

CIBEL Global Network Conference

# **A Chinese Perspective of the ISDS Reform**

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**1 May**  
**2019, UNSW**





# Outline

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**China's undecided position**

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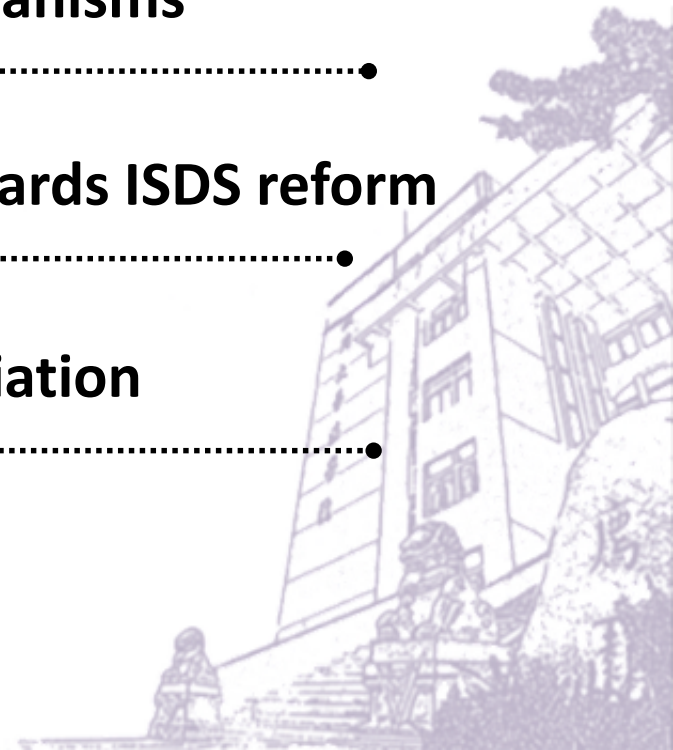
**China's innovative ISDS mechanisms**

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**China's possible position towards ISDS reform**

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**China's good practice of mediation**





## China's undecided position towards the ongoing ISDS reform at the international level



The US approach and the China-US BIT negotiation (a permanent and stand-alone appellate body)



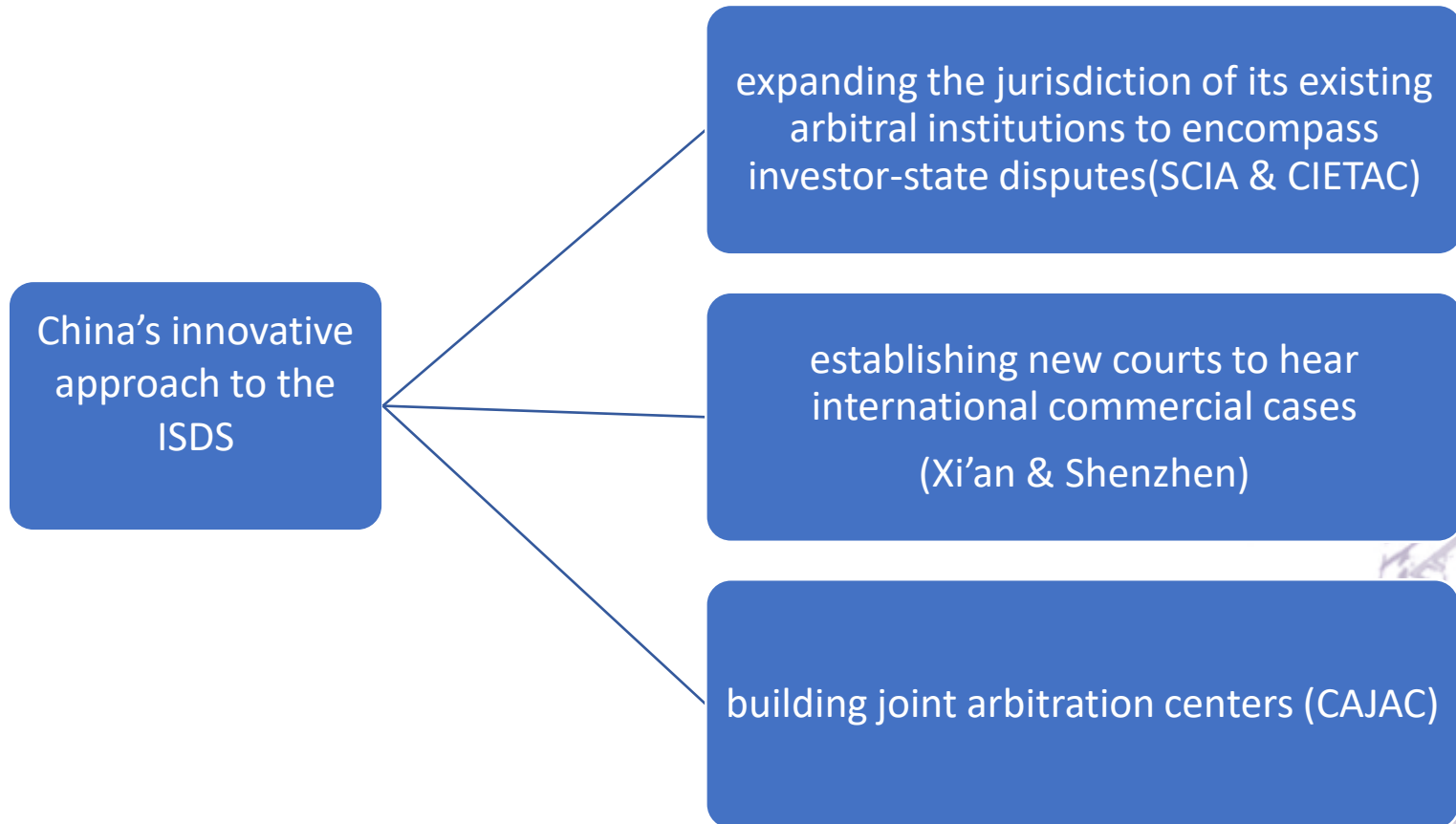
The EU approach and the China-EU CAI negotiation (a permanent investment court with an appellate mechanism)



Developing countries' approach and China's BRI Initiative (undecided & terminating BITs)



# China's innovative ISDS mechanisms at its domestic level and their implications





How this approach serves China's strategy on international engagement

The mechanisms answer China's pressing need to protect Chinese investments abroad

The new mechanisms enable China to amplify its voice in the international discourse on the IIA-making

China's reform help to break the monopoly of existing Western-initiated institutions



# China's possible position towards the current international ISDS reform

## The current UNCITRAL reform work

- UNCITRAL Working Group III: a broad mandate to work on the possible reform of ISDS
- government-led work
- Proposals:
  - US approach: a permanent and stand-alone appellate body
  - EU approach: a permanent international investment court with an appellate mechanism





## Lessons learned from the WTO

UNCITRAL's work	WTO	Chinese lessons in the WTO	What reaction China should take in UNCITRAL
<b>Internationalizing</b> the reform + rule-making	An int'l org. + rule-making	ROC founder of GATT 1947, PRC quitted in 1950, lost opportunities in rule-making	actively participate
<b>multilateral</b> mechanism, Mauritius Convention model ( <b>plural</b> approach)	Multilateral org., <b>provisional</b> application of the GATT 1947	lost opportunities in rule-making and dispute settlement	Participate from the very beginning
<b>institutionalized</b> regimes, Advantages over ad hoc	Institution, panel + AB	China benefits	actively participate



# Sharing China's good practice of mediation in the ISDS reform

Mediation is a proposed alternative for ISDS arbitration

- BITs & FTAs
- ICSID mediation rules
- UNCITRAL Draft Model Law & Draft Model Convention

China has good practice in mediation

- *The institutionalization of mediation*
- *The hybrid 'arbitration + mediation' model*





# Conclusion

- it is difficult for China to adopt a definite position towards the ISDS.
- China is trying to develop its own ISDS mechanisms.
- China may learn lessons from its experience in the WTO dispute settlement in assessing the UNCITRAL work for ISDS reform.
- China has rich legislative, practical and institutional experience in implementing the 'arbitration + mediation' model in dispute resolution, which could be its unique contribution to the ongoing ISDS reform.



Thank you!

