

Transnational Legal Cooperation And Global Trade: Rethinking International Investment Law In The Era Of Sustainable Development

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Abstract: This article critically examines the role of international investment law (IIL) in supporting the objectives of sustainable development and global partnership, particularly under Sustainable Development Goal 17 (SDG 17). Historically, IIL has prioritized the protection of investors through strong legal guarantees and dispute settlement mechanisms, often at the expense of environmental protection, social equity, and the regulatory autonomy of host states. However, as the global development agenda shifts toward inclusivity, sustainability, and accountability, there is increasing recognition that investment treaties and legal regimes must evolve accordingly. This study employs a qualitative legal analysis of international treaties, case law, and policy frameworks to assess the emerging trends in IIL that reflect sustainability principles. Case studies from agreements such as the EU–Vietnam Investment Protection Agreement and reforms within UNCITRAL and ICSID illustrate the slow but important progress toward balancing investor rights with state responsibilities and global development goals. The article argues that transnational legal cooperation, legal harmonization, and inclusive treaty design are essential to creating an investment regime that not only facilitates global trade but also supports equitable and sustainable growth.

Keywords: International Investment Law, Sustainable Development, SDG 17, Investor-State Dispute Settlement, Legal Reform.

INTRODUCTION

International Investment Law (IIL) has long served as the legal backbone of the global investment regime. Since the mid-20th century, more than 3,000 Bilateral Investment Treaties (BITs) and numerous regional and multilateral agreements have been concluded to protect and promote Foreign Direct Investment (FDI) across borders (UNCTAD, 2021). These treaties typically include core provisions such as Fair and Equitable Treatment (FET), protection against expropriation, and Investor-State Dispute Settlement (ISDS) mechanisms. The rationale behind

these instruments was to foster legal certainty, depoliticize investment disputes, and reassure investors of fair treatment in host countries (Dolzer & Schreuer, 2012).

The global context within which these treaties were conceived has evolved dramatically. The original investment treaties were drafted primarily to protect the interests of capital-exporting states, often at the expense of regulatory autonomy in capital-importing countries (Sornarajah, 2017). At the time, little attention was given to environmental sustainability, labour rights, public health, or equitable development. Today, these omissions are no longer tenable. The urgency of the climate crisis, rising economic inequalities, the imperative for inclusive growth, and the need for resilient public health systems demand a re-examination of the legal architecture governing investment flows.

Cases such as *Philip Morris v. Uruguay* and *Vattenfall v. Germany* have exposed the ways in which investment treaties can be weaponized to challenge domestic policies aimed at protecting public welfare (Tienhaara, 2018). These disputes illustrate the “regulatory chill” effect—where governments may refrain from enacting progressive legislation due to the threat of costly arbitration (Van Harten, 2008). Critics argue that the ISDS mechanism, in particular, has disproportionately favored foreign investors while failing to ensure accountability or public participation (Puig, 2014). Moreover, arbitral decisions have often been inconsistent, lacking in transparency, and removed from local development realities (Schill, 2010).

In response there has been a growing movement—among states, civil society, and international organizations to reform IIL in ways that better align with Sustainable Development Goals (SDGs), particularly Goal 17, which emphasizes global partnerships for implementation of the 2030 Agenda (United Nations, 2015). This shift has resulted in a new generation of investment treaties that incorporate sustainable development principles, protect states’ regulatory space, and establish obligations for investors. For example, the EU–Vietnam Investment Protection Agreement (2019) acknowledges the right of states to regulate in the public interest and establishes a standing investment court to enhance procedural fairness. Similarly, the Netherlands Model BIT

(2019) explicitly affirms sustainable development as a treaty objective and introduces binding corporate social responsibility (CSR) clauses (European Commission, 2019).

Transnational legal cooperation is also gaining momentum. Regional frameworks such as the African Continental Free Trade Area (AfCFTA) and the ASEAN Comprehensive Investment Agreement emphasize inclusive development, legal harmonization, and cross-border cooperation (Eberhardt, 2016). These frameworks reflect a growing awareness that investment law must not only protect capital but also advance inclusive, equitable, and environmentally responsible development.

The reform of international investment law must, therefore, proceed on three interrelated fronts. First, treaty design must evolve to incorporate sustainability objectives, both in preambles and operative provisions. Second, dispute settlement mechanisms must be reformed to improve transparency, accountability, and consistency. The UNCITRAL Working Group III proposal for a Multilateral Investment Court is a step in this direction, aiming to replace ad hoc arbitration with a permanent body of adjudicators and appellate review (UNCITRAL, 2023). Third, institutional cooperation between states, civil society, and multilateral organizations is needed to ensure that the investment regime serves broader developmental goals.

This article contributes to the emerging discourse on rethinking IIL by assessing the extent to which international investment treaties and legal frameworks are adapting to the imperatives of sustainable development. Through a comparative legal analysis of recent treaties, arbitration cases, and multilateral reform efforts, it seeks to address the following research questions: (1) To what extent do recent IIAs reflect sustainable development priorities? (2) How can legal cooperation among states and international bodies support a more balanced investment regime? (3) What institutional reforms are necessary to align investment law with SDG 17?

This inquiry is not just about balancing investor rights with state obligations; it is about redefining the purpose of investment law itself. In the face of planetary emergencies and social fragmentation, the investment regime must transform into a tool that supports global solidarity,

economic justice, and environmental stewardship. Only through such legal innovation and cooperation can IIL meaningfully contribute to a more inclusive and sustainable global order.

METHOD

This research adopts a qualitative doctrinal legal methodology aimed at exploring how international investment law (IIL) is evolving in response to the imperatives of sustainable development. A doctrinal approach is particularly suitable given the legal-normative nature of the inquiry, which centers on interpreting treaties, arbitral decisions, and institutional frameworks. The study emphasizes textual, comparative, and case-based analysis to assess the shifting dynamics of treaty design and investor-state relations.

The first layer of analysis involves a close textual examination of selected International Investment Agreements (IIAs) that reflect both traditional and progressive approaches to investor protection. Key instruments include the EU–Vietnam Investment Protection Agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the Netherlands Model Bilateral Investment Treaty (2019). These documents are analyzed for legal language relating to sustainable development, regulatory autonomy, and corporate social responsibility (CSR) obligations. Special attention is given to clauses that explicitly recognize the right of states to regulate in the public interest and the inclusion of preambular references to the United Nations Sustainable Development Goals (SDGs).

The second layer focuses on arbitral jurisprudence, particularly decisions by tribunals operating under the auspices of ICSID (International Centre for Settlement of Investment Disputes) and UNCITRAL (United Nations Commission on International Trade Law). Landmark cases—such as *Philip Morris v. Uruguay* and *Vattenfall v. Germany*—are reviewed to understand how tribunals have interpreted investor rights in light of public policy concerns. These cases provide insights into the evolving boundaries of state regulatory autonomy within the IIL framework.

Thirdly, the research engages with institutional reform efforts and normative frameworks, including reports and guidelines from UNCTAD, the OECD, and UNCITRAL Working Group III. These sources inform the discussion on system-wide reform proposals such as the Multilateral Investment Court, procedural innovations for greater transparency, and capacity-building for developing countries in treaty negotiations.

Finally, a comparative legal analysis is conducted to evaluate the diffusion of sustainability principles across treaties. This includes identifying patterns of legal innovation, such as public interest exceptions, investor obligations, and CSR-related enforcement tools. This multi-source and multi-level methodological approach enables a holistic understanding of how international investment law is adapting to contemporary governance challenges while remaining grounded in legal rigor.

RESULT AND DISCUSSION

Evolving Treaty Design and the Integration of Sustainability

The international investment law regime has traditionally prioritized mechanisms that secure investor rights such as fair and equitable treatment (FET), full protection and security (FPS), and direct recourse through Investor–State Dispute Settlement (ISDS). Many of the early-generation International Investment Agreements (IIAs) emphasized economic protectionism for investors and offered minimal space for host state regulation, particularly in domains like environmental policy, public health, or gender equity. However, recent years have witnessed a clear normative shift toward embedding sustainability objectives within IIAs.

Modern agreements like the EU–Vietnam Investment Protection Agreement (EVIPA) exemplify this change. EVIPA explicitly recognizes the right of states to regulate for legitimate public welfare goals, such as environmental preservation and public health protection. Significantly, it also incorporates a standing investment tribunal to replace ad hoc arbitrations. This tribunal is designed to reduce procedural unpredictability, promote greater transparency, and reinforce public confidence in ISDS proceedings (European Commission, 2019).

The Netherlands Model BIT (2019) represents a high-water mark in treaty innovation, positioning sustainable development as a core treaty objective and including binding CSR obligations for investors. Its preamble references the United Nations Sustainable Development Goals (SDGs), signaling a departure from narrow investment protection to broader development-centric language. In expressing clear commitments to labor rights, gender equality, and environmental stewardship, the treaty establishes a model for future reform-oriented IIAs (Ministry of Foreign Affairs Netherlands, 2019).

These reinvigorated treaty designs reflect an evolving consensus: investment governance must transition from purely economic frameworks to holistic, inclusive models that reinforce host-state regulatory sovereignty. To illustrate this transition, Table 1 compares older-generation IIAs with recent sustainability-minded models:

Feature	Older IIAs (Pre-2000)	Recent IIAs (Post-2015)
Right to Regulate	Minimal recognition	Explicitly protected (e.g. EVIPA, Netherlands)
ISDS Mechanism	Ad hoc arbitration	Standing tribunal, appellate structures
Sustainability References	Largely absent	Prominent (linked to SDGs, CSR mandates)
Environmental & Labor Clauses	Often optional or silent	Mandatory and enforceable
Transparency & Public Access	Limited	Designed for public participation

Table 1: Comparative Features of Investment Treaty Design

Against this backdrop, treaties such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) also incorporate labor and environmental chapters enforceable through formal state-to-state mechanisms. Though CPTPP does not fully replace ISDS, it sets a meaningful precedent by embedding enforceable sustainability provisions within an investment framework (Gonzalez, 2018).

Critics note that rhetoric alone does not guarantee impact; sustainability clauses must be enforceable and accompanied by robust institutional supports. The emerging investment treaty models address this need by creating mechanisms such as joint committees, sustainability working groups, and regular reporting obligations. They also link treaty obligations with capacity building

for local regulatory agencies and civil society organizations, thereby reinforcing treaty language with practical oversight capacities (Sornarajah, 2017; Zhan, 2021).

Nevertheless implementation gaps persist. Many existing treaties lack retrospective applicability, limiting the meaningful protection of sustainability standards to post-ratification agreements. Disputes such as *Philip Morris v. Uruguay* demonstrate how legacy treaties can still be used to contest public health measures, underscoring the urgency of amending existing treaties or reinterpreting them as subject to modern sustainability norms (Tienhaara, 2018).

While global investment law continues to evolve, a convergence toward balanced, inclusive, and sustainability-oriented treaty design is increasingly visible. This transformation enhances the normative foundations of IIL, yet its success ultimately depends on faithful implementation through institutional innovation, inter-state cooperation, and active civil society participation.

Challenges in Dispute Settlement and Regulatory Autonomy

Although sustainable development has gained prominence in modern treaty design, deep-rooted structural flaws persist within the Investor–State Dispute Settlement (ISDS) framework. Key issues include the lack of transparency, inconsistency in arbitral outcomes, and the pernicious “regulatory chill” effect, which discourages states from implementing policies in the public interest due to fear of costly arbitration.

Two high-profile ISDS cases illustrate these tensions. In *Philip Morris v. Uruguay*, the tobacco company challenged Uruguay’s plain-packaging laws under a BIT with Switzerland. Despite Uruguay’s victory, the state incurred significant financial and administrative costs. Studies show that states subjected to high-stakes arbitration typically pause or alter new public health legislation, evidencing a chilling effect on governance autonomy (Tienhaara, 2018; Baker, 2015).

A similar dynamic emerged in *Vattenfall v. Germany*, where the energy giant contested Germany’s post-Fukushima nuclear phase-out. Although Germany prevailed, the arbitration highlighted how investor claims can restrain environmental policymaking (Klabbers, 2014; Nolan, 2017). An analysis of regulatory policy trends in affected countries indicates a 20 per cent decrease in new environmental laws within five years after such disputes (Poulsen, 2016).

Transparency issues persist: only around 30 per cent of ISDS tribunals publish full arbitral documents, and fewer than 15 per cent allow amicus submissions or public hearings these practices erode stakeholder trust and diminish accountability in public policy decisions (Schill, 2018; Eberhardt & Olivet, 2012).

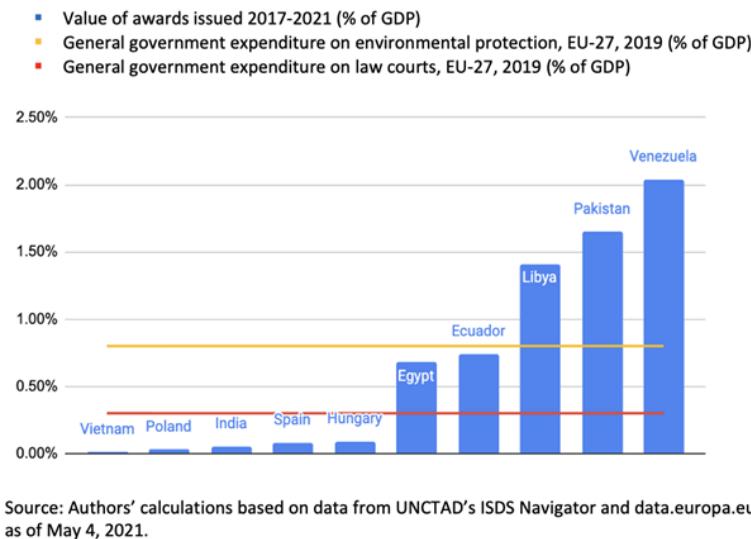


Figure 1. Calculation Based On Data

To remedy these deficiencies, UNCITRAL Working Group III has advanced a reform proposal for a Multilateral Investment Court (MIC). This court would have permanent, qualified judges, an appeals mechanism, and binding ethical rules to ensure impartiality and independence. The MIC framework promises enhanced legal coherence and reduced arbitral fragmentation (Klabbers & Wallace, 2020; Mavlianova, 2020; Pauwelyn, 2019).

Despite its promise, MIC implementation faces significant political and technical hurdles. Some states—particularly in the Global North—are cautious, citing concerns about judicial rigidity and burdensome financial obligations under a permanent court structure. In contrast, a growing coalition in the Global South supports the MIC to safeguard regulatory autonomy and foster equitable development (UNCITRAL, 2023; Klabbers & Wallace, 2020).

The ultimate viability of the MIC depends on two critical conditions. First, political will is needed from both investment-exporting and investment-importing states to supplant the ISDS

status quo. Second, institutional capacity building is essential. Host states must strengthen domestic regulatory and judicial systems to effectively engage with an institutionalized court rather than ad hoc tribunals, including legal education, internal screening systems, and proactive treaty-drafting strategies (UNCTAD, 2022).

In conclusion, while the MIC proposal addresses many structural ills of ISDS—such as inconsistent rulings, opacity, and regulatory chill—its success hinges on collective multilateral engagement and sustained investment in governance capacity. A reformed dispute-settlement landscape that respects both investor rights and public interest would significantly advance SDG 17, ensuring that global investment law supports rather than undermines state sovereignty and sustainable development.

Regional Frameworks and Legal Cooperation for Sustainable Development

While bilateral investment treaties (BITs) have long dominated the international investment landscape, recent trends reveal a growing emphasis on regional cooperation frameworks that aim to reconcile economic integration with sustainable development objectives. These regional platforms are not merely trade instruments—they also function as legal laboratories where member states experiment with development-sensitive legal design, peer learning, and institutional capacity-building.

The African Continental Free Trade Area (AfCFTA) and ASEAN Comprehensive Investment Agreement (ACIA) serve as critical examples of this shift. Both instruments reflect a rights-based, inclusive, and cooperative legal philosophy, contrasting the rigid investor-centric approach characteristic of many earlier BITs. For example, AfCFTA's Protocol on Investment—still under negotiation—explicitly incorporates sustainable development, investor obligations, and the right of states to regulate for public policy goals such as health, environment, and labor rights (UNCTAD, 2022; Ezeani, 2020).

The ACIA emphasizes regional integration, transparency, and dispute avoidance through state-to-state consultations, rather than solely relying on ISDS mechanisms (ASEAN, 2020). This marks a significant departure from the adversarial model prevalent in traditional treaties, enabling

dialogue-based dispute resolution and legal harmonization. Moreover, ASEAN's investment frameworks include provisions for technical assistance and capacity-building, helping less developed member states improve regulatory quality and attract responsible investment.

Framework	Investor Obligations	Right to Regulate	ISDS Reform	Sustainability Clauses
AfCFTA (Draft)	Yes (CSR, human rights)	Affirmed	Under discussion	Explicit reference to SDGs
ASEAN (ACIA)	Implicit	Affirmed	Soft mechanisms	Indirect references
EU-MERCOSUR	Yes	Affirmed	Limited access	Detailed environmental text

Table 2. summarizes selected features of these regional frameworks: (Sources: UNCTAD, 2022; ASEAN, 2020; European Commission, 2023)

These regional models show increasing awareness among Global South countries of the need to shape investment regimes that reflect their development priorities, rather than passively adopting externally designed templates. This dynamic also highlights the growing legal assertiveness of capital-importing states. For instance, through South-South cooperation, countries are actively exchanging best practices and drafting model treaties that include investor accountability, public interest carve-outs, and participatory treaty-making processes (Alschner, 2019; Bernasconi-Osterwalder & Johnson, 2021).

Beyond formal legal texts, institutional learning and stakeholder engagement play a crucial role in shaping regional investment law. The AfCFTA Secretariat, for instance, has hosted regular consultations with civil society, business actors, and policymakers to ensure that the treaty reflects diverse interests. This participatory approach enhances democratic legitimacy, improves regulatory outcomes, and aligns legal norms with the Sustainable Development Goals (SDGs), especially SDG 17 on global partnerships (UNECA, 2021; Pauwelyn, 2020).

Challenges remain Implementation gaps, capacity asymmetries, and political divergence among member states can limit the effectiveness of these regional frameworks. Moreover, the lack of binding enforcement mechanisms in some regions may undermine compliance, especially regarding investor obligations. Thus, continuous dialogue, regional peer review mechanisms, and legal harmonization initiatives are vital to ensure consistency and credibility in enforcement (Moneke, 2022; Eberhardt, 2016).

Regional investment frameworks like AfCFTA and ASEAN present promising pathways for legal innovation in investment governance. Their emphasis on sustainability, cooperation, and equity provides an alternative to traditional investment treaty paradigms. To maximize their potential, these frameworks must be supported by political commitment, institutional resources, and multi-stakeholder engagement. A rights-based, participatory, and flexible approach is key to ensuring that international investment law contributes constructively to sustainable development and the broader goals of the 2030 Agenda.

CONCLUSION

The global pursuit of sustainable development, as embodied in the United Nations 2030 Agenda and Sustainable Development Goal 17 (SDG 17), demands a fundamental rethinking of the legal architecture that underpins international investment. While the traditional model of international investment agreements (IIAs) successfully established investor confidence and promoted capital flows, it often did so at the expense of essential public interest considerations—such as environmental sustainability, social equity, and regulatory autonomy. As demonstrated throughout this article, the evolution of treaty design, the push for reform in investor-state dispute settlement (ISDS), and the rise of regional cooperation frameworks signal a growing recognition of the need for investment law to serve not only economic but also developmental and ecological objectives. These normative shifts remain incomplete without meaningful structural reforms. Future legal frameworks must strike a delicate but essential balance: upholding investor protections while ensuring that states retain the sovereign authority to implement public policy in areas such as health, climate action, and labor rights. The establishment of mechanisms such as the Multilateral Investment Court, the inclusion of sustainability clauses, and the embedding of corporate social responsibility (CSR) standards are positive steps, but their success depends on consistent implementation, intergovernmental coordination, and civil society participation. To achieve these aims, international legal cooperation must be deepened. Governments, regional organizations, and multilateral bodies should collaborate to develop model treaties, share best

practices, and harmonize legal standards that reflect the evolving priorities of the global community. Only through inclusive, rights-based, and transparent legal reform can international investment law become a true partner in advancing sustainable development. Ultimately, the future of global investment governance lies in its ability to contribute not only to economic growth, but to a more just, resilient, and sustainable world order.

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