

論以公平公正待遇條款橋接環境法之義務

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摘要

國際投資協定(International Investment Agreement)之「公平與公正待遇(Fair and Equitable Treatment, FET)」條款，目的在於保障外國投資人免於遭受歧視或不當對待，要求地主國提供公平且可預期的法律體系。隨著國際社會對於氣候變遷、永續發展等相關環境議題之重視日益加深，國際環境法下之環境保護義務亦逐步具體化，各國因而開始積極制定國內環境政策與相關規範。然而，地主國的環境保護措施通常會對外國投資人產生重大影響，因此 FET 條款便成為外國投資人挑戰國家政策的重要依據。在此情形下，如何衡平投資利益與環境利益，成為當前國際投資法與國際環境法交錯處的重大挑戰。

本文旨在探討 FET 條款是否具備整合國際環境法義務與國際投資法義務的可行性，而不會單方面淪為外國投資人之抗辯利器。本文不採取「例外條款(exception)」之作法，因為這可能會大幅度降低國家簽訂投資協定之意願。而是擬從條約解釋之方向著手，探討如何透過仲裁實務對於 FET 條款之解釋，使其作為一架橋規定，將國際環境法義務納入國際投資仲裁程序中審理，有效化解投資保障與環境保護之義務衝突。

關鍵字：公平與公正待遇條款、國際投資協定、國際環境法

Abstract

The “Fair and Equitable Treatment” (FET) clause in International Investment Agreements (IIAs) aims to protect foreign investors from discrimination or unfair treatment, requiring host States to provide a fair and predictable legal framework. With the international community’s growing emphasis on climate change, sustainable development, and other environmental issues, the environmental protection obligations under international environmental law have been gradually clarified and concretized. Consequently, States have increasingly adopted and strengthened domestic environmental policies and regulations. However, such measures often have a significant impact on foreign investors, making the FET clause a key legal basis for investors to challenge national policies. Against this backdrop, how to strike a balance between investment interests and environmental interests has become a major challenge at the intersection of international investment law and international environmental law.

This article examines whether the FET clause can serve as a bridge to integrate obligations under international environmental law with those under international investment law, without becoming merely a defensive tool for foreign investors. Instead of adopting the “exception clause” approach—which may substantially reduce States’ willingness to conclude investment agreements—this study takes a treaty-interpretation approach. It explores how arbitral practice in interpreting the FET clause can incorporate international environmental law obligations into investor-State arbitration proceedings, thereby effectively resolving conflicts between investment protection and environmental protection obligations.

Keywords: Fair and Equitable Treatment clause, International Investment Agreements, International Environmental Law