The Optimization Path of the International Investment Arbitration Appeal Mechanism under the "Belt and Road" Initiative

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Abstract. Since its introduction in 2013, the Belt and Road Initiative has become a model of international and regional economic cooperation. Since its development, shaping a business environment based on international rules and with the characteristics of internationalization, rule of law, and facilitation has become one of the important driving forces for the deepening and innovative development of the "Belt and Road" construction. However, due to the complex factors involved in international investment dispute settlement, there is a significant lag in the relevant mechanisms in practice, making it difficult to meet the needs of international investment in the "Belt and Road" for efficient dispute resolution. Based on this practical problem, this study combines the methods of legal economics, legal sociology and legal text analysis by comparing and analyzing the existing international investment dispute arbitration institutions and appellate mechanisms, such as the International Centre for the Settlement of Investment Disputes (ICSID) mechanism and the dispute settlement clauses under the Free Trade Agreement (FTA). Systematically identify the advantages and disadvantages of existing mechanisms. At the same time, fully considering the complex background of countries along the "Belt and Road", it is finally proposed to build an international investment appeal and arbitration mechanism based on a hybrid framework with "inclusive multilateralism" as the core concept, in order to provide strong support for the deepening and development of the "Belt and Road" construction through the improvement of the rule of law system.

Keywords: "Belt and Road" initiative, international investment arbitration appeal mechanism, international center for settlement of investment disputes, investment court system.

1. Introduction

As an important carrier for China's deep participation in global governance, the Belt and Road Initiative has formed an international cooperation network covering 160 countries and regions. With the deepening of international investment and production capacity cooperation in the region, complex international investment disputes have emerged, involving both the protection of investors' property rights and interests in private law and the effectiveness of state regulation in the field of public law. However, the current international investment arbitration mechanism has shown systemic shortcomings, which not only seriously hinder the fair and efficient resolution of investment disputes under the Belt and Road, but also restrict the deepening of economic cooperation under the Belt and Road in the long run. Taking the ICSID established by the Convention on the Settlement of Private Investment Disputes between States and Other States as an example, its core limitations include questionable definition of the scope of admissibility of arbitration, overly principled and vague substantive treatment clauses, and dispute over the application of international arbitration immunity rules [1]. In order to solve the above dilemma, the international community has launched several rounds of reform exploration: among them, the "Investment Court System" (ICS) reform promoted by the EU through free trade agreements (FTAs) in recent years is widely regarded as one of the forward-looking attempts [2]. Based on this, this paper will take the comparative research method as the core and compare the EU FTA appellate arbitral tribunal mechanism, the China-Africa Joint Arbitration Center (CAJAC), and the US model (United States-Mexico-Canada Agreement, USMCA) and the traditional ICSID mechanism to identify the advantages and disadvantages; At the same time, it focuses on specific fields in

combination with legal economics and legal sociology methods, such as cost-benefit analysis and social effect assessment, and uses legal text analysis to interpret legal texts and policy documents, which ultimately aims to solve the practical dilemma of the international investment arbitration appeal mechanism under the "Belt and Road initiative, and propose a plan to build an international investment arbitration appeals to mechanism that adapts to the background of the "Belt and Road" - with "inclusive multilateralism" as the core concept. Hybrid" framework to lay a solid foundation for the high-quality development of the "Belt and Road".

2. Literature Review

The functional shortcomings of the current international investment dispute settlement mechanism have become a consensus in the academic community. Foreign scholars generally point out that the current Investor- State Dispute Settlement Mechanism (ISDS) and its core operating institution, the ICSID, have systemic chronic diseases, which are manifested in the following: The significant erosion of the host country's domestic law jurisdiction, the systematic weakening of national regulatory sovereignty, the tendency of "dejudicialization" of arbitration procedures, and the internal tension with the global sustainable development goals, at the same time, foreign scholars have discussed the approach to the reform of the ISDS mechanism More refined and comprehensive research was conducted [2,3]. Scholar Umair Ghori has made a comprehensive study on this, including the EU's proposed approach to investment tribunal and UNCITRAL reform, and he believes that the design of the EU's investment tribunal is basically consistent with the value orientation of the contemporary ISDS mechanism, and the system has great feasibility [4]. Scholar Rebecca Lee Katz believes that the WTO can be considered as a model to gradually build an international investment court based on multilateral investment treaties [5]. However, domestic scholars criticize the current international investment dispute arbitration mechanism from the perspective of operational effectiveness, believing that the current international investment dispute arbitration mechanism is deeply trapped in four core dilemmas, including the lack of substantive consistency in arbitral awards, the limited exercise of public management powers by the host country, the weakening of the function of the award revocation mechanism, and the contradiction between the principle of "one award and the final decision" and the complexity of investment disputes [6]. Furthermore, domestic scholars have also summarized the unique attributes of investment disputes under the Belt and Road Initiative, namely, the diversity of dispute subjects, the diversification of dispute types, the wide scope of disputes, and the large number of relevant agreements in the region [7]. It also puts forward higher requirements for dispute resolution. It is worth noting that there is a consensus in the academic circles at home and abroad on the path of international investment dispute settlement under the "Belt and Road", that is, countries often submit investment disputes to ICSID or initiate ad hoc arbitration procedures through bilateral investment treaties (BITs) [8]. However, with the deepening of regional economic cooperation, this traditional path is facing increasingly severe challenges: the legal systems of countries along the "Belt and Road" show significant diversity, covering different legal traditions such as civil law, common law, and Islamic law.

The systemic shortcomings of the above-mentioned international mechanisms, the operational difficulties pointed out by domestic academic circles, and the regional particularities of the "Belt and Road" and the practical challenges of the traditional path jointly show that the current international investment dispute settlement mechanism is difficult to adapt to the complex pattern of global investment in the 21st century It has failed to balance the differences in interests and demands of different countries, nor has it been able to effectively connect public interests with private rights and interests, nor has it built a procedural guarantee system that is both efficient and fair.

3. Comparison between the Current Status of the International Investment Arbitration Appeal Mechanism and theModel of the Appeal Mechanisms

3.1. The Current Situation and the Need for Reform of the International Investment Arbitration Appeal Mechanisms

The ICSID has become the leading platform for dispute resolution between investors and countries around the world. By the end of 2024, there will be 166 signatories to the ICSID Convention (Equatorial Guinea is a new signatory), and the number of member countries will increase to 158; In the financial year from July 2023 to June 2024, a total of 341 cases were managed and a total of 58 new cases were registered(involving investors from 49 countries), and the number of cases has reached the second highest level since its establishment [9].

With the deepening of economic globalization and the easing of the development gap between the north and the south, the conflict of public and private interests between investor rights protection and state regulatory power has become the core contradiction faced by the ISDS mechanism [10]. In this context, the traditional model of ISDS "one adjudication final" leads to a significant lack of error correction mechanism: taking the ICSID adjudication mechanism as an example, although the parties can challenge the award through the revocation procedure, the scope of challenge is limited to serious procedural errors, and the substantive error correction function is weak; Moreover, mainstream international arbitration institutions such as the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), and the China International Economic and Trade Arbitration Commission (CIETAC) lack a permanent appeal mechanism to uniformly review and amend the arbitral tribunal's application of law the endogenous defects of the ISDS mechanism at the level of program design and judicial supervision.

Such structural deficiencies are becoming more prominent under the special ecology along the "Belt and Road", forming a unique dilemma: the legal systems of countries along the Belt and Road are diversified, the level of development is different, the development demands are differentiated, and there is a lack of unified regional multilateral investment arbitration tribunals. This pattern directly leads to a serious lack of consistency in awards and has led to a "forum shopping" strategy, where parties tend to choose the seat or institution that is likely to make a self-interested award, rather than choosing the procedure based on the case itself. Such behavior further erodes the authority and legitimacy of the ISDS mechanism, highlighting the urgency of structural reform of it.

3.2. Comparative Deconstruction and Evaluation of Existing Appeal Mechanism Modelss

In order to solve the structural inherent flaws of the traditional ISDS mechanism, the international community has carried out diversified reform explorations, among which the investment court system (ICS) advocated by the European Union has become one of the most representative and high-profile solutions due to their systematic innovation characteristics. The core institutional innovation of ICS focuses on the creation of a standing appeal mechanism, which aims to standardize the application of law, unify adjudication standards, and resolve the structural system of "different judgments in the same case" from the root, and enhance the consistency of adjudication through the structural design of "second instance final trial" [11]. The advanced nature of this mechanism is embodied in the following: the appointment of permanent arbitrators through consultation between contracting parties to ensure the neutrality and professionalism of arbitration entities; The establishment of an appellate court to review the deviations in the application of the law and the flaws in the determination of key facts of arbitral awards, and to strengthen the attributes of judicial supervision - the design of such asystem provides an important paradigm reference for the construction of the "Belt and Road" investment arbitration appeal mechanism. However, ICS also has significant limitations and practical difficulties: on the one hand, its deep binding to specific multilateral investment agreements makes it difficult for non-parties to the agreement (especially a large number of third-party countries along the Belt and Road) to access.

The selection process for permanent judges, the high operating costs arising from the remuneration scale, and the controversy over the possibility of overly constraints on the regulatory sovereignty of the host country all constrain the large-scale roll-out of the mechanism.

These limitations have important warning significance for the construction of appeal mechanisms under the framework of the Belt and Road Initiative: the complex relationship between efficiency and fairness, mechanism advancement and member inclusiveness, and adjudication consistency and national policy space must be carefully balanced [2, 10]. Compared with the systemic institutional reform of the EU ICS, the "hybrid" reform path explored by the Joint Arbitration Centre for China and Africa (CAJAC) highlights regional adaptability. CAJAC has established a system of special arbitration rules that integrates the core of civil law and common law rules and conforms to the practice of commercial transactions between China and Africa by setting up entity secretariats in major commercial hubs such as Beijing, Shanghai, and Shenzhen in China, and Nairobi and Johannesburg in Africa [12,13]. The core effectiveness of this mechanism is to break through the existing Western-led single arbitration model, build a "neutral dispute resolutio platform" with cultural adaptability and professional credibility, effectively reduce the uncertainty of arbitration results caused by legal and cultural differences, and enhance the acceptance of dispute settlement results by investors in the "Belt and Road" region [14]. However, it should be noted that this hybrid model, which relies on the existing infrastructure of mainstream arbitration institutions such as Shanghai and Johannesburg, also faces practical challenges, and the core crux focuses on the sustainability of operating costs - the daily operation and maintenance of the permanent secretariat, the travel expenses and labor remuneration of cross-border arbitrators, and the administrative services supported by multi-jurisdictional laws, all of which generate high operating costs. For the Belt and Road region, which also focuses on major developing countries, how to ensure the accessibility of services, such as lowering the threshold for small and medium-sized investors to participate and controlling operating costs, will also become a core challenge related to its long-term survival and effectiveness.

The ISDS model constructed by the United States in the USMCA presents a distinct "duality" characteristic: embedded in two significantly different mechanisms: in the bilateral relationship between the United States and Mexico and Canada, traditional investors are basically used-National arbitration mechanisms, i.e. reserving the investor's right to claim arbitration directly against the host country; In the bilateral relationship between the United States and Canada, the ISDS mechanism is substantially abolished, and exceptions are retained only in a very small number of specific areas, such as energyinfrastructure, and the above-mentioned disputes involving Canada can only be resolved through Canadian courts, interstate arbitration, or other investment agreements that Canada has or will enter into with the parties in the future [15,16]. This differentiated design profoundly reflects the strategic logic and internal contradictions of the USMCA model. From a positive perspective, it accurately responds to the political and economic realities in different bilateral relations through nationalization and differentiated rule arrangements. However, from an economic perspective, this fragmented solution of "one matter, one discussion" has not built a unified and coherent appeal supervision mechanism, but has exacerbated the institutional fragmentation and "rule puzzle" of global investment dispute settlement, further weakening the predictability of international investment rules. This model provides key enlightenment for the "Belt and Road" initiative: the design of the international investment dispute settlement mechanism is essentially a game between the will of sovereign states and strategic interests, and any mechanism concept that is divorced from the specific regional political and economic context and ignores the differences in members' sovereign claims may encounter severe challenges at the practical level.

4. Construction Plan of the "Belt and Road" International Investment Arbitration Appeal Mechanism

Based on the critical examination and abandonment of the international mainstream reform model, this study finally constructs the "Belt and Road" international investment arbitration appeal mechanism with "inclusive multilateralism" as the core concept and follows the phased implementation path. The hybrid architecture seeks to strike a delicate balance between institutional authority and membership diversity, and its specific institutional design are as follows.

At the level of institutional settings, the "core-periphery" two-tier governance structure is innovatively adopted. The Permanent Appeals Tribunal serves as the decision-making center of the mechanism, and the participating countries of the "Belt and Road" jointly appoint senior experts in private and public international law as judges through consultation to ensure their professional authority and independence. In order to reflect inclusiveness, regional appellate courts have been set up as executive layers in key judicial regions along the route and judicial districts of different legal systems: mainly responsible for case management, procedural affairs coordination and regional legal practice docking. Without interfering with the exercise of judicial power, it effectively responds to the pluralistic characteristics of the legal cultures of countries along the Belt and Road [17]. At the level of procedural rules, build a system of rigor and efficiency. The scope of the appellate court's review is clearly limited to errors in the application of law and major flaws in the determination of facts, and the principle of "respecting the determination of facts of the first instance" is strictly followed. At the same time, the efficiency of the procedure is optimized through refined time limit management, and a clear cycle is established for all aspects of appeal filing, documen submission and ruling, and a simplified rejection procedure for appeals without substantive grounds is introduced, fundamentally preventing parties from using the appeal process to implement strategic delays.

At the level of adjudication effectiveness and enforcement, establish implementation guarantees that pay equal attention to finality and cooperation. Clarify that the appeal award is final and legally binding: once it is made, it will have res judgement on the parties to the dispute and the original arbitral tribunal, and it clearly excludes the possibility of the parties appealing or seeking revocation of the same dispute, so as to eradicate the systemic chronic disease of "final adjudication" and "site selection litigation" under the traditional mechanism. Innovatively build a "judicial collaborative enforcement network" to enable countries along the Belt and Road to adopt special model clauses or transform domestic legislation so that the final rulings of the mechanism can be enforced in the territory of member states, increase the willingness of host countries to perform, and pay equal attention to diversified resolution mechanisms such as arbitration, mediation, and litigation [18].

5. Conclusion

Based on the practical needs of international investment dispute settlement under the Belt and Road Initiative, this study systematically analyzes the systemic shortcomings of the existing ISDS, compares and evaluates the advantages and disadvantages of different appeal mechanism models such as the European Union, China Africa and the United States, and deeply discusses the unique challenges faced by building new mechanisms in the highly diversified context of the "Belt and Road" Finally, a new construction plan was proposed. This study mainly draws the following conclusions:

First, the fundamental shortcomings of the existing ISDS mechanism make it impossible to meet the needs of high-quality development of the "Belt and Road", and reform is imminent. Second, the existing reform models have their own advantages and disadvantages, providing diverse experience references for the construction of the "Belt and Road" mechanism, but they cannot be directly copied. Third, the particularity and complexity faced in the context of “Belt and Road" determine that "inclusiveness" and "flexibility" must be put in the first place in the design of mechanisms.

Fourth, the optimal path to build an appeal mechanism for the Belt and Road Initiative is to create a "hybrid" framework with "inclusive multilateralism" as the core concept.

To sum up, it is necessary and feasible to build a new international investment arbitration appeal mechanism in the context of the "Belt and Road". The key to its success lies in the establishment of a multilateral and hybrid framework that goes beyond the EU's bilateral model - which not only absorbs the advanced experience of the international rule of law, but also fully adapts to the highly diverse special national conditions of the "Belt and Road" region. However, due to the limitations of space and other issues, this study is only in the theoretical discussion stage of the construction of international investment arbitration appeal under the background of the "Belt and Road", and will continue to study the feasibility and operability of its realization path in future research, so as to promote the implementation of a new paradigm of international investment arbitration appeal.

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