Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.126, 2022

Investment Dispute Settlement Mechanism in the Context of the Belt and Road Initiative

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Abstract
The Belt and Road Initiative has the potential to update current investment dispute settlement mechanism established by China and its partner countries. According to the practical contexts of the Belt and Road region, this article evaluates the trade-offs associated with existing, emerging, and proposed investment dispute settlement mechanisms, including informal means, domestic courts, interstate investment dispute settlement mechanisms, ISDS (Investor-State Dispute Settlement), regional investment court and international tribunal review. The article emphasizes that no single investment settlement mechanism is sufficient to resolve all disputes related to the Belt and Road Initiative and the complementarity among different mechanisms is necessary. The platform and special nature of the Belt and Road Initiative are able to support both the improvement of the current mechanisms and the establishment of the newly proposed mechanisms.
Keywords: Investment Dispute Settlement, Belt and Road Initiative
DOI: 10.7176/JLPG/81-04
Publication date: November 30th 2022

1. Introduction

The Silk Road Economic Belt and the 21st-Century Maritime Silk Road, usually referred to as the Belt and Road Initiative, was firstly proposed by Chinese President Xi Jinping in 2013.[1] The Belt and Road Initiative is the top-level design of Chinese government which aims at promoting global economic governance toward a fair, just and rational system.[2] The Belt and Road Initiative is based on the historical and culture heritage of Silk Road created by the diligent and courageous people of Eurasia more than two millennia ago, and the spirit of Silk Road is "peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit".[3]

Reaching a consensus for cooperation, building the top-level framework, jointly building economic corridors are works of Chinese government to translate the Belt and Road Initiative from plan to cooperative action.[4] In the perspective of regional economic integration in the Belt and Road Initiative, enhancing economic cooperation and expanding investment cooperation reveal a China's formula of global economic governance.[5] Because foreign investment is the significant catalyst to encourage the Belt and Road Initiative and Chinese investments involve into a series of large infrastructures and natural resource projects, China also steps up its process of talks on bilateral and multilateral investment protection treaties in order to promote investment cooperation.[6]

Chinese government actively achieves investment agreements and even RTAs (Regional Trade Agreements) with countries covered by the Belt and Road Initiative, such as the ACFTA (Association of Southeast Asian Nations and China Free Trade Area)[7] established in 2010. Building these RTAs by more inclusive free trade and investment agreements is one of the strategies of China to enhance the economic cooperation.[8] Most of these investment agreements contain dispute settlement mechanisms, particularly ISDS mechanism, to settle the potential increase in the quantity of international investment disputes.

However, the Belt and Road Initiative is different from present-day models of international agreements.[9] The Belt and Road Initiative is not an RTA within traditional meaning of regional cooperation, and there is even no an investment or trade agreement particularly for Belt and Road Initiative. The Belt and Road Initiative may

[1] Office of the Leading Group for the Belt and Road Initiative, (2017), Building the Belt and Road: Concept, Practice and China's Contribution. [Online] https://eng.yidaiyilu.gov.cn/wcm.files/upload/CMSydylyw/201705/201705110537027.pdf (8 January 2019).
[2] See ibid.
[3] National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, (2015), Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, Preface.
[4] See Office of the Leading Group (n1), 7.
[5] See ibid., 24-26.
[6] See ibid., 29.
[7] Framework Agreement on Comprehensive Economic Co-Operation between the People's Republic of China and the Association of Southeast Asian Nations (2002), art. 2.
[8] See Office of the Leading Group (n1), 25.
[9] Julien Chaisse and Mitsuo Matsushita (2018). China's 'Belt and Road' Initiative: mapping the world trade normative and strategic implications. Journal of World Trade, 52, 163, 163.

develop into a sort of RTA in future when a comprehensive legal framework is established. No uniform dispute settlement mechanism exists at present stage to resolve investment disputes arising from the implementation of the Belt and Road Initiative.[1] With the goal to establish a large common market and to achieve shared prosperity, promotion of current investment dispute settlement mechanism in the Belt and Road area is the guarantee to reach such goal.

In the context of the Belt and Road Initiative, this Article evaluates the contribution of both existing and proposal international investment dispute settlement mechanism to the settlement of investment disputes arising from the Belt and Road region. Section 2 briefly surveys the investment disputes settlement practices China involves in the Belt and Road region and then focuses issues therein. Section 3 undertakes a functional analysis of informal means, negotiation, mediation, conciliation and market mechanism, which are the efficient and significant complementarity to formal dispute settlement measures in the Belt and Road region. Section 4 discusses the role of domestic judicial mechanism in hearing Belt and Road investment cases, and its trade-off. Section 5 assesses three types of international investment settlement methods, interstate adjudicatory mechanism, ISDS, and new emerging international investment court. Their pros and cons of resolving Belt and Road investment conflicts are particularly examined. Section 6 advances an international tribunal review mechanism which aims to provide a two-level dispute settlement system to facilitate the resolution of Belt and Road investment disputes.

2. Investment Disputes under the Belt and Road Initiative

2.1 Investment Dispute Settlement Practices

Most investment treaties that China signs with the Belt and Road countries contain ISDS clauses. China signed the first BIT (Bilateral Investment Treaty) with Sweden in 1982 and near half of China's BITs were signed between 1982 and 1998.[2] This is the first generation of China's BITs, which shows a relatively conservative attitude of China's government concerning investor-state arbitration.[3] Starting with the 1998 China-Barbados BIT, China relaxed its limitation and entered into a number of BITs with comprehensive consent clauses, which allowed foreign investors to settle any investment disputes with host states in international arbitration.[4] For instance, the new China-Belgian-Luxembourg Economic Union BIT in 2009 allows any dispute to be submitted to the ICSID (International Center for Settlement of Investment Disputes).[5]

In the current international investment dispute settlement mechanism in the Belt and Road region, amicable consultation is usually the compulsory measure firstly applied by foreign investors in the investment dispute settlement proceedings according to the investment treaties in this region.[6] At the choice of investors or the requirement of investment treaties, the disputes then will be submitted to: domestic court or tribunal of host state, ICSID, arbitration under the rules of the UNCITRAL (United Nations Commission on International Trade Law) or any other arbitration institution.[7]

How China should further update current investment dispute settlement mechanism to better resolve future disputes happening in the area of Belt and Road region is a hot topic. At the meantime, the problems and systemic flaws of current ISDS are gradually explored.[8] Different proposals of reforming investment dispute settlement mechanism are currently advised, which forms a new debate globally.[9] Ministry of Commerce of China has solicited public opinion regarding the reform of investor-state dispute settlement mechanism since the August 2018.[10]

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[1] Jiaxiang Hu and Jie (Jeanne) Huang (2018). Dispute resolution mechanisms and organizations in the implementation of 'one Belt, one Road' Initiative: whence and whither. Journal of World Trade, 52, 815, 816.

[2] Lifeng Tao and Wei Shen (2018). The gap between the EU and China on the ISDS mechanisms in the context of the EU-China BIT negotiations: evolving status and underlying logic. Hong Kong Law Journal, 48, 1159, 1163.

[3] See, for example, Article 6.2 of Agreement Between the Government of the People's Republic of China and the Government of the Kingdom of Sweden on the Mutual Protection of Investments (1982) mentions that "[i]f the dispute cannot thus be settled it shall, upon the request of either Contracting State, be submitted to an arbitral tribunal".

[4] Julian Ku (2013). The enforcement of ICSID awards in the People's Republic of China. Contemporary Asia Arbitration Journal, 6, 31, 36.

[5] Agreement Between the Government of the People's Republic of China and the Belgium-Luxemburg Economic Union on The Reciprocal Promotion and Protection of Investments (2009), art. 8.

[6] See, for example, Agreement Between the Government of the People's Republic of China and the Government of the Democratic Socialist Republic of the Sri Lanka on the Reciprocal Promotion and Protection of Investments (1987), art.13.

[7] See for example, Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation Between the People's Republic of China and the Association of Southeast Asian Nations (2010), art. 14; Agreement Between the Government of the People's Republic of China and the Government of the State of Qatar Concerning the Encouragement and Reciprocal Protection of Investments (2000), art.9.

[8] Ariel Anderson (2018). Saving private ISDS: the case for hardening ethical guidelines and systematizing conflicts checks. Georgetown Journal of International Law, 49, 1143, 1147.

[9] Tania Voon (2018). Consolidating international investment law: the mega-regionals as a pathway towards multilateral rules. World Trade Review, 17, 33, 34.

[10] Ministry of Commerce of the People's Republic of China, Department of Treaty and Law, [Online] http://tfs.mofcom.gov.cn/article/bc/201808/20180802773833.shtml (24 January 2019).

The dramatic increase of dispute settlement clauses in China's bilateral and multilateral investment treaties gives rise to the significance of the institutional choice among domestic remedy, ICSID or other arbitral tribunals.[1] Investment disputes involving China's BITs are increasing in these recent years, not only in ICSID[2] but also in the PCA (Permanent Court of Arbitration).[3] Chinese investors and foreign investors in China are more likely to continue using ISDS mechanism to settle their investment disputes. Among Chinese ISDS practices, most of these investment cases involve the Belt and Road countries either as host state or as the nationality of the investors.

The *Ansung Housing Co., Ltd. v. People's Republic of China* is a dispute relating to Ansung's investment in a golf course and condominium development project in Sheyang-Xian, China, submitted by the Korean investor Ansung Housing.[4] Ekran Berhad is a Malaysian investor claiming against Wanning, China in the *Ekran Berhad v. People's Republic of China* case.[5] Hela Schwarz GmbH is a German investor claiming against Jinan, China in the *Hela Schwarz GmbH v. People's Republic of China* case.[6] Korea, Malaysia and Germany are all Belt and Road countries.

As the Claimant, Chinese investor, Ping An's claims were dismissed for lack of jurisdiction in the *Ping An v. Belgium* case in 2015[7]. Another Chinese investor Sanum, in the PCA proceeding against Lao, encounter the jurisdiction issue as well.[8] The Chinese entity, Standard Chartered Bank (Hong Kong) Limited, involves into a dispute with Tanzania in ICSID, concerning the Tanzania of breach of the Implementation Agreement and the validity of the Claimant's termination of the Implementation Agreement.[9] Chinese investor, *Beijing Urban Construction Group Co. Ltd*, also come across investment risk in Yemen.[10] Belgium, Lao, Tanzania and Yemen are comprised by the Belt and Road Initiative.

2.2 Diversity of Issues Involved in Investment Dispute Settlement

With the expanding outbound and inbound investment in the Belt and Road area, multiple selection of investment dispute settlement measures due to different contexts across Belt and Road area is needed. China has already reached bilateral or multilateral investment agreements with the majority of Belt and Road countries.[11] However, the language of ISDS provisions in these investment agreements are sometimes vague and overbroad, which leads to the inconsistent interpretations of treaty language in the ISDS proceedings. Different investment settlement forums have varying interpretations even on the same language and thereby have different repercussions for investors and the host states in a specific investment dispute.

For instance, *Sanum Investments Ltd v Government of the Lao People's Democratic Republic* is a serious of ISDS cases firstly commencing in the PCA in 2013 according to the UNCITRAL Arbitration Rules. Government of Laos dissatisfied the award of the PCA, which concluded that China-Laos BIT was applicable to Macao Special Administration Region,[12] and then filed an application in the Singapore High Court in 2014. The central question in this application concerns the applicability of China-Lao BIT dated 1993 to Macau after the handover by Portugal and the PRC resumed sovereignty over the Macao in 1999.[13] The Singapore High Court answered this questions in the negative and thereby Sanum brought the appeals against the decision of the High Court in the Singapore Court of Appeal in 2015.[14] The Singapore Court of Appeal viewed that China-Laos BIT did apply to Macao.[15]

In the Belt and Road region, China not only has powerful economical ally, such as those countries in

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[1] Mariel Dimsey (2008). The resolution of international investment disputes: challenges and practical solutions. Hague: Eleven International Publishing, (2).

[2] *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Decision on Jurisdiction (June 19, 2009); *Ekran Berhad v. People's Republic of China,* ICSID Case No. ARB/11/15 (16 May 2013); *Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen,* ICSID Case No.ARB/14/30 (8 November 2015); *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium*, ICSID Case No. ARB/12/29 (30 April 2015); *Ansung Housing Co., Ltd. v. People's Republic of China* , ICSID Case No. ARB/14/25 (9 March 2017); *Hela Schwarz GmbH v. People's Republic of China*, ICSID Case No. ARB/17/19 (Pending); *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/15/41(11 October 2019).

[3] *China Heilongjiang International Economic & Technical Corporative Corp. et al. v. Mongolia*, UNCITRAL, PCA Case No. 2010-20 (1 January 2010); *Sanum Investments Limited v. Lao People's Democratic Republic*, UNCITRAL, PCA Case No. 2013-13 (13 December 2013).

[4] See *Ansung Housing v. China* (n 21), para.2.

[5] See *Ekran Berhad v. China* (n 21).

[6] See *Hela Schwarz GmbH v. China* (n 21).

[7] See *Ping An v. Belgium* (n 21), para. 240.

[8] See *Sanum v Lao* (n 22).

[9] See *Standard Chartered Bank v. Tanzania* (n 22).

[10] See *Beijing Urban v. Yemen*, (n 21).

[11] Department of Treaty and Law, Ministry of Commerce of the People's Republic of China, [Online] http://tfs.mofcom.gov.cn/article/h/ (9 July 2020).

[12] See *Sanum v Lao* (n 22). para.300.

[13] *Government of the Laos People's Democratic Republic v Sanum Investments Ltd*, [2015] SGHC 15, para.1.

[14] *Sanum Investments Ltd v Government of the Lao People's Democratic Republic*, [2016] 5 SGCA 57, para.2.

[15] See ibid., para.152.

Europe but also has many developing partners, particular those countries in Asia and Africa. On one hand, investment treaties between China and those developed countries in the Belt and Road area normally stipulate strong ISDS mechanism and resemble Western-style frequently adopted by those developed countries in order to ensure security of two-way investment between China and those developed countries. For instance, Bilateral agreements signed by China with Germany, Korea and Israel all contains strict international investment arbitration mechanism to resolve investment disputes between investor and host state.[1]

On the other hand, China will try to build up of good relations with developing countries along Belt and Road region as a strategy of protecting its investments rather than to make hard investment treaties with strong ISDS.[2] Deviating from a strict ISDS mechanism, China makes BITs with some of these countries, which enable host state to "require the investor concerned to exhaust the domestic administrative review procedures specified by the laws and regulations" of that host state before international investment arbitration, for instance, China-Tanzania BIT.[3] For Asian culture, conflict, such as investment arbitration, is not preferred, but western countries would like to settle their investment disputes through gladiatorial contests in the ISDS.[4]

It is not fitting that the investment dispute settlement under the Belt and Road Initiative should adopt a pattern of Western-style ISDS mechanism. Besides Asian preference, some of other participants in the Belt and Road region are also wary of ISDS in investment treaties, such as Russia after Yukos award.[5] It is impossible to establish a single and uniform ISDS system to settle all kinds of investment disputes because of the diversity of investment issues in the Belt and Road regions. China embraces the pluralist vision of ISDS mechanism and does not adopt a single approach to settling investment dispute settlement. There are many ways of resolving investment disputes for both investor and host state, which will be analyzed in the following sections. Different institutional settings of investment dispute settlement mechanism will permit lots of leeway for Belt and Road states to adjust policies and regulations according to their demands.

3. Informal Means of Dispute Settlement

Negotiation, mediation, conciliation, and market mechanism, as means of informal investment dispute settlement, could provide a swifter, lower cost and more efficient way to handle investment issues in the Belt and Road area. This kind of informal dispute settlement measures may be the most effective measure for protection of foreign investment because some states in the Belt and Road region do not sign any investment agreement, such as Maldives and Bhutan,[6] and some do not enter into investment treaties with China, such as Iraq and Jordan.[7] Further, "friendly" and "peaceful" or "peacefully" are emphasized in the China's official documents of the Belt and Road Initiative.[8]

3.1 Negotiation, Mediation and Conciliation

Negotiation, mediation and conciliation are popular measures for not only China but also many participating states in the Belt and Road Initiative to settle investment conflicts.[9] For instance, International Investment Arbitration Rules of China International Economic and Trade Arbitration Commission emphasize the Combination of Conciliation with Arbitration in its Article 43, and disputing parties are able to "request the arbitral tribunal to render an arbitral award in accordance with the terms of the settlement agreement".[10] Another example is that Article 14 of Agreement on Investment Between China and ASEAN (Association of Southeast Asian Nations) encourages disputes between investors and host state, as far as possible, to be resolved through consultations.[11] Negotiation, mediation and conciliation are also emphasized in the ICSID. Negotiation, mediation and conciliation are considered as the friendly means to resolve Belt and Road investment disputes, by which disputing parties are easier to achieve compromise and to formulate win-win results.[12]

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[1] Agreement between the Federal Republic of Germany and the People's Republic of China on the Encouragement and Reciprocal Protection of Investments (2005), art.9; Agreement on the Encouragement and Reciprocal Protection of Investments Between the Government of the People's Republic Of China and the Government of the Republic of Korea (2007), art.9; Agreement Between the Government of the People's Republic of China and the Government of the State of Israel for the Promotion and Reciprocal Protection of Investments (2009), art.8.

[2] Muthucumaraswamy Sornarajah (2020). Chinese investment treaties in the Belt and Road Initiative. The Chinese Journal of Comparative Law, 8, 55, 68.

[3] Agreement Between the Government of the People's Republic of China and the Government of the United Republic of Tanzania Concerning the Promotion and Reciprocal Protection of Investments (2014), art.13.

[4] See *Sanum v Lao* (n 33), para.2.

[5] *Yukos Universal Limited v. The Russian Federation* (PCA Case No. AA227) (18 July 2014).

[6] ICSID, Database of Bilateral Investment Treaties, [Online] https://icsid.worldbank.org/en/Pages/resources/Bilateral-Investment-Treaties-Database.aspx (3 March 2019).

[7] Ministry of Commerce, Department of Treaty and Law, [Online] http://tfs.mofcom.gov.cn/article/h/at/? (5 March 2019).

[8] See Office of the Leading Group (n 1), 4, 28, 42, 54.

[9] Chunlei Zhao (2018), Investor-state mediation in a China-EU bilateral investment treaty: talking about Being in the right place at the right time. Chinese Journal of International Law, 17, 111, 113.

[10] International Investment Arbitration Rules (2017), art. 43.

[11] See Agreement on Investment (n 16).

[12] Sienho Yee (2018). Dispute settlement on the belt and road: ideas on system, spirit and style, Chinese Journal of International Law, 17,

The Belt and Road area is composed of diverse investment covering infrastructure, energy, factories, real estate, finance, transportation, and so on. Thus, investment dispute settlement mechanism in the Belt and Road area should not be specialized in a single mode and should be suitable to settle overall issues.[1] Both formal procedural such as ISDS and informal mechanism such as negotiation, mediation and conciliation should be established. The informal mechanism is particularly useful for issues involving those Belt and Road countries, which only sign a narrow investment dispute settlement provision or even do not sign investment treaties.

In addition, the standing of SOEs (State-Owned Enterprises) in the ISDS is still in debate.[2] In *Beijing Urban Construction Group v. Yemen* case, whether Beijing Urban Construction Group, as the SOE, was the agent of Chinese government or the qualified investor under the ICSID was challenged by Yemen.[3] Many large-scale foreign investments in the Belt and Road countries come from China's SOEs and these China's SOEs may face challenge in future investment disputes. The informal dispute settlement mechanism is able to better handle the issue of SOEs. Sometimes, the investment disputes in the Belt and Road region is not a simple legal question but political one. Negotiation, mediation and conciliation are cheaper than high-cost investment arbitration. Both disputing parties are able to use their resources, such as diplomatic one, to advance the settlement of disputes.

Further, negotiation, mediation and conciliation can better settle future conflicts regarding new participating states of the Belt and Road Initiative because of the Belt and Road Initiative's nature of flexible and dynamic process. As discussed in the following section 5.3, the Belt and Road Initiative aspires to establish some sort of community and there is possibility that regional investment court will be created in the Belt and Road area. If new participant of the Belt and Road Initiative does not accept the jurisdiction of the regional investment court, their investment disputes will be settled through this informal investment dispute settlement measure.

However, negotiation, mediation and conciliation could not spur the development of domestic rule of law in the Belt and Road countries. Promoting domestic investment environment with rule of law is one of the targets by implementing the Belt and Road Initiative.[4] Negotiation, mediation and conciliation might be conducted according to treaties or domestic laws, but disputes would be finally settled based on political objectives, economic interest and concession of each parties. Instead of rule of law, this kind of investment dispute settlement methods fulfills one of the functions of the Belt and Road Initiative, to ensure friendly relationships between the countries.[5]

Large multinational enterprises, especially those China's SOEs, are more likely to trigger a response from the home state and then easier to achieve their purpose through negotiation, mediation and conciliation. However, small and medium-sized investors are lack of political background and capital support, and thereby are hard to successfully get the favorable outcome. On this aspect, negotiation, mediation and conciliation mechanism share some similarity with the following mechanism, market mechanism.

3.2 Market Mechanisms

If negotiation, mediation and conciliation cannot meet the demand of settlement of investment dispute because of complex geopolitical environment and diversified legal issues in the Belt and Road area, investors could resort to the other informal means, market mechanism. Market mechanism is the conflict-avoidance measure and also the significant bargaining chip during negotiation, mediation and conciliation process. The establishment of a highly efficient regional market is one of the targets involved in the Belt and Road Initiative.[6]

Market mechanism creates pressure on capital recipient countries in the Belt and Road region to protect foreign investor from a variety of risks, such as political risk and war risk. Such kind of risks easily triggers ISDS proceedings. Indeed, capital recipient countries, and at times do, make commitments to avoidance of conflicts and the number of investment disputes thereby is reduced. Most countries, especially developing countries, prefer to receive foreign capital with a reduction in the cost. The cost for attracting foreign investment is largely determined by investor risk. The reduction of investor risk will reduce the demand of investor in return because of assuming that risk. Normally, host state reducing risk to investor will encourage foreign investment while host state heightening investor risk will discourage foreign capital.[7] More accurately, foreign investors focus on reputation of a particular government in power rather than capital recipient country itself.[8] Capital recipient countries account for majority of Belt and Road countries, and these countries may try to avoid

907, 912.

[1] See Chaisse, Julien and Matsushita, Mitsuo (n 15), 172.

[2] See generally Claudia Annacker (2011). Protection and admission of sovereign investment under investment treaties. Chinese Journal of International Law, 10, 531-564.

[3] *Beijing Urban Construction Group Co. Ltd. v. Republic of Yemen*, ICSID Case No.ARB/14/30 (31 May 2017), para.29.

[4] See Jiaxiang Hu and Jie (Jeanne) Huang (n10).

[5] See Office of the Leading Group (n1), 42.

[6] See ibid., 13.

[7] Jeswald W. Salacuse (2017). Of handcuffs and signals: investment treaties and capital flows to developing countries. Harvard International Law Journal, 58, 127, 131.

[8] Rachel Brewster (2009). Unpacking the state's reputation. Harvard International Law Journal, 50, 231, 258.

investment disputes or easily reach consensus in negotiation, mediation and conciliation processes in order to attract foreign investments.

Normally, multinational companies in the sectors such as resource-intensive sectors are frequent users of ISDS mechanism.[1] These powerful multinational enterprises, especially SOEs, have strong bargaining power to negotiate with host state by contract, such as choice-of-law and dispute settlement provisions. China's Fortune's Global 500 companies, especially China National Petroleum Corporation, China Petrochemical Corporation, and China State Construction Engrg. Corp. have tremendous investments in the Belt and Road region.[2] A registered capital of 274.9 billion yuan (about 40.8 billion US Dollar) held by China Petrochemical Corporation, ranked the 3rd on Fortune's Global 500 List in 2017,[3] is even beyond the total GDP (Gross Domestic Product) of many participating states of the Belt and Road Initiative.

When these powerful multinational enterprises involve into investment negotiations, dispute settlement mechanism will be specified on a case-by-case basis instead of broad treaty protections with ISDS. Besides ISDS, domestic litigations or international commercial arbitration are all available to these multinational companies to hedge against risks. Sometimes, it seems that ISDS is not necessary for these Chinese SOEs or any powerful multinational enterprises from other countries. Market mechanism is an alternative, especially for those Belt and Road states which are afraid of diminution of sovereignty in the ISDS proceedings.

These powerful multinational enterprises may turn to the insurance market. For example, Chinese companies are able to rely on China Export Credit Insurance Corporation, a state-funded policy-oriented insurance company, to protect their investment from expropriation, exchange restrictions, war, political riot and breach of contract in the host states.[4] MIGA (Multilateral Investment Guarantee Agency), a member of the World Bank Group, is an alternative insurance mechanism for foreign enterprises including Chinese companies. Multiple insurance institutions are needed because the Belt and Road projects require a very large amount of investment guarantees.

These large powerful multinational enterprises such as Chinese SOEs are better positioned to rely on market mechanism including insurance but not court proceeding to hedge against political risks. However, market mechanism alone could not fully ensure host state to comply its commitment with foreign investors. Taking the *Beijing Urban Construction Group v. Yemen* case as an example, Beijing Urban Construction Group claimed that "the Respondent unlawfully deprived BUCG of its investment in Yemen by employing the Respondent's military forces and security apparatus to assault and detain BUCG's employees and forcibly deny BUCG access to the Project site and thus its ability to perform its contractual obligations"[5]. The market mechanism alone may not induce Republic of Yemen to treat Beijing Urban Construction Group fairly.

Further, there are still a large number of small and medium-sized Chinese investors in the Belt and Road region. Lacking of financing support and human resources, they do not have the same bargaining power as those large multinational enterprises. To the large extent, market mechanism could not promote domestic governance in the Belt and Road countries. Formal investment dispute settlement mechanism enforces the bargain between investor and host state, and thereby guarantees the compliance of commitment of host states. Faced with the pressure from investment treaty and possible adjudication against the violation of treaty obligation, host states will voluntarily comply with investment treaty obligation and try to establish domestic rule-of-law institutions. With the protection of *ex post* adjudication and domestic rule of law, small and medium-sized investors in the Belt and Road area will take less precaution and suffer less risk of biases. Because informal means is not able to settle all kinds of international investment disputes, the following sections will analyze the trade-off of formal investment dispute settlement mechanisms in detail.

4. Domestic Judicial Mean of Dispute Settlement

The courts or administrative tribunals of host states, including the Belt and Road states and China, are usually the alternatives to settle investment disputes, for instance, the stipulation in Agreement on Investment Between China and ASEAN.[6] Many developing countries which are the majority of Belt and Road countries traditionally

[1] Emilie M. Hafner-Burton, Zachary C. Steinert-Threlkeld and David G. Victor (2016). Predictability versus flexibility: secrecy in international investment arbitration. World Politics, 68, 413, 431.
[2] Ministry of Commerce of the People's Republic of China, Department of Treaty and Law, Guidelines on Country Foreign Investment and Cooperation. [Online] http://fec.mofcom.gov.cn/article/gbdqzn/index.shtml (27 January 2019).
[3] SINOPEC, About Sinopec Group. [Online] http://www.sinopecgroup.com/group/en/companyprofile/AboutSinopecGroup/ (27 January 2019).
[4] See ibid.
[5] See *Beijing Urban v. Yemen*, (n 21), para. 25.
[6] See Agreement on Investment (n 16) ("This Article shall apply to investment disputes between a Party and an investor of another Party…4. Where the dispute cannot be resolved as provided for under Paragraph 3 within six (6) months from the date of written request for consultations and negotiations, unless the parties to the dispute agree otherwise, it may be submitted at the choice of the investor: (a) to the courts or administrative tribunals of the disputing Party, provided such courts or administrative tribunals have jurisdiction;").

preferred to resolve investment disputes in their domestic courts.[1] For some China's BITs signed 20 years ago, such as China- Bangladesh BIT, investment dispute should only be submit to the competent court of the host state except for the dispute regarding the amount of compensation for expropriation.[2] Consent clauses in Modern China investment treaties, including treaties with the Belt and Road countries, usually have fork-in-the-road provisions such as Agreement on Investment Between China and ASEAN, which allows investment dispute to be submitted to either domestic court or international arbitral tribunal.[3]

Normally, local court is one of forums to resolve international investment disputes. Domestic court are able to apply treaties including investment agreements and international custom as part of laws of host state.[4] For example, Article 142 of the Civil Law of China stipulates that:

"[i]f any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions".[5]

There are comparative advantages to settle investment disputes by domestic litigation, not only in courts of China but also in courts of the Belt and Road states. Firstly, domestic courts are able to address most of claims, including claims from foreign investors, government organs and even general public affected. The voice of affected individuals or communities in the Belt and Road countries can be heard by adjudication body. In domestic litigation, the access and participation of non-disputing parties are highly respected, and general public ae usually allow to attend or observe all or part of the hearings. Secondly, it is easier and more efficient for small and medium-sized foreign investors to resolve their conflicts through litigation in the Belt and Road countries, especially the courts of which are efficient, independent, and impartial. Then， the judgments of local courts are convenient to be enforced compared with adjudicatory awards from remote international investment tribunals. Lastly, an effective, fair and accountable domestic investment dispute settlement court will reduce the cost of investment in the Belt and Road countries and then will encourage foreign investment in this area. Sometimes, foreign investors are treated the same as or even more favorable than domestic ones,[6] especially in those developing countries which urgently need foreign capital.

To some extent, the domestic courts or proceedings in the Belt and Road countries could accommodate investment protection to the environment, substantial development, public safety and regulatory interests of those Belt and Road countries. However, many Belt and Road countries are developing countries, the courts of which are sometimes hard to provide such efficient, independent, and impartial resolution of investment disputes.[7] Foreign investors sometimes are unwilling or hesitant to litigate in courts of such states due to the lack of knowledge about investment dispute settlement processes in host states.

Further, foreign investors worry about the neutral role of domestic courts as well, the judge of which are appointed by government of host states. Whether local courts will provide effective reliefs during the investment dispute settlement proceeding is the concern of foreign investors because judges may favour local government or maybe fall under the influence of the dictates of host states. In addition, some governments of host states revise their domestic legislations on frequent base. Changes in those legislations, such as the civil procedural law and the arbitration law, might have an impact on the investment dispute settlement. Owing to systemic limitation of domestic jurisdiction, the next section will discuss popular ISDS and its improvement in order to better settle international investment disputes in Belt and Road region.

5. International Arbitral and Judicial Means of Dispute Settlement

The establishment of international arbitral and judicial investment dispute settlement mechanism with regional characteristics is not only conductive to settlement of increasing investment disputes in the Belt and Road area, but also valuable to help developing Belt and Road countries to better integrate into global economy.[8] This

[1] Guiguo Wang (2017), The belt and road initiative in quest for a dispute resolution mechanism. Asia Pacific Law Review, 25, 1, 7.
[2] Agreement Between the Government of the People's Republic of China and the Government of the People's Republic of Bangladesh Concerning the Encouragement and Reciprocal Protection of Investments (1996), art. 9.
[3] See Agreement on Investment (n 16), art. 8.
[4] Eyal Benvenisti (2008). Reclaiming democracy: the strategic uses of foreign and international law by national courts, American Journal of International Law, 102, 241, 242.
[5] General Principles of the Civil Law of the People's Republic of China (1986), art. 142, National People's Congress, The National People's Congress of the People's Republic of China, [Online]
http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm (30 January 2019).
[6] Jonathan Bonnitcha, Lauge N. Skovgaard Poulsen and Michael Waibel (2017). The political economy of the investment treaty regime. Oxford: Oxford University Press, 149-151.
[7] Cristoph H. Schreuer (2001). The ICSID convention: a commentary. Cambridge: Cambridge University Press, 5.
[8] Guiguo Wang (n 61), 11.

section surveys the contribution of international arbitral and judicial investment dispute settlement mechanisms to the solution of the Belt and Road investment disputes.

5.1 Interstate Investment Dispute Settlement Mechanism

Investment disputes in the Belt and Road area will not only happen between investor and host state but also between two states. A state could claim against another state in international tribunals on behalf of its national investors. Although a state espouses the claim and benefit of its national investors, the state participates into an interstate investment dispute settlement proceeding independently. A Belt and Road country, South Africa, allows state-to-state international investment arbitration between South Africa and the home state of foreign investor after foreign investor exhausts local remedies in South Africa.[1] Another Belt and Road country, Iran, settled the investment dispute with U.S. (Unite States) through an interstate ad hoc tribunal established on 1981.[2] The WTO (World Trade Organization) agreements settle investment-related issues, especially Articles in the TRIMS (Agreement on Trade-Related Investment Measures), the GATS (General Agreement on Trade in Services), and the TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights). The WTO DSB (Dispute Settlement Body) with a compulsory jurisdiction to settle these investment disputes between two members. Actually, the DSB settled only a few investment-related disputes, a few of which were resolved in parallel to ISDS disputes.[3] If investment dispute between two Belt and Road countries is settled by the DSB, it should be noticed that some of investment treatments or laws, such as fair and equitable treatment, are lacking in the WTO agreements.

These interstate adjudicatory mechanisms especially standing ones cover most of countries all around the world, and the WTO DSB even has an appeal system with fixed judges. The fixed members in the adjudicatory body may reduce the possibility of inconsistent decisions on the same subject matter in the current ISDS proceedings,[4] which has long been criticized. The consistent decisions in the international investment dispute mechanism will facilitate the observance of bilateral or multilateral investment treaties and the establishment of rule of law in the Belt and Road region.

In interstate adjudicatory mechanisms, government may represent the public and diplomatic interests of their countries, as opposed to only economic interest of foreign investor. Interstate adjudicatory mechanisms are able to eliminate large multinational companies to aggressively threaten small developing Belt and Road countries by an expensive lawsuit or a claim against domestic regulation in ISDS. Then Belt and Road states can focus on broader "environment-friendly and sound development of the Belt and Road, featuring peace and the exchange of wisdom, and [building] a global economy that is more vibrant, open, inclusive, stable, and sustainable",[5] rather than a short-term victory in a single dispute through ISDS.

However, states currently prefer to advocate ISDS and seldom involve into interstate investment dispute settlement mechanism in order to attract foreign investment. If interstate investment dispute mechanism is widely used in Belt and Road States instead of ISDS, foreign investors will express concern that states may sacrifice interests of foreign investors and discard claims for political and diplomatic reasons.[6] Foreign investors in the Belt and Road area will also worry about that judges of interstate adjudicatory mechanisms are selected by state but not investors themselves, and thereby these judges will pay more attention on state's benefits but not investor's interest. Further, foreign investors will not receive compensation if interstate adjudicatory mechanisms in Belt and Road follow the WTO DSB mode, which only requires violator to bring the violating measure into conformity with the WTO agreement but does not requires violator to provide compensation for the aggrieved parities.[7]

In addition, the Belt and Road countries may just espouse a claim of large multinational companies or a group of small size investors in the interstate adjudicatory mechanism. For instance, China's SOEs play a significant role in the foreign investment projects in the Belt and Road region,[8] and invest the Belt and Road projects in accordance with governmental policy. Therefore, claims of China's SOEs are easily supported by the Chinese government in the dispute settlement procedures. Claims of individual small size investors could be

[1] South Africa Protection of Investment Act 22 of 2015 (2015), art. 13.
[2] David D. Caron (1990). The nature of the Iran-United States claims tribunal and the evolving structure of international dispute resolution. American Journal of International Law, 84, 104, 156.
[3] Sergio Puig and Gregory Shaffer (2018). Imperfect alternatives: institutional choice and the reform of investment law. American Society of International Law, 112, 361, 392.
[4] Laurence Boisson de Chazournes (2017), Plurality in the fabric of international courts and tribunals: the threads of a managerial approach. European Journal of International Law, 28, 13, 46.
[5] See Office of the Leading Group (n1), 59.
[6] Stephan Schill (2011). Enhancing the legitimacy of international investment law: conceptual and methodological foundations of a new public law approach. Virginia Journal of International Law, 52, 57, 68.
[7] Understanding on Rules and Procedures Governing the Settlement of Disputes (1994), art. 19.
[8] See generally Qinhua Xu and William Chung (2016). China's energy policy from national and international perspectives – the energy revolution and one belt one road initiative. Hong Kong: City University of Hong Kong Press.

sacrificed in the interest of political or diplomatic purpose. On the aspect of states, interstate adjudicatory mechanism usually supports the argument of powerful Belt and Road member states, which fund the mechanism and support its operation.[1] Accordingly, interstate investment dispute settlement mechanism could not be the only international arbitral or judicial mean of investment settlement mechanism in the Belt and Road area.

5.2 Current ISDS

Compared to domestic litigation in some of Belt and Road states, ISDS is more neutral, professional and fairer. In contrast with interstate adjudicatory mechanisms, ISDS is less political involvement. The acceptance of ISDS in Belt and Road investment treaties will send a positive signal to international capital markets, and then foreign investors will have enough confidence in the investment climate of those states.[2] Most investment treaties that China signs with the Belt and Road countries contain ISDS clauses. For those developing countries in the Belt and Road Initiative, foreign investment is significance to the local economy and therefore these countries would like to accept ISDS clauses in their investment agreements.

ISDS is able to reduce the pressure of domestic judicial reform in the Belt and Road states because domestic courts are not significant complementarity to the implementation of state obligations. Less influence on domestic judicial system is consistent with one of the requirements of Belt and Road Initiative, respecting the sovereignty,[3] and the underlying principle of China's diplomatic policy, non-interference in others internal affairs.[4] Regulatory autonomy of domestic judicial system of Belt and Road countries will be less intruded on.

ICSID is the pillar for ISDS although some investment disputes are settled in the ICC (International Chamber of Commerce), the PCA and so on. One of advantages concerning the ICSID arbitration is that the laws governing the dispute settlement procedure are the rules and regulations of the ICSID regime "except as the parties otherwise agree".[5] Foreign investors in the Belt and Road area are able to choose an independent alternative instead of domestic remedy in host state. Foreign investors can directly espouse its claim against host states in ICSID tribunals when the Belt and Road states have made the consent to settle disputes in ICSID in their bilateral or multilateral investment agreements.

The ISDS mechanism has long been criticized for inconsistent decisions on the same subject matter.[6] Because choice of arbitrators in ISDS is random and is different from a standing body with fixed judges in the interstate adjudicatory institution, like disputes in ISDS sometimes are not decided alike.[7] Arbitrators, counsels and even government officials are generally repeat-players, so conflict of interests issue is serious in ISDS proceedings. For example, 286 arbitrators of ICSID have also acted as counsel for investors and some of them testifies as experts in ICSID proceedings.[8] The Belt and Road countries may also worry about that ISDS prefers to support the interests of foreign investors.[9]

Facing current trend towards renegotiation of investment treaties particularly about their ISDS,[10] China also tries to seek an effective ISDS system in the Belt and Road region by a variety of investment treaty negotiations.[11] For instance, China focuses on negotiating China-EU BIT and upgrading ACFTA. The reformation of current ISDS, such as establishing the investment court advocated by the EU, is one of highly debated topics in the China-EU BIT negotiation,[12] which will be analyzed in detail in the next part. Many developing states complain that ICSID arbitrations are normally in favor of investors from developed countries and ignore regulatory interests of host states,[13] new designed ISDS mechanisms in the Belt and Road region should better balance investment protection and regulatory interest of host states because the majority of the Belt and Road states are developing states.

The high cost incurred by ISDS proceedings has always been considered as one of gravest concerns,[14] and a

[1] Richard H. Steinberg and Jonathan M. Zasloff (2006. Power and International Law. American Journal of International Law, 100, 64, 74.
[2] See Jeswald W. Salacuse (n 53), 143.
[3] See Office of the Leading Group (n 1), 19.
[4] Agreement (with Exchange of Notes) on Trade and Intercourse Between Tibet Region of China and India (1954), Preamble.
[5] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1966), art. 44.
[6] Guiguo Wang (n 61), 10.
[7] Laurence Boisson de Chazournes (2017). Plurality in the fabric of international courts and tribunals: the threads of a managerial approach. European Journal of International Law, 28, 13, 46.
[8] Sergio Puig (2013). Emergence and dynamism in international organizations: ICSID, investor-state arbitration & international investment law. Georgetown Journal of International Law, 44, 531, 603.
[9] Anthea Roberts (2015). Triangular treaties: the extent and limits of investment treaty rights. Harvard International Law Journal, 56, 353, 378-380.
[10] Timothy Meyer, Tae Jung Park (2018). Renegotiating international investment law, Journal of International Economic Law, 21, 655, 663.
[11] Liang Yong, Zhao Daiwei (2019). The developments of ISDS mechanism initiated by the EU Investment court system and China's choice. Indian Journal of International Economic Law, 11, 127, 160.
[12] See Lifeng Tao, Wei Shen (n 11), 1203.
[13] See generally Charles N.Brower & Sadie Blanchard (2014). What's in a meme? the truth about investor-state arbitration: why it need not, and must not, be repossessed by states. Columbia Journal of Transnational Law, 52, 689-779.
[14] Michael Faure, Wanli Ma (2020). Investor-state arbitration: economic and empirical perspectives. Michigan Journal of International Law, 41, 1, 42.

legal aid mechanism is proposed to be established in current ISDS mechanism applied in the Belt and Road region.[1] Besides the deficiencies of ISDS as mentioned above, another main reason that the developing Belt and Road countries are reluctant to accept ISDS is financial resources.[2] A legal aid mechanism is able to offer assistance, especially financial support, to the developing Belt and Road countries with financial or human resources constrain. If there is no legal aid, high cost for ISDS proceeding will restrain such developing countries from ISDS. Then, developing Belt and Road countries will not sign ISDS or only involve limited consent clauses in their investment treaties. Article 27 of CIETAC (China International Economic and Trade Arbitration Commission) International Investment Arbitration Rules (For Trial Implementation) stipulates the mechanism of third party funding.[3] This kind of legal aid mechanism is a good example and is better to be stipulated in the proceeding rules of the Belt and Road ISDS mechanisms. Generally speaking, ISDS, particularly the ICSID, is the main forum to settle international investment disputes in the Belt and Road region, [4] but some aspects of current ISDS should be further improved in order to better resolve investment conflicts in this region.

5.3 Regional Investment Court

The establishment of an investment court with an appeal system in the Belt and Road region is not only able to better settle international investment disputes in this region but also set in motion a global trend of the ISDS reform.[5] A permanent international investment court proposed by the EU in its TTIP (Trans-Atlantic Trade and Investment Partnership) negotiation with the US in 2015 attracts worldwide attention,[6] although the Arab Investment Court was established in 1985.[7] EU's international investment court is realized in its bilateral agreements with Canada,[8]namely CETA (Comprehensive Economic and Trade Agreement), and Vietnam.[9] Investment court in CETA tries to overcome the drawbacks of the current ISDS and stipulates the provisions regarding renewability of tribunal members' terms, restrictions on acting as counsel, and remuneration from government.[10] More and more countries join into the negotiations concerning a world investment court proposed by the EU.

If the Belt and Road Initiative aims at creating some sort of community, regional investment court will be a good choice as the investment dispute adjudicatory body in this region. Regional investment court has the potential to be established in the Belt and Road area through bilateral or multilateral agreements, depending on the acceptance of this adjudicatory mechanism by countries in this area. If regional investment court is established in the Belt and Road area, permanent judges selected by counties in the court will be committed to support the intentions of investment treaties signed by these Belt and Road countries. Permanent judges paid by government are more independent and impartial than arbitrators selected by disputing parties, and there will be less conflicts of interest. Further, regional investment court with an appellate system is able to adjudicate like cases consistently. The predictability of investment dispute settlements will be less challenged.

Appointment of judges will be the significant concern if the regional investment court is established in the Belt and Road area. Independence, impartiality, and diversity of the judge's pool are the guarantee of effective and independent investment dispute resolution. China should avoid excessive influence on the appointment of judges in the regional investment court of the Belt and Road area and this regional investment court should not be biased towards major powers. The ICSID vests the authority to appoint chief arbitrator in ICSID's secretary-general, who is close to the U.S.[11] Coincidentally, U.S. always wins investment disputes and many

[1] See Sienho Yee (n 46), 910.
[2] Muthucumaraswamy Sornarajah (2011). Mutations of neo-liberalism in international investment law. Trade, Law and Development, 3, 203, 203.
[3] China International Economic and Trade Arbitration Commission International Investment Arbitration Rules (For Trial Implementation) (2017), Article 27. ("Third Party Funding
1. In these Rules, a "third party funding" means the situation where a natural person or an entity, who is not a party to the dispute, provides funds to a party to the arbitration to cover all or part of that party's costs for the arbitral proceedings, through an agreement with the party accepting the funding.
2. As soon as the third party funding agreement is concluded, the party accepting the funding shall notify in writing, without delay, to the other party or parties, the arbitral tribunal, and the IDSC or the CIETAC Hong Kong Arbitration Center that administers the case, of the existence and nature of the third party funding arrangement, and the name and address of the third party funder. The arbitral tribunal shall have the power to order the disclosure by the party accepting the funding of any relevant information of the third party funding arrangement.
3. When making a decision on the costs of arbitration and other fees, the arbitral tribunal may take into account the existence of any third party funding arrangement, and the fact whether the requirements set forth in the preceding Paragraph 2 are complied with by the party or parties accepting the funds.").
[4] W Michael Reisman (2009). International investment arbitration and ADR: marries but best living apart. ICSID Review, 24, 185, 186.
[5] Guiguo Wang (n 61), 12.
[6] European Commission, (2015). Concept Paper: Investment in TPP and Beyond: The Path for Reform, 4.
[7] Walid Ben Hamida (2006). The first Arab investment court decision. Journal of World Investment & Trade, 7, 699, 700.
[8] Comprehensive Economic and Trade Agreement between Canada, of the One Part, and the European Union and Its Member States, of the Other Part (2016), art. 8.27.
[9] European Union–Viet Nam Free Trade Agreement (2015, text released but not signed), arts. 12-15.
[10] See Tania Voon (n 18), 60; see also CETA arts. 8.27.5 and 8.30.1.
[11] See Sergio Puig and Gregory Shaffer (n 71), 400.

commentators express concern about this issue.[1]

Regional investment court of the Belt and Road area may follow the mode of the AIIB (Asian Infrastructure Investment Bank), which aims to improve global governance but not to be a hegemon.[2] Appointment of judges in the regional investment court of the Belt and Road area should be depoliticized. Drawing lessons from the ICSID which is formulated under the organization of the World Bank Group, the AIIB could be the effective and ready platform for establishing regional investment court in the Belt and Road area.

The AIIB should change or set up its own rules for investment dispute settlement in order to become the potential platform of future regional investment court. There is a financial dispute settlement mechanism in AIIB but it only focuses on the loan between AIIB and Loan Parties. The disputing parties to AIIB Loan arbitration "shall be the Bank on the one side and the Loan Parties and the Project Implementing Entity on the other side".[3] If the platform of AIIB is in charge of investment disputes in the Belt and Road region, its jurisdiction of arbitration should be expended to all sorts of investment disputes. Current arbitral rule of the AIIB is limited to UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules.[4] A complete investment dispute settlement body established by the AIIB should have multiple choice of dispute settlement rules just as those dispute settlement clauses of BITs, which usually provide the rules of ICSID, UNCITRAL, the Arbitration Institute of the Stockholm Chamber of Commerce, and so on.

Considering overwhelming volumes of Belt and Road cases with regard to private investment disputes between investors, investor-state disputes, and inter-states disputes, the jurisdiction of regional investment court in the Belt and Road area should be strictly limited to ISDS cases and even inter-states disputes.[5] Since ISDS disputes arising in the context of Belt and Road Initiative is supposed to increase, Regional investment court in the Belt and Road area will not have enough capacity to handle all kinds of investment disputes. Investment disputes between investors in the Belt and Road are could be settled through commercial arbitrations or local remedies, such as the CICC (China International Commercial Court) newly established in Xi'an and Shenzhen in 2018, the Dubai International Financial Centre Courts created in 2004, the Singapore International Commercial Court officially launched in 2015 and Netherlands Commercial Court opened in 2019.

6. International Tribunal Review

Combining domestic and international investment dispute settlement mechanism together is another alternative to resolve international investment disputes in the Belt and Road region. In other words, international adjudicatory body reviews domestic decisions of investment dispute resolution. There will be a two-level dispute settlement mechanism to resolve investment disputes in the Belt and Road area. The first-level is the domestic investment dispute settlement organ, especially judicial organ, to resolve investment dispute in accordance with its national investment law and international investment treaties. If foreign investors do not satisfy domestic administrative or judicial decisions of the Belt and Road countries, foreign investors will appeal or request their home state to appeal such decisions to an international adjudicatory panel. There is no requirement of exhaustion of local remedy in this two-level investment dispute settlement mechanism. Local remedy only proceeds to a certain stage and then dispute settlement is subject to the review by an international tribunal.

Article 1904 of the NAFTA (North American Free Trade Agreement) stipulates that member state "shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review", and member state shall "on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review".[6] The update of the NAFTA, the USMCA (Agreement between the United States of America, the United Mexican States, and Canada), also has the same provision in its Article 10.12.[7] Chinese government is now trying to combine domestic and international dispute settlement mechanism to establish a new mechanism particularly for resolving the Belt and Road disputes.[8]

This two-level complementarity mechanism could enhance domestic rule of law in the Belt and Road countries. The interaction between domestic and international judicial organ facilitates congruence between international investment treaties and national investment laws of the Belt and Road countries.[9] The reach of

[1] See ibid.
[2] Bin Gu (2017). Chinese multilateralism in the AIIB. Journal of International Economic Law, 20, 137, 157.
[3] AIIB, General Conditions for Sovereign-backed Loans (2016), art. VII, Section 7.04(i).
[4] See ibid., art. VII, Section 7.04(a) ("Any dispute, controversy or claim arising out of or relating to any Legal Agreement or the breach, termination or invalidity thereof, which has not been settled by agreement of the parties, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules").
[5] See Sienho Yee (n 46), 909.
[6] North American Free Trade Agreement (1992), art. 1904.
[7] Agreement between the United States of America, the United Mexican States, and Canada (2018), art. 10.12.
[8] See Jiaxiang Hu and Jie (Jeanne) Huang (n 10), 824.
[9] Tom Ginsburg and Richard McAdams (2004). Adjudicating in anarchy: an expressive theory of international dispute resolution. William and Mary Law Review, 45, 1229, 1229.

multilateral and bilateral investment treaties signed among China and the Belt and Road counties could be extend to domestic level. Subject to the appeal of international investment tribunal, domestic judicial authorities in these Belt and Road countries will better respect a variety of treatments towards foreign investors stipulated in international investment agreements.

Settlement of investment disputes firstly in domestic jurisdiction reduces cost of foreign investors in the Belt and Road area, no matter whether foreign investors are large multinational enterprises or small and medium-sized ones. The effectiveness of this two-level complementarity mechanism depends heavily on domestic court's good faith, independence, and knowledge of international investment laws. All these factors influence foreign investors' access to justice in the Belt and Road area. When all these factors do not hinder the operation of this two-level complementarity mechanism, this mechanism can better balance the protection of international investment law and local interest of the Belt and Road countries. However, international tribunal review of domestic determination easily raises concerns of the Belt and Road countries about their sovereignty. The independence and finality of domestic jurisdiction are challenged, especially when an international tribunal overrules a judgement of a national highest court in the Belt and Road countries.

7. Conclusion

There is not a simple and perfect investment dispute settlement mechanism that could efficiently resolve all kinds of investment disputes arising from the Belt and Road area. To meet the need of Belt and Road initiative, the proposed investment dispute settlement mechanism emphasizes on multiple selection of settlement means according to particular economic, political and social environments in Belt and Road area. Negotiation, mediation and conciliation, normally as the preliminary step for initiating a case, not only reflect the regional cultural and legal characteristics but also handle some Belt and Road issues beyond the jurisdiction of the formal means. Market mechanism could well complement the negotiation, mediation and conciliation, and protect foreign investor from a varieties of investment risks and disputes.

However, informal methods are only able to resolve a small part of international investment disputes. Formal means including domestic one and international one, as the pillar for investment dispute settlement, are thereby recommended. Domestic adjudication contributes to the lower threshold of international investment dispute proceedings and is more easily accepted by small sized foreign investors, although fairness and independence of local courts are usually challenged. The existing interstate investment adjudicatory mechanisms should be reserved to safeguard investment policy between states.

As the dominant means, ISDS provide a neutral, fair and professional investment dispute settlement mechanism for foreign investors in the Belt and Road region although many deficiencies of ISDS are exposed and debated at present stage. For better implementation of Belt and Road Initiative, the establishment of Belt and Road investment court affiliated with the AIIB could rectify the shortcomings of the current ISDS to some extent and is also in line with the trend of ISID reformation. International tribunal review of domestic adjudication could promote observations of investment treaty obligations at domestic level but easily raises concerns about diminution of national sovereignty of the Belt and Road countries. To sum up, effective solution of investment disputes happening in the Belt and Road area should rely on multiple options, which are based on a full consideration of different contexts across the Belt and Road states, demands of foreign investors, and the aim of the Belt and Road Initiative.