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Limits and Overcoming the Application of the Burden of Proof in Jurisdictional Disputes in ICSID Arbitration

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This article examines the burden of proof in ICSID arbitration jurisdiction disputes and highlights three significant limitations in its practical application. These limitations include difficulties in confirming factual elements, an excessive duty of persuasion leading to an imbalance between parties, and the burden of proof rule overshadowing the interpretation of the arbitration agreement. To address these limitations and improve fairness, effectiveness, and consistency in settling jurisdictional disputes, it is advisable to adopt the International Court of Justice's approach. This approach involves diluting the statutory duty of persuasion, relying on the presumption of good faith for fact-finding, and utilizing diverse methods of treaty interpretation. By implementing these measures, the effectiveness of ICSID arbitration can be enhanced

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