



ALMA MATER STUDIORUM  
UNIVERSITÀ DI BOLOGNA



REFORMING THE GLOBAL ECONOMIC GOVERNANCE:  
THE EU FOR SDGS IN INTERNATIONAL ECONOMIC LAW



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# International Investment Law and Climate Change

**Carlo de Stefano - Roma Tre University**



**03 April 2023 - University of Bologna**

**Introductory Remarks and Discussant:  
Prof. Elisa Baroncini, University of Bologna**

**START**

**9.00 am - 11.00 am**

**Aula L Belmeloro,  
Second Floor,  
Via Beniamino Andreatta, 8  
Bologna**



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# International Investment Law and Climate Change

International investment agreements (“IIAs”) may protect in principle every kind of foreign direct investment (“FDI”), including “brown” and “green” FDI. This means that potentially polluting multinational enterprises may be protected by IIAs and benefit from the right to sue States for the enactment of measures adopted in furtherance of climate change action through investor-State dispute settlement (ISDS). While this is not preferable under a policy perspective, various legal techniques may provide important “entry points” through which the *lex climatica* – international climate change treaties, such as the United Nations Framework Convention on Climate Change (UNFCCC) of 9 May 1992 and the Paris Agreement of 12 December 2015, and implementing municipal laws – may be successfully integrated in the *lex mercatoria* – IIAs. Such techniques pertain to investment treaty drafting (recognition of the States’ right to regulate, general exceptions, express environmental carve outs and provisions establishing investors’ commitments), procedural issues (jurisdictional requirements, admissibility filters and viability of States’ counterclaims) and substantive matters (treaty interpretation and applicable laws). Notably, IIAs must be interpreted pursuant to systemic integration as required by Article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT) pursuant to which “any relevant rules of international law applicable in the relations between the parties” “shall be taken into account”. As a result, multilateral treaties addressing climate change do constitute an hermeneutic basis against which adjudicators may assess the breaches of economic treaties under international law. In this respect, the most relevant international instrument appears to be the Paris Agreement with its 196 States membership. The domestic implementation by States of their nationally determined contributions (NDCs) required periodically under Article 4 of the Paris Agreement may provide a parameter of legality of States’ climate change inaction, which would then result to be inconsistent with the applicable IIAs. The recent stipulation of multilateral commitments addressing climate change is relevant also under the lens of dispute resolution. In this respect, the “teeth” provided by IIAs and ISDS to implement the investors’ rights granted by the Parties may be instrumental also to the enforcement of climate change action commitments (in the absence of an arbitration or submission agreement pursuant to Article 24 of the Paris Agreement and Article 14 of the UNFCCC). In this scenario, ISDS may be resorted to by “green” investors to request an international investment tribunal or court to sanction a possible failure by a State in the implementation of binding climate change action.



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Carlo de Stefano is Assistant Professor of International law at the Department of Law of Roma Tre University. He has earned a Ph.D. in International Law and Economics at the Bocconi University of Milan (2016). During his doctoral studies he has been a visiting scholar at the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law (2015), junior visiting fellow at the Graduate Institute for International and Development Studies (IHEID) of Geneva (2015) and visiting researcher at Yale Law School (2014).

He has been lecturer and post-doc researcher in international law at Roma Tre University (since 2016) and post-doc visiting scholar at the Max Planck Institute for Comparative Public Law and International Law of Heidelberg (2017), at the Department of Law of the Catholic University of the Sacred Heart of Milan (2018), at the Department of European, International and Comparative Law of the University of Vienna (2022) and at the Lauterpacht Centre for International Law (LCIL) of the University of Cambridge (Brandon Research Fellowship 2023). He has also been lecturer and research tutor for the Master of Laws in International Trade Law of the International Training Centre (ITC) of the International Labour Organization (ILO) in Turin. Carlo is involved in the international arbitration practice, as counsel as well as administrative secretary of arbitral tribunals. His book “Attribution in International Law and Arbitration” (2020) was published by Oxford University Press.



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