

# **The Dilemma of Overseas Investment Protection and Institutional Coordination from the Perspective of International Public Law**

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## **Abstract**

**The overall picture of foreign direct investment (FDI) across the world has been characterized by a steady decline. Being one of the key aspects of the international economic collaboration, overseas investment faces a more significant challenge of protecting the legal rights and interests, and there are numerous practical issues that require a systematic approach to their solution. According to the main principles of public international law, this article refers to the authoritative information provided in the World Investment Report 2025 published by UNCTAD, the official case statistics of the International Centre for Settlement of Investment Disputes (ICSID) and the 2023 Statistical Bulletin of China Outward Foreign Direct Investment. It explores the pragmatic challenges and the underlying cause of overseas investment protection based on the framework of public international law, offers specific institutional coordination solutions, and gives recommendations to the improvement in line with the Chinese experience of overseas investment. The research has established that the disintegration of the investment treaty system, the clash of interests between the sovereign of the host country and the investor, and the lack of effective functioning of the mechanism of resolving disputes have significantly limited the efficacy of the protection of overseas investment. The lag of public international law rule updates behind investment practice and the notable divergences in legal concepts among countries are the core causes of the above-mentioned dilemmas. This paper aims to offer practical insights for the international community to address investment protection issues, promote investment liberalization and facilitation, and facilitate the sound recovery of the global investment market.**

## **Keywords**

**Public International Law; Overseas Investment Protection; Institutional Coordination; Bilateral Investment Treaties (BITs); Dispute Resolution Mechanism; China's Overseas Investment Practice.**

## **1. Introduction**

UNCTAD's World Investment Report 2025 shows that global FDI totalled \$1.5 trillion in 2024, a year-on-year decrease of 11% and marking the third consecutive year of decline. The increase in geopolitical disputes as well as the growth of global investment protectionism have also increased the level of market uncertainty to investors. The pace of change in the global investment governance system is increasing steadily, and it is difficult to modify the old investment regulations to meet the requirements of the new forms of cross-border investments. One of the critical points in the connection of national economies and enhancing the efficiency of global resources allocation is the safety and steadiness of the overseas investment, which plays a direct role in the recovery of the world economy. In 2024, ICSID received 55 new investment dispute cases, an unprecedented number that highlights the

urgency of improving the protection of foreign investments. Since the main rule governing the investment behavior and setting inter-state investment relations, the public international law has determined the fundamental legal framework of the protection of overseas investment. Nevertheless, in reality, due to the fragmentation of the treaty system, the unclear border of national sovereignty and investment protection, and the lack of effectiveness of dispute resolution systems, there are multiple obstacles to the implementation of overseas investment protection [1].

With a total of \$177.29 billion in outward foreign direct investment (OFDI) flow, China has become a leading global outward investor in 2023 and is expected to grow at a rate of 8.7 percent year on year reversing the trend, with the OFDI stock skyrocketing to \$2.9554 trillion and having a presence in 189 countries and regions around the world. However, Chinese companies often encounter practical challenges in protecting their legal rights and interests when investing abroad, including the unexpected policy change of expropriation, and the absence of means of dispute resolution. From the perspective of public international law, analyzing the practical predicaments of overseas investment protection, exploring its in-depth public law root causes, and exploring institutional coordination paths adapted to the global investment pattern are of great theoretical and practical significance. It can not only promote the liberalization and facilitation of global investment, but also safeguard the legitimate overseas investment rights and interests of Chinese enterprises and strengthen the legal protection of cross-border investment.

## **2. The Core Connotation and Theoretical Basis of Overseas Investment Protection from the Perspective of Public International Law**

From the perspective of international public law, the connotation of overseas investment protection can be defined as a series of institutional arrangements that rely on international public law rules, bilateral and multilateral treaty agreements, combined with cooperation between countries, clarify the boundaries of rights and obligations between the host country and overseas investors, prevent various cross-border investment risks, and safeguard the legitimate rights and interests of investors. The core of this institutional arrangement is always to achieve a balance between the sovereignty of the host country and the legitimate interests of investors [2]. The theoretical foundation of overseas investment protection is deeply rooted in the three core principles of international public law, which is also an important legal support for the orderly development of global cross-border investment activities and the basic protection of the rights and interests of all parties.

The principle of equal sovereignty of states is the primary prerequisite for the protection of overseas investments. This principle is explicitly stated under Article 2(1) of the United Nations Charter, and is taken as the basic principle of all international investment activities. The territorial state has a natural right of jurisdiction over foreign investments in its territory and may exercise full control over investment operations in its territories in line with the law. Such jurisdiction encompasses both ordinary day-to-day control and territorial settlement of disputes regarding investments, which confirms the central role of national sovereignty in the sphere of cross-border investments [3]. The principle of fairness and mutual benefit aims at leveling the interests of the host country, the investing country, and the investors, and all stakeholders should consider treating each other fairly and considering one another's reasonable requests. This principle has also been adopted as the central goal of bilateral investment agreements, and most favored nation treatment and national treatment are two of its concrete implementations. Bilateral investment treaties that have been signed between China and countries like Belarus and Mexico have special non-discriminatory treatment

provisions to ensure the proper protection of the equal and legitimate rights and interests of the investors.

The minimum treatment standards principle has its foundation in the customary international law that demands that the host country ensures fair and just treatment, proper protection, and security to investors once it accepts foreign investment. It is also a crucial legal background of the International Centre for the Settlement of Investment Disputes dealing with cross-border investment disputes. In numerous arbitration practice scenarios, the principle has been an essential contributor to the protection of investors rights and interests. By the end of 2024, China has already concluded and participated in bilateral investment agreements with 108 states (all of them based on three principles of international public law and cover most of the investment destinations across the world), creating a robust legal barrier to investment activities of Chinese firms abroad.

### **3. Practical Dilemmas of Overseas Investment Protection from the Perspective of Public International Law**

In terms of international public law, when considering the modern practice of international investment, there are four practical challenges of overseas investment protection that are present, and each of them could be backed up with specific statistics and examples based on the work of authoritative organizations. The disunity of the treaty system is the main problem. At the moment, there are 2,228 operational bilateral investment treaties in the world, along with other regional investment treaties creating an overlapping web of rules [4]. Various treaties differ substantially in their definition of core clauses like equitable and fair treatment and compensation standards, and not only do they make compliance costs and forecasting risks extremely high to investors, they can also cause a lot of controversy in terms of judicial application and interpretation of treaties.

There is an underlying conflict between the implementation of national sovereignty and the safeguarding of the rights to invest abroad that have also been made more noticeable. In 2024, ICSID registered 55 new investment disputes, half of them were cases of direct conflict between sovereign measures, including expropriation by a host state, foreign exchange control, and changes to industrial policies and investor rights.. Developing countries accounted for 55% of such cases as respondents, and the balance between the two under the public law framework urgently needs to be solved.

The operation of the International Centre for Settlement of Investment Disputes (ICSID) mechanism is significantly inefficient and lagging behind. Since its establishment, ICSID has received a total of 1,022 cases, with an average trial period of 3–5 years [5]. The high time and economic costs have discouraged many investors, and the implementation of arbitration awards is quite difficult. In 2023, only 65% of its published awards were effectively enforced, awards that are supposed to carry international legal binding force. The actual effectiveness of the awards is greatly reduced.

There is still a clear lack of public law protection rules in emerging investment fields. According to the UNCTAD 2025 World Investment Report, the number of overseas investment projects in the global digital economy will increase by 17% and their value will double in 2024. Investment in emerging fields such as green investment, new energy, and key minerals will continue to expand. However, there has never been a unified protection rule at the international public law level that is suitable. The lack of core provisions such as defining digital assets and protecting cross-border data flows not only fails to respond to the protection needs of new investments, but also further widens the institutional supply gap in global investment governance.

#### **4. Analysis of the International Public Law Roots of the Difficulties in Overseas Investment Protection**

The multiple challenges faced by overseas investment protection are not caused by a single factor, but rather by the inherent flaws of international public law rules and the insufficient adaptability to investment practice scenarios, which are intertwined and work together. Firstly, the iteration of international public law rules significantly lags behind the evolution of investment practices. Most of the existing investment-related public law rules were formed in the era dominated by traditional industrial investment, with core provisions designed around goods trade and real industry investment. They lack responses to the core demands of emerging fields such as digital economy and green investment, and are also difficult to meet the protection needs of new scenarios such as cross-border data and low-carbon investment. The UNCTAD report clearly points out that the investment scale related to sustainable development goals in developing countries has decreased by 25%–33%, which is highly related to the systematic lack of relevant international public law rules and the imperfect design of provisions. Secondly, there is a significant imbalance in the formulation of investment treaties. For a long time, developed countries have dominated the drafting and formulation process of the vast majority of bilateral and regional investment treaties based on their economic and regulatory discourse power [6]. Treaty provisions are more focused on safeguarding the interests and demands of multinational investors, while developing countries, due to their urgent investment needs and relatively weak bargaining power, often have to accept non-equivalent terms, ultimately resulting in a structural imbalance in the allocation of rights and obligations in the investment field between countries. Thirdly, there is a lack of unified rules coordination and interpretation mechanisms at the level of international public law. There is not a single multilateral investment treaty that has been adopted across the world. It is hard to use only the disjointed regulations of the bilateral and regional treaties to solve the problems of overseas investment protection at the global level. In addition, there is no common approach to the interpretation and implementation of fundamental clauses of various treaty systems and there is no authoritative body in the international community that can link the rules, which further complicates the situation with the current protection dilemma. Lastly, there are considerable differences in legal principles and values orientation between countries. Developed states focus more on the rights of investors than the territorial sovereignty of the host states whereas developing states focus more on the defense of national sovereignty and social interests. Such conceptual differences are immediately manifested in the real life practices of treaty implementation, investment regulation and dispute resolution as barriers to the implementation of rules and eventually become challenges to the achievement of uniform implementation of international public law rules on a global level [7].

#### **5. Institutional Coordination Path for Overseas Investment Protection under the Framework of Public International Law**

In response to the existing difficulties in protecting overseas investments from the perspective of international public law, and in combination with the basic principles of public law and global investment practices, it is necessary to establish a multi-level institutional coordination system to effectively enhance the practical effectiveness of overseas investment protection. Firstly, promote the coordination and unity of the investment treaty system, refer to the high-standard rule design in the CPTPP investment chapter, strengthen the connection between regional investment agreements and bilateral investment treaties, and resolve conflicts in the application of rules; Relying on the United Nations Conference on Trade and

Development to accelerate the negotiation process of multilateral investment treaties, establish a globally unified overseas investment protection benchmark, refine the recognition standards for core clauses such as fair and just treatment and expropriation compensation, and reduce the practical difficulty of treaty application and investor compliance [8].

Secondly, improve the international investment dispute resolution mechanism, promote the reform of the arbitration mechanism in accordance with the ICSID Rules Amendment, optimize the ICSID arbitration procedure, simplify the trial process, shorten the trial period, and establish a supervision and cooperation mechanism for cross-border enforcement of arbitration awards; At the same time, actively promote the construction of multilateral investment courts, ensure equal participation of all countries in rule design, enhance the neutrality and enforcement effectiveness of dispute resolution, and address the long-standing pain points in the industry of difficult enforcement of rulings.

Thirdly, strengthen the updating and scenario adaptation of international public law rules, and formulate exclusive investment protection rules based on the investment characteristics of emerging fields such as digital economy, green investment, and new energy, clarifying the standards for safeguarding the rights and interests of digital assets, cross-border data, and low-carbon investment [9]; Based on the UNCTAD Sustainable Development Investment Policy Framework, international cooperation among countries should be further strengthened to achieve the deep integration of investment rules and sustainable development goals, and work together to promote overseas investment protection and global development processes.

Fourthly, strengthen multilateral consultations and practical cooperation among countries, relying on international platforms such as the United Nations Conference on Trade and Development and the WTO, establish a normalized coordination mechanism for overseas investment protection, fully resolve differences in legal concepts and value orientations among countries, safeguard the legitimate rights and interests of investors while maintaining the sovereignty and regulatory rights of the host country, build a balanced and inclusive new international investment governance order, and strengthen public law protection for stable cross-border investment.

## **6. Practice and Improvement Suggestions for China's Participation in the Coordination of Overseas Investment Protection System**

Against the backdrop of the profound reshaping of global capital flows and the accelerated restructuring of international investment rules, China, as a major global outward investor, has deeply engaged in the coordination of overseas investment protection systems. It has gradually emerged as a key player in international investment governance and developed a practical model integrating local characteristics with an international perspective. From the existing practical achievements, China has established a network of bilateral investment treaties covering more than 140 countries [10], and the new generation of treaties such as the China Russia Bilateral Investment Agreement has been modernized and upgraded. Significant breakthroughs have been made in investment facilitation and the refinement of dispute resolution mechanisms. According to official data from the Ministry of Commerce, China's OFDI stock climbed to \$2.9554 trillion in 2023, with investment coverage in 189 countries and regions worldwide; At the same time, China's pilot free trade zones have been testing high-standard investment rules on a trial basis through institutional innovation, and convert practical experience into local support for treaty negotiations for treaty negotiations, and has improved the rule system for cross-border investment along the Belt and Road Initiative (BRI). However, there are still significant shortcomings in the existing participation system compared to international high-standard investment rules and the actual needs of Chinese enterprises for overseas investment. Some of the early signed bilateral treaties did not include

emerging issues such as digital economy and green investment, highlighting the problem of lagging rules; On the stage of multilateral investment governance, there is still room for improvement in China's ability to set agendas and interpret rules [11], and the cross-border legal cooperation mechanism for overseas investment rights protection of enterprises has not yet formed a systematic support. The efficiency and practicality of rights protection need to be further optimized.

In this regard, China needs to promote the improvement of the coordination system for overseas investment protection from four aspects. Firstly, systematically upgrade the bilateral investment treaty system, actively embed investment protection clauses in emerging fields, and achieve deep integration and adaptation with international high-standard rules such as CPTPP. Secondly, by leveraging multilateral platforms such as BRICS and the Shanghai Cooperation Organization, China can deeply participate in global multilateral investment treaty negotiations and actively present China's governance proposals. Thirdly, deepen cooperation and experience sharing with developing countries to jointly shape a fair and reasonable international investment order that balances national sovereignty and development rights. Fourthly, based on the China Council for the Promotion of International Trade (CCPIT) Trade Law Service Platform and the "Global Economic and Trade Investment Opportunities and Risks Express" we will create the risk warning system that covers all the stages of the investment process, enhance the real-time delivery of risk information and the guidance system, connect to overseas embassies and commercial representative offices to create a legal support team, and employ international public law regulations and bilateral treaty devices to protect the lawful interests and rights of Chinese companies doing business abroad.

## **7. Conclusion**

The paper performs a systematic review of the problem of foreign investment protection within the context of the international law of peoples. Using information of such authoritative organizations as UNCTAD and ICSID, it singles out four major practical threats to the protection of overseas investment: fragmentation of treaties, ineffective mechanisms of dispute resolution, absence of regulations in new spheres, and imbalance between sovereignty and rights of investments. Simultaneously, it examines the main sources of the issues under consideration in terms of public law, i.e., a gap in updating the rules of investment and the real development, unbalanced benefit allocation during the creation of the treaties, absence of global coordination in the sphere, and significant differences in legal theories between the states. In this regard, a multi-level institutional coordination path is proposed in order to bring about treaty system coordination, improve the dispute mechanisms, adapt and update the rule, and create multilateral cooperation among the countries.

This paper has not yet undertaken an intensive exploration of how to develop special laws that protect the interests of the people in the emerging sectors like digital economy and green investment due to restrictions on perspectives of research and the scope of the study. Further development of differentiated systems of investment protection in various regions remains possible and appropriate information may be considered as one of the main directions of further research.

In terms of practical implementation, it is necessary to improve the overseas investment protection system in a concerted effort by all countries in the world. All the parties must adhere to the general principles of international public law, close the gaps in the legal concepts and values, expedite the multilateral investment treaty negotiations and create an investment governance structure that would be appropriate to the concept of global

sustainable development based on the balance between the sovereignty of the host countries and the legitimate rights and interests of the investors. Being one of the largest outward investors in the global market, China should use its current bilateral investment treaty network and outward investment experience to continue developing its treaty system, increase its input into the creation of multilateral investment regulations, better warn about risks and provide legal assistance through the China Council for the Promotion of International Trade website (Trade Law), further engage in cooperation with developing countries and make use of local traditions to help to establish a fair, reasonable and inclusive new world order in the field of international investment governance.

## References

- [1] Puig, S., & Shaffer, G. (2018). Imperfect alternatives: institutional choice and the reform of investment law. *American Journal of International Law*, 112(3), 361-409.
- [2] McLachlan, C. (2008). Investment treaties and general international law. *International & Comparative Law Quarterly*, 57(2), 361-401.
- [3] Byers, M. (2001). Introduction: Power, Obligation, and Customary International Law. *Duke J. Comp. & Int'l L.*, 11, 81.
- [4] Schill, S. W. (2009). *The multilateralization of international investment law (Vol. 2)*. Cambridge University Press.
- [5] Van Harten, G. (2008). *Investment treaty arbitration and public law*. Oxford University Press.
- [6] Simmons, B. A. (2014). Bargaining over BITs, arbitrating awards: The regime for protection and promotion of international investment. *World politics*, 66(1), 12-46.
- [7] Cotula, L. (2023). International investment law and climate change: reframing the ISDS reform agenda. *The Journal of World Investment & Trade*, 24(4-5), 766-791.
- [8] Newcombe, A. P., & Paradell, L. (2009). *Law and practice of investment treaties: standards of treatment*. Kluwer Law International BV.
- [9] Chaisse, J., & Bauer, C. (2018). Cybersecurity and the protection of digital assets: assessing the role of international investment law and arbitration. *Vand. J. Ent. & Tech. L.*, 21, 549.
- [10] Chaisse, J., & Kirkwood, J. (2020). Chinese puzzle: anatomy of the (invisible) Belt and Road investment treaty. *Journal of International Economic Law*, 23(1), 245-269.
- [11] Wang, H. (2017). New multilateral development banks: Opportunities and challenges for global governance. *Global Policy*, 8(1), 113-118.