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Study on International Dispute Settlement Mechanism

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Abstract: *Commercial disputes involving "One Belt, One Road" have obvious uniqueness, and to properly resolve commercial disputes and local conflicts, the existing international dispute resolution mechanism has a large gap. In order to properly resolve commercial disputes and resolve conflicts locally, the existing international dispute resolution mechanism has a large gap, drawing on and absorbing the existing dispute resolution mechanism and building a dispute resolution mechanism specifically for the "Belt and Road", which is not only necessary to promote the construction of the "Belt and Road" and promote the improvement of the international governance system, but also to promote the construction of the rule of law in China.*

Keywords: *"Belt and Road" Construction; International Commercial Disputes; Dispute Resolution Mechanism*

I. Introduction

The "Belt and Road" connectivity project, which is based on the geography of Asia and Europe and serves the economic mutual assistance and development of countries along the route, requires a set of commercial dispute resolution mechanisms that can be adopted by countries along the route due to the large scale and complexity of infrastructure needs and the great differences in legal systems and cultural traditions of countries along the route.

II. Status and Problems of the "Belt and Road" Dispute Settlement Mechanism

With the deepening development of the construction of the "Belt and Road" economic zone, the number of trade disputes among commercial. However, due to the development status of each country, political system, rule of law environment, religion, race, ethnicity and other issues, a dispute settlement mechanism suitable for all members has not yet been established. A good environment is a primary condition to attract the participation of business entities along the route, and all economic groups in the world have dispute settlement rules that meet their development (Li 2019).

In the traditional international trade dispute settlement, the parties to the dispute will generally choose litigation, arbitration, mediation, and other ways to resolve trade disputes, but whatever the way has its existing problems. (1) For private law subjects, judicial remedies have the most effective way of dispute resolution, but

litigation involves the right to sue, the right to sue is based on national sovereignty arising from jurisdiction, will involve jurisdiction, conflict of law application, long cycle, implementation issues. (2) Arbitration, high cost, long time, most of the rules and procedures used by arbitration courts are in line with those used in developed countries such as Europe and the United States. (3) Mediation is not mandatory and lacks binding force.

III. Drawing on the Singapore Mediation Convention's Dispute Resolution Provisions

In December 2018, the United Nations General Assembly meeting considered the adoption of the United Nations Convention on International Conciliation Agreements Arising from Mediation (also known as the Singapore Convention on Mediation, hereinafter referred to as "the Convention"), which entered into force on September 12, 2020. The emergence of the Convention is a realistic and progressive step forward for the current legal framework of international mediation, providing enforceable options and measures for the cross-border enforcement of commercial mediation settlement agreements; establishing a unified legal framework on the invocation and enforcement of settlement agreements at the multilateral level, providing market players with an alternative option with more enforcement guarantees, giving the enforceability of the agreement, and allowing enterprises seeking to enforce mediation settlement agreements across borders to directly to the courts of the country that signed and ratified the agreement, highlighting the value of multilateralism (Su 2007).Compared with the traditional dispute resolution methods of litigation and arbitration, mediation can reduce the time cost and legal investment cost of both parties to the dispute and create a better commercial environment.

It is also consistent with the concept of "peace is precious" and "harmony makes wealth" advocated by traditional Chinese culture. However, the Convention has not entered into force for China, and for a long period, the positive effect of the Convention on China could not be brought into play, and only the possible legal risks of the application of the Convention could be foreseen.

The early ratification of the Convention is one of the major issues that China needs to accomplish in the next period, while the establishment of a legal system of commercial mediation with both international advancement and Chinese characteristics is another major issue that needs to be accomplished with the efforts of all parties.

Despite the unique value of the Convention in international dispute settlement,for China, the following issues need to be concerned: (1) The Convention strictly requires a third party to intervene in mediation and produce a written mediation agreement. The current provisions of China's judicial system and the development of the global transnational judicial system are not synchronized. (2) After joining the Convention, China's unique geographical position among the countries along the route, connecting east and west, a large number of transactions occur in China, and inevitably, more international settlement agreements seek relief from China, but remote countries or even non-contracting states that have colluded in bad faith to apply for international settlement agreements in China. If the international settlement agreements of remote countries or even non-contracting countries are enforced in China, the legal identification and judicial review of such cases will be extremely difficult. This is another constraint on China's limited judicial resources; (3) Conciliation agreements

of non-parties can be enforced in the convention countries, but conciliation agreements of convention countries cannot be enforced in non-parties. (4) The court mediation system with Chinese characteristics has not been fully recognized by the Convention and settlement agreements that have been judicially confirmed by the court or reached through mediation in litigation, as well as settlement agreements that can be enforced by the courts of a country as judgments of that country.

IV. The Construction of International Commercial Dispute Settlement Mechanism

1.1 To establish a neutral third-party platform for prognosis processing

When a dispute arises, both parties to the dispute shall select any three staff members as the staff members for this dispute according to the staff list provided by the platform. If the staff members selected by both parties do not overlap or if there are fewer than three staff members, one person from each of the staff members selected by both parties shall be selected at random, and the remaining one shall be selected from the platform (Xie 2016). randomly selected to form a three-person working group, with the majority opinion as to the final treatment, and the platform to supervise the reconciliation process, the performance of the results, and if any problems are found in the mediation, the three persons shall bear unlimited joint and several responsibilities for this result, and if any violation of discipline is found, the platform will be punished internally and the results will be announced, and the platform will be required to be banned from any work in the platform within a specified period.

1.2 To Establish "One Belt, One Road" International Center for Non-Litigation Disputes

At this stage, China's non-litigation mechanism is small in scale, but it can learn from the mature mechanism of Europe and the United States. To avoid the movement of the subject of the dispute across borders, the parties can focus on the dispute resolution, and ultimately also need to focus on the implementation of the results of the processing of international non-litigation dispute processing rules is essential, but after the dispute processing, the implementation of the results of the dispute subject is the most concerned about the issue. The non-contentious dispute processing method is not limited to mediation and arbitration, etc., and applying for third-party intervention or inviting industry organizations and social institutions to intervene should be allowed, based on the characteristics of the dispute and combined with the choice of both parties.

At the beginning of the dispute processing, it is recommended to sign a good faith performance guarantee, promising to voluntarily fulfill the processing results of the center in the future and voluntarily pay a good faith performance deposit to enhance the binding force of the center to both parties and ensure the fulfillment of the final results, combined with the specific implementation of the situation, and not to ignore the relevant remedies.

1.3 To establish an intelligent platform for international commercial dispute resolution

The establishment of this intelligent case handling system requires not only big data as support and perfect infrastructure construction, but also the network support of the countries along the route, and for the

maintenance of network security, the member countries of the "Belt and Road" have collaborated to design an exclusive network of an intelligent platform for international commercial dispute resolution led by China, with the state's support for its Data protection. Each country will establish a different number of base points according to the distance and the number of trade disputes, and within these base points, a closed network will be used, and the state will provide advanced equipment to create the maximum conditions for dispute resolution. In these base points, the entire dispute resolution process is recorded and videotaped for random supervision in the future, and the parties to the dispute are prevented from making malicious video recordings and leaking each other's commercial secrets. Once a dispute is uploaded, the system will automatically identify the type of dispute and push out the proposed handling method, and provide the advantages and disadvantages of each type of handling method for this dispute, but it cannot force the disputing parties to choose a certain method.

1.4 To improve the new ODR talent building mechanism

The lack of professional talents is also a real problem in the "Belt and Road" trade dispute settlement, so we should strengthen the joint training mechanism of universities along the route, cultivate new professional ODR talents, and improve the treatment of related personnel. If one of the parties to a dispute has a common nationality with the professional, whether the professional can still maintain objective neutrality to deal with the dispute, that is, the issue of recusal of professionals, and should not be limited to the recusal of nationality, if there is a stake in the processing of the dispute, enough to affect the normal processing of the dispute, at this time, the recusal system should be invoked.

If the professional who should be recused does not recuse himself, the dispute needs to be re-processed, and the cost of re-processing the dispute and all losses caused shall be borne by the person, and the matter needs to be reported to the countries along the route. States are advised not to employ this person again and to implement a one-case veto system. It also cannot be ignored that outside of job development, factors such as benefits, family, and infrastructure are important factors that affect the concentration of talent.

V. Conclusion

Legal system structure refers to a top-down hierarchical and systematically linked unified rule system composed of sectoral norms of a country. On the issue of "One Belt, One Road" international dispute settlement, China needs to adhere to the principles and concepts of mutual consultation, common construction and sharing, party autonomy and openness, fairness and efficiency, and combine the characteristics of "One Belt, One Road" disputes themselves. In the light of the advanced nature of the Convention, the starting point is to safeguard the legitimate rights and interests of the parties to the dispute, to promote the economic prosperity and development of the countries along the route, to play the role of the "trinity" dispute resolution mechanism of mediation, arbitration, and litigation, to integrate the three dispute resolution methods, and to make use of the "Internet +" and the beneficial results of the development of big data, online and offline work together to provide more choices for the parties to disputes

To minimize the cost of dispute resolution, improve the efficiency of dispute resolution and optimize the effectiveness of dispute resolution, but in solving the relevant problems, we must take into account both the current situation and the impact on the future, from the current point of view, the formation of the rule of law is an important task of institutional innovation in the FTA, and in this, the reconstruction of the trial system based on the principle of judicial independence is particularly important. In the process of "One Belt, One Road" construction, the rule of law, especially judicial independence, is still one of the key concerns of the countries along the route, and China is no exception, how to balance the economic and legal benefits is still an important issue that we cannot ignore.

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