

從SDGs之視角論投資人地主國投資爭端解決之改革-

UNCITRAL程序以及跨領域議題草案初探

薛景文*

摘要

國際投資仲裁之場域中，國際投資協定（International Investment Treaties/Agreements）向來因欠缺對人權、環境、公衛等價值之保護而飽受批評，而「投資人對地主國爭端解決機制（Investor-State Dispute Settlement, ISDS）」則存在過度保護投資人利益；過度限制地主國在形成公共政策上裁量權之問題，再加上該機制尚有過於封閉、不透明乃至缺乏公正性等疑慮，以上情形皆加深國際社會對現行國際投資仲裁制度的不信任，甚而認其有悖於聯合國可持續發展目標（SDGs）所揭示之價值，也成為推動投資人地主國爭端解決機制改革之契機。

本文嘗試探討 UNCITRAL 改革草案之主要驅動因素，並以 SDGs 多元面向的觀點，歸納並分析聯合國貿易法委員會（The United Nation Commission on International Trade Law，以下簡稱 UNCITRAL）於 2023 年提出的「程序以及跨領域議題草案（Draft Provisions on Procedural and Cross-cutting Issues，以下簡稱跨領域議題草案）」對於投資仲裁程序的各種改革及替代性制度之引進，再檢視 UNCITRAL 第三工作小組之參與國家，對現行投資仲裁之疑慮是否與可持續發展目標（SDGs）相關，其次，本文將討論改革草案對於投資人地主國爭端解決制度之主要變革、其對於在存投資協定之影響為何，最後分析此改革對實現 SDGs 的助益。

關鍵字：國際投資仲裁、國際投資協定、投資人對地主國爭端解決機制改革、SDGs、聯合國貿易法委員會、程序以及跨領域議題草案。

* 國立政治大學國際經營與貿易學系副教授。

Abstract

In the field of international investment arbitration, International Investment Treaties or Agreements have always been criticized for their lack of protection in human rights, the environment, public health and other basic values. Meanwhile the issue with Investor-State Dispute Settlement Mechanism (ISDS) being its over-protective nature towards investor interests, which also deprived the discretion of the host state on forming public policies. In addition, the ISDS is also criticized to be untransparent, opaque and unfair. The above situation has deepened the distrust on the current international investment arbitration mechanism among international community, also hindering the SDGs values. This has sparked the effort by international community towards promoting the reform of the investor-state dispute settlement mechanism.

This article attempts to explore ISDS reform with the view of the multifaceted aspects of SDGs by first analyzing the UNCITRAL Draft Provisions on Procedural and Cross-cutting Issue (hereinafter Draft Provisions) in order to discuss what major changes are to be made to the ISDS. Secondly, this article takes a look at the intentions of participating countries of UNCITRAL Working Group III regarding the reform. Thirdly, this article assesses the impact of the Draft Provisions on existing investment agreements. And finally, this article discusses how the Draft Provisions will help meet the SDGs.

Keywords: Investor-State Dispute Settlement Mechanism Reform, UNCITRAL Working Group III, Draft Provisions on Procedural and Cross-cutting Issue