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Research on Climate Governance Provisions in International Investment Treaties

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ABSTRACT

The climate governance models involved in international investment law are mainly divided into three types: the hard law approach, the soft law approach, and the approach that combines both hard and soft law. Each of these approaches offers solutions to different climate governance issues in international investment.This paper argues that the crux of the climate governance challenges in international investment lies in the conflict between the economic value of efficiency and the international public principle of efficiency. According to international practice, the reasons for the differences in climate governance models in international investment include the pluralism of legal interpretation, the fragmentation of treaties and other international documents, and the differences in the construction of legitimacy and legality.This paper believes that state actors can address the conflict between the legitimacy and legality of climate protection clauses in international investment by establishing a dual path of “hard law and soft law” through international cooperation.

KEYWORDS

International Investment Regime; Climate Governance; Soft Law Approach; Legitimacy.

1. INTRODUCTION

With the profound impact of global climate change on the environment, economy, and society, the field of international investment is undergoing a significant transformation. Climate protection issues in international investment are increasingly being emphasized by both state and non-state actors. Depending on the differences in environmental protection clauses in international investment, there are mainly three models: the soft law approach, the hard law approach, and the hybrid approach combining both soft and hard law. However, several challenges have emerged: it is difficult for a single path to form a regionalized climate protection mechanism; the legal basis of each path is fragmented; and there are differences in how each path addresses the conflict between the legitimacy and legality of climate governance. These two issues make it difficult for the above three paths to meet the relevant climate protection requirements.

2. THE CONCEPT OF CLIMATE GOVERNANCE AND ITS BASIS IN INTERNATIONAL LAW

Climate governance refers to a system in which state actors are the primary agents, with non-state actors also participating, to reduce greenhouse gas emissions caused by human activities in order to slow the trend of global warming. Climate governance not only ensures the health and sustainable development of human beings and the global ecosystem, but also emphasizes the importance of intergenerational equity. In the utilization of resources and environmental protection, the needs and interests of future generations must be fully taken into account. The establishment of climate governance norms is conducive to building a fair, reasonable, and mutually beneficial global climate governance system, ensuring that all countries can participate equally in global climate negotiations, rule-making, and share the achievements of climate governance.

2.1. The International Legal Basis for Climate Governance

The legal basis for climate governance provisions in international investment law can be primarily divided into soft law and hard law sources[1].The hard law approach to climate governance requires that states and international organizations, when implementing climate governance and addressing national environmental issues, strictly adhere to the relevant provisions of international law. The main sources of hard law in international law are as follows: 1. International Treaties: For example, the Paris Agreement sets greenhouse gas emission targets for countries[2], and supports developed countries in providing advanced emission reduction technologies to developing countries. 2. International Judicial Precedents: For instance, the Urgenda Foundation, an environmental organization, along with 886 Dutch citizens, sued the Dutch government in the Hague District Court for its failure to act on climate change, which they claimed violated their rights. The Dutch court ruled that the government must reduce greenhouse gas emissions by at least 25% from the 1990 baseline by 2020, thereby limiting the total greenhouse gas emissions of the Netherlands.3. General Principles of Law: The principle of "common but differentiated responsibilities"[3] exists in climate governance provisions, which requires developed and developing countries to assume different responsibilities in addressing climate change. This principle was first introduced in the Rio Declaration on Environment and Development and was further established in the United Nations Framework Convention on Climate Change (UNFCCC). In climate governance, the conclusion of bilateral and multilateral treaties between states and between states and international organizations to achieve global coordination in climate governance is the main implementation method of the hard law approach. In contrast to hard law, soft law in climate governance is characterized by diverse legislative bodies, non-judicial centrism, and greater flexibility. The soft law approach in climate governance is often the result of negotiations between countries or discussions on relevant issues through international organizations, and it promotes the resolution of climate governance issues through forms such as meeting records and universal documents of international organizations.

In terms of climate governance, the formulation of soft law mainly relies on informal sources of international law, which mainly include the following types:

International Environmental Agreements and Declarations: These documents mostly exist in the form of declarations and contain non-binding commitments and goals. Although they lack legal enforceability, they are indispensable for guiding state behavior. For example, the 1972 Stockholm Declaration on the Human Environment and the 1992 Rio Declaration on Environment and Development. 1. Partnership Agreements: These agreements cover memoranda of understanding, joint statements, and letters of intent between states and between states and non-state entities, which are an important part of the international soft law framework. Guiding documents and policy recommendations include white papers, guiding documents, and notices, which contain policy suggestions and help understand and implement the requirements of hard law or soft law. For example, the soft law tools used by the European Union in its climate change policy, such as guiding documents or notices, are typical examples of such documents. 2.Human Rights and Environmental Rights Declarations: These include human rights declarations and guiding principles for environmental rights, emphasizing the crucial role of human rights and environmental rights in climate governance.

2.2. Climate Governance Models in International Investment Law

In international practice, climate governance under the provisions of international investment law is primarily divided into two models: the hard law model and the soft law model. The hard law model is characterized by a "judicial centrism" approach, which mainly relies on international arbitration and other judicial means to resolve international disputes. Therefore, the procedural provisions for judicial resolution are its main features. The soft law model, on the other hand, uses non-judicial means, such as consultation, to handle international disputes. Its main features are non-justiciability or lack of binding force.

(1) The hard law model of climate governance in international investment law

Article 38 of the Statute of the International Court of Justice stipulates that international climate treaties are the sources of international law for climate governance (their formal sources). International climate treaties mainly come in two types: bilateral treaties and multilateral treaties. For example, in 1988, the United States and Canada signed the Arctic Cooperation Agreement; in November 2014, China and the United States issued the Joint Statement on Climate Change, and China and the European Union issued the Joint Statement on China-EU Dialogue and Cooperation on Climate Change. Meanwhile, multilateral treaties advocated by international organizations are important sources of international law for climate governance. Taking the United Nations as an example, there are the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Paris Agreement, and the Glasgow Climate Pact. At the same time, countries can regulate activities to address climate change and allocate responsibilities and tasks among various departments through ratification and domestic legislation. Domestic legislation helps ensure the effective implementation of measures to address climate change. The international community has formulated multilateral agreements and conventions to build an international legal and policy framework for addressing climate change.

There are five common core principles among these international treaties that guide their negotiation, formulation, and implementation. These five principles are:1.The Principle of Common but Differentiated Responsibilities. This principle, based on the economic conditions of countries, fairly and justly clarifies the roles and tasks of developed and developing countries in addressing climate change. It emphasizes that developed and developing countries should bear different responsibilities and play different roles in climate protection.2.The Principle of Supporting Developing Countries. This principle mainly requires that developed countries provide necessary financial support to developing countries for mitigating climate warming and reducing greenhouse gas emissions. It also involves the development and sharing of sustainable technologies to help developing countries achieve their greenhouse gas reduction targets. This enhances the self-sustaining capabilities of developing countries and supports their diversified, autonomous, and sustainable development.3.The Precautionary Principle[4]. In the context of international investment and climate protection, this principle emphasizes the importance of taking preventive actions even in the absence of scientific certainty that human activities will cause climate damage. It aims to prevent potential environmental harm and promote sustainable development.4. The Principle of Promoting Sustainable Development. This principle is reflected in guiding financial flows towards a low-carbon economy, promoting green technological innovation, and improving the legal framework for sustainable development investments. These actions are conducive to the development of global climate governance.5.The Principle of an Open Economic System. This principle requires countries to establish a fair, open, and orderly competitive modern market system and to form a new pattern of comprehensive openness. The goal is to promote sustainable development while ensuring the balance between economic growth and climate protection.

(2) The Soft Law Model of Climate Governance in International Investment Law

The soft law model of climate governance in international investment law is a governance model based on universal documents of international organizations, general resolutions, and international commercial customs. Its effectiveness stems from the voluntary acceptance and compliance of the contracting parties, reflecting its flexibility, adaptability, and non-binding nature. This model is better able to accommodate the differentiated needs of all parties and promote international cooperation and consensus[5]. For example, resolutions and declarations from the United Nations Environment

Programme (UNEP). UNEP is responsible for coordinating national activities in the field of climate governance within the United Nations, and it promotes international cooperation on climate governance through resolutions and declarations. Although these resolutions lack legal binding force, they provide guiding principles and objectives for climate governance in the international community.

The increasing global awareness of climate change has prompted many investors to begin considering environmental and social responsibilities in their decision-making. Informal international rules provide clear investment guidelines, assisting investors in selecting projects that can reduce greenhouse gas emissions and support green technologies and clean energy development. Such investments help to avoid climate change risks and promote the global economy's transition to green development.

In summary, the soft law model of climate governance in international investment law, with its unique advantages, offers effective climate governance solutions for the international community. These rules not only promote consensus and cooperation among countries in climate governance but also guide funds towards more sustainable areas, making an important contribution to the global response to climate change.

2.3. The Formulation Models of Climate Governance Clauses in International Investment Law

The formulation models of climate governance clauses in international investment law mainly fall into three categories: the pure hard law model, the pure soft law model, and the integrated approach combining hard and soft law. The pure hard law and soft law models each have their own disadvantages, stemming from the characteristics of their respective paths. However, with the accelerating pace of global warming, it has become evident that neither the pure soft law nor the pure hard law model can effectively address the issue of climate change in a timely manner. Consequently, the integrated approach that combines hard and soft law has emerged to leverage the strengths of both paths and mitigate their respective weaknesses.[6]

(1) Pure Soft Law Approach

The formulation of environmental protection clauses in international investment law generally includes three models, with the first being the soft law - dominant model. International organizations pass resolutions to urge member states to internalize international soft law. For example, the United Nations' Blue Carbon Declaration calls for countries to establish blue carbon standards that are both internationally compatible and tailored to their national characteristics, in order to promote the scientific and effective development of blue carbon trading[7]. Additionally, the Declaration on Sustainable Development clearly outlines the goals and principles of sustainable development, providing a roadmap for action and a framework for cooperation among governments, international institutions, and business entities. Implementing these declarations can drive balanced progress in economic, social, and environmental aspects, laying the foundation for the long - term prosperity and sustainable development of human society.Western countries also advocate a cooperative and integrated environmental governance model, which involves not only formulating and implementing environmental management plans but also establishing comprehensive mechanisms for environmental management and decision - making. These actions by Western countries have contributed to the widespread dissemination of international soft law. This model is primarily found in Western countries, mainly because they underwent the Industrial Revolution earlier than developing countries and completed the initial accumulation of capital. The climate pollution resulting from the Industrial Revolution led Western countries to enact legal provisions for climate governance. However, the complexity and diversity of climate governance have also exposed the inherent shortcomings of these legal provisions. The role of soft law helps to compensate for the deficiencies of hard law and address issues arising in climate governance.

In resolving climate governance disputes, countries can reach settlements through negotiation, mediation, and other means. These methods are not only efficient but also conducive to maintaining harmonious relations among nations. Moreover, the diversity of dispute resolution methods allows for adjustments and modifications based on the specific circumstances of each country, and this flexibility is beneficial for addressing the complex and diverse issues in climate governance. The formulation subjects of soft law are diverse, including governments, international organizations, multinational corporations, and other diversified entities. The involvement of these diverse entities in climate governance helps to pool wisdom and resources from all parties to jointly advance the process of climate governance.

The formulation and implementation of soft law are influenced by a variety of factors, including political, economic, and cultural aspects. These factors lead to uncertainties in the content of soft law, which in turn pose challenges to climate governance. The enforcement of soft law relies on the voluntary compliance of countries, and high - efficiency implementation is conducive to climate governance. However, during the dispute resolution process, the lack of legal safeguards may prevent effective enforcement

(2) Pure Hard Law Approach

The second traditional model is based on international treaties as the core of the legal framework, also known as the "hard law" model. For example, the international investment guidelines advocated by the Asia-Pacific Economic Cooperation (APEC) stipulate that if international investment activities damage the environmental protection of the host country, the investing country must provide corresponding compensation to the host country. This model is widely applied and practiced in developing countries. When formulating policies, these countries must carefully balance the core value of harmonious development between economic growth and environmental protection. By participating in international investment treaties, these countries can attract foreign direct investment to boost economic growth while ensuring the effective implementation of their national environmental protection regulations, in line with the intrinsic demands of justice within the legal system. After joining international treaties like the World Trade Organization (WTO), developing countries have promoted the coordinated development of environmental protection and international investment on the international political stage. Moreover, when constructing their domestic environmental legal frameworks, they need to consider the provisions of international treaties to ensure that domestic legislation is consistent with international obligations. Additionally, developing countries comply with peremptory norms in the field of environmental protection, such as the principles outlined in Article 2 of the United Nations Charter. This not only advances the development of international law but also contributes to the global environmental protection cause. For example, the Pan - African Investment Code, in terms of climate governance, sets binding obligations related to climate governance for investors and AU member states. It requires both states and investors to conduct climate impact assessments for investments, and if the activities of investors cause damage to the climate, they should take reasonable measures to restore the environment.

The hard law approach has the advantage of clear legal binding force compared to soft law. It includes specific enforcement and dispute resolution procedures that ensure the effective implementation of climate governance clauses. Secondly, hard law is characterized by its clarity, as it can explicitly define the rights and obligations of the host country and investors, as well as the legal consequences of violating these obligations. Thirdly, hard law has universality and consistency, as it applies to all contracting parties and investors, which helps maintain a consistent pace in the climate governance process. These advantages promote cooperation and coordination in climate governance and facilitate the progress of climate governance. The rigidity of hard law determines its characteristic of lagging behind. Compared to soft law, hard law has stronger stability and executability. However, due to its strict formation procedures, it inevitably has some lagging issues. The hard law approach focuses on the interpretation of legal elements, strictly maintaining the procedural justice value in climate governance. This leads to its legislative lag, meaning that a unified governance path can only be formed after countries negotiate and go through strict treaty approval procedures. The emergence of the concept of soft law has provided a new path for climate governance in the context of globalization.

Compared to the hard law approach, the soft law approach focuses on substantive justice, which is based on the intended effects of legal implementation. It coordinates conflicts of interest among various parties and resolves disputes through non - judicial means such as negotiation, consultation, and mediation.

The flexibility of the soft law approach can effectively address the shortcomings of the rigidity of hard law. The implementation of soft law relies on the voluntary actions of countries. Each country can make climate governance decisions that are beneficial to itself based on its own circumstances. This avoids cooperation obstacles caused by rigid regulations. The process of formulating soft law is more open and inclusive, accommodating the opinions and demands of different countries to form a consensus and thus promote international climate governance cooperation. However, soft law lacks binding force and depends on the voluntary compliance and enforcement by member states. If a member state's implementation of soft law conflicts with its own interests, it may not comply or even violate the provisions of soft law, leading to cooperation failure or poor governance outcomes. When formulating and implementing soft law, it is necessary to balance the interests and demands of various countries. This can lead to differences in understanding and enforcement of soft law among countries, increasing the uncertainty of cooperation. Given the disadvantages of both the pure soft law and hard law approaches, the integrated approach that combines hard and soft law has been developed to better address climate governance challenges and achieve better outcomes.

(3) Integrated Approach Combining Hard and Soft Law

The integrated approach that combines hard and soft law involves countries formulating stricter standards than those stipulated in international treaties to elevate international climate governance standards. For example, China is one of the contracting parties to a series of international treaties such as the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement, and has actively participated in global climate governance. In the process of climate governance, China not only complies with the relevant provisions of international treaties but also formulates stricter climate protection and governance standards and policies based on its national conditions and development requirements. China has set the goals of "carbon peak" and "carbon neutrality" in response to climate change, which are stricter than the requirements in international treaties[8]. To achieve these goals, China has enacted and implemented a series of laws and policies, including a stricter Environmental Protection Law, higher standards for greenhouse gas emissions, and increased penalties for illegal emissions. These laws and policies have not only reduced greenhouse gas emissions but also promoted China's green development and sustainable development. In addition to these domestic efforts, China actively engages in multilateral climate investment cooperation, providing financial and technological support to other developing countries to jointly address climate governance challenges. China's efforts have not only improved its own climate governance level but also positively impacted the global climate governance standards.

In summary, the existing climate governance models can be broadly categorized into three types: the hard law model relying solely on international hard law, the soft law model relying solely on international soft law, and the mixed governance model that combines hard and soft law. The differences in the value hierarchy of legal systems among countries have led to the emergence of these three distinct climate governance models. In traditional Western capitalist countries, influenced by constitutional monarchy and utilitarianism, the ideology of freedom above all has gradually become the mainstream. In terms of institutional law, the values of freedom and efficiency are often ranked high. When formulating domestic policies, interest groups often prioritize the basic interests of related enterprises. This results in policies that tend to protect the survival and development of enterprises while neglecting climate protection and governance. Such biased policy orientation fails to effectively address the challenges of climate change and even exacerbates the destruction of the climate environment. After World War II, with the awakening of national sovereignty consciousness and the rise of national self - determination movements, developing countries, after gaining independence, needed to achieve the initial accumulation of capital through resource - based industrialization. The current hard law framework for climate governance, although clearly not conducive to the survival and development interests of enterprises, is beneficial to the national climate protection goals. Therefore, some developing countries support a model dominated by hard law. Thirdly, both the pure soft law and hard law governance models have obvious limitations. To overcome these limitations and seek a balance between climate protection and economic development, the integrated approach that combines hard and soft law has emerged. Overall, in the anarchic international society, these three models are essentially a game among countries and between countries and international organizations in terms of interests and climate governance.

3. JURISPRUDENTIAL ANALYSIS OF CONFLICTS IN ENVIRONMENTAL PROTECTION CLAUSES OF INTERNATIONAL INVESTMENT LAW

Based on the fundamental theories of jurisprudence, this paper argues that inconsistencies in the models applied by different national governments or international organizations in climate governance clauses lead to conflicts in the environmental protection clauses of international investment law. When we analyze the causes of these conflicts through jurisprudence, the following three issues are identified: 1. Conflicts of legal values: the conflict between efficiency and justice; 2. Deviations in the interpretation and application of legal provisions; 3. Conflicts between national economic interests and international legal obligations. The following sections will provide detailed introductions to these three issues.

3.1. Conflicts of Legal Values: The Conflict Between Efficiency and Justice

International investment, driven by multinational corporations' pursuit of financial gain, often involves the maximum exploitation of natural resources. Interest groups demand high returns on investment within a short period, reflecting their pursuit of efficiency and adherence to the principle of prioritizing efficiency. However, this behavior significantly damages the ecological environment and disrupts ecological balance. The practice of sacrificing the environment for economic gain is in stark contrast to the fundamental purpose of environmental protection and the justice value of safeguarding the common interests of humanity[9]. According to a World Bank report, the natural resource development activities of multinational corporations have led to a significant decline in global forest cover, threatening biodiversity and exacerbating global climate change. For example, in the case of Asia Pulp & Paper (APP), one of the world's largest paper companies, its activities in Indonesia indirectly and directly caused conflicts among local communities, exacerbated climate change, and destroyed habitats of vulnerable species. Through the efforts of non - governmental organizations (NGOs), downstream major enterprises boycotted APP, causing economic losses to the company. Under pressure from public opinion and economic factors, APP committed in February 2013 to implementing practices conducive to sustainable development. Another example is the Tecmed case in Mexico: Tecmed, a company established in Mexico by a Spanish investor, operated a landfill project in Mexico. However, the project severely damaged the local environment, prompting the Mexican government to enact regulations prohibiting the establishment of hazardous waste treatment facilities around cities, which ultimately led to the revocation of Tecmed's operating license. According to the Spain - Mexico Bilateral Investment Treaty, the regulations enacted by the Mexican government constituted an indirect expropriation of Tecmed's investment, and the Mexican government was required to pay Tecmed $52 million in compensation. The investment behaviors of APP and Tecmed ensured their own investment interests, reflecting the principle of efficiency value. However, their investment activities undeniably caused environmental damage and harmed the common interests of local people, reflecting the destruction of justice value. This indicates that there is currently a conflict between efficiency value and justice value in the environmental protection clauses of international investment law.

3.2. Deviations in the Interpretation and Application of Legal Provisions

Firstly, as the international community gains a deeper understanding of climate change issues, related international climate protection agreements are constantly being updated and changed. This requires that climate governance clauses in investment treaties be able to proactively adapt to these changes. However, there is a lag in practice, leading to deviations in the interpretation and application of climate governance clauses in international investment law[10]. Secondly, the vague wording of climate governance clauses leads to difficulties in applying them to climate disputes. Thirdly, deviations exist among different countries, investors, and arbitration institutions in interpreting climate governance measures. These deviations stem from different understandings of the text of the clauses, varying degrees of recognition of environmental protection and sustainable development concepts, and different practices in judicial proceedings. Lastly, the resource endowment of the host country constrains the formulation and application of its climate change regulation measures. Countries that are highly dependent on high - carbon emissions for economic development need to invest substantial resources in emission reduction measures. However, technological backwardness and lack of funding limit the host country's role in addressing climate change and also restrict the formulation and implementation of climate governance clauses in investment treaties. For example, in the case of Allard v. Barbados: Allard claimed that the climate governance measures taken by the Barbados government violated its fair and equitable treatment clause. However, the arbitral tribunal ruled that the measures taken by Barbados were legitimate actions taken to fulfill its international climate governance obligations. This case illustrates the deviation in understanding climate governance measures, resulting in inconsistencies between investors and arbitration institutions on whether climate governance measures violate the fair and equitable treatment principle.

3.3. Conflicts Between National Economic Interests and International Legal Obligations

Developing countries attract foreign investment through incentive measures, encouraging investors to invest within their borders to promote domestic economic development, create employment opportunities, and increase tax revenue. However, these incentive measures can conflict with environmental and climate governance, such as encouraging foreign investors to invest in high - pollution, high - energy - consuming industries in the host country. To address these climate changes, the host country may take measures to restrict foreign investment in high - energy - consuming, high - pollution industries or enact climate governance measures. These measures can harm the interests of investors and conflict with the most - favored - nation treatment and national treatment clauses in international investment law. For example, Spain implemented relevant incentive policies to promote the development of sustainable energy, attracting a large amount of foreign investment into the local market. However, due to an expanding fiscal deficit, the Spanish government subsequently canceled some incentive policies, causing damage to the interests of foreign investors. Investors argued that the Spanish government's measures violated the fair and equitable treatment clause in the international investment agreement and the expropriation clause agreed upon in the investment agreement, and initiated international arbitration. The Spanish government, however, argued that its cancellation of some incentive policies was in line with its national fiscal situation and climate change situation. In this case, the Spanish government believed that its cancellation of some incentive policies was correct and in line with national economic interests. However, it harmed the interests of investors and conflicted with international legal obligations, illustrating the conflict between national economic interests and international legal obligations.

4. ISSUES IN THE FORMULATION OF CLIMATE GOVERNANCE LEGAL PROVISIONS IN INTERNATIONAL INVESTMENT LAW

4.1. Ambiguity in the Framework Provisions of Climate Governance in International Investment Treaties

Before formulating legal provisions on climate governance, it is essential to clarify the distinction between climate - friendly and non - climate - friendly investments and define the boundaries between them. This would help to clearly define the rights and obligations of investors and host countries and avoid problems arising from environmental regulation[11]. However, currently, there is no legal provision or international cooperation agreement that can accurately explain what climate - friendly and non - climate - friendly investments are and what the definitional differences between them are.

Moreover, the fragmented nature of international investment agreements (IIAs) hinders the formation of legal provisions on climate governance and has a significant impact on their formulation. Additionally, the differences in the protected legal interests and focus areas of international investment law and international climate law also affect the legal provisions on climate governance. The following sections will provide a detailed discussion and explanation of the impact of these three issues on the formulation of climate governance clauses.

The fragmented nature of the IIA system is a significant challenge in its reform process. The IIA system is composed of numerous bilateral investment treaties (BITs) and investment chapters in free trade agreements (FTAs), each of which is the result of lengthy negotiations. This structure makes it complex to rapidly coordinate and advance reforms at the multilateral level. As the urgency of the global climate crisis increases, the reform of the IIA system becomes particularly pressing. However, the lack of systematic reform means that a thorough re - examination of the core values and long - term goals of the IIA system is necessary, which is difficult to achieve in the short term.

In the new generation of IIAs, we have witnessed fragmented reforms of climate change provisions. Compared with the old - generation IIAs, they usually contain more clauses directly related to climate, but these reform measures are too scattered to effectively build a unified regional climate protection mechanism. Between 2012 and 2022, the attention paid to climate change in IIAs signed has shown diversity, such as considering climate and environmental issues as exceptions to expropriation clauses and performance - requirement - prohibiting clauses. This diversity further hinders the formation of a unified regional climate protection mechanism.When exploring the ambiguities in the concept of investment in climate governance agreements, several key issues can be identified: First, some climate governance agreements only provide framework or vague provisions on the specific goals and standards for climate protection. Second, although multilateral agreements clarify the responsibilities of national government agencies in climate protection, the responsibility allocation and enforcement mechanisms in the implementation process are not clear. Third, the commitments of developed countries to provide technology and financial support to developing countries in climate governance agreements are not clear. This adds many challenges to the implementation of climate protection measures by developing countries. Fourth, there is a lack of effective monitoring, reporting, and review mechanisms in climate governance agreements. This makes it difficult to assess the progress of countries in environmental protection and to ensure that all countries fulfill their commitments. Finally, climate governance agreements do not fully take into account the necessity of international cooperation and coordination. It should be noted that cooperation among different countries and regions is very important in global environmental governance.

In terms of international investment and climate governance, the ambiguity in defining climate - friendly and non - climate - friendly investments is mainly reflected in the following key areas: First, it is restricted by technology transfer and performance requirements. In some international investment agreements, the prohibition of performance - requirement clauses restricts the host country's constraints on investors' investment behavior, such as technology - transfer requirements. This restriction forms a barrier to the dissemination of "green" technologies and affects the development of climate - friendly investments. Second, there is a potential conflict between expropriation clauses and climate governance measures. In investments in high - carbon - emission industries, investors may believe that the climate governance measures of the host country's government will greatly reduce their investment value or affect profit levels, which is equivalent to expropriating their investments. In this case, climate governance measures will face legal challenges, increasing the uncertainty of policy implementation. Finally, promoting investment facilitation and climate - friendly investments. The development of the investment facilitation agenda has the potential to promote sustainable development and climate - friendly investments[12]. However, in practice, how to ensure that these measures truly support climate - friendly investments rather than non - climate - friendly investments remains an urgent challenge to be addressed.

Although international climate law contains provisions to protect investors and international investment law contains provisions to protect the climate, the legal interests they protect are different. The purpose of formulating international investment law is to protect the rights and interests of foreign investors and promote an increase in international investment. The purpose of formulating international climate law is to limit the increase in global average temperatures and slow down the rate of global warming. Their focus is also different, reflected in the fact that international climate law mainly deals with climate change issues through measures such as setting emission standards and promoting the development of new energy, while international investment law mainly protects the rights and interests of investors through measures such as providing investment protection treatment and mechanisms for resolving investment disputes.

4.2. Fragmentation in the Legal Basis of Climate Governance Provisions in International Investment Treaties

The number of International Investment Agreements (IIAs) has surged with the increase in global trade and investment activities. The content of these agreements in terms of environmental protection issues has shown significant diversity and divergence. Since the first environmental provisions appeared in the China–Singapore Bilateral Investment Treaty in 1985, more and more bilateral investment treaties have included provisions on climate protection and governance. By 2005, over half of the newly signed investment agreements contained provisions on climate protection and governance, reflecting the increasing importance of climate protection and governance in international investment agreements. However, there are differences among countries in the development and popularization of climate protection and governance provisions, leading to the fragmentation of legal basis.

The provisions on climate protection and governance in investment agreements are expressed in a variety of ways, which can be broadly categorized into three types: declarations in the preamble, exceptions as general provisions, and regulations combined with corporate social responsibility and environmental impact assessment. This diversity has led to differences in the legal basis for climate protection and governance among different agreements, and has further increased the fragmentation of the international investment law system. The international investment law system, which has evolved from general international law rules to date, now includes more than 3,000 bilateral investment treaties and ad hoc arbitration mechanisms, presenting a typical fragmented structure. This structure is inevitable as the international investment law system adapts to the diverse sovereign demands, and although it needs coordination, it should not lead to the denial of the legitimacy of the entire system.

The relationship between international investment and environmental protection is tense. International investment may harm the environment, while host countries may strengthen their control over foreign investment to protect the environment, and even use environmental protection as a pretext to restrict foreign investment and build green barriers to protect domestic enterprises. This tension is particularly evident in international investment disputes, where the number of cases involving environmental issues has increased sharply, further exacerbating the fragmentation of legal basis. International dispute resolution bodies have different interpretations of environmental protection provisions. Most international environmental disputes lack institutions with compulsory jurisdiction, and are often submitted to the World Trade Organization (WTO), human rights courts, international investment arbitration bodies, etc., due to their multiple natures involving trade, human rights, investment, etc. The different interpretations and applications of environmental protection provisions by these bodies have made the legal basis even more fragmented.

In summary, the diversity of environmental protection provisions in international investment agreements, their development process, the variety of expression methods, the tense relationship between international investment and environmental protection, the fragmented international investment law system, and the different interpretations by international dispute resolution bodies together constitute the complex picture of environmental protection provisions in current international investment agreements. These factors have not only led to the fragmentation of the legal basis for environmental protection, but also posed challenges for the reform and unification of international investment agreements.

5. SOLUTIONS TO THE PROBLEM

5.1. Formation of New Climate Governance Legal Principles through International Organizations' Initiatives and State Practices

International organizations such as the United Nations and the World Bank play a key role in promoting the integration of international investment law and climate governance. Through the release of research reports, the formulation of guidelines and frameworks, and other means, they encourage countries to incorporate climate change into international investment agreements and policies. Countries are actively exploring ways to integrate climate governance into international investment law in practice. Some countries have already explicitly stipulated environmental protection and climate change response requirements in their domestic laws and included relevant provisions in international investment agreements. These practices provide valuable references for the international community to formulate new climate governance principles.

Through multilateral negotiations and international conferences, countries have engaged in in-depth discussions and consultations on the integration of climate governance and international investment law, gradually reaching international consensus. This consensus is reflected in the form of international treaties, declarations, or resolutions, providing a basis for the legalization of climate governance principles. Based on international consensus, some countries or international organizations propose new climate governance principles and promote and publicize them through various channels. These principles are usually forward-looking, innovative, and guiding, and can lead the future development of the international community.

To ensure the effective implementation and compliance of new climate governance principles, the international community needs to incorporate them into the international legal system or establish corresponding institutional arrangements. This includes amending existing international investment agreements, formulating new international treaties, or establishing specialized international institutions. In formulating new climate governance principles, it is essential to fully consider the balance of interests between host countries and investor countries, including protecting the legitimate rights and interests of investors, promoting sustainable development, and safeguarding global public interests.

Climate change is a global issue that requires the joint efforts of all countries to address. Therefore, strengthening international cooperation is crucial in the process of formulating new climate governance principles. Countries should jointly promote the progress of international investment law in climate governance through sharing experiences, exchanging information, and providing technical support.

In summary, the formation of new climate governance principles in international investment law is a long-term and complex process that requires the joint efforts and continuous promotion of the international community. Through the combined effect of the above steps and considerations, a more complete and effective international investment law system can be gradually built to address the challenges posed by climate change.

5.2. The Path to the Transformation of International Investment Agreements

Against the backdrop of the increasingly urgent global climate change issue, the green transformation of International Investment Agreements (IIAs) is particularly important[13]. First, it is necessary to clarify the priority of climate change agreements in IIAs, ensuring that when obligations to protect foreign investments conflict with obligations to address climate change, the priority of the two types of agreements can be clearly distinguished. This priority can be safeguarded through treaty interpretation. According to Article 53 of the Vienna Convention on the Law of Treaties, treaties that conflict with peremptory norms of general international law are invalid, thereby ensuring that the effectiveness of climate change protection law is higher than that of investment agreements.

The green transformation of IIAs should also include the integration of climate-friendly provisions. A multi-level balancing approach should be adopted to introduce climate-friendly provisions, promoting coordinated development of investment and environmental protection. At the same time, it is necessary to coordinate fair and equitable treatment with climate change response measures. The specific content of fair and equitable treatment should be clearly listed, and exceptions to the application of fair and equitable treatment in investment agreements should be clearly stipulated, especially when the contracting host country grants differential treatment to investors or investments based on public interest factors, this does not constitute a violation of the fair and equitable treatment standard.

In terms of coordinating expropriation clauses with climate change response measures, it should be clarified that when the host country takes measures to fulfill its international obligations to address climate change, if such measures result in differential treatment of investors or investments and constitute discrimination, they may be considered as indirect expropriation. In addition, it is crucial to establish a specialized dispute resolution mechanism for climate change-related investment disputes. A special dispute resolution mechanism for handling climate change-related investment disputes can be set up, or investment disputes involving climate change content can be excluded from international investment dispute resolution mechanisms, or a counterclaim mechanism for host countries can be included in investment treaties to ensure that host countries can exercise their climate change regulatory powers.

Finally, it is important to promote the establishment of a unified and standardized sustainable investment legal framework, encouraging host countries to formulate sustainable development investment guidelines and guidelines, establish green financial institutions, and strengthen climate risk disclosure, thereby guiding investors to focus more on climate-friendly investments.

5.3. Strengthening International Cooperation and Policy Coordination

In International Investment Agreements (IIAs), some new-generation IIAs have established specific provisions on climate change and climate cooperation. For example, the Moldova–UK Trade and Cooperation Agreement and the Angola–EU Sustainable Investment Facilitation Agreement contain such provisions. These agreements establish specific procedures and mechanisms for the implementation of climate action policies through cooperation between countries, such as the establishment of joint committees, joint dialogue mechanisms, climate action consultations, and expert panels, to promote international cooperation on climate change.[14]

Under the principle of non-discrimination, the assessment criteria for "likeness" in the non-discrimination principle of IIAs should be set, allowing for differentiated protection based on carbon emissions. Differentiating protection of investors based on carbon emissions falls within the scope of legitimate public purposes, and measures taken on this basis should be considered reasonable. In addition, international cooperation mechanisms can be used to share best practices, promote environmentally friendly investments, and foster international cooperation. For example, the home country of investors can add investor obligations within the framework of investment facilitation. If investors comply with the corporate social responsibility clauses in the treaty and fulfill their sustainable development obligations (including the protection of climate interests), the home country will decide whether to provide investment support such as risk insurance, investment guarantees, and development financing for investors.

A framework for environmental and economic policies should be established to strengthen the guiding role of environmental and economic policies in actively addressing climate change[15]. At the same time, the standard system for climate finance and investment should be gradually improved, including standards for climate projects, climate information disclosure, and climate performance evaluation, to improve policy coordination and the standard system.

6. CONCLUSION

Climate governance is rather complex, involving numerous stakeholders. Its goal is to utilize comprehensive means such as policies, regulations, standards, and technological innovation to jointly address climate change, promote sustainable economic development, and facilitate social progress. At the level of international regulations, climate governance relies not only on hard laws with legal binding force, such as international treaties, but also on soft laws with greater flexibility, such as resolutions and universal documents of international organizations. These legal tools together form the international regulatory framework for climate governance, providing guidance for global climate action.However, in actual operation, climate governance faces many challenges. For example, international investment agreements are fragmented, the legal basis is piecemeal, there are conflicts between legitimacy and compliance, and the definition of investment is unclear. These problems make it difficult to form a regional climate protection mechanism under the same model, and also exacerbate the tension between international investment and climate protection.It is necessary to integrate international investment agreements with the climate change regulatory framework to ensure their coordination. International investment agreements need to be updated and improved to reflect the new requirements of climate change and global environmental goals. Legislation should strike a balance between certainty and flexibility to meet the situations and needs of different countries. Through international cooperation and policy coordination, countries should make joint efforts in climate protection.

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