

走出海外投资安全的雷区

——冲突风险评估与管理

蒋 姮/著

Out of the Mine Fields and Blind Areas of
Overseas Investment Security

-Conflict Risk Assessment and Management

中国企业“走出去”步入风险高发期

全球金融危机之后

缅甸、苏丹、埃及、叙利亚、利比亚等投资高风险国家雷区——触发

本书推出冲突风险评估与管理工具

扫描解构投资高风险国家风险结构矩阵的关键节点

带你走出海外投资安全的高风险雷区



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前 言

在很多国家,来自石油、天然气和采矿业的金钱往往与贫困、冲突和腐败相连。油气或矿产等自然资源丰富的国家经济增长相对缓慢,冲突与腐败现象更为多见,发展相对滞后,这一现象通常被称为“资源诅咒”。

根据 2011 年的统计数据,能源、电力、采矿等自然资源领域占了中国海外投资的四分之三,自然资源的供给已经成为带动中国经济可持续增长与保证中国长远能源安全的关键因素。自然资源开发投资属资本密集型投资,收回资本需依靠长期稳定的局面。但自然资源领域经历了 20 世纪 70 年代的资源危机、80 年代和 90 年代的环境和社会危机后,全球舆论和社会价值观开始抵触资源业,导致全球资源开发业遇到了空前的社会冲突危机。

风险尤其大的是,我国海外投资 80% 以上分布在亚非拉等发展中国家,其中有较多高冲突国家,典型的是缅甸、柬埔寨、老挝、巴基斯坦、安哥拉、苏丹、利比亚、叙利亚、埃及、刚果金等。这些国家存在一种“资源诅咒”的悖论,中国的采掘类公司在这些高冲突地区进行开采工作,相当于一开始就进入了高风险的雷区,直面因冲突而带来的许多额外的投资风险。

随着全球金融危机带来的全球政治和社会动荡,我国企业投资踊跃而资源丰富的一些高冲突国家近年来正实实在在转化成高风险投资地区。我国企业对冲突风险及其最新变化不敏感,甚至存在一些认识盲区和误区,以在利比亚、叙利亚、苏丹、埃及、缅甸等国所遭受的巨大损失为代表,冲突地区投资风险与安全问题正成为我国企业面临的巨大挑战。

一、冲突国家成为投资安全雷区

根据联合国全球契约等机构的相关指南,高冲突国家的基本特点之一是利益格局异常复杂,利益争夺异常激烈,法律不健全。既有法律框架和现

行政策中往往没有很好体现冲突各方的重大诉求,社区等占人口大多数的弱势利益相关者的利益诉求往往没有得到体现。强权之下正常的社会沟通和冲突表达渠道多半受到遏制,这导致冲突风险在投资准入阶段和企业运营初期具有较大的潜伏性。对于当地国情缺乏深入了解的海外投资新手,很可能由于与冲突一方来往密切或利益捆绑较多而无意中招致冲突另一方的怨恨。投资行为使得冲突双方争夺的利益目标扩大,还可能激化原有的较小的冲突,或是成为潜在冲突的导火索,给投资项目的存续、投资机构和人员的安全带来颠覆性挑战。

缅甸北部自2011年6月以来地方独立武装和缅甸政府军之间围绕中资水电站的利益争夺而爆发的军事冲突就是典型案例。城门失火殃及池鱼,我国企业为此遭受了巨大损失。2011年9月底,投资规模2200亿人民币号称“海外三峡”的密松大坝项目以“民意”的名义被缅甸政府叫停搁置。近年来,这种案例不在少数。2012年2月,苏丹29名中国工人还没救出,埃及25名中国工人又被绑架。根据外交部领事司提供的数据,2011年有关部门处理各类领事保护案件约3万起。

冲突风险的潜伏性特征使得这种风险具有巨大的危害性。主要是在法制不完备的情况下,环境社会等领域的许多风险在投资准入阶段得不到法律屏蔽,导致一些重大冲突问题在准入和运营初期难以被及时发现和监督,对于普遍缺乏跨文化管理经验的海外投资新手而言,更是如此,不少企业当潜在风险已经转化为巨大损失时,还不能正视,一些企业表现出十分“吃惊”,一些企业更多以“阴谋论”从外部归因,一些企业将这些风险归为“不可控”。

资源驱动下的海外投资不得不走向大量冲突国家时,不可避免的冲突风险真的是不可控的雷区吗?还是我们根本就忽略了探雷器的作用呢?

二、冲突风险管理存在巨大盲区

从近年来的调研情况看,我国企业对高冲突国家潜在的冲突风险普遍有所低估,对企业投资可能激化这类国家的冲突现状的认识明显不足。在冲突国家投资如果缺乏冲突意识,则很容易不知不觉中卷入冲突,或加剧冲突,最终使自身运营环境受到干扰,投资安全受到威胁。

我国企业之所以冲突意识淡薄,主要是因为我国国内的投资环境和政局比较稳定,利益格局也相对稳定,利益争夺较少呈现极端暴力状态,政府

往往成为各个利益相关方的交汇点和稳定器。

在国际经营经验不足的情况下,一些企业习惯于将国内重上层路线的经营模式搬到海外,有些企业一味重视政府关系却忽略社区关系和媒体关系。在冲突国家社区和媒体却往往是不容忽视的重要利益相关方,忽视的结果是社区风险和媒体风险的爆发,企业长期形象受损的同时,投资安全也如履薄冰。

我国对外交往中高度依赖执政政府的高层路线曾经取得很大成功,不仅成功地在联合国系统团结了发展中国家政府获得投票支持,也为弱小的中国企业走向高风险地区提供了保护伞,但这种模式双刃剑的一面目前开始更多展示。主要是这种模式下在高冲突国家可能加剧官民分离及社会不公,最终由于冲突形势恶化而威胁人员、机构、项目和资产的安全。

在高冲突地区进行经营活动,任何规模的企业都会面临诸多难以解决的困境。虽然存在挑战,但许多困难可以通过早期的积极举措得以化解。冲突风险管理可以降低由企业活动引起的风险因素;减少经营运作困难,提高创造价值的能力;有利于促进区域稳定性,以保证企业长期利益。

在受冲突影响与高风险地区商业运营所面临的机遇与挑战在国际上早已引起了广泛的关注。这些地区与稳定的运营环境有显著的区别,并且需要企业和投资者将额外的因素考虑在内。联合国秘书长潘基文说:“正是寻找应对挑战的共同解决方案驱动了企业社会责任运动的全球化。”

三、冲突风险管理盲区亟待填补

我国走出去战略必然要经历一个逐步探索和完善的过程。我国实施这一战略只有十来年时间,基本上仍处于初级阶段,对海外投资环境存在的问题和风险缺乏了解和处理经验,应对能力尚且薄弱,对高冲突地区复杂的风险管控更是十分薄弱,其中的经验和教训需要系统总结,国际经验需要分析、论证和借鉴。

强化冲突风险管理有利于促进和谐世界建设和高冲突地区的持续和平与繁荣,能使我国海外投资战略与和平崛起外交战略更好统一。比如,通过投资可以促进当地就业消除贫困;采纳包容兼顾的用工政策可以促进族裔和社区间的融合;制订针对“经济金字塔底层”的商业战略可以增进人权、劳工、环境和反腐败方面的最佳实践;建设真正有利于当地社区发展的基础设施可以促进社区发展;给予弱势群体和受冲突影响的人群特别考虑可以创

造就业机会和促进社会公平。

四、本书的目标及鸣谢

根据商务部的十二五规划,未来5年,中国海外投资年均增速17%,建立有效的海外投资安全保障机制显得尤为迫切和重要。在我国海外投资结构呈现高冲突偏向的情况下,冲突风险管理是保障海外投资安全的关键环节。

为此,我们历时6年就相关问题在缅甸、柬埔寨、老挝、安哥拉、苏丹、叙利亚等典型的高冲突国家进行了系列调研,在此基础上进行实证分析和案例研究。同时采用横向比较的方法,参考国际指南并借鉴跨国公司的经验,从宏观战略框架布局和微观管理工具这两个维度提出冲突风险应对办法。

本书旨在提高我国企业的冲突风险意识,填补冲突风险管理的盲区,加强对冲突风险因子的认识,并推出一套带有普遍性的风险评估管理综合框架及核心步骤。未来,我们希望在本书的框架基础上,结合具体的国别分析、产业分析、企业分析和项目分析,制定针对具体企业和项目的冲突风险评估管理的更加实用的工具模型。

最后,就本书的研究和出版,感谢王志乐教授的指导,感谢北京新世纪跨国公司研究所和商务部研究院世界经济研究所的支持,感谢德国海因里希·伯尔基金会、德国西门子公司、美国公谊会以及CDA企业参与计划的帮助,也感谢中海油、中石油、中电投、中电建、俊安、BP、美铝、壳牌、必和必拓、英美资源等30家中外跨国公司提供调研支持和经验分享。特此鸣谢!

Introduction

In many countries, the oil, natural gas and mining sectors are plagued by conflict and corruption. As a result, while such countries have abundant natural resources, these are translated only into very slow economic growth rates and increasingly acute poverty. This phenomenon is often referred to as the "resourcecurse".

According to statistics from 2011, investment in natural resources such as energy, mining and electricity represents 75% of all Chinese investment overseas. Access to natural resources has become the key factor sustaining the development of the Chinese economy and guaranteeing China's long – term energy security. The investment in the natural resource sector is categorized as capital – intensive investment, and the recovery of investment demands long – term social stability in countries where investments are made. Since the 1970s though, the natural resources sector has experienced one crisis after another, with a large number of environmental and social crises occurring in 1980s and 1990s. During this period, public opinion began to turn sharply against the natural resources industry, resulting in unprecedented social conflict in a number of resource rich countries across the globe.

For Chinese companies, a greater risk is associated with the fact that 80% of Chinese investments are concentrated in resource rich countries in Asia, Africa and Latin America. Of these, many are conflict – afflicted or post – conflict countries, such as Myanmar, Cambodia, Pakistan, Angola, Sudan, Libya, Syria, Egypt and the Democratic Republic of Congo. While China has quickly become the top investor in many of these countries, it has also become highly exposed to

non – technical risk associated with conflict. This risk has increased as fragile and conflict – afflicted states have come under tremendous pressure as a result of the global finance crisis, which has driven social, sectarian or ethnic conflict within many countries. Chinese enterprises are in general not sensitive to conflict risk, and many are completely blind to or lack understanding of deep fault lines within societies where they are investing which can have the effect of perpetuating or causing conflict. For example, Chinese enterprises suffered great losses in Libya, Syria, Sudan, Egypt and Myanmar over the past five years as these countries exploded into or experienced sustained conflict. Chinese companies failed to predict these conflicts or take measures that might mitigate their losses, illustrating the lack of understanding of challenges that Chinese investors face in conflict – afflicted states.

I. Investment Security in Conflict – afflicted States: Assessing the Level of Risk

According to the guidance of organizations like the United Nations Global Compact, conflict – afflicted states are characterized by highly complex patterns of relationships between actors with clashing interests. Competition for control over resources in such countries tends to be intense, while local legal frameworks are not able to properly mediate relationships between clashing interest groups. Legal and political structures do not properly reflect the rights of all parties, especially disadvantaged groups and poor communities, often adding to the complexity of the conflict. Channels for expressing grievances and mediating conflicts are often nonexistent, or are controlled by a dominate group not representative of the broader population.

Investing in such a context will undoubtedly have some type of impact on the relationship between parties to conflict, although in the initial stage of operations, it may be difficult to perceive the nature of the impact and the associated risk it implies to the investor and the locality. During the initial stages of a project, many investors lack knowledge of the local situation, and their activities can unintentionally exacerbate conflict, especially if they are perceived as becoming too close to a particular party or allying with a particular group to the potential deter-

minant of an adversary. In extreme cases, a project might advance the interests of one party in a way that can transform latent social cleavages into violent conflict. By triggering conflict in such a manner, the project not only threatens to destabilize a fragile balance of local interests, but can also threaten the safety of the company, its staff and local constituents.

For example, in June 2011, violent conflict broke out between ethnic armed groups and the Myanmar government army in northern Myanmar when a Chinese – invested hydropower project located adjacent to a ceasefire line was perceived as threatening the security of one of the largest ethnic minority groups. Fighting between the two armies resulted in serious damage to the hydropower project, and ultimately led to the collapse of a ceasefire agreement, triggering violent conflict throughout northern Myanmar. Only three months later in September 2011, another project, the Chinese – invested Myitsone Dam project with investment of 220 billion RMB, also became embroiled in the conflict. The Burmese government subsequently suspended the project citing strong public opposition.

While these events in Myanmar came as a shock to Chinese companies, such phenomenon are by no means exceptional. In 2011 alone, according to statistics from the Department of Consular Affairs of the Chinese Ministry of Foreign Affairs, China had to manage over 30,000 requests for consular assistance and protection; most of these related to attacks by local interest groups against Chinese construction projects.

In the examples above, conflict almost universally arose from latent tensions and unseen risks, taking investors by surprise. In contexts where laws and legal enforcement are inadequate, simply following the local laws can result in operations that are unaware of social issues and which severely damage the local environment and negatively impact communities, thereby exacerbating local grievances and exposing companies to significant risk. If a company subsequently fails to perceive and respond to such grievances, tensions can continue to escalate to a point at which the company loses the acceptance of the community and its social license to operate. For investors that lack cross – cultural management experience or sensitivity, such problems can become even more acute. What can be most

frustrating for all parties is the inability on the part of the investor to identify the problem – after conflict results in loss, many investors attempt to explain what has happened through conspiracy theories or by simply writing off such risks as being out of their control.

An old Chinese proverb states that the wise look internally for solutions to problems, while the foolish blame their neighbors. This raises the question – when investing in conflict prone states is conflict risk really unavoidable, or have investors simply failed to develop tools to detect and respond to conflict risk?

II. Conflict Risk Assessment: A Tool to Enhance Project Management

Considerable research over the past several years has found that Chinese enterprises have underestimated the level of risk associated with investment in conflict – afflicted states. Investors are not fully aware of the fact that investment in such countries will have an impact on the conflict. As a result, many Chinese investors have unknowingly become involved in conflict or unintentionally aggravated conflict, undermining their business operations and the security of their investments, while also harming the interests and security of local stakeholders.

Back in China, where the investment environment and political situation are both quite stable, Chinese enterprises have not developed a high level of sensitivity regarding the impact that operations might have on conflict. Very rarely does violence break out around development projects, and when it does, the government responds quickly and effectively. Lacking experience investing overseas, practices and expectations of Chinese companies are shaped largely by China's domestic context. Given the government's strong role in China in mediating and resolving conflicts and social issues, companies are accustomed to the practice of focusing on their engagement with government, often paying less attention to other stakeholders and actors such as the community or media. In conflict – afflicted and fragile states on the other hand, the importance of non – government stakeholders is much greater, and failure to engage these actors places investors at a serious disadvantage, often exposing the investor to great risk.

Not only Chinese investors, but also the Chinese government has a tradition of emphasizing high – level exchanges in its diplomacy. In the past the primary

goal of the Chinese government was to unite and support developing countries and to win their support for China in the United Nations through development and private sector investment. Later, as Chinese companies started to invest overseas, these high – level relationships were utilized to provide Chinese enterprise with protection of their interests, especially in high – risk areas. With time though, such diplomacy has become a double – edged sword. In many fragile and conflict – afflicted states, governments are not representative of their populations, or government institutions have extremely limited reach. In cases where the Chinese government or Chinese investors ally closely with such state actors, this has served to intensify cleavages between state and non – state actors, in some cases causing non – state actors to perceive Chinese investors as colluding with the state against their interests.

Any commercial activities in conflict – afflicted or fragile states, regardless of size, will have an impact on conflict. Despite these challenges, risks can be managed if a company is sensitive to the local context from the point of first engagement. Conflict risk analysis can help companies mitigate the impacts that business activities may have on conflict, and help the company develop more stable operations. The application of conflict assessment tools can also help promote the stability of a conflict – afflicted or fragile state, while also providing long – term benefits to the company.

In developing tools to assess and respond to such risks, Chinese companies do not need to reinvent the wheel. A range of international actors have long paid close attention to these issues, and a number of tools and guidance frameworks have been developed to assist companies in getting it right in complex operating environments.

III. Conflict Risk Assessment and Chinese Outward Investment

Chinese companies began making significant investments overseas just over a decade ago when the Chinese government announced the "Going Out Strategy," providing companies with legal space and support to venture abroad. Ten plus years of experience have yielded significant dividends to Chinese investors, but they still lack knowledge and experience, especially when it comes to managing risks and problems in the complex operating environments characteristic of con-

flict – afflicted and fragile states. China needs to review its lessons and experiences operating in such environments, and carefully study the experiences and approaches of other international stakeholders in responding to these issues.

Through enhancing their abilities to assess and manage conflict risk, Chinese companies have the opportunity not only to strengthen their performance and reputation overseas, but also to help the Chinese government realize its policy goals of building sustained peace and prosperity in conflict – afflicted states. Taking such an approach to conflict can ensure that China's overseas investment strategy can support its diplomatic strategy of a peaceful rise. For instance, investment made in a conflict sensitive way that integrates different ethnic groups and communities can promote local employment, which in turn can reduce poverty and support state building processes. Conflict sensitive approaches are also extremely responsive to the needs of poor and vulnerable populations, and can improve local performance with respect to human rights, labor, environmental protection and anti – corruption. Applying tools to assess the impact of projects on conflict will ensure that projects are conducive to the local community and promote the development of the community.

IV. The Purpose of this Book

According to the Twelfth Five – year Plan of the Ministry of Commerce, Chinese overseas investment is projected to increase at an annual rate of 17% for the next five years. Given the extent to which Chinese interests overseas will grow in the coming years, establishing an effective mechanism to provide security to overseas investments is critical.

This book represents a first step in the direction of developing a comprehensive set of tools for Chinese companies to assess and manage conflict in overseas operations. Based on field research completed over a course of three years on Chinese business operations in conflict – afflicted communities in Myanmar, Cambodia, Laos, Angola, Sudan and Syria, the book discusses the current approach of Chinese companies, and identifies a series of gaps and shortfalls. It next turns to international guidelines, the experience of transnational corporations, and to nongovernment organizations with deep experiences in working with companies on

investment in conflict – afflicted spaces. On the basis of these experiences and approaches, it introduces a framework that Chinese companies can consider in assessing their operations in conflict – afflicted states.

Developed in consultation with a wide range of actors, including companies, NGOs, community leaders and government officials, the intention of this book is to strengthen the awareness of Chinese enterprises with respect to conflict risk and provide a framework that can fill in gaps in their management systems when it comes to conflict risk management. The book is based on the assumption that proactive conflict management can ensure local peace and sustainability, while reducing company operating costs and increasing long term profitability. As such, it demonstrates to Chinese companies how improving their risk control, assessment systems and ability to operate in high – risk and conflict – afflicted countries can safeguard their investments. Lastly, it is hoped that the book will be useful for further developing China's diplomatic strategy of increasing stability and development around the world by directing the energies of Chinese business towards activities which will ensure peace and harmony in conflict – afflicted states, while enhancing the reputation of Chinese companies.

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目 录

CONTENTS

前言

第一章 中国企业海外投资安全的雷区:高冲突国家	1
一、海外投资安全遭遇冲突雷区	1
(一)海外投资安全的现状	1
1. 海外投资安全事件频发	2
2. 海外投资步入风险高发期	2
(二)海外投资安全高危雷区	2
1. 高冲突国家与高风险雷区	3
2. 雷区的诱惑与偏向雷区行	6
(三)海外投资结构的冲突偏向	7
1. 海外投资行业的冲突偏向	7
2. 海外投资区域的冲突偏向	8
3. 海外投资主体的冲突偏向	9
4. 海外投资模式的冲突偏向	9
(四)冲突风险的高危性	9
1. 冲突的复杂剧烈性	10
2. 冲突的长期潜伏性	10
3. 冲突的突然爆发性	10
二、高冲突国家投资雷区风险探源	11
(一)资源诅咒	11
1. 自然资源丰富的国家大多冲突激烈	11

2. 自然资源丰富的国家大多增长缓慢	12
3. 集中性资源经济体冲突更大	12
4. 资源业比重大的经济体冲突更大	12
(二)都是资源惹的祸	13
1. 三大资源战事	13
2. 利比里亚内战	13
3. 刚果内战	13
第二章 中国企业海外投资安全的盲区:冲突风险管理	15
一、我国海外投资呼唤冲突风险管理	15
(一)投资对冲突的潜在影响	16
1. 投资的正面影响	16
2. 投资的负面影响	16
3. 投资与冲突纠结的案例	16
4. 投资与冲突纠结的机理	17
(二)冲突风险的发展趋势	19
1. 政治动荡加剧	19
2. 冲突面积扩大	19
3. 风险激发点增多	20
4. 监管标准巨变	20
5. 民粹主义抬头	20
(三)冲突风险管理的国际实践	21
1. 国际组织和机构的做法	21
2. 主要国家的做法	24
3. 跨国公司的做法	25
二、我国海外投资存在冲突风险管理盲区	26
(一)冲突风险管理的认识缺失	27
1. 冲突敏感性缺失	27
2. 无意识加剧冲突	27
(二)冲突风险管理的战略缺失	28

1. 法律框架缺失	28
2. 国家援助机制缺失	29
3. 外交保护机制缺失	30
(三) 冲突风险管理的工具缺失	30
1. 研究系统缺失	31
2. 信息系统缺失	31
3. 评估系统缺失	32
4. 保险系统缺失	33
第三章 海外投资安全管理的战略思路:冲突管理框架	35
一、海外投资模式的转型与应对	36
(一) 海外投资模式应更加亲民	37
1. 充分关注民生	37
2. 更多倾听民意	38
(二) 海外投资模式应更加融合	39
1. 增加本地含量	39
2. 完善合规内控	40
(三) 海外投资模式应更加透明	41
1. 加强社区沟通协商	41
2. 强化合规信息披露	42
(四) 海外投资模式应该更加绿化	44
1. 重视环保国际标准	44
2. 加强环保政策指引	44
3. 提升企业环境履责能力	45
二、冲突风险管理的基本原则	46
(一) 动态性	46
1. 管理工具循环使用	46
2. 申诉程序的常设性	46
(二) 多元性	47
1. 广泛的代表性	47