perspective of Environmental Laws and Sustainable Development

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Abstract: Environmental issues know no boundaries and are recognised as a matter of regional and/or global concern, and neighbouring countries have to face shared environmental effects. Environmental laws internationally, particularly in the last thirty years, have grown significantly and have contributed to environmental protection in a variety of national, regional and international management strategies. In recent years, environmental legislation has entered into a responsible and mature phase in several non-Western countries, particularly in Asia. The present study examines the shared environmental obligations of regional or neighbouring countries using China and Pakistan as a case study and provides references from international (environmental) laws as well as states' best practices. This study adopts a well-defined analytical methodology to not only investigate the implications of environmental laws but also to define the gaps in the existing framework of environmental laws in the region and recommend appropriate grounds to systematically fill these gaps through much-needed legal cooperation before it is too late. The study provides a detailed analysis and pertinent knowledge horizons, and concludes that there is an abrupt need for China and Pakistan to revise their trade agreements and include the environment as an integral part of each mega-infrastructure activity, including the China-Pakistan Economic Corridor. Most of the potential outcomes are already known but there is little academic discussion available concerning the perspective of cross-boundary environmental laws, and the present study intends to fill this gap.

Keywords: international environmental law; environmental policy and practice; legal challenges; regional cooperation; China-Pakistan Economic Corridor; states' practices



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1. Introduction

The world is facing interconnected environmental challenges in areas including water, biodiversity, climate change, ocean acidification and agriculture [1]. There is an overwhelming reliance on natural or mineral resources through supply chain demand which necessitates taking coordinated efforts to meet environmental responsibilities [2–4], which will eventually lead to a better understanding of and valuing of natural capital as well as create a sound linkage among natural resources [5]. To this end, regional and global collaboration in environmental issues is necessary in order to develop a comprehensive and holistic environmental strategy to realise and address contemporary environmental issues as well as value the procurement of natural resources. The world's history is replete with many examples where independent states could not effectively tackle environmental challenges. However, they have been addressed with a collaborated effort, i.e., the United States (US), Mexico, and Canada have tripartite environmental understandings within their trade agreements such as the North American Free Trade Agreement (NAFTA) [6], and the European Union's collaboration with Canada in its trade agreements such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA) [7]. These examples

leave some lessons for the rest of the world. The environmental considerations envisaged in these trade agreements are playing a significant part in keeping the regional as well as global environment clean, and helps these countries refrain from contributing much to climate change due to anthropogenic activities [8].

Given the above facts, it is fair to comment that the future of any nation belongs to their economies. However, environmentalism can never be overlooked, and economic goals cannot be achieved at the cost of the environment. There is a close connection between the environment, domestic and international laws, and economic development, which require an environmental mix coupled with effective enforcement mechanisms. According to the UN Environment Programme (UNEP), it is the duty of all the member states to keep the world environmentally safe, and control or administer its economic activities in ways that refrain from spreading pollution to other states, as well [9]. Unlike the other delimitations of nature, the environment follows no boundary. Therefore, it binds a state not only to consider taking effective control over its domestic pollution but also to take appropriate measures and ensure that any activity may not have harmful effects beyond its borders [10].

Environmental law represents that branch of law which comes from certain sets of rules drawn from a range of legal sources including the torts of negligence, nuisance, trespass, and town planning as well as environmental legislation. However, environmental law does not encompass a single distinct set of rules [11]. This study mainly focuses on transboundary pollution due to huge infrastructural developments, and on the contrary, the development of relevant environmental laws and its enforcement mechanisms. The present study particularly emphasises the environmental issues, challenges, and specific conditions in China and Pakistan. It will also make a reference to the huge infrastructural developments under the China-Pakistan Economic Corridor (CPEC) and the need for collaborative efforts to address the issues of transboundary pollution and climate change with bilateral environmental agreements to make these trade ventures more sustainable.

Environmental degradation affects not only ecosystems but also human health and economic activities, and influences national welfare a great deal. It pushes governments to devise pertinent regulations to address possible environmental effects. Environmental regulations generally weigh two elements: the benefits linked to decreased environmental impairment, and the opportunity cost of environmental mitigation [12]. It also represents national institutional and political will to demonstrate how the various departments intervene and tackle environmental issues with suitable policy implications [13]. Eventually, it becomes apparent that sustainable environmental management is followed by a condition precedent of having a sound environmental policy that involves recognising problems and designing suitable strategies and action plans to achieve particular aims and objectives. Similarly, environmental law acts as one of the most effective parameters or vehicles for administering and then achieving such goals and objectives already set in the national environmental policy [14].

The environment is a multidisciplinary notion, and the laws and regulations are the central means by which it can be implemented and effectively managed [15]. As in other areas of international law, the most important legal sources in the environmental field remain mainly in the States [16]. Nevertheless, the concept of international legal personality has expanded in recent years, which is also applicable to some international NGOs, including regional intergovernmental organisations that have the ability to contribute to the development of international (environmental) laws [17,18]. Cooperation on free trade and investment as well as economic integration have increased significantly since the 1980s in this region. Consequently, a forum of the Asia-Pacific Economic Cooperation (APEC) [19], as well as free trade agreements (FTAs) between Pakistan and China, has been established [20,21]. The trend of greater collaboration in applying or implementing international environmental law (IEL) has also shown the expansion of national, sub-regional and regional legal systems. For instance, the Association of Southeast Asian Nations (ASEAN) created an institutional framework for cooperation in environmental matters, and is a

body of representatives from the member countries that regularly meet; it has played an important role in the development of IEL [22]. At this point, it should be remembered that the main projects under the CPEC include transport infrastructure, energy, the proposed special economic zones (SEZ), construction of the Gwadar Port, industrial cooperation, and telecommunications, but surprisingly, environmental redesign or measures to address the resulting environmental damage by these intense development projects have not been adequately included [8,23]. It is, therefore, necessary to review or improve their environmental preferences in order to meet the future environmental challenges that could be outcomes from these projects and achieve sustainable development in the field of national, regional or IEL.

Environmental policy should be understood in terms of mitigating environmental risks without compromising development activities. However, economic development can never be attained at the cost of the environment. Moreover, national policy instruments should also meet internationally recognised environmental principles, i.e., ‘the polluter pays principle’, as well as ‘the precautionary principle’ [24]. Therefore, this study sheds light upon the narrative of supporting the best possible environmental arrangements between neighbouring countries such as China and Pakistan. To this end, this study follows the qualitative method of content analysis and provides a critical analysis on the policy gap concerning the environmental safety of the region. It appropriately explores the relationship between environmental laws and international law in Section 2 and eventually the development of regional (in the form of bilateral or multilateral treaties) as well as international environmental law. It also provides examples of regional cooperation, i.e., from the US-Canada-Mexico trade agreement where environmental concerns take an integral position. Additionally, the current study also makes some pertinent references to the combination of international (environmental) law and international trade coupled with appropriate environmental concerns. Moreover, it provides some legal challenges and grounds in Section 3 which merit binding (regional) legal cooperation in environmental issues (Section 4 provides a detailed discussion), addressing possible transboundary environmental harms, particularly referring to China and Pakistan and the whole region at large.

2. The Development of International and Regional Environmental Laws in Asia

Since the 1970s, there has been an exponential growth of IEL across the world, which is largely the result of the increased activities and sophistication of the intergovernmental organisations that have developed after the implications of the 1972 Stockholm Conference [25]. Equally, in the same period, regional environmental law regimes have emerged around the world, as part of a ‘new wave of regionalism’, which ‘extends regional cooperation to areas such as the environment as well as human rights’ [26]. In the Asia region, it is notable that Southeast Asian and Pacific Island subregions regularly send representatives to many of the major conferences of the parties of multilateral environmental treaties or agreements [27]. However, in comparing this region with, for example, the European Union [28], these regimes remain at the early stage of development. Regarding the negotiation of regional instruments and declarations, it is perhaps inevitable that the lowest common denominator of legal provisions, policies and standards are put forward in order to achieve consensus, particularly in regions where sovereignty and the principle of non-interference continue to be in play [29].

The effectiveness of regional and IEL regimes must be understood with regards to their implementation globally and regionally, but their most direct influence on environmental protection and conservation should be measured at the national level [30]. There is now broader recognition that environmental governance must be strengthened across the Asia region: “in many countries of the region, environmental regimes, as well as institutions, are still insufficient, which leads to weak enforcement of relevant laws, insufficient policy responses, and inadequate compliance with multilateral environmental agreements (MEAs)” [31]. As one hopeful sign, increased attention to the Asia-Pacific region by the

Environmental Law and Governance Division of UN Environment in recent years is likely to prove beneficial in addressing legal needs at regional and national levels across the Asia region [32].

Although it may be too early to talk about a consistent and integrated environmental law regime across the Asia region, there are indications at least at the sub-regional level that more consistency is desired and also beginning to be achieved [33]. Although regional environmental instruments have evolved significantly over the past 30 years, many are generally weak and non-binding. The reasons for this are regional political sensitivity and historical conflicts, a lack of scientific consensus, economic problems, a lack of technical competence and a lack of political will at the national level [34]. Nevertheless, in South Asia, Central Asia and Northeast Asia, after many years of slow progress, the regional inter-governmental organisations are beginning to pick up steam about the depth as well as the scope of their programmes, with more regional conventions, agreements and declarations on various aspects of environmental governance and management emerging, i.e., ASEAN.

In the same vein, China and Pakistan are going to enter into a large range of bilateral collaborations including maritime security, investments in vast energy projects as well as huge infrastructural developments in Pakistan. These investments and this bilateral cooperation are the country's largest development in its history. To this end, it will bring abrupt changes to the environment at local and regional levels. Therefore, these mega-development projects ideally require them to consider the likely environmental challenges that would seriously come from these infrastructural expansions and make all collective efforts to keep the regional environment at peace.

3. Legal Challenges in Enforcing Environmental Laws across the Borders

3.1. *Transboundary Environmental Harm and Cluster-Litigation*

The term 'cluster-litigation' refers to serial or parallel litigations of closely related or overlapping claims before multiple courts [35]. Cluster-litigation, in cases related to transboundary environmental harms, is a result of the fact that private claimants, in many such cases, may have multiple options to file a claim for reparation, in a case in which they were injured due to environmental impairment that was instigated from across the border. As one option, an aggrieved party may file a claim against a private party which has caused such harm, such as industrial emission and wastewater. On the other hand, the claim may also be brought against foreign states where from (and under whose dominion) such harm was originated, with mention to their failure to take suitable actions for its prevention. Otherwise, injured (private) parties must depend on their national courts or state to take a claim against the transgressing state to seek compensation on behalf of their nationals—this is an extensive procedure.

International organisations may also support the injured parties as a consequence of transboundary environmental harm up to a certain point, such as providing loans. For example, a complaint signed by over 39,000 people was filed with the Ombudsman's office, a government appeal mechanism for the Multilateral Investment Guarantee Agency (MIGA) and the International Finance Corporation (IFC) which allegedly provided monetary support for the mills' construction. NGOs also filed two so-called specific cases against three European-based multinational companies that were involved in the project for alleged violations of the Organisation for Economic Cooperation and Development (OECD) guidelines for multinational companies [36]. They argued that it was against so-called equatorial principles to violate an agreement between international banks in which they promised to invest responsibly and to comply with environmental protection measures [37]. This very example depicts that environmental issues arise in the case of transboundary pollution, which merit the provision of appropriate litigation fora for the affected or aggrieved party to file its claim against a (foreign) entity; it may also be treated as a reference to treat any environmental issue concerning China-Pakistan transboundary pollution cases that are likely to arise in the future. Although the term cluster-litigation has

not been used commonly in this context, the phenomenon of multiple procedures is not new and has previously been subjected to scientific analysis [38].

3.2. Access to Domestic and Human Rights Courts

3.2.1. Domestic Courts

There are two scenarios in which the domestic courts may be an option for victims or private injured parties to file a claim: (i) either against a private party which allegedly caused the harm and was directly responsible for it, or (ii) against that state under whose jurisdiction such environmental injury was triggered. The first scenario (claims by private claimants against private entities allegedly responsible for the pollution) will be based on whether the injured party has access to the applicable national law or the domestic court. For this scenario, there would be two further options: (a) the case may be brought to the claimant's domestic court, or (b) the claimant may take the case to the domestic court of the responsible party where such harm was originated. For example, in the European system (within the states under the European Union), both options are open for the claimant and he or she can choose from these two forums, at least for civil proceedings based on tort claims.

Otherwise, where no such bilateral, multilateral or international instrument or treaty is applicable, a claimant may only have the option to sue the defendant in the competent domestic court where the defendant resides and the harm was originated. China and Pakistan reveal time-tested friendship in all aspects of international relations, and they are entering into a new development era, namely CPEC, which has been regarded as the game-changer for the region [39]. Therefore, some pertinent lessons on how to deal with the provision of adequate access to the relevant applicable courts in the case of transboundary pollution may be drawn from the above scenario that will ensure the fulfilment of the international standards concerning the environmental (legal) rights of the concerned population due to any anthropogenic activity, i.e., legal cooperation in terms of environmental harms or issues, signing a bilateral agreement concerning transboundary pollution and the provision of legal aid in its litigation process.

The 2004 UN Convention on Jurisdictional Immunities of States and Their Property barred claims in the court of the claimant on the grounds of the immunity of defendant states. Its exception does not apply to trans-frontier harms such as climate change; therefore, a prospective litigant would have no effective access to a court [40]. In this case, the only option a claimant would have, would be to file a case in the court of the foreign state. Additionally, the 'limitation of access' in cases of litigation against a private person in a foreign state, would remain problematic. The principles of the International Law Commission (ILC) are also applicable here, i.e., international and domestic remedies [41]. Nevertheless, it is uncertain that the principle requiring access to legal remedies against the state is a principle of customary international law. Globally, transboundary court cases against the state are non-starters [42], thereby posing a legal challenge to the victim and meriting a bilateral or multilateral legal cooperation in transboundary environmental harm cases that addresses and ensures the true sense of human rights.

3.2.2. Human Rights Courts

Another choice in domestic courts is in a case where the victim(s) of transboundary harm seeks (seek) compensation in the international forum of a human rights court. A healthy environment prevails as a human right, grounded in common understanding of 'right to life' or 'right to private life' [43]. For example, the Inter-American Court of Human Rights (ICHR) may treat environmental harm by transboundary pollution as a violation of a claimant's 'right to private life' or 'right to life'. As to the latter, the European Court of Human Rights (ECtHR) noted that 'complaints, in order to fall within the scope of Article 8 [44] of the European Convention on Human Rights about environmental nuisances, need to present two shreds of evidence regarding; i) an actual interference with

the claimant's private life, and ii) that a level of severity was attained' (ECtHR, *Fadeyeva v Russia* (A. No. 55723/00), para. 70).

Claims related to human rights treaties are not directed against the private entities but rather are necessarily directed against the state responsible for such environmental harm or pollution. The situation may be different in the domestic court of law and the inter-state human rights court; no 'horizontal claims' against private entities can be filed in the ICHR. A claim may still be made against the state in a case where a private party caused such harm, on a condition that the claimant shows that the state has allowed such pollution or failed to take appropriate measures to stop such pollution, thus violating its obligations (ECtHR, *Fadeyeva v Russia* (A. No. 55723/00), para. 89). Therefore, a claim may be made against the state where such pollution originated, for example, granting a license to an industrial facility causing pollution, and/or that fails to enforce pertinent laws for its due prevention. In *Fadeyeva v Russia* (A. F76), the Court formulated the standard as: 'the first task of the Court is to evaluate whether the State could reasonably be likely to act to prevent or put an end to the alleged infringement of the rights of the applicant' (para. 89). However, access to human rights courts will generally be limited to certain situations. Therefore, China and Pakistan should take necessary steps, including having bilateral agreements, to create joint arbitration courts to assist people (claimants) from both sides of the border.

3.3. Forums of Inter-State Claims

The third option may be to bring compensation for the claims concerning transboundary environmental harm by a state as a victim or claimant against the state under whose jurisdiction such harm was originated. These kinds of claims can be made in the case of a direct injury, for instance injury to the state itself, including its territory, infrastructure and even its ecosystem. Additionally, a state can present such a claim in cases where the environmental injury was caused to its residents or nationals. It is based on the narrative that any harm to individuals may be qualified as harm to their state of nationality [45]. In transboundary environmental harm cases, inter-state claims rarely concern the protection of citizens' rights, as the state is also likely to be directly damaged [46]. However, at least in theory, the protection of citizens' rights is a separate basis for the complaint.

Claims based on diplomatic protection are dealt with diplomatic means and not normally presented in the court (Article 1 of the draft articles on Diplomatic Protection with commentaries 2006). In theory, there is a large variety of international tribunals and courts to present inter-state claims; therefore, the possibility of bringing such claims to international tribunals or courts cannot be excluded theoretically but is not a common practice [47]. For instance, it may be presented in the International Court of Justice (ICJ) under Article 36(2) of the Statute of the ICJ, or if both the state parties have a special agreement, then it may be presented on a jurisdictional basis in a treaty concerning environmental harm, such as in the case of a claim presented by Argentina against Uruguay regarding the pulp mills dispute [46]. Otherwise, claims may be presented before an arbitral tribunal, such as in the case of the claim before an arbitral tribunal set up under the UNCLOS, by Ireland against the United Kingdom about the radioactive pollution of the Irish Sea [48].

While intergovernmental claims may be an option to obtain adequate relief and results, such as ending environmentally harmful activities or compensation (after all, the state can have much more influence and power to achieve a result than an individual private applicant), this option is not executed by or available to the private injured parties. Diplomatic protection is the sole right of the state and not the right of the nationals. Under most domestic legal systems and also under international law, individuals do not have the right to compel a state to exercise diplomatic protection. This exclusive right to file a complaint lies with the state. If the state were able to ask for compensation, the compensation would go to the state, and the persons who have suffered a loss would not be entitled to such compensation (See Article 19(c) of the ILC articles on Diplomatic

Protection). However, due to the principle of the exhaustion of local remedies, there may be overlaps and connections with disputes available to private parties [46].

4. Discussion and Analysis

4.1. Legal Grounds of Bilateral Cooperation Concerning Transboundary Environmental Issues

4.1.1. Good Neighbourliness: The Duty to Cooperate

All of the IEL represents, in any form, the 'duty to cooperate'. Enshrined among the Article I peacekeeping 'purposes' of the UN Charter is the purpose "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character" [49]. The reason for this duty to cooperate is really enlightened self-interest and self-preservation, as the UN General Assembly (UNGA) candidly recognised in a 1970 declaration: "States have the duty to cooperate with one another, irrespective of the differences in their social, economic, and political systems, to sustain international security and peace, and to encourage global economic progress and stability, the general welfare of nations and international cooperation free from discrimination based on such differences" [50].

This duty of cooperation is also known as 'the general principle of good neighbourliness,' as recognised in the UN Charter [51]. This 'good neighbourliness' or cooperation duty was seized on as a principle of IEL from the outset. Principle 24 of the 1972 Stockholm Declaration states: "Matters concerning the improvement and protection of the environment at the international level, should be handled in a cooperative spirit by all countries, small or big, on an equal footing. Cooperation through bilateral or multilateral arrangements or other suitable means is crucial to reduce, effectively control, eliminate, and prevent adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the interests and sovereignty of all States" [52].

Note that the duty is not only 'essential' but also specifically made compatible with sovereignty. Cooperation is even more embedded throughout The Rio Declaration on Environment and Development (the Rio Declaration) of 1992 [53], and its concluding Principle 27 is devoted to it: "States and people shall cooperate in good faith and a spirit of partnership in the fulfilment of the principles embodied in this Declaration" [51]. In creating the UNEP, the UNGA did its first duty "to promote international cooperation in the sphere of the environment and to recommend, as appropriate, policies to this end" [54]. It is because environmental problems are frequently transnational in scope, and cooperative action is often the only way to solve them successfully. Numerous success stories exemplify international environmental cooperation, as the issue-specific or the general cooperation in this regard. Two good examples are the international cooperation leading to swift action on stratospheric ozone depletion, and the cooperation among Mediterranean Sea coastal states which has led to some success in protecting that shared marine environment [51]. Countless international legal authorities, as well as state practice, support this general principle. The 'duty to cooperate' is an essential building block of IEL since environmental damage is often too big of an issue for any country to handle individually.

4.1.2. The 'No-Harm' Rule

The 'no-harm' rule depends on the time-honoured common law principle of "*sic utere tuo ut alienum non laedas*" (that is, "One should not use one's own property to injure another") [51]. Obviously, the 'no-harm' rule is a specific manifestation of the 'good neighbourliness' principle, and enlightened state self-interest and self-preservation can be seen as the stimulus for states to accept such a '*quid pro quo*' limitation on their sovereignty. However, logically, the no-harm rule is a principle of relatively recent international customary law.

Several matters should be noted about this famous early statement of the rule. In its favour, it: (i) implicitly denies the existence of a 'right' to permit or involve in such happenings as to be injurious and have transboundary effects, (ii) applies both to government action and inaction (that is, it also applies to various activities in the private

sector which are not effectively controlled and administered by the government to prevent transboundary harm), and (iii) creates a duty running not only to the victim state but to private persons and properties therein. On the other hand, it is limited in that it: (i) applies only to harms outside the perpetrator state, not within, (ii) requires that the injury be 'serious' (thus setting a threshold for allowable transboundary pollution or other injuries), (iii) appears to put the burden of proof of serious consequences on the victim, and (iv) elevates that burden of proof to the very demanding 'clear and convincing evidence' level (in contrast to the 'precautionary principle') [51].

Numerous international environmental declarations and treaties have adopted variations on this concept, notably Principle 21 of the 1972 Stockholm Declaration and its twin Principle 2 of the 1992 Rio Declaration, which explicitly limit countries' sovereignty with "a responsibility to ensure that control and activities within their jurisdiction may not damage or cause damage to the environment of other countries or of areas outside the limits of their jurisdiction" (See, for example, the UN Economic and Social Council, Report of the Secretary-General, Permanent Sovereignty over Minerals and Water Resources (18 February 1993), UN Doc. E/C.7/1993/2). Thus, an international rule prohibiting transboundary environmental harms is available, but there are still many unanswered questions about its application in real cases. What degree, amount, or level of harm is required? Is it an absolute 'no-harm' rule, or is there a least harm threshold that is acceptable? If so, what is the harm threshold, 'appreciable', 'significant', or 'serious'? Is there a standard of care which, if the offending state meets it, absolves it of the harm? If so, is it a standard of 'due diligence', 'reasonable care', 'best efforts under the circumstances', or 'international best practice'? Should there be a 'differentiated' (i.e., lower) standard for developing states? How much private sector activity should be considered under a state's 'control and jurisdiction'? What remedies are provided and to whom? These and related questions will be developed on the grounds of, and should be addressed through, the formulation of pertinent legal strategies, principles and issue-specific policies in a collaborative manner, especially when it comes to neighbouring states.

4.1.3. Common but Differentiated Responsibilities

Developing nations feel their economies cannot afford environmental costs; some also have an impression they should not have to bear the cost since they 'did not cause the problem.' Therefore, they foresee the attempts made by developed countries to 'export' their environmental standards as a cynical subterfuge to suppress the South's economic development (i.e., environmental colonialism). Part of the developing countries' argument is that the US and Western European countries became rich because they exploited their environments to build their economies in the 19th century, and therefore are 'hypocrites' for now trying to prevent other countries from doing the same. As stated in Agenda 21, the costs of the economic, social, and environmental programmes necessary to attain global sustainable development will total in the hundreds of billions of dollars in a single year [51].

A sad, but frequently heard slogan in these debates is that environmental degradation is a 'rich man's problem, as well as, rich man's solution' [55]. What are the 'rich' countries doing to help solve the problem? Environmental foreign aid from the developed countries to underdeveloped or developing countries is relatively low. The US, for instance, spends no more than 0.5% of its total federal budget on all foreign humanitarian and economic assistance, and funds only about \$493 million USD annually for environmental programmes in other countries [56]. While it is the largest donor in terms of dollars, in terms of gross national product (GNP), the US provides the least foreign assistance of any major industrialised nation [56]. Japan has a larger foreign assistance programme than the US, and Denmark and Germany both spend a much higher percentage of their foreign aid on the environment than the US does [56]. On the other hand, some developing states are already, or on track to become, the world's biggest polluters (think of the giants such as China, Brazil, and India) [57]. Thus, any environmental treaty regime, i.e., between China

and Pakistan, must secure the support and participation of the developing nations to avoid pollution havens and economic free riders if it is to have any hope of success [58].

The 1992 Rio Conference recognised this ‘North-South’ dichotomy and made significant strides to solve the controversy. Specifically, the Rio Conference adopted the principle that all countries have a ‘common’ and ‘collective’ responsibility for environmental protection but, depending upon their economic conditions, i.e., wealth and technology, they have ‘differentiated’ levels of obligation to perform. Principle 7 of the Rio Declaration states: “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. Given the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development given the pressure their societies place on the global environment and of the financial resources and technologies they command” [59].

It is, therefore, expected that the ‘common but differentiated responsibilities’ (CBDR) principle is to be more utilised in international environmental treaties. Its increasing acceptance in treaties can be accredited to its pragmatic and ethical benefits, though it is not likely to arise anytime soon as recognised international customary law. For the time being, it has limited application as states seek to avoid exact wealth redistribution that may push developed states to assist developing nations in the form of financial assistance, technology transfer, trade advantages, and capacity building (since deferred compliance schedules can be viewed as a competitive cost advantage).

4.1.4. State Responsibility and Liability

International law cannot deal with violations of law by sovereigns in quite as simple a way as national tort, or contract law deals with violations by individuals. Instead, under international law, states are ‘responsible’ for breach or violations of their duties or obligations [60]. Thus, a state that violates IEL, the ‘no-harm’ rule, the ‘prior notice’ rule, and other ‘hard’ laws, will, in theory, be held responsible for that violation [51]. Put another way, every single international or transnational wrongful act of a state subjects it to respond [61]. The remedies for responsibility or legal obligation include both cessations of the conduct threatening or causing the violation, and reparations. Reparations are actions which “must ‘as far as possible’ wipe out all of the consequences of the illegal act” [62]. This can include restitution in kind, monetary compensation, or satisfaction (an apology, or disciplinary action against the individuals responsible) [51].

In practical fact, both principles remain underutilised and theoretical in the real world. Few treaties incorporate either concept explicitly (the way national legislation would have an ‘Enforcement’ section). Indicatively, both Principle 13 of the Rio Declaration [59] and Principle 22 of the Stockholm Declaration [25] contain the identical aspiration that all countries must cooperate to ‘develop further’ rules of liability and compensation, which suggests not much progress is being made. Few states bring arbitral or judicial challenges against other states on either theory, as the paucity of international environmental cases attests, preferring to use collegial forms of dispute resolution and more diplomatic channels (although in these, concededly, responsibility is the stated or assumed basis of the diplomatic claims). Although responsibility, as compared to liability, is a firmly fixed principle in theory, experts lament that there is very little overt state practice of either [62].

4.2. A Need for Regional Legal Cooperation on Environmental Issues

The challenges mentioned above concerning transboundary environmental harms also merit bilateral environmental agreements between regional and neighbouring states, such as China and Pakistan, concerning the environment in various infrastructural ventures under CPEC. They are also an integral part of the FTAs between the two countries. Therefore, the preceding sub-sections shed light upon this narrative to support the best possible environmental arrangements between these two countries. To this end, this section provides an example of regional cooperation from the US-Canada-Mexico trade agreement

where environmental concerns take an integral position. Additionally, this section makes some pertinent references with the combination of international (environmental) law and international trade coupled with appropriate environmental concerns. Moreover, it provides some legal grounds which merit binding legal cooperation on environmental issues and addresses possible transboundary environmental harms, particularly between China and Pakistan and the whole region at large.

4.3. A Reference from Other Regional Cooperation in Environmental Matters

There are some trade agreements between the other states of the world where trade is happening with due consideration of the environmental significance, such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA) [63]. Likewise, China and Pakistan should also render and make positive contributions to sustainable trade liberalisation as the US, Canada, and Mexico have made. However, the North American Free Trade Agreement (NAFTA) [6] does not explicitly contain a chapter for environmental protection, nor does it regulate biodiversity, genetic resources, invasive species, illegal fishing, and illegal trade in wild flora and fauna [64], whereas environmental issues are addressed in the North American Agreement on Environmental Cooperation (NAAEC) [65]. NAAEC binds the parties to make a contrast between their policies, laws and regulations, and environmental protection [66]. It may be taken as a pertinent example and way forward by neighbouring countries such as China and Pakistan to proceed further into the green environment while going through huge infrastructural development and extensive trade activities.

4.4. International Trade, International Law, and Environmental Concerns

Another example may be MARPOL 73/78. However, compared with the FTAs, CPEC should impose a greater number of compulsory obligations on both China and Pakistan in the areas of illegal trade in wild flora and fauna and require them not only to take measures to enforce the provisions of MARPOL 73/78 in true letter and spirit but also to make these measures publicly available [8]. To this end, public participation may help to enhance compliance with MARPOL 73/78 [67]. In addition, in the arena of international law, though, there is no specialised agreement in WTO on 'trade and environmental' issues. However, it indirectly influences the trade parties to ensure environmental protection in its articles XIV (a), (b), and (c) of the General Agreement on Trade in Services (GATS) and XX of the General Agreement on Tariffs and Trade (GATT) [68]. These provisions should have been incorporated into the terms and conditions under the operations of CPEC energy projects. It may also be feasible for the stakeholders for determining how the dispute resolution panels will apply WTO case law regarding these provisions [69]. There are some special WTO agreements which refer to environmental concerns, namely the Technical Barriers to Trade [70], the Agreement on the Application of Phytosanitary and Sanitary Measures (SPS Agreement) [71], the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) [72], the Agreement on Subsidies and Countervailing Measures (SCM Agreement) [73], the Agreement on Government Procurement [74], and the Agreement on Agriculture and the Understanding on Procedures and Rules Governing the Settlement of Disputes [75]. Similarly, China and Pakistan may take these agreements of international trade coupled with environmental concerns as references to influence their trade agreements under CPEC regarding environmental concerns including policy formation and devising enforcement mechanisms as envisaged by international (environment) law.

4.5. Establishing a Close Connection between Environmental Protection and Trade

Trade and the environment are gradually inter-connected over preferential trade agreements (PTAs). Despite the significant nature of environmental provisions in trade agreements, there are scarce academic studies available on the causes as well as consequences of the linkage of trade and the environment. Linking trade liberalisation, environmental protection, and social cohesion in mutually supportive ways has long been a challenge

for the global community. The connection among these three realms was first forged in practice almost a century ago with the emergence of the first MEA with trade-restrictive provisions [76]. More generally, among publics in North America, Europe, and Asia, the earlier consensus on the value of trade liberalisation began to erode as anxieties about the social and environmental impacts of globalisation grew.

Although environmental negotiations in the UN forums are slow, about twenty new trade agreements are concluded each year with detailed environmental regulations [77]. For instance, the recently signed CETA [7] between Canada and the EU contains a comprehensive environmental chapter which covers a wide range of areas, i.e., trade in environmental goods, endangered species, forest governance, fisheries conservation, and corporate social responsibility [78]. Furthermore, some environmental commitments are more precise and applicable than those contained in MEAs. Nevertheless, the environmental provisions of the trade agreements are still highly controversial. Recent agreements are celebrated as environmentally conscious [79], and condemned as an ecological disaster hidden under a green blanket [80].

4.6. Building National, Regional and Global Environmental Networks

Similar to the other developed regions of the world, China, Pakistan, and the other stakeholders from private and public sectors of this region should collectively build an environmentally friendly and sustainable image of the mega-infrastructure projects under CPEC. For example, in 2017, the Indonesian House of Representatives hosted the World Parliamentary Forum on Sustainable Development with the collaboration of various stakeholders from 49 countries, which may be regarded as a demonstrative instance of how legislative convening power may refer to developing consensus-building and partnerships regarding sustainable development and environmental law-making in a region [81].

In addition, a wide range of capacity-building support concerning the building of environmental legal capacity is available for developing countries from environmental NGOs, bilateral governmental donors, international NGOs, and inter-governmental institutions, e.g., UNEP, UNDP, the Global Environment Facility, the UN Regional Economic Commissions, as well as the relevant development banks [9]. This process of contributing to the building of environmental legal capacity and the fragmentation of policymaking and national laws can be useful for convening national efforts to formulate integrated as well as collaborative policies and priority statements about the environment. It would be helpful in domestic policymaking and the fragmentation of national laws to develop collaborative as well as integrated strategies concerning the environment. To this end, the Inter-Parliamentary Assembly of the ASEAN may be the pertinent example [82], as it was established to achieve the various objectives of the ASEAN through inter-parliamentary integration and cooperation including regional or global environmental issues, thus providing another avenue for environmental cooperation.

5. Recommendations and Conclusions

China and Pakistan need legal cooperation mechanisms and homogeneous commercial codes to make the infrastructure development of CPEC more reliable [83,84]. Through a literature survey of existing studies, the government of Pakistan needs to strictly adhere to a distinct growth plan by incorporating green information, communication and technology (ICT) for all projects under the head of CPEC [85,86]. It is also pertinent to mention here that China is actively promoting large infrastructure projects to countries alongside its Belt and Road Initiative (BRI) [87]. However, China has concluded few FTAs with these states, and it is unrealistic for China to conclude FTAs with all BRI states in a short period [88]. Some of these BRI States and NGOs have strongly urged China to be environmentally conscious in operationalising the BRI [89]. Therefore, China should seek mutual recognition of environmental protection measures and environmental standards with countries alongside BRI and CPEC. Sustained efforts by various stakeholders from both Pakistan and China in CPEC are the prerequisite to making a considerable contribution

for achieving environmental commitments, sustainable development goals, and ultimately building a better world.

Regional empowerment coupled with various economic concerns is a good Chinese strategy, which will help to implement its vision of a peaceful rise a great deal; BRI and CPEC could, perhaps, reshape the world with a new economic leader [8]. The states, alongside the BRI and CPEC, are varied in terms of economic stages and environmental standards. Therefore, China should encourage them to mutually recognise each other's environmental protection measures and environmental standards. To this end, China can adopt a mutual recognition of environmental protection measures and environmental standards by actively signing bilateral and multilateral agreements on environmental protection and, thereby, reduce environment-related trade friction.

International law binds regional countries with the 'duty to cooperate' and with 'common but differentiated responsibilities' in matters concerning the transboundary environment. Since China and Pakistan are entering into a new infrastructural development regime under the China-Pakistan Economic Corridor, it necessitates a handful of arrangements to ascertain and maintain the environmental standards in this coalition [23]. So far, there is no specific independent environmental treaty available between these two countries, neither have environmental provisions been specifically mentioned and publicised in any of the legal documents.

Moreover, the investments made in the CPEC-related projects should be looked at more critically to ensure environmental sustainability. For example, in recent years, Pakistan has started exploiting its coal reserves extensively and has established coal power plants with Chinese funding under CPEC [8]. However, the 2015 Paris Agreement discourages the member states from using coal for power generation [90], and China and Pakistan are both members of this environmental agreement. It is also pertinent to mention here that Pakistan has extensive capacity for power generation from renewable resources, i.e., energy production from solar, wind, hydro and other renewables sources; it is estimated that solar energy alone could add 1600 GWs in Pakistan, which is far more than the present consumption of the country [91]. Nevertheless, CPEC-related projects are still more focused on the coal-based energy projects. Therefore, it is recommended to take corrective measures in time to ensure sustainable development; sharing environmental lawyers from both countries and opening such legal avenues for pertinent collective research and development activities may better serve this purpose.

Furthermore, an environmental database sharing system between different governmental departments of both countries should be established to bring out the most efficient cross-border legal harmonisation followed by the implementation of necessary measures, and the two countries should establish an inter-regional environmental enforcement mechanism. To achieve this objective, both sides should consider improving the environmental intelligence for pollution acknowledgement and better law enforcement at local, provincial, national and regional levels—public interest litigation and public participation in environmental matters should be strengthened in this regard. In the same vein, increasing consistency between domestic and international environmental law, agreements, and treaties is currently needed in order to lead to the implementation of the Paris Agreement on Climate Change, Sustainable Development Goals, Aichi Biodiversity Targets, Sendai Framework for Disaster Risk Reduction, and other important regional and global commitments to achieving sustainable development. It will not only help to address the environmental challenges of the two countries, but also serve the whole region and international community with environmental legal cooperation at large.

This study concludes that social issues, i.e., matters concerning transboundary environments, would be better treated by the legal cooperation of the two countries rather than taken to either domestic, foreign or international courts in every such event. It will serve the stakeholders in many ways, ranging from the financial benefits to saving their time and potential energy, as well. It would also justify the essence of justice with the provision of every case, especially to the private party (the claimant) in a case of transboundary harm,

who always has limited resources and access over legal fora across the border, i.e., a foreign or international court.

CPEC endeavours a large number of mega-development projects; all these developments should be governed by revised, updated, and mutually accepted environmental enforcement mechanisms. To this end, lessons can be drawn from the other regions of the world as well as an independent study of any developed country. For this very purpose, China and Pakistan should have appropriate provisions in their trade agreements concerning the possible environmental harms which are likely to be significantly increased in the near future under CPEC, an integral part of the Chinese BRI. To serve this notion, this study highlights some of the potential legal challenges concerning the enforcement of environmental laws across borders and provides a basis for an abrupt need for legal cooperation between the two countries concerning environmental matters.

China and Pakistan are entering into a new infrastructural development regime under CPEC, which necessitates a handful of arrangements to ascertain and maintain the environmental standards in this coalition. So far, there is no specific independent environmental treaty available between these two countries, nor have environmental provisions been specifically mentioned and publicised in any of the legal documents (i.e., trade agreements). Therefore, this study urges stakeholders to ensure the consideration of environmental matters as an integral part of each trade document in order to achieve sustainable development goals.

6. Limitations and Future Research Directions

Since the environment know no boundaries, the main limitation of the present study is that it focuses mainly on China and Pakistan in its consideration of the all-time high foreign investments in infrastructure in Pakistan, which will have environmental effects particularly in Pakistan and may also impact the whole region. Therefore, future studies may expand the scope of this research to the whole region and include the challenges and opportunities for other regional stakeholders.

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