

The Development of Investment Dispute Resolution Under the Belt and Road Initiative

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Abstract: The objective of this article is to provide an overview of: first, the present situation and challenges faced by investment disputes under the Belt and Road Initiative (BRI) in recent years; second, the factors influencing the development of investment dispute resolution mechanisms under the BRI, including the updating and modernization of investment treaties, revisions to domestic laws such as the Law on Foreign State Immunity and the Arbitration Law, as well as the impact of institutional setup, rules, and arbitrators; and third, proposals for improving the investment dispute resolution mechanism under the BRI, including promoting the integration of regional investment dispute resolution mechanisms, diversifying dispute prevention and mediation, fostering the rule of law in the business environment of BRI countries, and reforming and modernizing China's investment treaties.

Keywords: International Investment Law, Belt and Road Initiative (BRI), Investment Dispute Settlement Mechanism, Investor–State Dispute Settlement (ISDS)

I. OVERVIEW OF INVESTMENT ACTIVITIES AND DISPUTE RESOLUTION UNDER THE BRI

China has significantly strengthened investment partnerships with countries along its routes under the Belt and Road Initiative (BRI), resulting in a remarkable increase in bilateral investment. The two-way cumulative investment value of China and the BRI partners was over \$380 billion, with China's investment value being \$240 billion among the BRI countries between 2013 and 2022.¹ However, having excess skilled labor and frequent

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1 Information Office of the State Council of the People's Republic of China, Jointly Building the Belt and Road: A Major Practice in Building a Community with a Shared Future for Mankind, https://www.gov.cn/zhengce/202310/content_6907994.htm (Last Visited on July 13, 2026).

industrial upgrades in China is a major challenge that has a significant effect on the investment activities. The BRI is a tool used to address labor and investment upgrade issues by creating vast employment opportunities and pursuing an international investment strategy by exporting labor. Through the BRI and the macroeconomic engine, China has transformed from a capital-importing country to a capital-exporting one, a shift that has been instrumental in international investment. While China's outbound investment under the BRI was initially catalyzed by State-owned Enterprises (SOEs), in recent years private enterprises have gradually become the main force driving this investment growth.² This indicates that the structure of China's outbound investment under the BRI has become more rational and balanced.

The BRI spans a wide range of countries and regions, many of which have weak economic fundamentals and high political risk, making them inherently risky areas for investment. These countries typically face challenges such as inadequate infrastructure services and policy gaps, which result in trade and foreign direct investment (FDI) levels falling below their potential. A common issue in these countries is underdeveloped infrastructure, with port infrastructure quality and digital infrastructure development lagging behind the global average. These challenges not only hinder economic growth but also increase the investment risks for Chinese enterprises in these regions.³

Politically, several risk factors have an adverse effect on China, especially risks imposed by the BRI countries. Political instability, social disorder, and unstable public sentiments are political risk factors that may trigger civil wars, armed conflicts, protests, and terror attacks.⁴ For example, the Commonwealth of Independent States (CIS) region, comprising Russia, Ukraine, and the five Central Asian nations, presents particularly high geopolitical risks, amid concerns about political stability and governance. In the Asia-Pacific region, political risks vary widely. For instance, Singapore faces very low political risks, while Nepal, Pakistan, and Bangladesh in South Asia face much higher political risks.

2 Ministry of Commerce of the People's Republic of China, 2024 Statistical Bulletin of China's Outward Foreign Direct Investment, <https://swt.fj.gov.cn/mqchzhfwpt/chzx/gzdt/202511/P020251107391329648639.pdf> (Last Visited on July 13, 2026).

3 World Bank, *The Economics of the Belt and Road Initiative: Opportunities and Risks of Transport Corridors*, World Bank Publications, 2019, p. 38.

4 Hu Fang and Li Yubo, Geopolitical Risk Assessment and Influencing Factors of Countries Participating in the Belt and Road Initiative, *Tropical Geography*, Vol. 43, No. 6, 2023, p. 1160.

Moreover, substantial geopolitical risks and poor social security conditions characterize the Middle East and North Africa (MENA) region. Additionally, a large proportion of the BRI countries are politically unstable or frequently experience regime changes, leading to shifts in policies and investment projects with each new government. For example, the East Coast Rail Link (ECRL) in Malaysia was delayed after the 2018 elections, when there was a change in the ruling government, resulting in a renegotiation of the project's terms.

Economically, many of the BRI countries are developing countries with underdeveloped infrastructure and insufficient domestic economic growth. Energy-dependent countries, in particular, are heavily reliant on their energy sectors, which creates imbalanced economic structures.⁵ Especially in regions like West Asia, South Asia, and Africa, where economies are relatively underdeveloped, the focus is often on labor-intensive light industries and the export of raw materials.⁶ These factors pose obstacles to attracting FDI and increase risks for Chinese companies investing in these regions. Moreover, many countries participating in the BRI, particularly developing ones, struggle with high levels of corruption, which weakens governance and reduces the attractiveness of these markets to foreign investors. For instance, in the Association of Southeast Asian Nations (ASEAN) countries, which account for a large share of the BRI investments, most nations (with the exception of Singapore) rank in the lower half of Corruption Perceptions Index, by score and ranking (Figure 1).⁷ Corruption also leads to inefficiencies in the implementation of investment projects, thereby increasing costs and risks for local businesses. Myanmar and Pakistan, for example, are particularly notorious for corruption. While anti-corruption efforts have been stepped up, their effectiveness remains limited, and corruption continues to disrupt economic functioning severely.

Against this backdrop, Chinese enterprises' investment activities in countries along the BRI are facing greater challenges, and the frequency with which Chinese investors use international investment arbitration to resolve

5 Li Zhihui et al., Assessment and Influencing Factors Analysis of Economic System Vulnerability of the Belt and Road Initiative Countries, *PLOS ONE*, Vol. 17, No. 1, 2022, p. 2.

6 Zhang Hui, Yan Qiangming and Li Ningjing, BRI Infrastructure Development and Economic Growth, *China Economist*, Vol. 16, No. 3, 2021, pp. 26–31.

7 Brunei's data is not included in the 2023 Corruption Perceptions Index survey. Data comes from Transparency International, Corruption Perceptions Index 2023, <https://www.transparency.org/en/cpi/2023/index/bdi> (Last Visited on July 13, 2026).

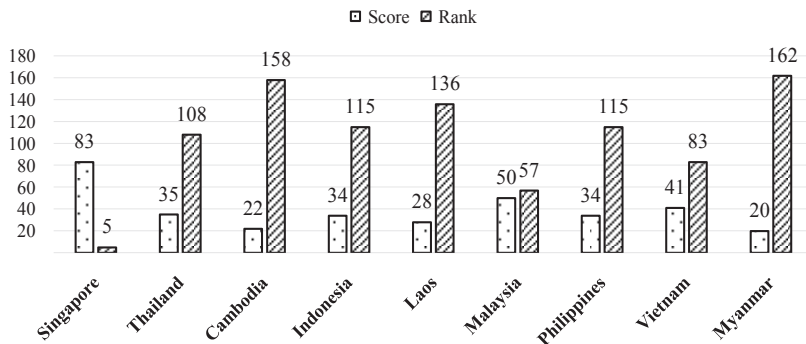


Figure 1: 2023 ASEAN Corruption Perceptions Index

disputes has risen sharply. As of April 2026, there have been 25 investment arbitration cases filed by Chinese investors against foreign governments, with 19 of these cases arising after the BRI was proposed in 2013. The majority of these cases involve the BRI countries. Countries along the BRI route, particularly those in Southeast Asia and Africa, often have underdeveloped legal systems, and investors are unable to enforce their claims through local courts. As a result, they often turn to international investment dispute resolution mechanisms to seek greater legal certainty and protect their rights within foreign jurisdictions. Since the launch of the BRI in 2013, China has signed more than 200 cooperation documents and agreements with 147 countries and 32 international organizations.⁸ However, these cooperation agreements have not provided sufficient protection for Chinese investors, nor have they led to significant advances in the mechanisms used in international investment dispute resolution.

II. FACTORS AFFECTING THE DEVELOPMENT OF THE INVESTMENT DISPUTE SETTLEMENT MECHANISM UNDER THE BRI

A. Investment Treaties: Declining Numbers, Regional Consolidation, Treaty Renewal and Modernization

The main goal of the BRI is to enhance global connectivity and foster

⁸ Belt and Road Portal, China has signed more than 200 cooperation documents on the joint construction of the Belt and Road Initiative with 147 countries and 32 international organizations, <https://www.yidaiyilu.gov.cn/xwzx/gnxw/215896.htm> (Last Visited on July 13, 2026).

international trade and investment, which intersects significantly with the evolving landscape of investment treaties. Historically, the number of International Investment Agreements (IIAs) surged as countries sought to attract capital and protect foreign investors. However, the number of new treaties has significantly declined in recent years. According to United Nations Conference on Trade and Development (UNCTAD) statistics, starting from 2010, the number of IIAs began to show a declining trend compared with the past, which was in sharp contrast to the rapid growth in the 1990s (Figure 2).



Figure 2: A Presentation of Signed and In-force Stock of IIAs, 1959–2024
(By Date of Signature)

Data Source: UNCTAD, IIA Navigator, <https://investmentpolicy.unctad.org/international-investment-agreements/ii-a-mapping> (Last Visited on July 13, 2026).

Note: The figure does not include IIAs that were effectively terminated.

Over the past few years, several countries have chosen not to renew their Bilateral Investment Treaties (BITs) and have expressed dissatisfaction with these agreements as a legal framework in other ways. Between 2022 and 2023, 60 BITs were terminated. Following the era of intense globalization, BITs (or at least their core provisions) have become increasingly unpopular among developing countries. In the 1990s, many developing countries, often under subtle or indirect coercion, signed numerous BITs, sometimes without fully assessing the long-term costs and benefits. In other words, the sharp increase in the BITs stemmed from developing countries' less-than-thorough calculations of the costs and benefits involved, leading to an outcome that was excessively investor-friendly.⁹ Similar to consumers who often overlook low-probability,

⁹ Lauge N. Skovgaard Poulsen, Bounded Rationality and the Diffusion of Modern Investment Treaties, *International Studies Quarterly*, Vol. 58, No. 1, 2014, pp. 7–14.

high-impact risks, developing countries fell into these treaties without fully considering the legal implications.¹⁰ For instance, between 1994 and 2009, South Africa signed over 50 BITs, the majority of which were concluded before 2000 with capital-exporting states. Since 2000, however, most of South Africa's BITs have been with other developing countries. South Africa was not alone in this trend; South Korea and numerous other countries followed suit. This behavior appears even less "rational" when one considers empirical evidence suggesting that the conclusion of BITs has only a minimal effect on the flow of FDI.¹¹

In this context, many countries have begun to slow down the signing of BITs and are instead seeking the regionalization of investment treaties. Under the vertical overlap of regional investment treaties, BITs and policy documents related to the BRI, the handling of investment disputes will face greater challenges and constraints. For example, Chinese investors in Thailand may rely on the China–Thailand BIT (1985) and the ASEAN Comprehensive Investment Agreement (ACIA) signed in 2009 to protect their investments. They may even be influenced by the cooperation plans outlined in the BRI documents between China and Thailand.¹² This layering of multiple legal instruments creates a complex legal environment for investors and governments alike, as different treaties may have distinct dispute resolution mechanisms, standards of treatment, and exceptions. Investors may find themselves navigating a web of treaties and policy documents that can support or undermine their claims. At the same time, governments may face challenges reconciling the terms and obligations under various agreements. This fragmentation can generate legal uncertainty, increase compliance costs, and complicate the consistent resolution of investment disputes.

Accordingly, since the BRI was proposed in 2013 and China signed the BIT with Turkey in 2015, it took eight years for China to finally sign another BIT with Angola in 2024, a country along the BRI.¹³ This passive behavior is contradictory to China's proactive approach toward the BRI. Therefore, some

¹⁰ *Ibid.*, p. 10.

¹¹ Egger Peter and Michael Pfaffermayr, The Impact of Bilateral Investment Treaties on Foreign Direct Investment, *Journal of Comparative Economics*, Vol. 32, No. 4, 2004, p. 788.

¹² Wolfgang Alschner, Regionalism and Overlap in Investment Treaty Law: Towards Consolidation or Contradiction? *Journal of International Economic Law*, Vol. 17, No. 2, 2014, p. 271.

¹³ Bjørn Leif Brauteseth, China's Bilateral Investment Treaties with the Global South: Protecting Nature or Building Symbolic Legitimacy? *Forum for Development Studies*, Vol. 52, No. 2, 2025, p. 297.

scholars argue that the BRI may, to a large extent, be a marketing strategy,¹⁴ with China possibly believing that new Belt and Road investments do not need to be governed by IIAs (i.e., IIAs would be *passé* and contracts would be the future).¹⁵ This is evident in China's current engagement in significant investment negotiations, suggesting it is taking time to reassess its existing network of BITs and transition to new agreements.¹⁶

B. ISDS: ICSID New Rules and UNCITRAL Working Group III Reform

The development of an effective Investor–State Dispute Settlement (ISDS) mechanism is crucial to the success of the BRI, as it directly affects the investors' confidence and the stability of cross-border investments. Given the increasing scale of Chinese investments in countries along the BRI routes, the need for a reliable, transparent, and fair system of resolving investment disputes has become more pressing. The International Center for Settlement of Investment Disputes (ICSID) initiated its rules modernization reform in 2016, aiming to create procedures that are more transparent, efficient, cost-effective, and environmentally friendly. The new rules came into effect on July 1, 2022.¹⁷ These rules include significant innovations, such as the broader applicability of supplementary facility rules, the establishment of expedited arbitration procedures, requirements to disclose claimants' ownership and control, and mandatory disclosure of third-party funding. These innovations may significantly influence the practices of relevant countries and stakeholders.¹⁸

China's stance on ISDS reforms was viewed as ambiguous and hesitant.¹⁹ As a result, the Chinese government proposed the ISDS reform to the United Nations Commission on International Trade Law (UNCITRAL) Working Group III. In the proposal, China endorsed its commitment to the ISDS as a significant means of resolving disputes between investors and states. In addition, China

14 Julien Chaisse and Jamieson Kirkwood, Chinese Puzzle: Anatomy of the (Invisible) Belt and Road Investment Treaty, *Journal of International Economic Law*, Vol. 23, No. 1, 2020, p. 259.

15 *Ibid.*

16 Julien Chaisse and Richard Pomfret, The RCEP and the Changing Landscape of World Trade – Assessing Asia-Pacific Investment Regionalism Next Stage, *Law and Development Review*, Vol. 12, No. 1, 2018, p. 160.

17 Qi Tong, An Important Milestone in the Modernization of Investment Dispute Settlement Mechanism: Comments on the New ICSID Rules of 2022, *International Economic Review*, No. 3, 2023, p. 61.

18 *Ibid.*

19 Du Ming, Explaining China's Approach to Investor–State Dispute Settlement Reform: A Contextual Perspective, *European Law Journal*, Vol. 28, No. 4–6, 2023, p. 290.

outlined concerns about the current ISDS mechanism and proposed several priority areas for reform. Some of the concerns China addressed in the proposal included the appeals mechanism, the arbitrators' code of conduct, alternative dispute resolution mechanisms, and third-party funding.²⁰ There are significant differences in the attitudes of the BRI countries toward the ISDS mechanism. Some countries, such as Venezuela and Ecuador, withdrew from ICSID due to concerns about the loss of sovereignty. In addition, Brazil has been resistant to BITs, while countries like New Zealand have taken a conservative stance on investment dispute settlement mechanisms.

This indicates that not all BRI countries are willing to accept the current ISDS framework. Many BRI countries are not parties to international treaties. For instance, 15 countries are not members of the World Trade Organization (WTO), meaning their disputes cannot be resolved using the WTO dispute settlement mechanism. Among BRI countries that are WTO members, a significant number have never resorted to the WTO dispute settlement process. Countries have differing positions on the ISDS reform. Some, such as India, advocate for the gradual exclusion of the ISDS from international investment dispute resolution, arguing that the mechanism lacks transparency. The European Union supports establishing an investment court and has adopted international investment arbitration as a dispute settlement mechanism in agreements with Vietnam and Canada. Meanwhile, Brazil and South Africa argue for abolishing the ISDS mechanism, claiming that international arbitration remedies discriminate against domestic investors who can seek relief only through national courts.

C. WTO: Investment Facilitation for Development Agreement (IFDA)

On February 25, 2024, 123 WTO members gathered in Abu Dhabi, UAE, for a Ministerial Conference on Investment Facilitation, where they officially adopted the IFDA. The IFDA emphasizes enhancing the transparency and predictability of investment measures, which helps reduce uncertainty in cross-border investments and boosts investor confidence.²¹ For countries along the BRI, this means a clearer policy environment and more predictable investment rules,

²⁰ *Ibid.*

²¹ Ministry of Commerce of the People's Republic of China, World Investment Report Released, China Takes the Lead in Promoting the Investment Facilitation Agreement in the WTO, <http://chinawto.mofcom.gov.cn/article/ap/tzblhyt/202309/20230903443826.shtml> (Last Visited on July 13, 2026).

helping to prevent and reduce investment disputes. Conversely, the agreement aims to simplify and accelerate administrative approval procedures, promoting cooperation in cross-border investment facilitation. The agreements associated with the BRI in developing countries focus on streamlining and expediting administrative processes, aiming to strengthen foreign investment. Furthermore, the IFDA includes provisions to promote sustainable investment, aligning with the BRI's sustainable development goals.²² Investment dispute settlement mechanisms must consider sustainability factors such as environmental protection and social responsibility, and this aspect of the IFDA provides new directions for resolving the BRI investment disputes. The IFDA explicitly excludes market access, investment protection, and ISDS mechanisms. This implies that the future resolution of investment disputes under the BRI may rely more on bilateral or regional agreements, rather than multilateral frameworks.

D. Domestic Legal Framework: Law on Foreign State Immunity and Arbitration Law

The Arbitration Law of the People's Republic of China was revised and adopted on September 12, 2025, at the 17th meeting of the Standing Committee of the 14th National People's Congress of the People's Republic of China.²³ This marks an important revision since the previous arbitration law was enacted in 1994. The revision can be perceived as a response to China's long-term efforts to promote the globalization of its international arbitration and a reform aimed at standardizing investment arbitration under the BRI in the future. For a long time, China has not permitted "*ad hoc* arbitration" because, under the Arbitration Law, a valid arbitration agreement must designate an arbitral institution. In the new draft amendment, the "*ad hoc* arbitration" system has been added and regulated, limiting its scope to "foreign-related commercial disputes".²⁴ Since "*ad hoc* arbitration" has no pre-existing set of rules, the parties involved can only choose from rules applicable to *ad hoc* procedures or from the UNCITRAL Arbitration Rules. The new amendment uses the keywords "foreign-related" and "commercial" to ensure both the autonomy and

²² *Ibid.*

²³ The National People's Congress of the People's Republic of China, Order of the President of the People's Republic of China No. 54, http://www.npc.gov.cn/npc/c1773/c1848/c21114/zcfxd/zcfxd002/202509/t20250915_447841.html (Last Visited on July 13, 2026).

²⁴ Arbitration Law of the People's Republic of China, Article 78.

flexibility granted to parties in “*ad hoc* arbitration”, while also preventing the abuse of this system.

In response to the growing need for specialized BRI-related dispute resolution, Chinese arbitration institutions have taken proactive steps. These include amending arbitration rules and establishing dedicated arbitration centers to handle BRI-related investment dispute better. For example, in October 2016, the Wuhan Arbitration Commission was the first to establish a “Belt and Road Arbitration Court”, specifically designed, under tailored rules, to adjudicate BRI disputes. Furthermore, the Shenzhen Court of International Arbitration (SCIA) introduced updated arbitration rules on December 1, 2016, which include services for managing investor–state disputes, thereby becoming the first Chinese arbitration institution to offer such capabilities. In addition, the China International Economic and Trade Arbitration Commission (CIETAC) launched the CIETAC PPP Arbitration Center in May 2017, dedicated to resolving disputes arising from Public-Private Partnership (PPP) projects under the BRI.²⁵

The amendment further adjusts and standardizes the establishment of arbitration institutions and their registration management systems, setting standards for the seat of arbitration in alignment with international arbitration practices.²⁶ Integrated with the BRI approach to arbitration in different Chinese courts, the amendment supports and promotes the country’s arbitration by making it friendly and attractive in the global arena for infrastructure investment projects. The transformation of the Chinese arbitration system ensures that the BRI aligns with the infrastructural legal frameworks in different countries and regions. The objective is to identify and address emerging uncertainties, including effectively managing investment disputes that might arise.

Accordingly, on September 1, 2023, the Standing Committee of the 14th National People’s Congress enacted the Law on Foreign State Immunity of the People’s Republic of China, which came into effect officially on January 1, 2024. This is China’s first comprehensive law governing the sovereign immunity of foreign states. The law provides the Chinese courts with a legal basis to exercise jurisdiction over and adjudicate civil cases where a foreign state is the defendant. In the past, China adhered to an absolute state immunity

25 Tao Jingzhou and Zhong Mariana, The Changing Rules of International Dispute Resolution in China’s Belt and Road Initiative, In: Zhang Wenxian, Ilan Alon and Christoph Lattemann (Eds.), *China’s Belt and Road Initiative: Changing the Rules of Globalization*, Palgrave Macmillan, 2018, pp. 305–320.

26 Arbitration Law of the People’s Republic of China, Article 12.

policy, under which Chinese courts did not entertain cases involving foreign states as defendants or cases concerning foreign state property. This led to situations in which Chinese citizens and businesses could not protect their legitimate rights through Chinese courts in cases of commercial disputes with foreign states. On the contrary, foreign courts frequently assumed and exercised jurisdiction over frivolous lawsuits and malicious claims against China, but Chinese courts were unable to exercise jurisdiction over other states. As a result, there is an asymmetry in the legal treatment of states and their respective immunities. In the Law on Foreign State Immunity, Article 7 provides that BRI activities must take place within China or have a direct impact on Chinese territory, imposing jurisdictional conditions on the application of “commercial activities” exceptions.²⁷ However, “commercial activities” are broad in concept; accordingly, Chinese courts take a comprehensive approach taking into account the nature and purpose of BRI activities. All foreign investment activities must adhere to sovereign interests. The enactment of the Law on Foreign State Immunity forms part of the ISDS reforms. In the BRI context, China applies this law to promote equitable development, establish a balanced international investment dispute resolution mechanism, and at the same time, protect the interests of overseas investors.

E. Institutional Setup: Rules and Arbitrators

Several factors influence the ISDS mechanism in the BRI context. Institutional setup is one of the key factors that have a significant influence on both the institutions that formulate rules and the arbitrators appointed to solve disputes. The institutionalized rules determine the outcome of disputes, especially the BRI disputes associated with foreign governments, SOEs, and private investors. Currently, investment arbitration procedures are lengthy and costly, which is a heavy burden for countries along the BRI routes, especially since many of these countries are economically disadvantaged. Additionally, the existing ISDS mechanism suffers from inconsistent rulings and procedural transparency issues, which affect the fairness and efficiency of dispute resolution.²⁸

Arbitrators and mediators are core elements of dispute resolution, playing

²⁷ The Law of the People's Republic of China on Foreign State Immunity (2023), Article 7.

²⁸ Shi Jingxia and Dong Nuan, Establishing the Mechanism for Investment Disputes Settlement under the Belt and Road Initiative, *Wuhan University International Law Review*, Vol. 16, No. 2, 2018, p. 17.

vital roles in the orderly progression of the process and the proper resolution of disputes. Under the current system, in which arbitrators and mediators are selected and remunerated by the parties, it may be hard for them to maintain complete neutrality.²⁹ Currently, arbitrators, mediators, and panel members from Western Europe and North America, including the United States, Mexico, and Canada, account for 68% of the ICSID appointments.³⁰ By contrast, a substantial proportion of BRI participating countries are located in Asia and Central and Eastern Europe, while many others are situated in Africa, the Middle East and Latin America. Thus, having arbitrators and mediators from developed European and North American countries handle investment disputes under the BRI may lead to a lack of understanding of and consideration for the interests of the BRI countries, raising concerns regarding fairness. Currently, most BRI disputes involve a varied array of industries, including energy, telecommunications, infrastructure, and finance. Arbitrators from Western countries may not be fully equipped to address disputes in these specialized fields, which could lead to less accurate and informed decisions, ultimately hindering the achievement of more effective solutions. In the recently introduced Draft Amendment to the Arbitration Law, to improve the disclosure and recusal system for arbitrators and ensure their neutrality, arbitrators are required to sign a declaration guaranteeing their independence and impartiality and submit it to the parties. The amendment also expands arbitrators' disclosure obligations and links them to the recusal system, further regulating arbitrators' conduct.³¹ However, since Chinese arbitration institutions and arbitrators have only handled a small share of investment dispute cases under the BRI, it remains uncertain whether this measure will improve the current situation.

III. SUGGESTIONS FOR IMPROVING THE INVESTMENT DISPUTE SETTLEMENT MECHANISM OF THE BRI

A. RCEP: Promoting the Regional Integration of Investment Dispute Resolution Mechanisms

In the existing Regional Comprehensive Economic Partnership (RCEP)

²⁹ *Ibid.*

³⁰ ICSID, The ICSID Caseload-Statistics (Issue 2018-1), <https://icsid.worldbank.org/sites/default/files/publications/Caseload%20Statistics/en/ICSID%20Web%20Stats%202018-1%20%28English%29.pdf> (Last Visited on July 13, 2026).

³¹ Arbitration Law of the People's Republic of China, Article 52.

dispute settlement mechanism, investment disputes among contracting parties are subject to agreement provisions, but disputes between investors and host countries are not.³² Given the varying levels of economic development and judicial systems among the RCEP member countries, it is necessary to establish an ISDS mechanism under the RCEP Agreement to reduce judicial unfairness, enhance the recognition and enforcement of rulings, minimize investment disputes, and strengthen foreign investors' confidence. This would help build mutual political trust, accelerate the integration of agreements, and resolve conflicts through dialogue and consultation. The negotiations for the China–ASEAN Free Trade Area (FTA) 3.0 were concluded on October 10, 2024, with the agreement scheduled for signature in 2025. However, the joint statement did not mention any content related to the establishment of an ISDS mechanism.³³ Among the current RCEP contracting parties, some countries still maintain a relatively passive stance toward the establishment of ISDS, arguing that including ISDS in RCEP would undermine existing mechanisms, as seen with countries like New Zealand and Australia.³⁴ Against this background, the progress of regional integration in investment dispute resolution mechanisms is likely to be slower.

On the other hand, the BRI's expansion calls for establishing specialized regional arbitration centers that can handle disputes arising from investments across multiple BRI countries. Building on the existing arbitration structures, such as the China–ASEAN Commercial Arbitration Cooperation Center,³⁵ China can promote the creation of a network of regional arbitration institutions

32 Regional Comprehensive Economic Partnership Agreement, Article 19.

33 Joint Statement on Substantial Conclusion of the ASEAN–China Free Trade Area (ACFTA) 3.0 Upgrading Negotiation, https://tjtb.mofcom.gov.cn/cms_files/filemanager/519129929/attach/202411/b07cfbacd3f347b8b1188abcf6eacf3f.pdf?fileName=JOINT%20STATEMENT%20ON%20THE%20SUBSTANTIAL%20CONCLUSION%20OF%20THE%20ASEAN-HINA%20FREE%20TRADE%20AREA%20%28ACFTA%29%203.0%20UPGRADE%20NEGOTIATIONS.pdf (Last Visited on July 13, 2026).

34 Zhu Wenlong, Construction of the Investor–State Dispute Settlement Mechanism of China–ASEAN Free Trade Area 3.0, *Wuhan University International Law Review*, Vol. 8, No. 5, 2024, p. 92.

35 In September 2024, the China–ASEAN Commercial Arbitration Cooperation Center was established. The center aims to deepen and expand cooperation and exchange between China and ASEAN countries in the field of arbitration, promote the establishment of a China–ASEAN commercial arbitration cooperation mechanism, actively participate in the development of international commercial arbitration rules, strengthen the capacity for diversified dispute resolution in commercial disputes, and provide legal protection for the commercial and trade exchanges between China and ASEAN.

that can effectively resolve disputes in a consistent and unified manner. The arbitration centres offer flexible, cost-effective, and impartial solutions, which align with the economic and cultural contexts of the countries involved.

B. Diversification: Dispute Prevention and Mediation

Preventing investment disputes is more cost-effective than solving them reactively during the crisis. For instance, addressing potential issues proactively before they escalate into formal disputes can save time and resources and protect the relationships between investors and host countries. When international investment disputes occur, they often result in a lose-lose situation. For investors, their investment goals are unlikely to be achieved, and they may even suffer significant losses. For host-country governments, frequent lawsuits will damage their international reputation and hinder capital inflows. The biggest advantage of dispute prevention is that it eliminates problems, dissatisfaction, or conflicts between investors and host countries at an early stage, stopping them from intensifying into investment disputes. This helps prevent the parties from entering into investment litigation or arbitration, and from allowing disputes to evolve into a political conflict between the host country and the investor's home country. Consequently, it fosters long-term collaboration between investors and host countries and maintains friendly relations between the investor's home country and the host country.

Economically, by preventing investment disputes, the parties involved slash costs and save time. Besides, preventing disputes is cost-effective because it saves resources and facilitates the timely achievement of investment goals.³⁶ Additionally, establishing a proactive approach allows the stakeholders to identify early warning signs of uncertainties and emerging issues promptly, enabling the enactment of a proactive dispute prevention mechanism. For instance, the creation or designation of a dedicated domestic department for investment dispute prevention and management is one of the preventive strategies that can be deployed. The dispute management approach focuses on addressing specialized and complex legal issues involved in investment treaties. However, the preventive approach requires a small group of professionals

³⁶ Qi Tong, *The Prevention Mechanism of International Investment Disputes in the "Belt and Road"*, *Law Review*, Vol. 36, No. 3, 2018, p. 82.

and officials with experience in legal affairs. Accordingly, it is also important for other departments to familiarize themselves with these matters for further development. Besides, the preventive dispute approaches should support the broadening of officials' understanding of the investment treaty provisions, and how they should respond to disputes. For instance, China should create and designate a department for dispute prevention and management to oversee local and international investment treaties. The department is also responsible for generating, storing, sharing, and filtering information related to the investment disputes to develop prevention measures for the future.

Furthermore, dispute preventive approaches should incorporate data collection and analytical tools such as surveys, publications, investment forums, websites, and technical training. All of these provide comprehensive approaches to developing dispute preventive measures using data generated from actual case studies, which could be used to help officials connect their everyday decision-making to ISDS and its associated costs and consequences.³⁷ Moreover, jurisdictions benefiting from the BRI face unstable political and economic volatility. China and the BRI partners should pool resources to develop and invest in joint risk management frameworks to address political and economic issues that could trigger investment disputes.

Additionally, mediation, as a form of alternative dispute resolution (ADR), can be a highly effective tool in resolving disputes amicably and without resorting to lengthy and expensive arbitration or litigation. In Confucianism, the principle of “harmony is precious” reflects the Chinese tendency to avoid trade disputes and seek mediation, which aligns with the cooperative spirit of the BRI. Notably, most of the Chinese BITs offer a cooling-off period, which typically lasts for six months, for negotiations and consultations. Therefore, both BRI investors and states can adjust their practices within the six-month framework to create more favorable conditions for an effective mediation.³⁸ To help address disputes related to the BRI, China has established International Commercial Courts that are responsible for handling smaller-scale disputes. These courts are part of China's efforts to create a multi-tiered dispute

³⁷ *Ibid.*

³⁸ Mark McLaughlin, *Investor-State Mediation and the Belt and Road Initiative: Examining the Conditions for Settlement*, *Journal of International Economic Law*, Vol. 24, No. 3, 2021, p. 617.

resolution mechanism, successfully integrating arbitration, mediation, and litigation, thus creating a “one-stop” platform for global commercial dispute resolution.³⁹ The International Commercial Experts Committee (ICEC), which was established by the International Commercial Court, aims to assist judges in fulfilling their mediation and advisory functions, with mediation occupying a central role within the functions of the International Commercial Court.⁴⁰

China and the BRI countries could promote the creation of specialized mediation centers that focus on investment disputes. These centers could serve as neutral, independent bodies where parties can meet and negotiate under the guidance of skilled mediators. Such centers should be equipped with experts in international law, commercial contracts, and cross-cultural communication to facilitate smooth and constructive discussions. Meanwhile, to ensure impartiality and fairness, third-party mediators from diverse legal systems and cultural backgrounds should be appointed to handle BRI-related disputes. The presence of skilled mediators who understand both the legal framework of the involved countries and the commercial interests of the parties can significantly increase the chances of a mutually beneficial settlement. In this regard, the International Organization for Mediation (IOMed), established under the Convention on the Establishment of the International Organization for Mediation signed in Hong Kong, may offer valuable institutional experience. As the world’s first intergovernmental legal organization exclusively dedicated to the settlement of international disputes through mediation, IOMed has the competence to mediate disputes between states and foreign investors, as well as international commercial disputes, based on party consent. It has also been noted that mediation, by its nature, is more flexible, cost-effective, and convenient than adversarial proceedings, and is particularly well suited to the demands of the BRI cooperation.

In this connection, IOMed could help establish a BRI international investment dispute mediation mechanism by providing voluntary, flexible, and

39 CICC, Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court, <http://cicc.court.gov.cn/html/1/219/208/210/817.html> (Last Visited on July 13, 2026).

40 Ignacio de la Rasilla, “Sharp Ears to Hear a Thunderclap”? The Rise of Mediation in the International Dispute Prevention and Settlement System of the Belt and Road Initiative, *Asia Pacific Law Review*, Vol. 29, No. 1, 2021, p. 171.

low-cost mediation services. Such a mechanism would complement the BRI investment dispute resolution mechanism that may be established under the Asian Infrastructure Investment Bank, providing the BRI partner countries and other developing countries with more diversified dispute resolution options and promoting the development of international rule of law in a fairer and more inclusive manner. Therefore, the future mediation centers for BRI investment disputes could draw upon the institutional design, operational model, and mediator expertise of the IOMed, while also exploring avenues for collaboration and synergy with it.

C. IFDA: Promoting the Rule of Law in the Business Environment of the Countries Along the Route

Accordingly, the IFDA, as the world's first multilateral investment agreement, will help enhance the predictability and stability of investment regulation policies in the countries along the BRI, further boosting investor confidence and promoting stable investment growth. Currently, some host countries adopt complex and stringent administrative procedures for market access and investment operations by foreign investors. Some host countries even violate principles such as Most-Favored-Nation and national treatment under the WTO, implementing discriminatory measures against foreign investors. This creates investment barriers and hinders the free flow of capital within the BRI.

In response to these challenges, the WTO has proposed solutions to promote investment facilitation by optimizing host countries' administrative management. These solutions include basic principles that countries' investment management should adhere to, specific measures to improve investment management efficiency, and the availability of legal remedies for investors. To enhance the sustainable growth of investment, the IFDA places requirements not only on investors but also on host countries. The agreement requires investors to not only fulfill certain social responsibilities in the host countries but also comply with internationally recognized business conduct standards. On the other hand, the IFDA requires host countries to devise anti-corruption measures and improve transparency in anti-corruption and anti-money laundering practices.⁴¹ Therefore, Chinese outbound investment enterprises in

⁴¹ Li Xuan, IFDA: An Evaluation and China's Policy Responses, *International Business Research*, Vol. 46, No. 1, 2025, p. 50.

the BRI host countries should actively assume certain social responsibilities, protect the host countries' ecological environment, and adhere to the host countries' labor standards. At the same time, the BRI countries should, with the help of the IFDA, establish a highly transparent and fair business environment.

D. Wave of Reform in the IIAs and ISDS: Modernization of China's Investment Treaties

In recent years, the number of IIAs signed or renewed by various countries has seen a sharp decline, and dissatisfaction with the existing ISDS mechanism has led to growing calls for its reform. This reform wave has been driven by various global developments, including growing criticisms of ISDS mechanisms, concerns over the balance between state sovereignty and investor protection, and a push for more sustainable and socially responsible investment practices. In November 2020, UNCTAD released the "IIA reform accelerator" for international investment, proposing eight optional model provisions for key IIA clauses, which could be used to interpret, amend, or replace outdated treaties.⁴² Each of these eight model provisions offers a precise reform pathway favorable to sustainable growth. These pathways are based on UNCTAD's extensive experience in providing technical assistance and capacity building to developing countries, establishing an investment policy framework for sustainable development, and new treaty practices.⁴³ However, the effectiveness of the model provisions proposed by UNCTAD remains limited, and in the face of a large number of clauses that require reform, the time and financial costs of negotiating each clause individually are immeasurable.

Comprehensive reform will require new treaties and the modernization of existing ones.⁴⁴ Notably, while China has signed BITs with 113 countries participating in the BRI, many ISDS clauses in China's BITs are restrictive, especially the BITs signed before 2013.⁴⁵ China's IIAs are classified into three

42 UNCTAD, International Investment Agreements Reform Accelerator 2020, <https://investmentpolicy.unctad.org/publications/1236/international-investment-agreements-reform-accelerator> (Last Visited on July 13, 2026).

43 Mo Jianjian and Gao Jianxun, The Reform of Investor-State Dispute Settlement Mechanism under the Belt and Road Initiative, *International Business Research*, Vol. 43, No. 4, 2022, p. 68.

44 *Supra* n. 30.

45 Du Juan and Zhang Zhenxing, *Asia Phos Limited and Norwest Chemicals Pte Ltd v People's Republic of China: Unpredictable Jurisdiction under the Restrictive ISDS Mechanism*, *ICSID Review*, Vol. 39, No. 1, 2024, p. 30.

generations.⁴⁶ First-generation agreements include the agreements signed in the 1980s and 1990s. These agreements included extensive substantive protection clauses, covering umbrella clauses, fair and equitable treatment, transfers and remittances, expropriation and compensation, full protection and security, and Most-Favored-Nation treatment, among others. However, national treatment was not covering, and generally limiting the scope of investor–state dispute arbitration to disputes over the sum of expropriation compensation. Overall, these agreements can be considered conservative agreements primarily because they favored the protection of host countries rather than foreign investments. Those signed between 2000 and 2010 are the second-generation agreements, which introduced national treatment and expanded the scope of investor–state dispute arbitration to include disputes under the agreement or any investment disputes. They were considered liberal agreements as they favored the protection of foreign investments rather than host countries. The agreements signed since 2010 are the third-generation ones, which clarified and limited substantive protection clauses, and reformed and improved investor–state dispute arbitration. These agreements have, to varying degrees, balanced the protection of investors and the interests of host countries, making them balanced agreements.⁴⁷

Due to China's lack of experience with ISDS in the past, the initial BITs it signed adopted a conservative stance, primarily aimed at preventing the Chinese government from becoming a respondent in ISDS cases. In hindsight, this approach has been successful. For instance, before the signing of third-generation IIAs, the number of ICSID cases in which China was a respondent was zero. However, from 2011 to 2024, the number of cases where China acted as a respondent surged to nine. At the same time, the earlier conservative IIAs failed to safeguard the interests of Chinese investors abroad and dampened their enthusiasm for outward investment. This conservative approach is inconsistent

⁴⁶ There are different views in the academic community on the generational division of China's IIAs. See Cai Congyan, China-US BIT Negotiations and the Future of Investment Treaty Regime: A Grand Bilateral Bargain with Multilateral Implications, *Journal of International Economic Law*, Vol. 12, No. 2, 2009, pp. 461–462; Axel Berger, The Political Economy of Chinese Investment Treaties, In: Ka Zeng (Eds.), *Handbook on the International Political Economy of China*, Edward Elgar, 2019, pp. 154–159; *Supra* n. 16.

⁴⁷ Wang Yanzhi, China's Practice in International Investment Agreements under the Belt and Road Initiative: A Review and Outlook, *Wuhan University International Law Review*, Vol. 7, No. 6, 2023, p. 33.

with China's goal of promoting outward investment through the BRI. Currently, China has begun the iterative updating of its early BITs, but most of the updates have been focused on European countries, with updates to the BITs between China and the BRI countries still accounting for a small portion. In the future, China should accelerate the process of updating early BITs signed with the BRI countries and, while improving the provisions, use more precise language to ensure that the legal rights and interests of investors in investment dispute resolution along the BRI are properly protected. Conversely, given the large scale of China's investments across various countries in the BRI and the large number of countries with investments, China should consider different factors to accelerate the negotiation of high-quality international investment agreements. For example, it could prioritize modernizing the BITs signed with countries with higher investment risks. Finally, China could propose a regional multilateral investment agreement under the BRI framework, which would not only avoid the cumbersome process of negotiating and updating the BITs country by country but also save both time and financial costs.

IV. CONCLUSION

As China transitions from being a capital-importing country to a capital-exporting country and with the deepening of the BRI, the improvement of the investment dispute resolution mechanism has become particularly important. Currently, the reform of ISDS system is slow and lacks clear direction. Therefore, it is urgent to establish a suitable international commercial dispute resolution mechanism for the BRI. As the initiator and practitioner of the BRI, China should take the initiative to reform and actively engage in the development of the ISDS mechanism under the BRI. Specific aspects include improving the structure of arbitral institutions and composition of arbitrators, modernizing the BRI BITs as soon as possible, and establishing a diversified approach to investment dispute resolution. From a long-term perspective, the establishment of a specialized investment dispute resolution court and associated rules for the BRI may not be far off.