

Legal Support for Environmental Public Governance

— View of soft law

Shaojie Lang

School of economics and management

Jiujiang University

Jiujiang, China

langsj2015@126.com

Abstract—The seriousness of problems is in urgent need of environmental public governance. It should move toward good governance. Soft law is a complement of hard law. It is fitted with the model of public governance and should be the right path of good governance. Soft law is applied in not only international environmental public governance, but also in our domestic environmental public governance. We need to improve it.

Keywords—public governance; good governance; environment; soft law

I. INTRODUCTION

Along with its pursuits of industrialization, urbanization, and agricultural modernization, China is also seeking to ensure that its economic growth and living standards are environmentally sound. The eco-friendly plant is what people see as a model for “green desalination” in china. How do we protect the environment? How can we strengthen the environmental public governance?

II. THE EMBODIMENT OF PUBLIC GOVERNANCE AND GOOD GOVERNANCE IN TERMS OF THE ENVIRONMEN

The original intention of governance is to control, command and guide, also exchange the word “rule” (government) originally. But in the 1990s in the vision of research field, it appeared a variety of usage in political science management etc. Scholars had given new meaning to it [1].

The research report which named “our global partnership” Came out in 1995. The governance which global governance committee consider is a variety of the public or private individuals and institutions to manage their common affairs in the sum of many ways. It is to reconcile conflicting or different interests and joint action by the continuous process of the governance rule has changed. The meaning of process implicates that a new rule means that the conditions of the orderly rule is different from which before, or taking shape a new ways of ruling society [2]. At this point, the governance usually refers to an activity supported by the common goal. The main body of these activities is not just the government, and it even does not need to rely on the national compulsory power to achieve the goal [3]. The most obvious difference with the rule of governance is that a focal point of governance

is the society as a whole. And the participation of the governance body is extensive. It may be the government organizations, and the non-government organizations, even individuals [4]. Therefore, governance can be divided into two basic types as the public governance and the private governance.

And so-called public governance, in terms of its composition, is by the open elements integrated by a wide range of citizen participation into public management, such as “public governance = open + broad public participation in public management”.

That is to say, a wide range of citizen participation is the foundation. And through the integration the advantages of public governance appears. There is no doubt that it requires citizens to actively participate in the public administration of environment. Actually, there are good governance and bad governance to distinguish the type of governances.

To Protect the ecological environment, to make it from damage is one of the important issues today's human society facing. And the increasing serious ecological damage and environmental crisis calls for public governance in terms of environment. It is also an inevitable trend. Environmental public governance is based on the ecological environment as the object, preventing further destruction of ecological environment, improving environmental quality, using a variety of means such as economy, politics and science and technology to adjust human behavior in order to realize the coordination of activities with nature. So, environmental problems are closely related to each other in the environmental public management. Citizen participation also highlights its importance.

Good governance is the good governance by literal translation from the meaning of the norm. It is the management process to maximize the public interest of society. The essence of good governance is that it is the cooperation management of public life through the government and citizens. And it is a new type relation with the political state and civil society, even the best state of them. The process of the good governance is actually to give back the power to the people, and the return of the state power to the society to realize the good relations between the state and society, government and citizens.

Of course, the goal of governance reform in our country is adopted to improving public governance, finally realizing the good governance. It is not in question. Given the importance of the environmental problems, the ecological environment is to get good protection that can realize sustainable development of human society by unprecedented attention to the important factors. The environmental public governance is supposed to achieve the good governance, and the environment in the process of public administration system arrangement therefore becomes the focus of attention.

III. METHODOLOGY: THE SOFT LAW GOVERNANCE IS THE APPROPRIATE PATH

A. *What is the soft law*

The soft law, also called Soft rule, appeared in the late 1970s as a Law concept in western legal science. The emergence of the phenomenon of soft law was actually benefited from the creation of some international law scholars. Initially soft law was the privilege in maintenance of western developed countries advantage in law on innovation by jurists. They named strictly these binding legal norms as “hard law”, and correspondingly named the non-proper legal binding as the “soft law” [5].

The attitudes of jurists were very different in the norm of soft law. Some jurists approved, but the other fiercely opposed. Therefore, the soft law was not only a product of the contradiction and struggle, after the birth of it also was often in the contradiction and struggle. Even so, soft law has the trend of more and more popular in the world. Investigating its reason, the common social problems in the international society such as environmental pollution led to the weakening of the state legitimacy, and the rise of the new public sports produced “rule of soft law” instead of “rule of hard law” as requirements.

The soft law not only significantly exists in international law, also can be used in the domestic law. And the application of domestic law is the result of conscious choice for more. In general, the context of the governance of soft law, not only exists in the public law field, but also exists in the field of private law [6].

The soft law always appears in the highly sensitive bottleneck areas which have much legislation because of different interests and ramifications by the contradictions and conflicts. When we form a legally binding law in difficulty, and form the soft law replacing it. The Soft law through flexible mechanism and the program simply and rapidly, compared with the hard law shows more flexibility and more freedom. It is greatly attractive to all countries with approval procedures which can bypass troublesome domestic legislation, has left governments more independent activities and decisions of space.

Although the definition of the soft law exists in large differences in the academic circles, and the soft law also has a larger controversy, the soft law can be accepted by the international community in a larger extent. The concept which is widely circulated is the definition by French scholar Francis

Snyder: “soft law is not legally binding in principle, but there is actual effectiveness of rules of behavior.”[7]

So someone based on this, starting from the traditional legal concepts, negatives properties of soft law as the law. Actually the problem of “what is law” can not be not only clear and the only answer. The soft law is the general meaning of law, but not a typical law or a strictly law, and produces certain effect. Many people have suspicions in the soft law by the main reason is that many people worry about theory of “soft law” will further weaken the laws in our country in the weak executive force in social life [8]. In fact, this concern is unnecessary because they misunderstand the concept and function of the soft law. In order not to turn from side to side, we should use open attitude in paying attention to practicality in the soft law in domestic law. After all, the soft law maybe brings a revolution to the laws.

The author thinks clearly that the soft law is not a new phenomenon which is already existed in the countries all over the world and widely accepted; and based on its important role in the process of public governance. It ought to be taken seriously.

B. *The soft law is the supplement of the hard law*

The norms and forms of the soft law are different. The soft law as the law relative to the hard law, reflects the publicity, normative and universality and other characteristics in a different way. In particular, the soft law benefits the interests which will focus on the other community besides the country, mainly provide guidance for public main body behavior choice.

The soft law exists as a supplement of the shortage in the hard law, even a beneficial supplement [9]. From the domestic and foreign experience, the hard law needs state coercive power to ensure the implementation. With a lag and difficulty to modify, its system arrangement tends to be uniform, easily to overlook the diversity. And the soft law is of diversity, flexibility, constant volatility which has the effect in supplementary of the hard law to a great extent.

So in the process of governance, contradictions between rules demand and supply exist in both developed countries and developing countries at different degrees. The role of the soft law is obvious when hard laws supplied are inadequate. The soft and hard laws may be compatible and also be complementary each other indeed. The soft law not only can be used as a hard leading law, but also can be an appropriate way to explain the hard law. Both can be of mutual transformation, and be of complementary advantages in coordinated with governance functions into full play.

C. *Soft law and mode of public governance in particular*

The soft law has been a hot topic in the world, and presents the vigorous developing momentum. The main reason is that the rise of public governance. Beyond the traditional public administration mode of management thinking, it emphasizes the common governance which is characterized by dispersed, opening and negotiation. Many commands used to fade the color by soft consultation method as goal oriented. In order to adapt to the characteristics of public governance, the diversity

of the specification is necessary. And it is also possible. There are not only of hard law mechanism, but also of soft law mechanism. The hard law mechanism is increasingly mature, and the soft law mechanism will distinguish itself.

In the context of public administration, the means of achieving governance is no longer commands and control regulation accurately. It emphasizes between the public and private subjects on the dialogue, negotiation and collaboration in turn. And through a variety of governance means achieve governance process.

So the public governance mode cannot be purely construction on the hard law. It is only the carrot and stick, combination of softness and hardness. It need both rule of the hard law, and rule of the soft law. And public administration needs propulsion in rule of the soft law in particular. The inner relation of soft law and public governance is embodied as "soft management". It is like peas and carrots with soft law.

The characteristics of soft law and public governance mode in particular are relatively strong indeed. It is embodied in which the soft Law composes of multiple subject game, create a diversified patterns of behavior, be adapted to the diversification of public governance and the need of diversification means of behavior.

The rise of public governance expands the social power. And the specification of the social power cannot completely depend on the hard law. It needs more soft law to regulate the higher power, to avoid legal vacuum. In addition, the premise in public governance to achieve good governance is mainly public, participation, effectiveness and consistency, responsibility. And these requirements are applicable to the soft law. Public administration can even be said that it is mainly the cure of rule of the soft law. Lots of people contact to the rise of soft law and the perfection of the development of the deliberative democracy [10]. The political background on mass appearing in the soft law is the large non-governmental forces, the social public enhancing sense of responsibility and the social reality of diversified increasingly, which is no doubt the basis of public governance to promote.

The rise of soft law makes the rule of law field more comprehensive. The rule of law in the process of public governance is not only rule of the hard law, but also rule of the soft law. Rule of the soft law is necessary in the process of rule of law.

The system of soft law helps to form a consensus reached in the process of, system formation and implementation. It is beneficial to strengthen the legitimacy of the law, and strengthen the legal effect. It also helps to reduce the cost of the rule of law and social development. It not only helps to promote the transformation of government functions and the establishment of legal ideology of science, the full realization of the goal and the rule of law.

IV. ENVIRONMENTAL PUBLIC GOVERNANCE AND PERFECT OF RULE OF THE SOFT LAW AND PRACTICE

A. *The soft law in the international environment is the concrete application of public administration*

In the process of international environmental governance, phenomenon of the soft law is more prominent. It is known as the international environment soft law playing a special role specification. There is the reason that the environmental problems of governance may involve the change of national economic policy, influencing the development of national economy and the growth rate, causing national contradictions and conflicts. At that time, used in the process of international environmental legislation framework agreement, the declaration of principles, code of conduct, and other forms of soft law is more common and appropriate. They are not the treaties which are not legally binding, but to influence the legislative intent of the relevant countries and law enforcement practice. In the files, it can only be in the form of the soft law to declare in the supplementary protocol or accessories for the consensus, countries with independent intend to decide whether to comply with, it also can produce certain effect.

At the moment the advantage of using soft law is in the conditions when needed, using the relative fuzzy phrase which can make countries bear the task of those under the condition of the hard law will not be accepted, let countries they don't want to agree with each other under the reason that is of too strict constraints. The supplementary protocol or attachments may become hard when conditions are ripe. It is the soft law for the forming of international environmental hard law and has created favorable conditions. The fundamental law of the prelude to the development of the soft law is still a meaningful process. Otherwise, many international treaties and agreements may not be able to be produced.

Therefore, in the form of the soft law performs resolution. After a long time, more careful discussion on the development of international law has the function of the proof and guidance. Files of the soft law may become the theme of the international surveillance and reporting procedures. Part of the soft law has also achieved the status of customary international law. There is such a rapid growth in international environmental law. And in the field it has yet to finalize the design to establish a new legal order, and to make important contributions, which promote the evolution of international law and global level environmental laws and standards coordination. Incidentally, the European Union in supranational law level, within the field of environmental law in a certain extent, also adopted the method of soft law. In short, the international environment of the soft law is welcomed in a specific era. Special technology is suitable for special cases. The use of the soft law can make prudent countries to be more likely to agree on common goals and standards. In a word, the soft law in international environmental governance is truly necessary. The soft law adopted and utility of the play is advantageous to the relief of global environmental crisis.

B. Soft law in the concrete practice of environmental public governance in our country

In our country, the environmental pollution is more and more serious. The pressure of environment protection is more and more big. To achieve sustainable development, construction and improvement in the ecological environment, must vigorously strengthen environmental legislation and law enforcement.

Really to realize the environment by rule of law, it needs to govern at all levels adopting the way of command and control, which is what we usually call hard environment law enforcement. The worsening of environment, realizing the rule of law and practice the scientific concept of development, and the construction of ecological civilization, strengthen environmental law execution, it is necessary. It is not eternal that blindly adopting an iron fist environment is also not enough. So from a rational point of view, we should give the command, control the use of the way that can play a role in the field, and supplement the soft law. The environmental soft law and other soft law generally do not rely on national force to ensure implementation. Therefore, in the appropriate field, It should be advocated the use of soft law of governance to strengthen the effect of the public, and to play their enthusiasm in the process of environmental governance.

Specifically, the soft law has already been existed to a certain extent in the environmental legal system in our country. The soft law which is belonged to, such as in the environmental protection act, the environmental impact assessment act and other hard laws which contains a lot of encouragement, guidance, advice, the elasticity of the terms and conditions. And it includes "cleaner production promotion law" "soft law" renewable energy law, etc. This is the most common forms of two kinds of soft law, namely the existence of the conventional code of individual terms and pure soft code composed of soft law clause. In the form of the difference between the standard is as follows: the first, basically see legally binding in the normative document; the second, basically see the content of the terms of the normative documents from the entity. Strategy based on legislation or cognitive limitations that there will be many words are very soft which can't create certain obligations of soft law provisions in some formal legally binding normative documents. There are currently many solutions in the trend of legislation. The presence of soft law is a necessity in the environmental governance in our country, especially the field that is short of the environmental hard law.

Of course, it is not enough that only the soft law exists. The soft law of environmental governance in our country also needs to be enriched and perfect. The author only provides a general direction here. The soft law of environment in other countries provides experience which use price means to promote environmental legal relationship, when one party chooses behavior such as transferable permits to pollute, paying lower

cost green taxes. The costs and benefits in the market measure to prevent and control the practice of pollution in our country's environmental protection. And it is worthy of reference. Indeed, we must carry out systematic innovation on the environment in practice in the scientific outlook on development and the construction of ecological civilization. The environmental systematic innovation includes the hard law innovation and soft law innovation. The author thinks that, in the process of environmental systematic innovation, the main type in order to promote terms of soft law is also essential. In the future it will be more apparent because this is suitable for national conditions of our country.

V. CONCLUSION

Of course, the soft law may have a certain negative impact. It has some harm to public administration. As the European parliament had feared, the soft law may endanger the vital democratic principle of transparency and the rule of law society demanding for predictability. It will harm the rule of law. But for environmental protection, phenomenon in the soft law is widespread and of implementation. We can't take the ostrich policy and turn a blind eye. Despite the existence of soft law may have shortcomings, we should hasten the benefits effectively. With its long and avoiding its shortcomings and disadvantages, we shall use in order to give full play to its function in the environment in the process of public administration to protect the environment, and to realize the positive role of ecological harmony.

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