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# *Optimisation of Risk Prevention and Control Mechanisms in International Investment Agreements under the Belt and Road Framework*

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***Abstract.*** In the context of advancing 'Belt and Road', China transformed from being the traditional receptor into major force affecting international investment rules. Therefore, investor-host state IIAs' dispute resolution system faces more complicated legal threats and institution challenge. Based on case study and literature review, this paper finds out three basic risk points including legal diversification, provision's various interpretation and sovereignty abandonment about current ISDS system. And it points out some reasons why investment governance is full of legal uncertainty now, such as wider scope of national security examination and unilaterally imposing sanction. Because there are those current problems, this article puts forward three ways of optimization: establishing multi-lateral appeal system, unifying legal interpretation method, introducing principle of proportionality, strengthening decision-making consistency among all countries, enhancing binding force of laws between different countries. At the same time, this article has learned from practical experience of 'The Belt and Road Initiative', reducing legal risk caused by IIAs in future, promoting perfect risk prevention mechanism and management measures. This paper intends to suggest some institutional innovation and policy suggestions which will promote IIAs risk management under 'The Belt & Road Initiative', protecting investor interests and safeguarding national sovereignty at the same time.

***Keywords:*** risk prevention, international investment agreements, belt and road framework

## 1. Introduction

Amid economic globalization, China's 'One Belt, One Road' initiative is steering the global investment rule system toward greater diversity and inclusiveness. As of April 2024, China had concluded more than 200 cooperation agreements with 153 countries and 32 international organizations, worth more than $2 trillion, including in areas such as infrastructure, resources and energy, the green economy, and the digital economy [1]. China has shifted from being a 'recipient' to a 'contributor' in international investment. During the conversion process, the national investment system must also transform to adapt to the requirements of the era of collaborative participation and win-win cooperation. However, in reality, due to the international environment and the differences in national legal systems, many legal problems have come to the fore. Current theoretical research focuses on the following aspects. On the one hand, traditional investment protection agreements prioritize protection over sustainable development and do not impose constraints on the behavior of

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the investing country, thereby creating a contradiction between the sovereign governance balance of the investing country and the host country [2]. Conversely, it emphasizes the management and mitigation of risks within the ISDS mechanism of the international investment agreement (IIA) system [3]. Based on the development of the 'Belt and Road', this study focuses on optimizing the risks faced by the ISDS regime in practice through case studies, literature reviews, and other research methods. To enhance the risk management framework of the international investment agreement system within the 'Belt and Road' initiative, and to strengthen the multi-tiered risk control system via the dispute resolution mechanism.

## 2. Literature review

### 2.1. Legal risks faced by IIAs

On the one hand, legal fragmentation has led to confusing arbitration standards in IIAs and significant divergence in arbitral awards. Differences in the provisions of more than 3,000 IIAs worldwide have led to inconsistent arbitration standards [4]. For example, arbitral tribunals have significantly diverged in their decisions on 'indirect expropriation', and the UNCITRAL statistics show that 30% of ISDS cases in 2025 had divergent judgments [5]. Conversely, international investment agreements expose the risk of sovereign waivers, that ISDS allows foreign investors to evade the administrative review and host country's Judicial processes, and directly seek the host country's liability through international arbitration, and in other words the jurisdiction of the host country in the area of investment regulation has been partially waived, and when arbitral tribunal decides the case of the host country violates the host country in terms of the two provisions and the host country will not be in a position to do anything it will be lying in the hands of the host country. When arbitral tribunals give expansive interpretations to clauses such as 'indirect expropriation' and 'fair and equitable treatment', the host country has been ruled to have 'violated the investment agreement' by substantially interfering with governance decisions within the sovereignty of the State.

### 2.2. Risk of ambiguity in the terms of IIAs

First, IIAs are widely used within national security review regimes, but lack uniform standards of measurement. The high degree of ambiguity about standards, particularly in investment measures led by developed countries, exacerbates the opacity of the legal environment. Second, unilateral sanctions and state intervention have weakened the sovereign position of host countries in implementing agreements, leading to investors taking the initiative in ISDS dispute settlement, while facing challenges to the balance of sovereignty.

In response to the ISDS system, academics have proposed the establishment of a multilateral appeal mechanism with a standardized legal review framework [6]. Refer to the two-tier structure of the World Trade Organisation (WTO) model. The establishment of a permanent appellate body independent of the arbitral tribunal, responsible for determining the legal applicability and procedural legality of the first instance decision. For example, the EU's ICS has a two-tier structure, comprising general and appellate courts, which ensures consistency in decisions [7]. Define the legally binding aspects of horizontal commitments while ensuring that the host state maintains sufficient flexibility during significant legal system reforms.

### 2.3. Risk of ambiguity in the terms of IIAs

In response to the issue of conflicting methods of legal interpretation in current ISDS cases, academics have proposed that arbitral tribunals be required to adopt Articles 31 to 33 of the Vienna Convention, based on the innovation of the system for 'sustainable development' and 'public interest'

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[8]. The Contracting States jointly make interpretative declarations as evidence to have reference and binding effect in arbitration, as well as in the interpretation of the provisions, and ensure consistency.

In the current international dispute investment practice, the traditional international investment agreement system often ignores the host country's reasonable surveillance space. In this regard, the principle of proportionality is introduced to achieve institutional reconciliation between state sovereignty and the protection of investments [9].

The presence of the principle of proportionality implies that the host country should take actions based on 'uncovering a lawful purpose of the population that is objectively accepted by society as a whole.' For example, the Fair and Equitable Treatment clause requires an investor State to demonstrate that it is not pursuing a purely legitimate public goal in trying to use the techniques claimed by the host State to override the FET. On the contrary, the self-defense of the public interest of the host nation is recognized [10]. The necessity principle does not allow a host State to take stricter measures once it offers the "least onerous options for achieving the objective" and when alternative options exist that are less harmful to the investor State. Indicators, such as in the expropriation clause, include the need to demonstrate that there is no alternative to serving the same public interest that is even more reasonable, along with compensation based on the actual impact [11]. With the principle of proportionality in investment agreements, the methods and means required by the host country should prioritize the interests of the people, outweighing the harm to the investor State.

## 3. Analysis of risks and sources of risks faced by the ISDS system

### 3.1. Risks faced by the ISDS system

Currently, ISDS, which has played an important role in the implementation of IIA, is facing serious challenges caused by legal fragmentation especially the lack of coherent standard on arbitral award which brings potential risks. Due to legal fragmentation, arbitral award lacks clarity, thus resulting in inconsistent decisions; different provisions exist among different BITs. Compared with BIT (2009 Additional) signed between China and Switzerland, BIT signed between Switzerland and Colombia, there are no certain definition of "reasonableness" contained in both BITs regarding FET clause which can easily cause inconsistent award decisions [12]. In the China-Switzerland BIT, disputes may be submitted either to local court of host state or international arbitral institution, thus offering several ways of dealing with dispute, whereas in Switzerland-Colombia BIT, arbitral panel pays close attention to regulations adopted by host country. From above statements, it can be seen that different review standards and interpretive approach adopted by arbitral panels lacking uniformity, causing legal uncertainty because different decision made out of identical case will increase legal uncertainty. Besides, since there is no clear emphasis on host state's right to regulate in both BITs, it might harm host states in real award; hence host country faces tough challenge when figuring out legal liability which also undermines investor confidence and the ability of state government as well. To sum up, reforms are needed because of reducing authority and legitimacy brought about by legal fragmentation, therefore, it is necessary to push forward standardization of language used as well as adjustment of arbitral proceedings dealing with issue concerning devolution of sovereignty because there cannot reach compromise on right to govern between investor countries and host countries.

In addition, another danger caused by the ISDS arrangement, in the context of legal fragmentation and conflicting decisions, lies in its failure to properly strike a balance between transferring the sovereignty from the host state to the company with regard to governing affairs. Most investment dispute arbitrators often pay more attention to the investors' standpoint, stressing 'investment protection', but ignoring the ability of one member country to make laws in accordance with social goals [13]. Thus, sometimes even though reasonable regulatory policies were adopted, however, they

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would still be declared breaches of FET criterion, or implied indirect seizure. This situation greatly endangers sovereignty. For example, in the case Uruguay & Cigar Smoking Law, national health plans became victims due to pressure exerted through this type of judicial procedure. So now many people think we need better ways to control how much power should belong to each player among host countries and firms. Such rules should be made clear via interpretations of agreements and general court ruling principles [14].

### 3.2. Analysis of the source of ambiguity risk of IIAs provisions

The IIAs that are in place have ambiguous provisions to deal with national security reviews and the unilateral sanction imposition practice is not so clearly presented. This confusion has caused continuous investment stands over the recently past years and this is a threat to the integrity of sovereignty states also has too much discretion in these provisions and they are also somewhat ambiguous. With increasing geopolitics, host and investor nations could not interpret and implement those terms. The issue is with national security reviews by the host country and unilateral sanctions and they have been widely defined over the past years [15]. The Foreign Investment Risk Review Modernization Act has enhanced the level of scrutiny that the US gives to high-tech foreign investments. This has given the state more discretion in reviews and increased investor uncertainty. Additionally, unilateral measures have affected investment. Sanctions applied by investing nations on specific countries may affect foreign investors' rights and cause investment projects to be abandoned, compounding IIA uncertainty. National security reviews must be more transparent and conducted by the law. National security evaluations under IIAs should have a clearer scope and procedural requirements to avoid legal disputes over unclear sections. Mandatory independent national security evaluations and investor rights to access information and make representations. The agreement should further enhance unilateral sanctions regulation by requiring parties to participate in a negotiating process or receive compensation if third-country penalties prevent them from fulfilling their obligations.

## 4. Path and suggestion

### 4.1. Constructing a multilateral appeal mechanism and a standardized legal review framework

The ISDS mechanism is today challenged by the issue of uneven decisions and uneven standards to apply the law that create legal fragmentation. Before the same provisions of the agreement were introduced, but still cannot resolve the conflict in the arbitration tribunal, investors and states find it difficult to predict the results of applying the law [16]. To resolve this problem, the UNCITRAL Working Group proposed drafting a multilateral appeal mechanism aimed at establishing a permanent appeals body and ensuring a consistent interpretation of the law, thereby promoting uniformity and predictability in the justice system. Scholars suggest drawing on the two-tier structure of the WTO to establish an independent arbitral tribunal and a permanent appellate body, thereby clarifying the legal application standards and procedural legitimacy, and ensuring the consistency and legally binding nature of the rulings [17].

### 4.2. Introducing the principle of proportionality to address the risk of ambiguity in IIAs

There are several instances where the critical provisions of the IIAs are ambiguous, leading to disputes over their meaning, including the concept of FET. The principle of proportionality has been introduced to find a balance between safeguarding investors' rights and protecting the public interest of the host country [18]. This principle encompasses three key concepts: appropriateness, necessity, and balance. It requires the host country to implement measures that achieve legitimate public

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purposes, adopt means with the least impact on investors, and ensure that the public interest significantly outweighs the harm to investors. At the same time, the principle of proportionality is explicitly included as an integral part of the FET clause, and it is clear that it has practical application value in the arbitral tribunal's decision, and can safeguard the investor's rights while taking into account the host country's public interest objectives [18].

### 4.3. China's hard rules RCEP introduced a ‘development exception’ in the investment chapter

This rule enables low-income host countries to maintain a certain degree of policy autonomy when liberalizing sensitive sectors. This agreement created a development exception within the investment chapter, allowing low-income host states to keep some policy space on opening up sensitive sectors. The clause is based on the general exemptions of GATT and the GATS as it alludes to the special concerns of the developing nations [19].

## 5. Conclusion

As the global environment in which investment takes place becomes increasingly complex and the global promotion of the Belt and Road initiative continues unabated, China must adapt to the issue of becoming a rule-maker rather than a consumer of investment. This study examines the risks of legal fragmentation and ambiguity, as well as the complexities of mixed arbitral remedies, in the context of ISDS. It resolves the vital effects on the sovereignty of host nations and legal predictability. It includes case studies and literature reviews to examine the challenges in risk prevention and control within the traditional IIA system. To improve rule consistency and predictability, it recommends an international appeals mechanism and a consistent judicial review system based on the WTO. Second, it advises using proportionality to interpret FET laws, coordinating investment safeguards with national regulatory authorities, by applying the three-stage measure of appropriateness, necessity, and balance. Third, China supports the inclusion of a development exception in the RCEP investment chapter, which provides regulatory flexibility to low-income host countries, based on the GATT and GATS general exception rules, to meet their specific needs. Fourth, it recommends putting into effect the GIP, soft laws, in the FTA annex of the Belt and Road Initiative so that investment behavior could be regulated. Fifth, according to future FTAs models; there would be a balance among investment liberalization with countries’ ability to regulate and provide public goods. Therefore, there will be more balanced dispute resolution mechanisms which are transparent, and sustainable. This also creates more stable legal environment for investors within the scope of Belt and Road Initiative (BRIs).

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