



Investment Dispute Settlement Mechanisms under the Recovery of Calvoism Reform Practices and way forward

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ABSTRACT

As the recovery of the Calvo Doctrine is becoming more and more apparent, the reform practice of the investment dispute settlement mechanism is also affected. The world's major economies have practiced different reform models according to their actual conditions, broadly categorized into the radical abandonment model represented by Latin American countries, the partial improvement model represented by the United States, and the institutional innovation model represented by the European Union. The essence of the Calvo Doctrine's "non-intervention" core corresponds to the field of investment dispute settlement, which is mainly reflected in the host country's opposition to the superior treatment of foreign investors over domestic investors, thus excluding investment disputes from being handled by international investment arbitration bodies. China, as the initiator of the "One Belt, One Road" initiative, should follow the trend of Calvo Doctrine recovery in the current reform of the investment dispute settlement mechanism, re-examine the international investment arbitration mechanism based on dialectical analysis of different reform proposals of various economies, explore and build a preventive and alternative approach based on investment dispute prevention and dispute mediation, and respond to the needs of the international community. To address the crisis of the legitimacy of the current investment arbitration under the revival of the Calvo Doctrine, we will explore the investment dispute settlement mechanism under the "One Belt, One Road" initiative from a new perspective with a distinctive Chinese solution.

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1. Introduction

The Calvo Doctrine, one of the essential doctrines in international law, was developed to protect the integrity of national sovereignty and regulatory power by excluding unjustified diplomatic protection. In other words, the maximum extent to which foreigners can pursue their rights in a state that recognizes the equality of rights of its nationals should be consistent with that of its nationals (Freeman, 1946). Since its inception in 1868 by Argentine Foreign Minister Carlos Calvo, the Calvo Doctrine has gained widespread acceptance in Latin America. It has continued to grow in scope and support among developing countries because of its emphasis on the absolute equality of foreigners and nationals and its explicit rejection of the imperial prerogatives of the powerful and the superiority of their nationals (Shan, 2006). Different scholars have analyzed its connotation from multiple dimensions. For example, some scholars, starting from the substantive aspect of the Calvo Doctrine, summarize its connotation into three levels of meaning: first, the host country is required to treat foreign investors as

nationals, i.e., deny foreign investors more favorable treatment than nationals; second, the host country's laws apply to foreign investors; and third, the host country's courts have exclusive jurisdiction over disputes involving foreign countries (Cremades, 2006). Other scholars, from the perspective of the elements of the Calvo Doctrine, have argued that it mainly consists of five elements: 1) submission to the jurisdiction of the host country, 2) application of the laws of the host country, 3) equal treatment of foreigners in local contractual arrangements, 4) waiver of diplomatic protection of the home country, and 5) waiver of international law rights (Wesley, 1975). In addition, some scholars have summarized and compared the various schools of thought and reasonably concluded that the core of the Calvo doctrine is non-intervention and absolute equality in treating internal and external nationals.

Along with the increasing development of economic globalization, developing countries have gradually become more involved in the wave of global capital flows. In the 1970s and 1980s, to build their economies and increase the attractiveness of foreign investment, developing countries began to move away from absolute "local remedies in the host country" at the level of investment dispute settlement. They gradually accepted other dispute settlement methods, including international investment arbitration. In the 1970s and 1980s, to develop their economies and increase the attractiveness of foreign investment, developing countries began to move away from absolute "local remedies in the host country" at the level of investment dispute settlement. They gradually accepted other dispute settlement methods, including international investment arbitration. However, as the shortcomings of the international investment arbitration mechanism have been exposed and the public interest of the host country cannot be safeguarded, the investor-State Dispute Settlement (ISDS) mechanism has faced a crisis of legitimacy, and developing countries, led by Latin American countries, have increasingly begun to re-emphasize the "exhaustion of local remedies" rule, oppose supranational treatment dispute settlement, and treat the ISDS mechanism with caution (Bromund, Roberts, & Dasgupta, 2015). Developing countries, led by Latin American countries, increasingly re-emphasize the "exhaustion of local remedies" rule, opposing supranational treatment dispute resolution and treating international investment arbitration mechanisms with caution. The Calvo doctrine is beginning to recover worldwide. The U.S. provisions in the U.S.-Mexico-Canada Agreement on the establishment of a pre-arbitration procedure and the limitation of the scope of arbitration disputes indicate that the impact of the recovery of the Calvo doctrine is gradually extending from developing countries to developed countries and is becoming a new issue in the latest round of ISDS reform. The change of the Calvo doctrine from invisibility to recovery in international investment can clearly show countries' interests at different levels of economic development (Hufbauer & Globerman, 2018). The Calvo doctrine recovery and proposes feasible reforms according to its value orientation. The ISDS mechanism should be reformed following the current revival trend of the Calvo doctrine.

2. The Calvo Doctrine and the Investor-Host State Dispute Settlement Mechanism

2.1 Reflection of Calvo Doctrine in the ISDS Mechanism

The purpose and essence of the Calvo Doctrine are to emphasize the sovereignty and public interest of the country and to oppose the imposition of diplomatic protection by other countries on top of the rightful regulatory power of the country, causing substantial damage to the exercise of sovereignty and the protection of public interest of the country. In international investment, the Calvo Doctrine is opposed to granting supranational treatment to foreign investors. In this regard, if an investment dispute arises between an investor and the host government, and the domestic investor does not have access to the dispute resolution channels enjoyed by the foreign investor, or if the dispute resolution methods applied to the two types of investors are not the same, the foreign investor is essentially considered to enjoy the supranational treatment (Reinisch, 2013). Typical examples are investment arbitrations provided by arbitration institutions such as the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA) in The Hague, as well as the failure of some Bilateral Investment Treaties (BITs) to provide for the exhaustion of local remedies for investors, which are concrete manifestations of the violation of the Calvo Doctrine.

2.2 The concealment of the Calvo Doctrine in the ISDS mechanism

2.2.1 The hidden manifestation of Calvo Doctrine in the ISDS mechanism

Early in the twentieth century, Mexico was the first successful example of the systematic application of the Calvo doctrine in Latin America, which led to the rapid incorporation of the Calvo doctrine into the constitutions and laws of almost all countries in the region. At the same time, Latin American countries began applying the Calvo Doctrine to expropriating and nationalizing private foreign investment, resulting in a general hostility to international arbitration in the region (Biggs, 2004). By the 1990s, there was a marked shift in the attitude of the traditionally Calvoist Latin American countries toward private foreign investment. Instead of rejecting and restricting foreign investment, they began to open up access to domestic markets and harmonize investment standards to attract foreign investors and capital (Manning-Cabrol, 1994). The Calvo Doctrine also suffered a gradual abandonment, highlighted by developing countries' acceptance of the ICSID Center's jurisdiction and their agreement to compromise on the "exhaustion of local remedies" rule. The Calvo Doctrine also suffered a gradual abandonment during this period.

The Calvo Doctrine is implicit in the ISDS mechanism in two ways: on the one hand, the compromise of agreeing to apply ICSID-centered arbitration. In the 1970s and 1980s, developing countries made more compromises between building their economies and attracting foreign investment, among which the signing of the Washington Convention became the decision of ICSID member states to allow foreign investors to bring investment disputes to ICSID in the International Investment Agreements (IIAs) they signed. This shows that Calvoist countries, which have always emphasized "non-interference," are beginning to tolerate investment arbitration rights for foreign investors unavailable to domestic investors.

On the other hand, the concession of exhausting local remedies rules in the host country. The requirement for foreign investors to exhaust local remedies in the host country before a dispute is submitted to international investment arbitration is the most typical manifestation of the Calvo Doctrine in the global investment field. However, to increase the attractiveness of foreign investment at this stage, the host country no longer compels foreign investors to exhaust local remedies in an investment dispute, which objectively confers supranational treatment of foreign investors. Instead of exhausting local judicial or administrative remedies when a dispute arises, foreign investors can take the dispute directly to an international investment arbitration institution with the host government as the defendant. In addition, some BITs provide for a "fork in the road clause." but due to the inadequate formulation of the text at that time and the tendency of arbitration institutions to interpret the text in an expanded manner, litigation speculation is familiar and foreign investors can obtain repeated remedies, which also defeats the original purpose of the provision (García-Bolívar, 2009).

2.2.2 Analysis of the Reasons for the Invisibility of Calvo Doctrine in the ISDS Mechanism

In the late twentieth century, developing countries, constrained by their legal development and business environment problems, experienced internal and external crises attracting foreign investment capital inflows. Calvo Doctrine was also affected by internal economic development needs and external international pressures and gradually disappeared from the international investment scene. In terms of the internal needs of developing countries, against the backdrop of declining traditional sources of capital, they need to find as soon as possible means to finance their development and address the shortage of financial resources caused by falling commodity prices and declining credit availability. As a result, most countries that had adhered to Calvoism have expressed their willingness to reconsider their policy stance on foreign investment to attract the needed capital. For example, since the 1980s, Latin American countries' attitude toward foreign investment has swung from one extreme to the other like a pendulum, with a paradigm shift in their original policy of resistance to foreign investment. In addition, the inherent weaknesses of domestic legislative systems and judicial mechanisms in developing countries make foreign investors vulnerable to legal risks at the entry, operation, and exit stages, which can lead to disputes with host governments (García-Bolívar, 2009). Therefore, in the absence of a significant improvement in

the rule of law in the short term, developing countries have to compromise and accept investors to seek alternative dispute resolution methods.

In terms of external factors, the gradual abandonment of the Calvo Doctrine by developing countries is mainly due to the pressure from developed countries and the rise of investment arbitration institutions. On the one hand, developed countries demand developing countries abandon final regulation and control of foreign capital. As net exporters of capital, developed countries have an incentive to protect the rights of their investors. Due to developing countries' application of the Calvo Doctrine to ISDS, investment disputes can only be mainly resolved through local remedies in the host country. Due to the difference in the level of the rule of law between developed and developing countries, the rights and interests of investors cannot be effectively protected in the dispute resolution process.

On the other hand, ICSID-centered arbitration is incorporated into the IIA model clause. The globalization of new business models have led to more dynamic capital flows between countries. Investment disputes between host countries and foreign investors have been an inherent obstacle to the flow of private capital to developing countries. Before the advent of investment arbitration, investors could only resort to local remedies in the host country for investment disputes. Only if they failed to exhaust local remedies could they seek remedies from their governments in the ICJ. However, the jurisdiction of the ICJ still depended on the host government's explicit indication, resulting in the ICJ's handling of investment disputes "in name only" (Baker & Yoder, 1989). It was for this reason that the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention) entered into force in October 1966, after being submitted by the World Bank to its member states for ratification in March 1965, which also signaled the creation of the ICSID, a new type of investment dispute resolution body. The establishment of ICSID provided developing countries with an alternative to the "exhaustion of local remedies" rule, met investors' reasonable expectations that investment disputes would be handled appropriately, and was highly regarded by capital-exporting countries. Against investment arbitration mechanisms becoming the mainstream of international investment dispute resolution, the Calvo Doctrine, with its emphasis on local remedies in the host country, has become a significant obstacle for developing countries to attract foreign investment and has been criticized by developed countries and investors.

Given the above, ICSID has been able to meet the needs of developed countries to protect their investors and the vision of third-world countries to increase the inflow of private capital. Therefore, it has played a significant role in diversifying ICSID (Odumosu, 2007). The ICSID central arbitration clause has also become an "evergreen" part of the investment chapter in bilateral investment agreements (BITs) signed by countries after the 1980s and 1990s.

3. The revival of the Calvo Doctrine in the ISDS mechanism

3.1 The resurgence of the Calvo Doctrine in the ISDS mechanism

While the sequestration of the Calvo doctrine by developing countries has yielded short-term results in total capital imports, the crisis of legitimacy inherent in the international investment arbitration mechanism has led to a gradual recognition of the situation by host countries. The international community has begun to rethink the value of the Calvo doctrine in investment dispute settlement. As the recovery doctrine becomes clearer, developing countries have started to respond to it, most notably by withdrawing from the ICSID Center and reforming the current ISDS mechanism.

Latin America, the birthplace of the Calvo doctrine, was a strong supporter of its emergence and a pioneer in its recovery. On May 29, 2007, at the Fifth Summit of the Bolivarian Alliance for the Americas (ALBA), then composed of Bolivia, Venezuela, Nicaragua agreed to denounce the ICSID Convention. On May 2, the World Bank had already received a written request from Bolivia to withdraw from the ICSID Convention. Bolivia criticized the ICSID Center for its opaque procedures, lack of neutrality in arbitration, and high costs in its written submission. It requested that the notice of withdrawal be formalized on November 3 of that year, i.e., six months after receipt of the notice (Delaume, 1966). In addition, Ecuador's Constitution expressly prohibits it from concluding treaties or international instruments that may refer the host country to international arbitration. Following Article 71 of the Washington Convention, Ecuador's withdrawal from the ICSID Center to the World Bank also entered into

force on January 7, 2010 (Gomez, 2011). In developing countries other than Latin America, the recovery of the Calvo doctrine has not been as extreme as the outright withdrawal from the ICSID Center. Still, signs of it can be seen in the ISDS reform initiatives of recent years.

In North America, for example, Mexico has made changes to the investment dispute settlement section of the former North American Free Trade Agreement (NAFTA) in the U.S.-Mexico-Canada Agreement (USMCA), requiring that local remedies be exhausted before an investment tribunal can be filed, and that a final judgment is obtained from the host country's courts if the investor has gone to local courts, or that 30 months have elapsed since the suit was filed (Garcia-Barragan & Tuck, 2019). In addition, in the latest Vietnam-EU Free Trade Agreement (EVFTA) signed between Vietnam and the European Union (E.U.) as an ASEAN member state, both parties have also included Alternative Dispute Resolution (ADR) in a separate chapter to mitigate the impact of the existing problems of the investment arbitration mechanism on the host government and to provide foreign investors with a diversified dispute resolution option other than arbitration (Xu & CISMAS, 2019).

3.2 Analysis of the Reasons for the Revival of Calvo Doctrine in the ISDS Mechanism

Host countries' sovereignty and public interests are vulnerable to infringement in investment arbitration, which is the main reason for the revival of the Calvo doctrine. In reality, the unevenness of the subjects of arbitration claims and the bias of the arbitral tribunal's decisions have caused developing countries, which are lagging in terms of international status and development, to suffer from the problems of sovereignty and public interests. The main reasons for this are the single subject of arbitration and the biased nature of arbitral awards at this stage.

First, states are reluctant to initiate arbitration claims. While the prevailing rules of international investment arbitration do not restrict the host government from initiating arbitration as a claimant, there are few examples in practice. In the data published on the ICSID website, there are only four cases where the state is a party to the claim (Arauz, 2015). The gradual separation of investment arbitration from commercial arbitration to form a separate arbitration system is primarily due to the natural specificity of the parties to the arbitration. Unlike commercial arbitration, where the parties are equal subjects, investment arbitration is set up to resolve investment disputes between a Contracting State and a national of another Contracting State. When the government of a contracting state agrees to an investor's submission of a dispute to arbitration at the ICSID Center, it is, in essence, a partial cession of state sovereignty. At this level, the host country's initiative to initiate investment arbitration is counter to the Calvo Doctrine's thrust. Developing countries have agreed to submit an investment dispute to arbitral tribunals in the recently signed BITs primarily a compromise to attract foreign investment for economic development. Therefore, when investment disputes arise, host countries, mainly developing countries, are more likely to settle them through local remedies rather than taking the initiative to apply to ICSID or other international arbitration institutions.

Second, the outcome of investment arbitration is more biased towards investors. As noted above, since investment arbitration is derived from commercial arbitration, the institutional structure of investment arbitration is primarily based on the commercial arbitration system. As far as arbitrators are concerned, investment arbitration does not have its arbitrators, so most arbitrators in mainstream investment arbitration institutions, such as ICSID and PCA, have only a commercial arbitration background and experience (Arauz, 2015). This has resulted in arbitrators focusing too much on the interests of investors in the arbitration process while ignoring the legitimate exercise of sovereignty and public interest objectives of the host country. In addition, the BIT, the text on which the arbitration claim is based, is designed to maximize the protection of the Contracting State's investors. Therefore, a significant number of arbitral tribunals in investment arbitration should interpret the treaty as much as possible in favor of the investor, i.e., "the purpose of arbitration is to allocate the maximum possible investment benefit to the investor" (Schultz & Dupont, 2014).

4. "Stones from Other Mountains": Calvo Doctrine and the Practice of ISDS Mechanism Reform

4.1 The radical surrender model represented by Latin American countries

4.1.1 Latin American countries and Calvo Doctrine

Latin American countries devoted proponents of the Calvo doctrine have used it to its fullest extent in the first hundred years of the 1980s. The constitutionalization of the Calvo doctrine and the slowing of the pace of accession to international arbitration-related conventions are strong supportive gestures by Latin American countries. Since 1886, many Latin American countries have required that every contract between a foreign investor and the host government must contain a Calvo clause in their constitutions and laws. Although the severity of the provision varies from country to country, the substance of the Calvo doctrine's emphasis on the "denial of diplomatic protection" is reflected in all of them. The most radical, the Mexican Constitution, for example, provides that only national or naturalized Mexican companies are entitled to ownership of land and waters and concessions to exploit resources and that the Mexican government has the right to dispossess foreign investors if they do not comply and to deny them the right to invoke the diplomatic protection of their home country. Nicaragua has a more moderate provision in its constitution, which provides that foreigners cannot use diplomatic intervention in denial of local judicial remedies, except for local judicial decisions unfavorable to the investor (Garcia-Mora, 1949). Against the backdrop of such an oppressive Calvo doctrine, Latin American countries adopted constitutions that more forcefully applied the principles of "exhaustion of local remedies" and denial of diplomatic protection to the field of international investment.

At the level of investment arbitration, Latin American countries have been slow to accede to and ratify the Washington Convention, with only two of the more than 30 countries in Latin America having acceded to it in the 20 years since its creation in 1966 (Garcia-Mora, 1949). Latin American countries were also not very active in recognizing and enforcing foreign arbitral awards concerning the New York Convention. In the context of the growing popularity of commercial arbitration as a means of dispute resolution at the time, it was only 17 years after its enactment that the Convention received its third Latin American member (Hamilton, 2008). The large number of BITs signed by Latin American countries starting in the 1980s, their agreement to refer investment disputes to ICSID centers, and their abandonment of the exhaustion of local remedies rule led academics to believe that the Calvo Doctrine was officially dead in the international investment arena. However, when combined with the radical support initiatives of Latin American countries before this, it is easy to see that the "death" of the Calvo doctrine was only a temporary dormancy, a passive response of Latin American countries to the global trend of investment liberalization at the time, and a temporary compromise to alleviate the severe debt crisis of the 1980s (Shan, 2007). These factors also set the stage for the inevitable revival of the Calvo doctrine in Latin America later on.

4.1.2 Calvo Doctrine and the Reform of the ISDS Mechanism in Latin America

Latin American countries have been more aggressive in reforming the ISDS mechanism. Along with the gradual revival of Calvoism, their approach to investment disputes has become more "localized." Among its radical reform initiatives, the withdrawal from the ICSID Center and the reform of the current investment agreement system are the most representative. Since the former has already been described above, it will not be repeated here. The latter will be discussed in detail below.

Since the 1980s, the serious debt crisis and the wave of investment liberalization forced Latin American countries to adopt higher standards of treatment for foreign investors, and this period also saw a concentration of BITs signed by Latin American countries, with more than 300 new BITs signed by the end of the twentieth century (Salacuse & Sullivan, 2005). In addition to the significant increase in the number of BITs, the settlement of investment disputes in BITs also gradually deviated from the Calvo doctrine, with the exhaustion of the local remedies rule no longer used as a precursor to investment arbitration.

Since the beginning of the new century, while foreign capital has been flowing into Latin American countries, conflicts between investors and host countries during the operation of their investments have emerged and have often been brought to international investment arbitration tribunals due to unsuccessful negotiations. Due to the inherent shortcomings of the current investment arbitration mechanism, the host country's right to regulate public interests

is often violated. In addition, the lack of uniformity in arbitral tribunal decisions on the applicability of MFN at the level of investment dispute settlement has led to some BITs being used as a tool for host countries to become defendants. For example, in *Maffezini v. Spain*, the BIT between Argentina and Spain, the investor's home country, provided for a local remedy rule that required the investor first to seek redress in Spanish courts and then submit to arbitration at the ICSID Center only if no award was obtained within 18 months (Flores, 2001). However, the BIT between Spain and Chile provided a six-month consultation period, a much simpler procedure than the former. The ICSID tribunal recognized this claim when it found jurisdiction. Such cases of investors using MFN clauses to circumvent the "fork in the road" are not rare, such as *Siemens A.G. v. the Argentine Republic* and *Ros Invest v. Russia* (RosInvestCo, 2005).

Latin American countries have begun to review their investment agreement systems in light of these loopholes. While abolishing BITs that are not conducive to their interests, they seek to adopt regional multilateral investment agreements to replace the current system of unreasonable IIAs in their countries. On the one hand, Latin American countries have started to adjust their BITs containing ISDS regimes because of the inconsistent interpretation of MFN clauses by arbitral tribunals, which may lead to abuse of the "fork in the road clause." For example, some countries have unilaterally withdrawn from BITs to prevent investors from abusing the MFN clause, such as Venezuela, which unilaterally annulled its BIT with the Netherlands because the BITs conflicted with its national development plan. For example, Bolivia only recognizes "technical disputes" as arbitrable matters.

On the other hand, Latin American countries have begun to reform the ISDS mechanism by entering into regional investment agreements. For example, in the latest USMCA, in addition to requiring the adoption of local remedy rules before submission to investment arbitration, the section of the USMCA on U.S.-Mexico investment disputes also includes a section on corporate social responsibility. Each party must encourage its enterprises to incorporate internationally recognized social responsibility into its internal policies (Hufbauer & Gliberman, 2018). In addition, in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Chile, Mexico, and Peru are parties. The most-favored-nation treatment in the investment chapter of the CPTPP has been extended to all parties. The MFN section of the investment chapter also specifies that the treatment referred to in this article does not include ISDS procedures or mechanisms. Ghaith (2019) to prevent foreign investors from using the "fork in the road clause" to circumvent local remedies.

4.2 The local improvement model represented by the United States

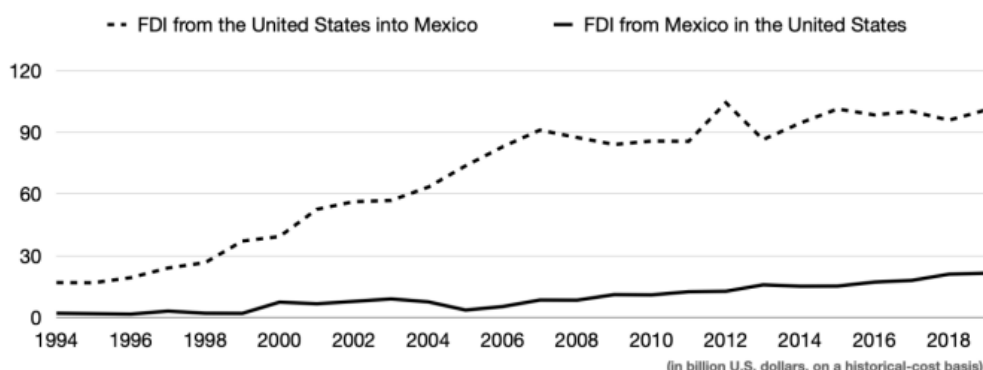
4.2.1 The United States and Calvo Doctrine - A Perspective on the North American Free Trade Agreement (NAFTA)

The United States, as a representative of developed economies, has long played the role of a staunch opponent of the Calvo Doctrine. It advocates that investment disputes between investors and host countries should not be resolved by local remedies in the host country but should be referred to as international investment tribunals. For example, the investment chapter of NAFTA, which was signed and entered into force in the 1990s, provides that the disputing investor only needs to give written notice to the contracting state within 90 days before filing a complaint, i.e., the investor only has a duty to inform the host state or does not need to obtain the host state's permission. In other words, local remedies of the host state are not a prerequisite for filing investment arbitration (Villareal & Fergusson, 2017). Admittedly, the U.S. has self-interest-oriented considerations in setting up such a system.

First, the United States is a net exporter of capital among NAFTA member countries. One of the reasons why developed countries so highly regard investment arbitration is that it can protect the interests of their investors in overseas investments. In economic globalization, developed countries, led by the United States, have started to shift their industries, and developing countries with abundant resources and labor have become the central target countries. However, due to the host country's poor business environment and legal system, investment disputes often arise between investors and the host country. In addition, the transparency and fairness of local remedies in host countries are lagging behind, which cannot ensure the adequate protection of investors' rights in overseas investment. Investment

arbitration is an excellent solution to this problem and meets the practical needs of overseas investment in developed countries. As shown in Figure 1, in NAFTA, the U.S., as a capital-exporting country, has a much higher foreign direct investment (FDI) in Mexico than its source capital. For this reason, the U.S. prefers investment arbitration to local relief in the host country under the Calvo Doctrine.

Figure 1



Data source: International Data of BEA. (BEA, 2022)

The ISDS route under NAFTA applies to all member countries, and the U.S., as both a capital-exporting and capital-importing entity, may also be sued by investors from other countries before international arbitration tribunals. According to UNCTAD's Investment Policy Centre, as of December 16, 2020, 70 investment arbitration cases were filed under NAFTA. As the table below shows, there is no significant gap between the U.S., Mexico, and Canada regarding the number of cases filed; however, the U.S. has a much higher success rate than Mexico and Canada. The reasons for this are, on the one hand, the high level of the rule of law in the U.S. and the ability of domestic legislation to match international standards in detail, the administrative regulation of investors within the boundaries of international law; and, on the other hand, the ability of the U.S. to respond to litigation and the ability of the government to gain an advantageous position in the investment arbitration process to win the litigation.

Table 1

NAFTA	Number of cases sued	Number of cases decided	Winning rate
United States	17	9/9	100%
Mexico	24	5/14	35.7%
Canada	29	5/13	38.5%

Data source: UNCTAD's Investment Policy Centre (IPB, 2022).

4.2.2 The Calvo Doctrine and the Reform of the U.S. ISDS Regime - A Perspective on the U.S.-Mexico-Canada Agreement (USMCA)

In the U.S., the opponent of the Calvo Doctrine in the ISDS section of NAFTA has significantly moderated its attitude in the USMCA, which can also be seen as a compromise to the current irresistible resurgence of the Calvo Doctrine in two main ways.

First, the scope of disputes brought to investment arbitration is limited. In the investment chapter of NAFTA Chapter XI, the scope of disputes is not defined, i.e., investment disputes arising from violations of Part A of NAFTA Chapter XI can be submitted to international arbitral tribunals; however, in the USMCA, even though the ISDS provisions are only directed at the United States and Mexico, the scope of disputes is significantly limited in Annex 14-D of the text, so that investors can only bring an arbitration against host countries for violations of USMCA 14.4 National Treatment, USMCA 14.5 Most Favored Nation Treatment, and USMCA 14.8 Expropriation and Compensation. USMCA 14.4 National Treatment, USMCA 14.5 Most-Favored-Nation Treatment, and USMCA 14.8 Expropriation and Compensation explicitly exclude the establishment and acquisition of investments and indirect expropriation (Hufbauer & Globerman, 2018).

Second, it imposes a stringent predicate procedure for initiating the arbitration. In contrast to NAFTA's more lenient initiation procedures, the USMCA's investment section imposes two mandatory prerequisite procedures for investors to initiate arbitration. On the one

hand, under USMCA Annex 14-D, an investor must seek relief from a competent domestic court or administrative tribunal in the host country before bringing a dispute to arbitration. Unlike NAFTA's parallel option, the USMCA makes domestic remedies of the host state a necessary condition for the initiation of arbitration. On the other hand, the USMCA further refines NAFTA's investment dispute resolution "fork in the road clause" by providing that international arbitration cannot be initiated immediately after the investor seeks domestic relief in the host country but only after 30 months from the completion of the final judgment in the domestic proceeding or the commencement of the proceeding, which adds a stringent artificial barrier to investment arbitration (Hufbauer & Globerman, 2018).

From the above analysis, it is clear that there is a clear difference in attitude between the U.S. provisions in NAFTA and USMCA at the ISDS level. This difference is a temporary compromise between the U.S. and its interest in recovering the Calvo doctrine. This apparent difference is due to three factors: First, the international community is increasingly critical of investment arbitration, and major economies, including developed countries, are beginning to seek changes to the ICSID arbitration mechanism. In this international context, if the U.S. still adheres to the traditional ISDS approach, it will not be conducive to deepening its international investment cooperation. In addition, investment arbitration is currently at a bottleneck stage of reform. With arbitration unable to adapt to the complexities of current investment disputes, it may be a viable alternative to the current reform trend of "de-internationalization" and seeking alternative solutions (Hufbauer & Globerman, 2018). Second, the rule of law in developing countries has improved to a certain extent. Although there is still a gap between Mexico's rule of law and the United States and Canada, in recent years, the Mexican government has improved its rule of law environment by improving its domestic legal system to a certain extent. And Mexico is the only developing country in the North American Free Trade Area. Its relatively cheap investment location factors forced the United States not to give it up. They can only compromise with the current trend of strong Calvoism recovery in Latin American countries. Third, the U.S. reserves room for litigation for its investors, and the USMCA makes an exception in its Annex 14-E, which provides that in a "covered government contract" scenario, if an investor has an investment dispute with the host government, the investor may directly initiate arbitration without the restrictions of 14-D. According to Annex 14-E, the so-called "covered government contracts" refer to written agreements between U.S. and Mexican investors and the government for specific industries, which mainly cover the energy sector such as oil, gas, electricity, telecommunications, public utilities such as roads, railroads and bridges, and the transportation sector (Hufbauer & Globerman, 2018). Since these industries are the main sectors exported by the United States, Annex 14-E is also considered a privilege granted by the U.S. investor to its investors.

4.3 E.U. as the representative of the institutional innovation model

4.3.1 Changes in the subject of E.U.'s outbound investment jurisdiction

In November 2009, the Treaty of Lisbon, which has the constitutional character of the E.U., entered into force on the first day of the following month after the last E.U. signatory, the Czech Republic, completed the ratification process in the Lisbon Treaty. The most significant change at the investment policy level in the Treaty of Lisbon was the transfer of exclusive jurisdiction over outward FDI from member states to the E.U. "The European Commission has devised an innovative investment policy that puts another easily overlooked but powerful actor in the shadows (Titi, 2017). The European Parliament not only enjoys significant powers at the level of E.U. investment policy development but has explicitly stated that it will be applied at the level of EU ISDS reform.

In *Achmea*, the CJEU judgment of March 2018 stated that the investor-host country arbitration clause in the BIT concluded between the Netherlands and Czechoslovakia was contrary to E.U. law and the principle of autonomy in E.U. law. Shortly after the CJEU judgment in *Achmea*, the European Commission issued a summary on investment policy within the E.U., stating that the *Achmea* judgment meant that the arbitration clauses in all BITs concluded between E.U. member states could no longer be applied and that any arbitral tribunal established based on such clauses would not have jurisdiction due to the lack of a valid arbitration agreement. Therefore, national courts must set aside an arbitral award and refuse to enforce it (Declève, 2019). On January 15, 2019, the E.U. member states terminated all BITs between them.

Following the entry into force of the Lisbon Treaty, changes in the E.U.'s internal power structure have deprived E.U. member states of the ability to reform the ISDS regime through the BIT alone, i.e., the E.U. has gained full representation at this level. In recent years, the E.U. has been pushing its proposed Investment Court System (ICS) at the ISDS reform level, advocating the replacement of the existing investment arbitration mechanism with a permanent court of a judicial nature to circumvent the current problems of investment arbitration. In November 2015, the E.U. officially announced the proposed investment chapter of the Transatlantic Trade and Investment Partnership (TTIP) with the United States. The organization of the ICS and the mode of hearings are detailed. In addition, the E.U. has explicitly proposed the expansion of ICS mechanisms in its FTA negotiations with Canada, Vietnam, and *Singapore*. Although the E.U.'s reform proposals are innovative and provide new ideas, they align with the current trend of Calvo's recovery.

4.3.2 The Permanent Investment Court Mechanism under the Calvo doctrine Recovery

Among the many criticisms of the investment arbitration mechanism, the inconsistency of arbitral awards has been a persistent problem in investment arbitration that has not been effectively addressed. For this reason, the E.U., in building the ICS mechanism, has tried to meet the common needs of both parties by improving the consistency of arbitration awards to increase the acceptance of the E.U. proposal by all parties.

The many criticisms of the current investment arbitration regime do not exist in isolation but are closely interconnected. For example, the much-criticized fragmentation of the investment rule of law results from an uncontrolled proliferation of IIAs. The proliferation of IIAs may also contribute to the increasing complexity of investment arbitration. Today, there are over 3,000 BITs in the international investment system. Because other agreements may contain different investment protection standards, investment tribunals may give different meanings to similar investment provisions in the arbitration process (Johnston & Trebilcock, 2013). This is also a fundamental factor that prevents arbitration awards from being agreed upon.

The biggest problem with inconsistent decisions is that they reduce the predictability of the outcome of cases, making it impossible for litigants to reasonably predict the course of the case. In the context of the current arbitral tribunal generally favoring the investor's side, the investor's success rate is higher than that of the host country. Moreover, if the investor loses the case, it only needs to pay the related litigation costs. In contrast, if the host country loses the case, it must bear a significant monetary compensation and face the corresponding cession of its sovereign regulatory power. Therefore, the predictability of the case is of much higher value to the host country than to the investor. Suppose the arbitral tribunal can base its decision on prior jurisprudence. In that case, the host country can predict the outcome of the dispute after it is submitted to arbitration and decide whether to resolve it through alternative dispute resolution or let the investor submit to arbitration.

Inconsistency in arbitral awards can manifest in various ways, such as inconsistent interpretation of the same treaty by different tribunals, inconsistent interpretation of the same provision of the same treaty or similar provisions of different treaties, or inconsistent decisions of the same treaty by different tribunals in the same case or similar cases. These situations occur mainly because there is no obligation to refer to prior decisions between arbitral tribunals, and arbitrators are only required to decide on a case-by-case basis without following the principle of *stare decisis* (Johnston & Trebilcock, 2013). On the other hand, the idea of an investment court would solve this problem. The two-tier structure of the court of the first instance and the court of appeal can effectively reduce the inconsistency of decisions (Tams, 2006). In addition, the tribunal of the first instance could establish a uniform treaty interpretation mechanism to standardize the interpretation of similar provisions. When correcting cases of inconsistent performance, the appellate tribunal could also address the problem of conflicting interpretations of the same or similar provisions by ICSID, UNCITRAL, and other international investment arbitration bodies (Gantz, 2003).

In addition to improving the consistency and predictability of arbitration awards, the EU ICS mechanism has also been designed to improve the arbitration process's transparency and

regulate the selection and conduct of arbitrators, taking into account the interests of both investors and host countries.

5. "Can the Jade be taken": An Assessment of the Desirability of three Reform Models from the Chinese Perspective?

5.1 The Radical Abandonment Model represented by Latin American countries is too extreme

Latin American countries have radically expressed their dissatisfaction with the current ISDS mechanism through the constitutionalization of "absolute judicial sovereignty" and their withdrawal from the ICSID Convention, which is the most revolutionary way of resurrecting the Calvo doctrine in the ISDS reform process. As mentioned earlier, Latin American countries have made such a choice inextricably linked to their economic development model and the actual water governance situation in domestic law. However, given the differences between China and Latin America, it is not appropriate for China to learn from them.

Since China opened up to the outside world and actively entered the WTO, outward investment cooperation has maintained steady development, especially since the 18th Party Congress. The scale of China's outward foreign direct investment (OFDI) has continued to expand, and significant achievements have been made. At the level of outward investment, the Ministry of Commerce officially released the "China Outward Investment Cooperation Development Report 2020" on February 2, 2021, stating that China's outward foreign direct investment (OFDI) will reach \$136.91 billion in 2019, maintaining the second position in the world; and OFDI in 2020 will be \$132.94 billion, an increase of 3 percent year-on-year. will be \$132.94 billion in 2020, up 3.3% year-on-year (Chinanews, 2020). At the level of attracting foreign investment, China will receive about \$163 billion in foreign direct investment (FDI) in 2020, which is \$29 billion more than the U.S. This is the first time China has overtaken the U.S. in FDI (News, 2021). Currently, China, as a major country with two-way capital flows in international investment activities, completely abandoning the current ISDS mechanism is not in line with the needs of developed countries, thus affecting the favorable perception of foreign investment inflows. In addition, unlike Latin American countries, China has established an image as a responsible power in the international arena with its growing comprehensive national power. It is inconsistent with our long-standing emphasis on "discuss, build and share."

5.2 The Local Improvement Model Represented by the United States can be used for Reference

The U.S. reforms to the ISDS in the NAFTA update process reflect protecting its own investors' interests as a significant capital-exporting country. The ISDS arbitration mechanism lacks some of the procedural and evidentiary safeguards found in traditional courts, leaving foreign investors with the opportunity to successfully obtain claims that would otherwise be denied by the host country's courts, which is inconsistent with the U.S. government's longstanding "America First" philosophy.

During the renegotiation of NAFTA, the U.S. Chamber of Commerce and the National Association of Manufacturers clarified that attempts to weaken the ISDS mechanism would harm U.S. businesses and workers because U.S. investors in Mexico rely heavily on Chapter 11 of NAFTA for their investments (Gross Jr, 2018). For this reason, the U.S. has retained the main body of the ISDS regime, incorporating reforms from other economies on transparency, arbitrator independence, and protection of the public interest of the host country. In addition, the USMCA was developed to meet the ISDS reform trends under the recovering Calvo doctrine, supporting domestic courts to limit individual investor-state dispute resolution, and further enhancing national legislative flexibility to allow investors to use different methods and procedures in resolving foreign investment disputes. While the institutional reforms to the ISDS in the USMCA are a compromise in response to current trends, they adequately protect both U.S. sovereignty and the interests of U.S. investors investing in Mexico and Canada. From China's perspective, the U.S. institutional reform of the ISDS mechanism, while retaining the original one, is quite beneficial compared to the extreme abandonment by Latin American countries. As China's outbound investment cooperation with other countries along the "Belt and Road" initiative intensifies, the original ISDS mechanism is becoming increasingly

unsuitable for complex and volatile investment disputes. As the initiator of the Belt and Road Initiative, China needs to establish a coordinated ISDS mechanism while safeguarding its sovereignty and protecting the interests of foreign investors. Since the construction of the mechanism cannot be achieved overnight, it is possible to explore a partial reform of the current ISDS mechanism to meet the needs of the current stage of investment dispute resolution among the countries along the route, based on the improved path of the United States in the short term (Kulaga, 2019).

5.3 The EU as the Representative of the System Innovation Model to Develop Ideas

Unlike the reform plans proposed by other economies, the E.U. recognizes that the fundamental reason the existing problems of the current ISDS mechanism cannot be eliminated lies in the "original sin" of investment arbitration, which is born out of commercial arbitration. Therefore, the E.U. proposes constructing a permanent multilateral investment court, plans to gradually transition from the initial bilateral investment court to the final permanent multilateral investment court, and makes a "drastic" innovation to the current ISDS mechanism dominated by ICSID center arbitration. From the IIAs recently signed by the E.U., it can be found that the idea of the E.U.'s permanent investment court is a systematic and multifaceted reform plan, including the inclusion of the transparency rules of the United Nations Trade Law (UNCITRAL) to improve the transparency of dispute settlement procedures, clarify the status of judges of trial members in the trial of investment disputes to reduce the bias of previous investment arbitration awards, establish a permanent appeal mechanism to change the inconsistency of arbitration awards, etc. (Kulaga, 2019).

The E.U.'s proposed permanent investment court mechanism does provide a new idea for the current bottleneck of ISDS reform. However, it is still proposed as a tool to serve the E.U.'s outbound investment cooperation and still takes the E.U.'s interest-oriented position as its fundamental guideline. In addition, the reason the E.U. is replacing arbitration with the trial is an attempt to eliminate its shortcomings in investment arbitration and is related to the European Commission's action plan. Since the entry into force of the Lisbon Treaty, the European Commission has been granted exclusive competence to negotiate IIAs on behalf of member states, which allows it to define and develop relevant rules on FDI. The European Commission also made clear as early as 2010 its intention to replace the existing planning of more than 1,400 IIAs in its member states with a common and coherent treaty. However, the current investment arbitration regime, which provides private investors with a legally privileged status, allows them to pursue their claims independently of the host country's judicial structure to a certain extent. In other words, the current ISDS mechanism undermines the ability of political groups (especially in Western democracies) to collectively decide what constitutes social and economic rules (Dietz, Dotzauer, & Cohen, 2019). It does not align with the E.U.'s blueprint for future external treaty harmonization. Based on the above, the question of whether China should follow the E.U.'s lead and try to build a permanent investment court does not seem to be a simple question of institutional transplantation. Given the differences between China and the E.U. in various aspects, further consideration is needed regarding the actual national conditions.

6. ISDS mechanism of "One Belt, One Road" Under the Recovery of Calvoism, The Chinese Solution

6.1 The choice of the "Belt and Road" mechanism should follow the trend of Calvoism recovery

Although the U.S. model of partial improvement and the E.U. model of institutional innovation can provide useful insights for China, they cannot be directly transplanted to constructing the ISDS mechanism under the Belt and Road Initiative. China, as the initiator of the Belt and Road Initiative, should actively respond to the current trend of Calvoism's recovery, make a "Chinese voice" during the bottleneck of the current ISDS mechanism reform by combining China's value considerations, and comprehensively consider multiple factors for the "Belt and Road" Initiative. The ISDS mechanism under the "Belt and Road" initiative should be a feasible "Chinese solution," taking into account multiple factors (Dietz et al., 2019).

At a time when the recovery of Calvoism is becoming more and more prominent, and because of the actual situation of China and the countries along the Belt and Road, neither the

"partial reform" model of the United States nor the "institutional innovation" model of the E.U. is entirely desirable. Conversely, the fragmented reform model is largely a drop in the bucket if it cannot fundamentally address host governments' inherent "supranational treatment" in international investment arbitration. On the other hand, the permanent investment court mechanism advocated by the E.U. has obvious E.U. values and interests, which cannot be fully applied to the developing countries along the route where the concept of litigation and litigation capacity have not yet reached a high level. In other words, the investment court mechanism under the "Belt and Road" initiative is likely to become "an orange in the south and a hedgehog in the north."

Returning to the essence of the Calvo Doctrine of non-intervention, its main manifestation at the level of investment dispute resolution is the host country's opposition to the right of foreign investors to investment arbitration, which is not available to domestic investors, and the negative impact of the current inherent drawbacks of investment arbitration on the host country's sovereign regulation. This, coupled with the negative impact of the current inherent disadvantages of investment arbitration on the host country's sovereignty, makes an investment dispute prevention mechanism and an investment dispute settlement mechanism ideal for responding to the resurgence of the Calvo Doctrine and the inherent disadvantages of investment arbitration.

6.2 Reduce the possibility of investment disputes through dispute prevention mechanisms

It is the most economical and valuable part of the investment prevention mechanism for the host country to deal with investment disputes efficiently and retain foreign investment continuously (Dietz et al., 2019). The one belt, one road "line" has a common understanding of "cooperation, co-construction and sharing" and has the corresponding basic advantages in the communication and construction of the prevention mechanism. Based on this, in setting specific rules, as the prior stage of dispute settlement, the investment dispute prevention mechanism can be divided into short-term and long-term measures according to the impact and duration of the measures.

On the one hand, short-term measures would be highly targeted, aiming to reduce the likelihood of investment disputes and prevent their further escalation. With this as a basic value, three systems can be designed: first, an early warning mechanism for investment disputes with a focus on monitoring sensitive sectors; second, the "exhaustion of local remedies" (pre-domestic dispute resolution), which requires investors to exhaust domestic remedies in the host country before submitting to investment arbitration; and third, the "Investor-State Arbitration" (ISDS), which China submitted to UNCITRAL Working Group III in July 2019.

On the other hand, the long-term initiative will be guided by the value of sustainable development, with dispute prevention as its objective and focus, and the "spillover effect," seeking to promote the level of domestic investment freedom and facilitation through reform initiatives, using an innovative "bottom-up" model to reduce the number of disputes fundamentally—the mode of fundamentally reducing the number of disputes. First, to resolve foreign investment claims, China can take the "investment ombudsman" position established by Korea in its Foreigner Investment Promotion Act of 1999 as a reference. China can set up a dedicated department to handle complaints from foreign investors in China, taking into account the specific situation of the division of functions of administrative agencies in China. Second, at the level of optimizing the foreign investment experience, a "one-stop" platform and an "integrated" window for business processing can be used to simplify the foreign investment business process and improve the transparency of administrative affairs so that all administrative decisions made by foreign investors can be handled with transparency and speed. Third, at the level of prevention platform construction, China established the International Commercial Dispute Prevention and Settlement Organization (ICDPASO) in October 2020, which can be used as a blueprint for the construction of the platform prevention mechanism based on the original commercial dispute prevention, and expand the platform's prevention business on investment disputes, as well as from the aspects of policy formulation, department setting and personnel selection and training. The ICDPASO can be used as a model for the construction of the prevention mechanism based on the existing commercial dispute

prevention, expand the platform's investment dispute prevention business, and design it in terms of policy formulation, departmental establishment, and personnel selection and training to maximize the platform's primary role in the investment dispute prevention mechanism (Ruscilla, 2019).

6.3 Using the dispute mediation mechanism to buffer the rise of investment disputes to investment arbitration

A well-designed dispute mediation mechanism would better enable China to respond to the increasingly urgent ISDS legitimacy crisis in the context of China's ongoing BITs negotiation process (Shang, 2019). For the investment dispute mediation mechanism under the Belt and Road Initiative, China can design it at three levels: pre-procedure, platform building, and validation.

First, mandatory conciliation pre-procedure. In the new round of BITs negotiation and update, China can require investors to go through a mediation process approved by the host country before submitting their disputes to an international investment tribunal, i.e., investors who have not gone through the mediation process will not have the right to bring their disputes to arbitration directly. The pre-mediation process would apply to investors in all contracting states simultaneously, thereby reducing the rights of foreign investors over domestic investors. Depending on the type of dispute, the pre-mediation phase could be set within the investor's cooling-off period or three months after the cooling-off period.

Second, building a professional platform for mediation. China's International Commercial Dispute Prevention and Settlement Organization (ICDPASO), established in Beijing on October 15, 2020, aims to become a diversified, one-stop and all-around professional commercial dispute handling platform that can provide dispute prevention to dispute resolution. Given the uniqueness of investment arbitration, ICDPASO can further expand its investment dispute handling business, explore investment dispute prevention and mediation initiatives, and provide neutral mediation services for investment disputes in countries along the "Belt and Road." In addition to ICDPASO, China's specialized commercial arbitration institutions, such as CIETAC and BAC, can also explore investment dispute mediation functions, build a diversified dispute resolution mechanism, and provide multiple options for the platform of "One Belt, One Road" investment dispute handling.

Third, the validity of mediation agreements should be confirmed. The failure of mediation to become the mainstream way of dealing with investment disputes is significant because the enforceability of settlement agreements reached through mediation is not effectively guaranteed. On the other hand, the recognition and enforcement of investment arbitration awards are guaranteed by the Washington and New York Conventions, which gives investors a more reliable expectation of enforcement. The validity of settlement agreements has become a "weakness" in investment dispute mediation. For this reason, the United Nations Convention on International Conciliation Agreements Arising from Mediation (Singapore Mediation Convention), which was opened for signature in Singapore on August 7, 2019, aims to give legal effect to cross-border recognition and enforcement of settlement agreements arising from international commercial mediation (Schnabel, 2019). As drafted, commercial should be interpreted broadly to include investment, i.e., the Convention may also apply to settlement agreements arising from conciliation proceedings in investment disputes. In addition, among the first 46 signatories to the Singapore Convention on Mediation, there are 36 Belt and Road member states, including China, making it possible for the Convention to provide a broader basis for the enforcement of settlement agreements under the Belt and Road dispute mediation, further weakening the role of investment arbitration as opposed to mediation. This will further undermine the enforcement advantages of investment arbitration over mediation (Shang, 2019).

6.4 Responding to the development of Calvo Doctrine recovery with an open pattern view

Although the recovery of the Calvo Doctrine at the level of investment dispute settlement has become a general trend, the varying degrees of healing in different countries (regions) also indicate its instability. For this reason, China should keep a close eye on it at this stage and follow the trend, while at the same time, it should change randomly according to future developments. On the one hand, given the enthusiasm of developing countries,

including Latin America, for the return of the Calvo Doctrine, the Belt and Road Initiative, mainly composed of developing countries, must pay close attention to this trend. On the other hand, because of the passive attitude of developed economies such as Europe and the United States toward the recovery of the Calvo Doctrine, the current trend of the "One Belt, One Road" initiative is not only to promote sustainable development of the "One Belt, One Road" strategy but also to maintain a harmonious coexistence under dispute settlement. On the other hand, given the passive attitude of developed economies in Europe and the United States towards the revival of the Calvo Doctrine, it is not possible at this stage to adopt the Calvoist initiative of "exhausting local remedies" and "seeking alternative dispute resolution" as the mainstream of ISDS. In addition, investment arbitration is still the most widely accepted dispute resolution mechanism, and the current international investment rule of law is still favorable and viable for China (Schnabel, 2019). The reform of the ISDS mechanism is not a quick and easy process. China needs to keep a developmental perspective and explore corresponding dynamic solutions to integrate with an open mind into the ever-changing global investment cooperation.

7. Conclusion

The differences in the patterns of ISDS reform in Latin America, Europe, and the United States represent differences in the degree of recovery of the Calvo Doctrine in different regions. Still, their recovery has increasingly become an essential factor influencing the rule of law in international investment. At a time when the world economy is becoming increasingly globalized and integrated, China, as a significant country deeply involved in two-way capital flows, should learn to take advantage of the situation, follow the trend, and explore and propose appropriate ISDS mechanism reform solutions in line with its value system. At the reform level of the "Belt and Road" ISDS mechanism, China should also continue to uphold the concept of sustainable development, build an investment dispute prevention mechanism in terms of responding to foreign businessmen's demands, optimizing foreign businessmen's experience, and building a prevention platform, so as to reduce investment conflicts among countries along the route. The Calvo Doctrine emphasizes the principle that "peace is precious." It builds a mediation mechanism for investment disputes in terms of compulsory mediation, confirmation of conciliation agreements, and construction of mediation platforms to explore a more peaceful way to deal with mutual investment disputes, thereby opposing and reforming unreasonable home country interference and diplomatic protection. In the context of the recovery of the Calvo Doctrine, which emphasizes "exhausting local remedies," China should further strengthen the effectiveness of investment facilitation through institutional measures such as optimizing the investment business environment and improving the level of the domestic rule of law to enhance the attractiveness of foreign investment and give full play to the "spillover effect" of the current ISDS mechanism reform.

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