

Editorial: Normative Grey Areas in International Investment Law – The Dynamics of Regions, Technologies, Dispute Resolution, and the Environment

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Abstract

International investments are undergoing a profound transformation, influenced by Investor-State Dispute Settlement (ISDS) reform, the growing influence of major players in the field, the impact of climate change, and new legal challenges brought by artificial intelligence. Adding to these complexities is the proposal for a UN treaty on business and human rights, which is disrupting the status quo of investor protection and corporate responsibility. ISDS reform requires a balance between international standards and regional specificities, while Chinese investments in the Western Balkans highlight tensions between global capital and European regulations. Climate change disputes underscore the need to reconcile investor protection with environmental policies. Meanwhile, artificial intelligence raises critical issues regarding digital sovereignty and jurisdictional competence in cross-border transactions. Thus, the evolution of international investment law is not merely defined by norms and treaties but also by its ability to reconcile economic interests with justice, environmental protection, and technological innovation – an essential condition for maintaining equilibrium between power, ethics, and sustainable development.

Keywords: international investments, ISDS reform, investor protection, UNCITRAL, the UN Treaty on Business and Human Rights.

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1. Introduction

International investments have unequivocally become one of the central pillars of the contemporary economy. However, the nature of these financial flows is undergoing profound transformations, driven by reforms in investor-state dispute settlement (ISDS), China's growing influence in emerging regions, the impact of climate change on investments, and the legal dynamics raised by artificial intelligence (AI) in trade and international investment. This edition of the *International Investment Law*

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Journal reflects on these issues through an in-depth comparative analysis of the interaction between international regulations and regional geopolitical and economic realities.

The ISDS system has been subjected to intense criticism, as it is perceived to favour investors' interests at the expense of state sovereignty. The transition towards a new dispute resolution model remains contested but necessary, even though some states fear that such a structure could diminish the decision-making autonomy of national courts².

China's expansion through initiatives such as the Belt and Road Initiative (BRI) is redefining power dynamics. In the Western Balkans, Chinese investments in infrastructure and energy raise concerns regarding transparency, sustainability, and compliance with European Union regulations. While these investments create economic opportunities, they can also generate vulnerabilities, including the risk of excessive debt for recipient states³. As a result, the European Union has started to implement stricter measures to ensure the compatibility of investment flows with its economic governance standards⁴.

In this issue you can read how, in the face of climate change, countries are adopting tougher energy transition policies, affecting the legal regime for international investment. Recent reforms aim to integrate environmental clauses into investment treaties to prevent situations where environmental measures are challenged through ISDS. Cases such as *Vattenfall v. Germany* have demonstrated the difficulty of reconciling investor rights with climate change regulatory needs⁵. The need for an arbitration mechanism that takes into account the commitments of the Paris Agreement is becoming increasingly evident, suggesting a fundamental reshaping of the investment regime⁶.

² See Schill, Stephan W., and Geraldo Vidigal. 2021. 'Investment dispute Settlement à la Carte : A Proposal for the Reform of Investor – State Dispute Settlement.' In *International Dispute Settlement: Demise or Transformation?*, edited by Marc Elsig, Rodrigo Polanco, and Peter van den Bossche, 220–263. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108966122.010>. UNCITRAL Working Group. 2024. 'UNCITRAL Working Group Meets Again to Discuss a Set of Reform Proposals.' *Investment Treaty News*, October 9, 2024. Accessed February 12, 2025. <https://www.iisd.org/itn/2024/10/09/uncitral-working-group-meets-again-to-discuss-a-set-of-reform-proposals/>. The topics for the discussion were a draft statute of the standing mechanism for the resolution of international investment disputes, cross-cutting and procedural issues, and a draft multilateral instrument on ISDS reform.

³ International Bank for Reconstruction and Development/the World Bank. 2023. *International Debt Report 2023*. Washington, D.C.: World Bank. Accessed February 12, 2025. <https://documents1.worldbank.org/curated/en/099146012112331629/pdf/IDU0e959f3f60973404af0088210e669e5f07689.pdf>.

⁴ European Commission. 2024. 'Proposal for a Regulation of the European Parliament and of the Council on the Screening of Foreign Investments in the Union and Repealing Regulation (EU) 2019/452 of the European Parliament and of the Council.' Bruxelles. Accessed February 12, 2025. https://eur-lex.europa.eu/resource.html?format=PDF&uri=cellar%3A272e2bb6-bb7c-11ee-b164-01aa75ed71a1.0006.02%2FDOC_1.

⁵ International Institute for Sustainable Development (IISD). 2024. *Background Paper on Vattenfall v. Germany Arbitration*. Accessed February 12, 2025. https://www.iisd.org/system/files/publications/background_vattenfall_vs_germany.pdf.

⁶ Gehring, Markus, and Marios Tokas. 'Synergies and Approaches to Climate Change in International Investment Agreements: Comparative Analysis of Investment Liberalisation and Investment Protection Provisions in European Union Agreements,' *The Journal of World Investment & Trade* 23, 5–6 (2022): 778–812, Doi: <https://doi.org/10.1163/22119000-12340270>.

Another regulatory grey area complicates the legal framework applicable to cross-border transactions. In particular, the use of AI in international arbitration raises questions regarding decision-making neutrality and data protection. International organisations, including the OECD, are exploring new regulatory principles to prevent potential abuses and ensure fair governance of digital investments⁷.

2. About our articles

One of the most significant current efforts in the field of international arbitration is the ISDS reform, coordinated by UNCITRAL Working Group III. The article by Amira Mahmoud explores how regional mechanisms can complement the global ISDS architecture, providing a more accessible and equitable alternative for resource-constrained states and SMEs in the Middle East and Africa. The use of regional arbitration centres, such as CRCICA or KIAC, can help reduce litigation costs and enhance accessibility, mitigating existing imbalances in the global ISDS system.

Another topic, this time with a focus on geopolitical dynamics, examines China's investments in the Western Balkans from the perspective of both opportunities and risks. China has become a major player in the landscape of foreign direct investment, including in the emerging regions of the Western Balkans. Nancy Carolina Fabara Verdezoto analyses the economic and geopolitical implications of this expansion, highlighting how the *16 + 1 Initiative* and infrastructure projects supported by Beijing are reshaping the relationship between Balkan states and the EU. Issues related to transparency, environmental protection, and public debt risks are essential considerations in analysing this investment trend.

A further key topic addressed in this issue is the relationship between ISDS and environmental governance. The study by Rawnak Miraj Ul Azam, Syeda Afroza Zerín, and Fahim Faisal Khan Alabi highlights the tensions between investor protection and the right of states to regulate in the interest of environmental protection. Cases such as *Urbaser v. Argentina* and *Vattenfall v. Germany* illustrate how certain ISDS provisions can be problematically used to challenge national climate policies. UNCITRAL WGIII represents an opportunity for developing mechanisms that safeguard both investor interests and sustainable development objectives. The ISDS reform discussed in this context aims to enhance transparency, accountability, and decision-making coherence by replacing ad hoc arbitration with a multilateral investment court. Mechanisms are being explored to prevent procedural abuses, including 'carve-out' clauses for environmental and social measures, ensuring that public policies are not compromised by speculative claims.

The impact of AI on the legal framework governing international trade and investment is addressed by TJ Kgoale and Kola O. Odeku, both through an examination of jurisdictional complexities in digital transactions and discussions on digital sovereignty. The absence of a harmonised regulatory framework for AI in international trade creates significant legal uncertainties, necessitating an update of World Trade

⁷ Lorenz, Philippe, Karine Perset, and Jamie Berryhill. 2023. Initial Policy Considerations for Generative Artificial Intelligence. OECD Artificial Intelligence Papers, no. 1 (September): 3–17. Paris: OECD Publishing. Accessed February 12, 2025. https://www.oecd.org/en/publications/initial-policy-considerations-for-generative-artificial-intelligence_fae2d1e6-en.html.

Organization rules and closer international cooperation.

In this issue, we highlight the insightful analysis by Can Çelik on the regime of foreign direct investment (FDI) restrictions in Türkiye, a testament to our journal's commitment to supporting and encouraging early-career voices in the field of international investment law. His study offers a clear perspective on the 'grey' balance between attracting foreign capital and safeguarding national interests, while exploring how Turkish legislation continues to evolve. The paper sheds light not only on the economic implications of FDI but also on the impact of legislative decisions on sovereignty and public interest.

The *International Investment Law Journal* actively supports early-career researchers, providing them with a platform for fresh ideas and critical studies. Works like Çelik's contribute to a broader understanding of the dynamics of international investments and encourage reflection on how states design policies that navigate between market openness and the protection of national interests. In this way, we continue to foster academic diversity and interdisciplinary dialogue in the field of investment law, recognising that international investment law remains constant, whether we speak of Bangladesh, Türkiye, Egypt, the European Union, or Asia.

The final article in this issue is a book review of *Regional Trade Agreements in Eastern Europe, Central Asia and the Caucasus: Is Multilateralisation of Regionalism Possible?* by Seljan Verdiyeva. The review, written by Marina Trunk-Fedorova, examines the relationship between regional trade agreements (RTAs) and the multilateral trading system, with a focus on the concept of 'multilateralisation of regionalism'. Verdiyeva argues that certain elements of RTAs can be harmonised to support a more coherent global trading system. The study is based on a comparative analysis of economic integration structures such as the Eurasian Economic Union (EAEU), EU Association Agreements, and the Free Trade Agreements of the Commonwealth of Independent States (CIS). The monograph identifies non-tariff barriers as the primary obstacle to multilateralisation and suggests that more liberal domestic trade regulations could have positive effects even on non-member states of these RTAs.

The grey area of international investment law reflects legal ambiguities and contradictions that create uncertainty for both investors and states⁸. On the one hand, investment treaties are designed to protect foreign capital and provide a stable mechanism for doing business, but on the other hand, they can limit states' ability to adopt public interest regulations, such as those related to environmental protection, public health or labour rights⁹.

This grey area largely stems from the lack of harmonisation between different legal regimes. While some states and international organisations, such as the EU, are striving to reform ISDS mechanisms to incorporate principles of sustainability and transparency, others maintain traditional arbitration structures, which often favour large

⁸ Yacoub, Amin R. 2024. 'Bridging the Gap between International Investment Law and Human Rights.' Hofstra Law Review 52 (65). Accessed February 12, 2025. Available at SSRN: <https://ssrn.com/abstract=4297513> or <http://dx.doi.org/10.2139/ssrn.4297513>.

⁹ Klein, Nicolas. 2012. 'Human Rights and International Investment Law: Investment Protection as Human Right?' Goettingen Journal of International Law 4 (1): 179–195. Accessed February 12, 2025. <https://doi.org/10.3249/1868-1581-4-1-klein>.

corporations and create obstacles for sovereign national policies. Another major issue is regulatory uncertainty. Many investment treaties contain vague provisions, such as ‘fair and equitable treatment’ or ‘indirect expropriation’, which allow for subjective interpretations by arbitral tribunals, leading to inconsistent rulings. This regulatory gap creates fertile ground for strategic litigation, where parties can utilise ISDS mechanisms to challenge measures related to combating climate change¹⁰.

At the same time and on the same grey area terrain, international investment regulations are failing to keep pace with new technological realities, such as digital investments and the use of artificial intelligence in business processes¹¹. The absence of clear norms on digital sovereignty and data protection within ISDS creates legal risks and potential jurisdictional conflicts, even among states.

Although the UN Treaty on Business and Human Rights has not been addressed in the pages of this issue, it will be the subject of an in-depth analysis in the next edition of the *International Investment Law Journal*. Whether a final version will be reached is of significant importance not only for the entire business environment but also for international investments. While there is potential for normative clarification, the real exit from the grey area will ultimately depend on the ability of this instrument (as well as others that are yet to be established or revised) to effectively integrate concrete obligations and monitoring mechanisms applicable not only to states but also to transnational corporations.

If it succeeds in imposing clear standards and effective accountability mechanisms, the treaty could reduce legal uncertainties and prevent abuses. Yet, if it remains a general normative text without enforceable power, it risks becoming merely a declaration of intent, perpetuating the ambiguities that weaken the current international investment regime. We will continue to examine these issues in future editions.

Thus, this grey area is not merely a matter of legislative voids but also of overlaps, inconsistencies, and conflicts between multiple legal regimes, policies, or regulatory initiatives.

3. Conclusions

This edition of the *International Investment Law Journal* explores the diversity of challenges faced by international investment law, positioned at the intersection of power and responsibility, profit and justice. The current regime, built on the promise of stability, appears to oscillate between protecting financial interests and the necessity of respecting state sovereignty and fundamental human rights. If investment protection is perceived as a guarantee of development, how can it be reconciled with the right of states to regulate in the common interest? If international justice provides a forum for dispute resolution, who ensures that the balance between capital and society remains

¹⁰ Diamond, Nicholas J., and Kabir A. N. Duggal. 2025. ‘2024 Year in Review: Human Rights and ISDS – Continued Convergence of Human Rights and the Environment.’ Kluwer Arbitration Blog, January 30, 2025. Accessed February 12, 2025. <https://arbitrationblog.kluwerarbitration.com/2025/01/30/2024-year-in-review-human-rights-and-isds-continued-convergence-of-human-rights-and-the-environment/>.

¹¹ See for some interesting details Popa Tache, Cristina Elena, and Cătălin-Silviu Săraru. 2024. ‘Evaluating Today’s Multi-Dependencies in Digital Transformation, Corporate Governance and Public International Law Triad.’ *Cogent Social Sciences* 10 (1). Taylor & Francis. Accessed February 12, 2025. <https://doi.org/10.1080/23311886.2024.2370945>.

equitable?

Investors – actors with quasi-sovereign rights – and traditionally sovereign states find themselves entangled in the same dilemma, one that is not merely legal but also ontological: what kind of international order do we genuinely aspire to for today and for the future?

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