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硕 士 学 位 论 文

投资条约缔约国联合解释与仲裁庭条约解
释之合理控制

——兼评美国《2012年BIT范本》第30条第3款

Joint Decisions by Contracting Parties of Investment

Treaties and the Proper Control of Treaty Interpretations by

Tribunals: A Study of Article 30(3) of the 2012 U.S. Model BIT

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内容摘要

随着国际投资实践的发展，国际投资法的发展呈现出新的复杂性、不确定性和扩展性。尤其是近年来，国际投资条约仲裁案件数量的攀升，投资条约的诸多不足也暴露出来。有关实体法的模糊或缺失、程序法的缺陷等等，不仅使得东道国的主权面临挑战，也带来了投资条约仲裁的“正当性危机”。围绕着改造投资仲裁机制的学术讨论以及具体的条约改革实践正在进行当中。

在此过程之中，投资仲裁制度无疑成为关注的焦点。规定以仲裁方式解决投资纠纷已然成为各国双边投资协定中极为重要的组成部分。实践中，往往会出现不同仲裁庭就同一条款解释不一的情况。为保证条约适用的统一性，美国《2012年双边投资条约（BIT）范本》沿用了《2004年BIT范本》第30条第3款，即“缔约国双方通过各自授权代表联合作出的，对本条约条款之解释，对仲裁庭具有约束力，仲裁庭所作出的任何决定或裁决应当与解释内容相一致”。事实上，这一做法已经被包括东南亚联盟国家和澳洲国家以及中国在内的一些国家所借鉴。此类条款的出现预示着缔约国双方的解释将优于并有可能控制仲裁庭的解释权。这对于正在进行和将要进行的投资仲裁可能产生重要影响。这在国际投资仲裁实践中是少有的。鉴于美国在国际投资领域的世界影响力，极有必要认真思考缔约国联合解释的可能性或可行性。

本文拟从美国《2012年BIT范本》第30条第3款关于缔约国联合解释的规定出发，通过介绍缔约国与仲裁庭在条约解释方面的权利结合与分野，结合实践投资仲裁案例对缔约国联合解释进行分析，指明缔约国解释与仲裁庭解释之间应该是互相平衡、互有制约的良性互动关系，同时探讨如何恰当运用联合解释，以期最大限度地发挥缔约国联合解释的作用，推动投资仲裁的良性发展。

关键词：国际投资仲裁；缔约国联合解释；双边投资条约解释

ABSTRACT

Investment Treaties are concluded by States. Where investment treaties refer to Investor-State arbitration, arbitral tribunals interpret treaty provisions in the context of the dispute settlement. Some of these interpretations have raised concerns, because of a perceived lack of consistency, predictability and quality. The concerns have resulted in a confidence even legitimacy crisis in the arbitral tribunals. As masters of their BITs, States are becoming more concerned about this development and trying to be more proactive in assuring the consistency, predictability and quality of the arbitral awards. States have various tools at their disposal including unilateral, bilateral and multilateral. Alongside treaty re-negotiations and amendments, interpretive tools have been regarded as a useful method for addressing some of the challenges the investment dispute settlement regime faces today. The United States released the new Model BIT in 2012, in which it carried over Article 30(3) of the 2004 United States Model BIT, enabling State parties to collectively issue a joint decision on interpretations of investment treaty provisions that would be binding on the arbitral tribunals. Article 30(3) of the 2012 US Model BIT signifies the trend that States are more proactive in asserting their interpretive authority to guide tribunals towards a proper and predictable reading of BITs provisions. The thesis explores the background and controversies of the Joint Decision on interpretation and suggests a possible roadmap for future joint decision for better development of investment arbitration.

Key Words: Investment Arbitration; Joint Decisions; Interpretation of BITs.

缩略语表 (Abbreviations)

BIT	Bilateral Investment Treaty 双边投资条约
FTA	Free Trade Agreement 自由贸易协定
ICJ	International Court of Justice 常设国际法院
ICSID	International Centre for Settlement of Investment Disputes 解决投资争端国际中心
IIA	International Investment Agreement 国际投资协定
ILC	International Law Commission 国际法委员会
ISDS	Investor-State Dispute Settlement 投资者-国家争端解决
NAFTA	North American Free Trade Agreement 北美自由贸易协定
NAFTA FTC	North American Free Trade Agreement Free Trade Commission 北美自由贸易协定自由贸易委员会
NGO	Non-Governmental Organization 非政府组织
PCA	Permanent Court of Arbitration 国际常设仲裁院
PCIJ	Permanent Court of International Justice 常设国际法院
UNCTAD	United Nations Conference on Trade and Development 联合国贸易和发展会议

UNCITRAL	United Nations Commission on International Trade Law 联合国国际贸易法委员会
VCLT	Vienna Convention on the Law of Treaties 维也纳条约法公约
WIR	World Investment Report 国际投资报告
WTO	World Trade Organization 世界贸易组织
para./paras.	paragraph/ paragraphs 段
v.	versus 诉

案例表 (Table of Cases)

Short Title	Full Case Title and Citation
<i>Abclat et al v. Argentina</i>	Abaclat et al v. The Argentine Republic (also known as Giovanna A. Beccara and others v. Argentine Republic), ICSID Case No. ARB/07/5, Decision on Jurisdiction, August 4, 2011 and Dissenting Opinion, October 28, 2011.
<i>ADF Group v. U.S.</i>	ADF Group Inc. v. United States of America, ICSID Case No. ARB (AF)/00/1, January 9, 2003.
<i>Aguas del Tunari v. Bolivia</i>	Aguas del Tunari S.A. v. Republic of Bolivia, ICSID Case No. ARB/02/3.
<i>Biwater Gauff v. Tanzania</i>	Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22, July 24, 2008.
<i>Canfor, Tembec and TFP v. United States of America</i>	Canfor Corp. v. United States of America, Terminal Forest Products Ltd. v. United States of America and Tembec Inc., et al., v. United States of America, Consolidated NAFTA Arbitration, UNCITRAL Rules, Order of the Consolidation Tribunal, September 7, 2005.
<i>CMS v. Argentina</i>	CMS v. The Argentina Republic, ICSID Case No. ARB/01/8, Award, May 12, 2005.
<i>CME v. Czech</i>	CME Czech Republic B. V. v. Czech Republic, UNCITRAL, Partial Award, September 13, 2001.
<i>Consortium v. Morocco</i>	Consortium R. F. C. C. v. Kingdom of Morocco, ICSID Case No. ARB/00/6.

<p><i>CPI, Archer and Tate & Lyle</i></p> <p>v.</p> <p><i>Mexcio</i></p>	<p>Corn Products International, Inc., v. United Mexican States and Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc., v. United Mexican States, Order of the Consolidation Tribunal, May 5, 2002.</p>
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<p><i>Duke Energy v. Ecuador</i></p>	<p>Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador, ICSID Case No. ARB/04/19, August 18, 2008.</p>
<p><i>Ecuador v. U.S.</i></p>	<p>Republic of Ecuador v. United States of America, UNCITRAL, PCA Case No. 2012-5, September 29, 2012.</p>
<p><i>Enron v. Argentina</i></p>	<p>Enron v. The Argentina Republic, ICSID Case No. ARB/01/3, Award, May 22, 2007.</p>
<p><i>Enron v. Argentina, Annul</i></p>	<p>Enron v. The Argentina Republic, ICSID Case No. ARB/01/3, Annulment Decision, July 30, 2010.</p>
<p><i>Felman v. Mexcio</i></p>	<p>Marvin Roy Feldman v. The United States of Mexcio, ICSID Case No. ARB (AF)/99/1, Award, December 16, 2002.</p>
<p><i>Inceysa v. Argentina</i></p>	<p>Inceysa Vallisoletana S. L. v. Argentina Republic, ICSID Case No. ARB/03/26, Award, August 2, 2006.</p>
<p><i>LG&E v. Argentina</i></p>	<p>LG&E v. The Argentina Republic, ICSID Case No. ARB/02/1, Decision on Liability, October 3, 2006.</p>
<p><i>Loewen & Raymond v. U.S.</i></p>	<p>The Loewen Group, Inc. and Raymond L. Loewen v. United States of America, ICSID Case No. ARB (AF)/98/3, June 26, 2003.</p>

<i>Methanex v. U.S.</i>	Methanex Corporation v. United States of America, UNCITRAL, Decision of the Tribunal on Petitions from Third Persons to Intervene as Amicus Curiae, September 6, 2001; Final Award of the Tribunal, August 7, 2005.
<i>Merrill & Ring Forestry v. Canada</i>	Merrill & Ring Forestry L.P. v. Government of Canada, UNCITRAL, ICSID Administrated, Award, March 31, 2010.
<i>Mondev. v. U.S.</i>	Mondev International Ltd. v. United States of America, ICSID Case No. ARB (AF)/99/2, Award, October 11, 2002.
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<i>Philip Morris (HK) v. Australia</i>	Philip Morris Asia Limited (Hong Kong) v. The Commonwealth of Australia, PCA Case No. 2012-12.
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<i>Salini v. Jordan</i>	Salini Costruttori S.p.A. and Italstrade S.p.A. v. Jordan, ICSID ARB/02/13, Jurisdiction, November 9, 2004.
<i>Salini v. Morocco</i>	Salini Costruttori S. P. A. & Italstrade S. P. A. v. Kingdom of Morocco, ICSID Case No. ARB/00/4.
<i>Santa Elena v. Costa Rica</i>	Santa Elena v. The Republic of Costa Rica, ICSID Case No. ARB/96/1, Award, February 17, 2000.
<i>Sempra v. Argentina</i>	Sempra v. The Argentina Republic, ICSID Case No. ARB/02/16, Annulment Decision, June 29, 2010.
<i>SGS v. Philippines</i>	SGS v. Philippines, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, January 29, 2004.
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<i>Tokios Toilelés v. Ukraine</i>	Tokios Toilelés v. Ukraine, ICSID Case No. ARB/02/18, Decision on Jurisdiction, April 29, 2004

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