

Re-Globe Seminar Series
University of Bologna

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and Sustainability Studies
(CLASS)

Climate Neutrality in International Investment Law

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Outline

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I. Introduction

II. Climate Change Law

III. International Investment Law

IV. Emerging discourse on IIL and CCL

V. Reform of international investment law

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International Climate Regime

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Necessary international cooperation

- Harmonised policies to fight climate change
 - Climate change has no borders
 - Intra- and inter-generational equity

UN Climate Regime

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1992

UN Framework
Convention on
Climate Change

2007

Kyoto Protocol

2015

Paris Agreement

UN Framework Convention on Climate Change / UNFCCC

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- Signature in 1992
 - Framework Convention for the Protection of the Ozone Layer (Vienna, March 22, 1985) – success story
 - 1st report IPCC – scientific basis
 - UN General Assembly resolution 45/212 of 21 December 1990 – basis for the negotiation process
- Entered into force in 1994
- 197 parties

UN Framework Convention on Climate Change / UNFCCC

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ARTICLE 2

OBJECTIVE

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, **stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.** Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

Principle of intergenerational equity

Principle of common but differentiated responsibilities (art . 3-1)

The Parties should protect the climate system **for the benefit of present and future generations** of humankind, on the basis of equity and in accordance with their **common but differentiated responsibilities and respective capabilities**. Accordingly, the **developed country Parties should take the lead** in combating climate change and the adverse effects thereof.

Precautionary principle (art.3-3)

...Where there are threats of serious or irreversible damage, **lack of full scientific certainty should not be used as a reason for postponing such measures**, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost...

Principle of sustainable development (art . 3-4)

4. The Parties **have a right to**, and should, promote **sustainable development**. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that **economic development** is essential for adopting measures to address climate change.

Obligations of the parties – three levels

- Obligations imposed **on all parties**: national inventories of emissions, reduction of emissions (art. 4.1); obligations to collect and communicate information (art. 12.1);
- Obligations imposed **only on developed States and States in transition** ("Parties included in Annex I"): reduction of emissions (art. 4.2 and art. 4.6 with regard to the flexibilities granted to States in transition); communication of additional information (art. 12.2);
- Obligations in matters of assistance imposed **only on developed States** ("Parties included in Annex II") (arts. 4.3, 4.5 and 12.3), in addition to the obligation to be at the forefront of the fight against climate change and its harmful effects

Kyoto Protocol

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- Signature in 1997
 - Art.17UNFCCC
 - Berlin Mandate (1995) (states in Annex 1 of the UNFCCC)
- Entered into force in 2005
 - According to art. 25(1) of the Protocol: ‘this Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55% of the total CO2 emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification... ‘

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Reduction obligations

- Time-bound targets (2 periods, 2008-2012, 2012-2020)
- Application of the principles of "common but differentiated responsibilities" and of "historical responsibility"
- **GHG emissions reduction obligations: only for the 38 industrialized countries + European Community** (Annex B), GHG (6), sectors
- 39% of global GHG emission, USA did not ratify, Canada withdrew
- 3 flexible mechanisms:
 - Art. 6 Joint implementation
 - Art. 12 Clean Development Mechanism
 - Art. 17 Emission Trading

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Article 3

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

Annex B

Party	Quantified emission limitation or reduction commitment (percentage of base year or period)
Australia	108
Austria	92
Belgium	92
Bulgaria*	92
Canada	94
Croatia*	95
Czech Republic*	92
Denmark	92
Estonia*	92
European Community	92
Finland	92
France	92
Germany	92

Paris Agreement

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- Signature in 2015
 - Decision of the COP 21 (decision 1/CP.21) + the Paris Agreement in annex
- Entered into force on 4 November 2016
- After being ratified by at least 55 states representing 55% of GHG emissions
- Now 195 countries have signed it (around ten less have ratified it)
- Quantified targets (temperature increase, long-term target of balance)
- Global stocktake 2023

Paris Agreement's objectives

Article 2

This Agreement, in enhancing the implementation of the Convention, including its objective, **aims to strengthen** the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

- (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels,** recognizing that this would significantly reduce the risks and impacts of climate change;
- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.**

Paris Agreement – net zero

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Article 4

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim **to reach global peaking of greenhouse gas emissions as soon as possible**, recognizing that peaking will take longer for developing country Parties, and to **undertake achieve rapid reductions** thereafter in accordance with best available science, so as **to a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century**, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

....

Paris Agreement – NDCs – voluntary contributions

Article 4

2. Each Party shall prepare, communicate and maintain successive **nationally determined contributions that it intends to achieve**. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party's successive nationally determined contribution will represent **a progression** beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

....

9. 9. Each Party shall communicate a nationally determined contribution **every five years...**

Recent developments

- 2021 **Glasgow climate pact (UNFCCC)**

*Para 20 ‘ calls upon parties to accelerate ..the adoption of policies to transition towards low-emission energy system, ..including **accelerating efforts towards the phase-down of unabated coal power and phase-out of inefficient fossil fuel subsidies**, while providing .. support to the poorest and most vulnerable .. and recognizing the need for support **towards a just transition**’*

- 2021 **BOGA - Beyond Oil and Gas Alliance** (initiative for ‘controlled and managed oil and gas phase-out’)

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EU Climate neutrality objective

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EU climate objectives - European Climate Law / Regulation (EU) 2021/1119

9.7.2021

EN

Official Journal of the European Union

L 243/1

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2021/1119 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 June 2021

establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law')

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The existential threat posed by climate change requires enhanced ambition and increased climate action by the Union and the Member States. The Union is committed to stepping up efforts to tackle climate change and to delivering on the implementation of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (the 'Paris Agreement') ⁽⁴⁾, guided by its principles and on the basis of the best available scientific knowledge, in the context of the long-term temperature goal of the Paris Agreement.
- (2) The Commission has, in its communication of 11 December 2019 entitled 'The European Green Deal' (the 'European Green Deal'), set out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use. The European Green Deal also aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. At the same time, this transition must be just and inclusive, leaving no one behind.
- (3) The Intergovernmental Panel on Climate Change (IPCC) provides in its 2018 Special Report on the impacts of global warming of 1,5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, a strong scientific basis for tackling climate change and illustrates the need to rapidly step up climate action

⁽¹⁾ OJ C 364, 28.10.2020, p. 143, and OJ C 10, 11.1.2021, p. 69.

⁽²⁾ OJ C 324, 1.10.2020, p. 58.

⁽³⁾ Position of the European Parliament of 24 June 2021 (not yet published in the Official Journal) and decision of the Council of 28 June 2021.

⁽⁴⁾ OJ L 282, 19.10.2016, p. 4.

In pursuit of the **Paris Agreement 1.5°C temperature goal:**

- EU climate neutrality by **2050 at the latest**
- at least 55% net reduction by **2030** compared to 1990

European Climate Law / Regulation (EU) 2021/1119

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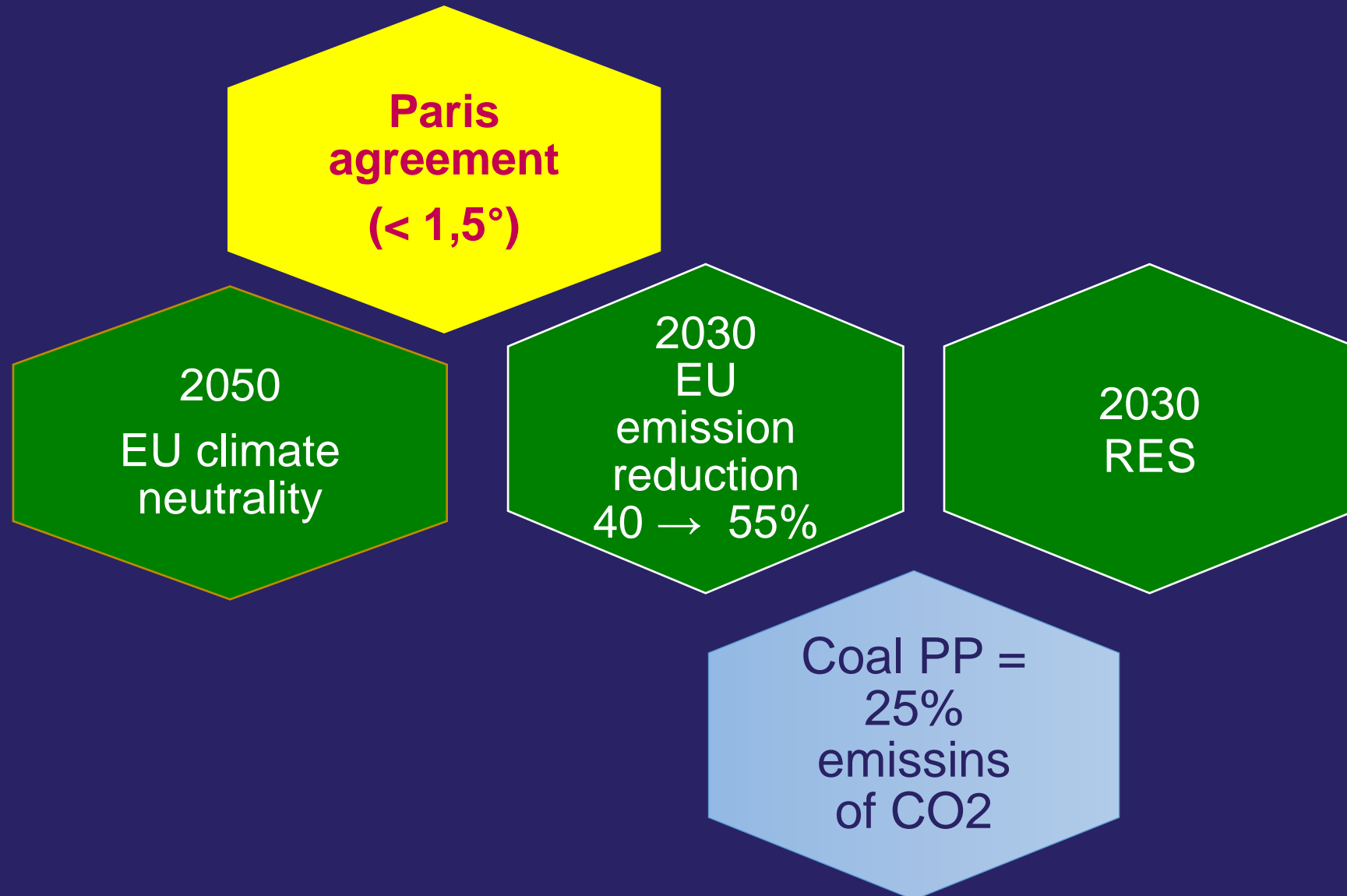
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Article 2

Climate-neutrality objective

1. Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter.
2. The relevant Union institutions and the Member States shall take the necessary measures at Union and national level, respectively, to enable the collective achievement of the climate-neutrality objective set out in paragraph 1, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective.

Climate goals



Premises

FF burning
80% emissions of
CO₂

↓ 6% p.a. 2020-
2030

↑ 2% p.a.
production

International Energy Agency “Net-Zero by 2050” Report:

- No investment in new fossil fuel supply projects from 2021 onwards
- Phase-out of unabated coal in advanced economies by 2030
- Phase-out of all unabated coal and oil power plants globally by 2040

Supply side policies:

- ❖ fossil fuel subsidy reform
- ❖ deadlines for coal phase-outs and for extraction of oil and gas
- ❖ moratoria on new coal, oil and gas exploration and production licenses
- ❖ divestment from fossil fuel holdings
- ❖ dismantling unnecessary infrastructure

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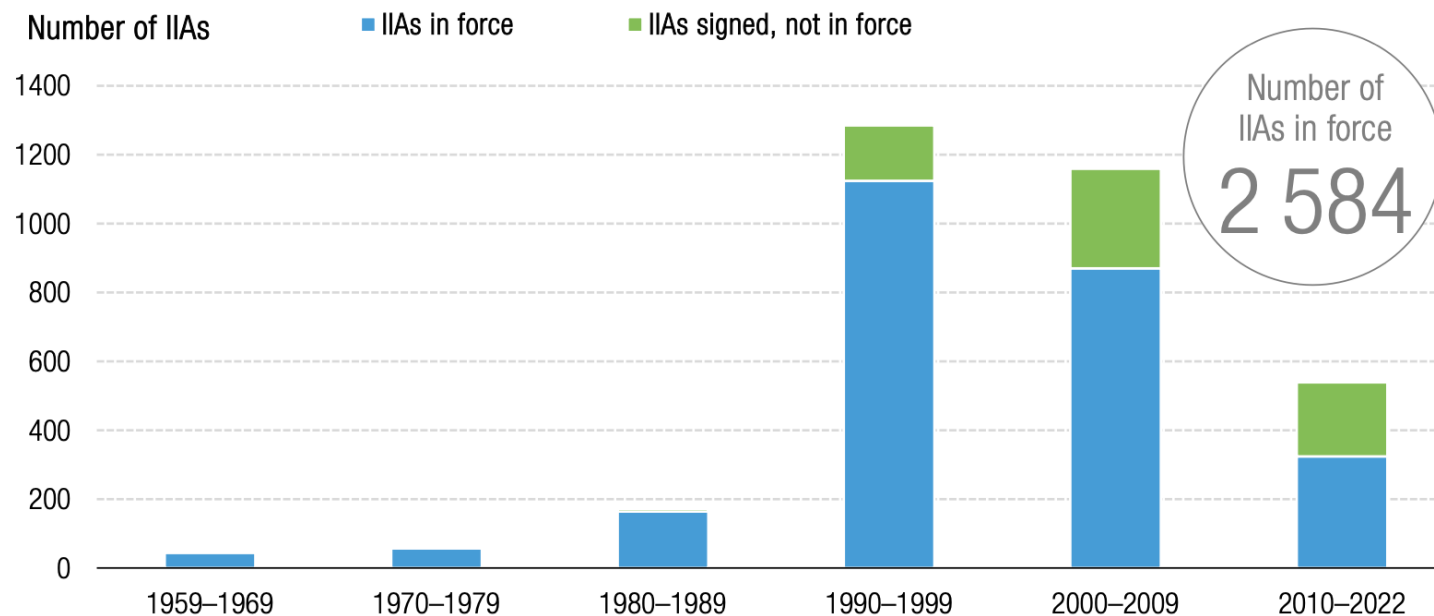
International investment law

International Investment Agreements

- **Bilateral investment treaties on protection of foreign investment**
 - Long duration + sunset clauses

- **Energy Charter Treaty, USMCA (ex-NAFTA)**

Figure 1. Stock of IIAs signed and in force, 1959–2022 (By date of signature)



Source: UNCTAD, [IIA Navigator](#).

Note: The figure does not include IIAs that were effectively terminated.

IAs

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- IIAs seek to create ‘favourable conditions’ or a ‘stable framework’ for investment, for **economic development**, by impose binding obligations on States under international law
- **treatment of foreign investment:**
 - a wide asset-based definition of investment;
 - guarantees of non-discrimination (national and most-favoured-nation treatment)
 - a minimum standard of treatment (‘fair and equitable treatment’, obligation not to impose arbitrary or discriminatory measures)
 - the right to transfer investments and profits out of the host state
 - compensation for measures tantamount to expropriation
 - Umbrella clauses (a state agrees to observe its commitments)
 - ISDS (investor-state dispute settlement)
- Pre-entry rights: access for foreign investment, prohibitions on performance requirements

International standards of protection of investment

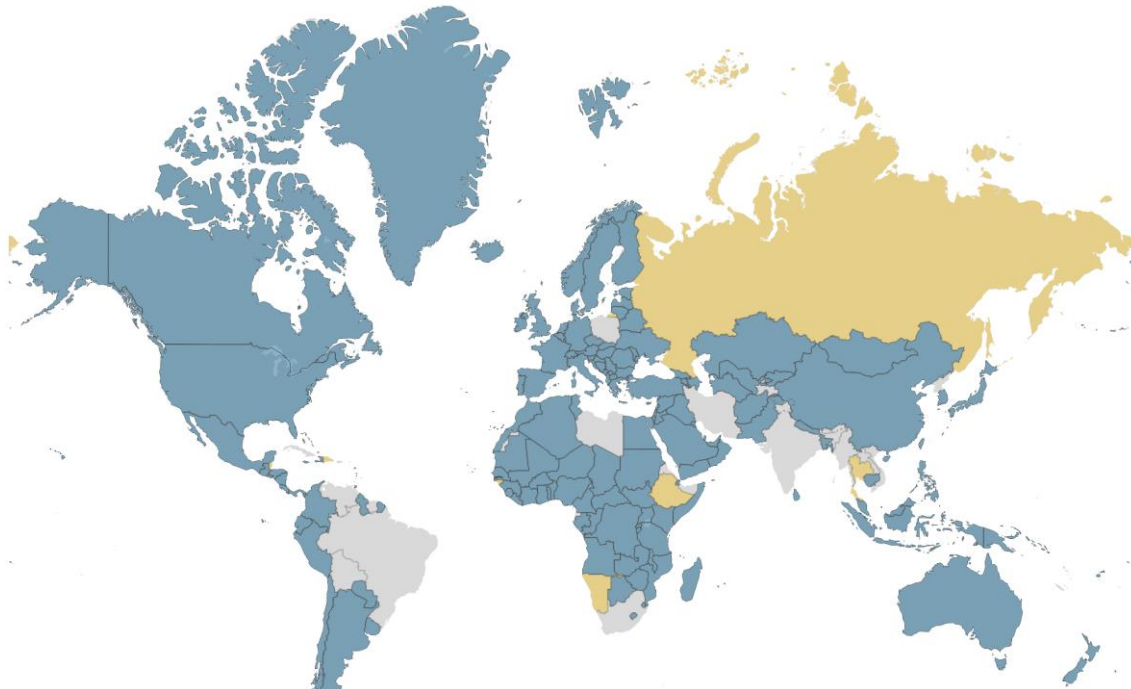
Substantive provisions:

- Expropriation
- Fair and equitable treatment (FET)
 - Transparency, stability
- National treatment, Most-favoured-nation treatment (MFN)
- Unreasonable and discriminatory measures
- Full protection and security

Procedural provisions:

- Investor-state dispute settlement (ISDS)
 - State's consent to arbitration / arbitration without privity
 - Direct access for foreign investors to international arbitration against host states
 - Ad-hoc arbitration (UNCITRAL, ICC, SCC)
 - ICSID (1965)

Contracting States to the ICSID Convention Signatory States to the ICSID Convention Non Member States



ICSID CONVENTION

CHAPTER II Jurisdiction of the Centre

Article 25

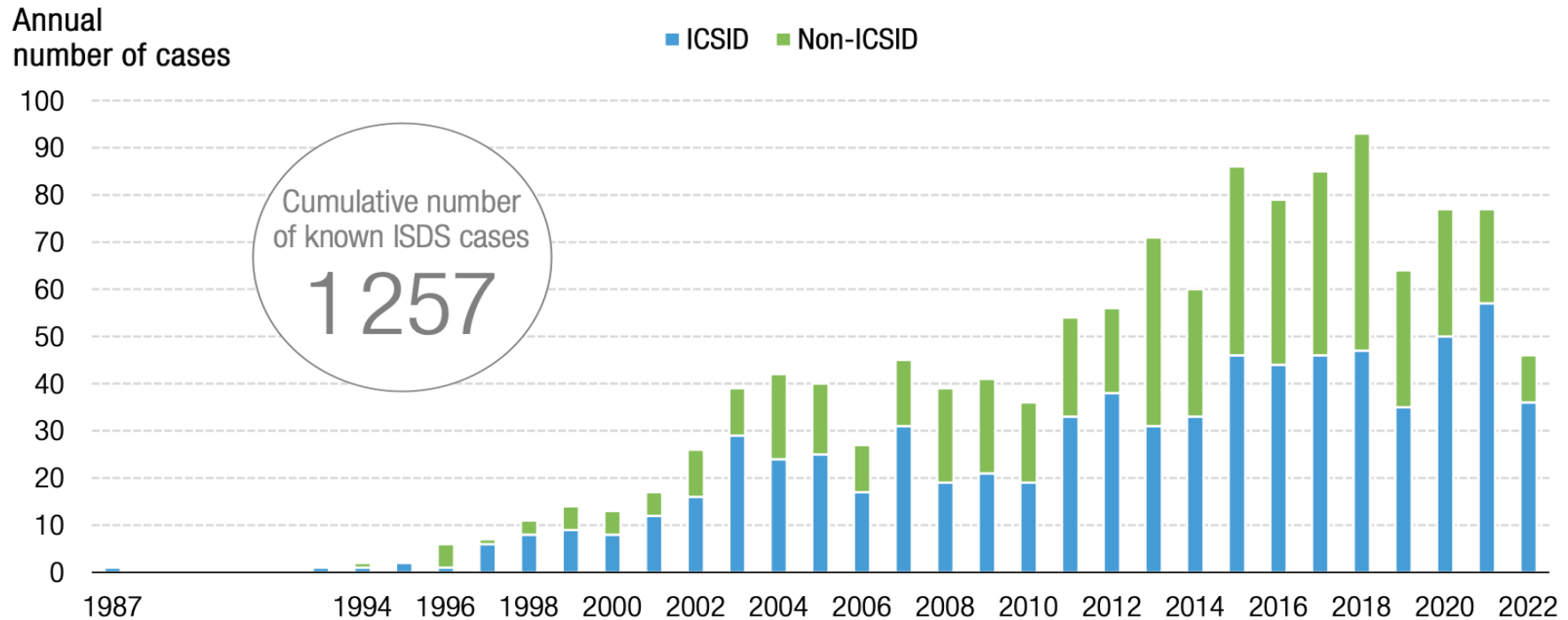
(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute **consent** in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

...

Article 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

Figure 5. Trends in known treaty-based ISDS cases, 1987–2022



Source: UNCTAD, [ISDS Navigator](#).

Note: Information has been compiled from public sources, including specialized reporting services. UNCTAD’s statistics do not cover investor–State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signalled its intention to submit a claim to ISDS but has not commenced the arbitration. Annual and cumulative case numbers are continually adjusted as a result of verification processes and may not match exactly case numbers reported in previous years.

Criticism of IIL

- Regulatory constraints
- Investor's rights without obligations
- ISDS



Why do countries conclude IIAs?

- Why limit regulatory policy space?
- Why protect foreign investors more than local?
- Why asymmetry between investor and host state claims?
- Why private dispute settlement mechanism?

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IIAs and climate change

International investment treaties impede transition

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AR6 Mitigation, TS-120:

IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change

29 may be hindering mitigation efforts, namely evidence that trade and investment agreements, as well as
30 agreements within the energy sector, impede national mitigation efforts (*medium confidence*).

International investment treaties impede transition

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Special Rapporteur on the promotion and protection of human rights in the context of climate change (A/77/226):

90. **With respect to mitigation, the Special Rapporteur on the promotion and protection of human rights in the context of climate change recommends that the General Assembly:**

- (b) **Recommend the repeal of the Energy Charter Treaty;**



Photo: UN

Modernisation that did not happen

- 24 June 2022 - **Agreement in Principle** reached on the modernised ECT



Brussels, 7.7.2023
COM(2023) 447 final

2023/0273 (NLE)

Proposal for a

COUNCIL DECISION

on the **withdrawal of the Union** from the Energy Charter Treaty

Climate change reasons for failure?

Commission: →

- Unmodernised ECT's applicability to intra-EU disputes
- Unmodernised ECT not in line with EU investment policy
- Unmodernised ECT not in line with EU energy and climate goals
- Modernised ECT is in line with Council's mandate

● This article is more than 10 months old

France becomes latest country to leave controversial energy charter treaty

Quitting the ECT, which protects fossil fuel investors from policy changes that might threaten their profits, was 'coherent' with Paris climate deal, Macron said

France
Germany
Poland
(Italy)

Energy | Climate Change

German parties agree to ratify CETA, quit energy charter

Reuters

November 11, 2022 8:49 PM GMT+1 · Updated 10 months ago



"The Energy Charter Treaty has proven itself in the past to be an obstacle for change," Habeck said.

Interaction between IIAs and climate change

- Colliding investors obligations and international climate law commitments?

Concerns:

- BITs rules on 'regulatory expropriation' might limit climate related measures or fossil fuel phase-outs
- BITs rules on FET might constrain state's policy space to adapt climate regulations
- BITs stabilization clauses limit new climate regulatory measures

Climate-related investment disputes

- **Fossil fuel ISDS cases**
- **Renewable energy ISDS cases**
- **Environmental permitting ISDS cases**

Fossil fuel cases: Phase-Out Lawsuits

‘The fact that many states have set targets to phase-out of fossil fuel power generation in the wake of the COP21 Paris Agreement on climate change and the COP26 summit in Glasgow is likely to lead to a growing number of claims from energy companies that have invested in fossil fuel power generation.’

(Int. Law Firm)

Uniper v Netherlands (ECT, 2021)

RWE v Netherlands (ECT, 2021)

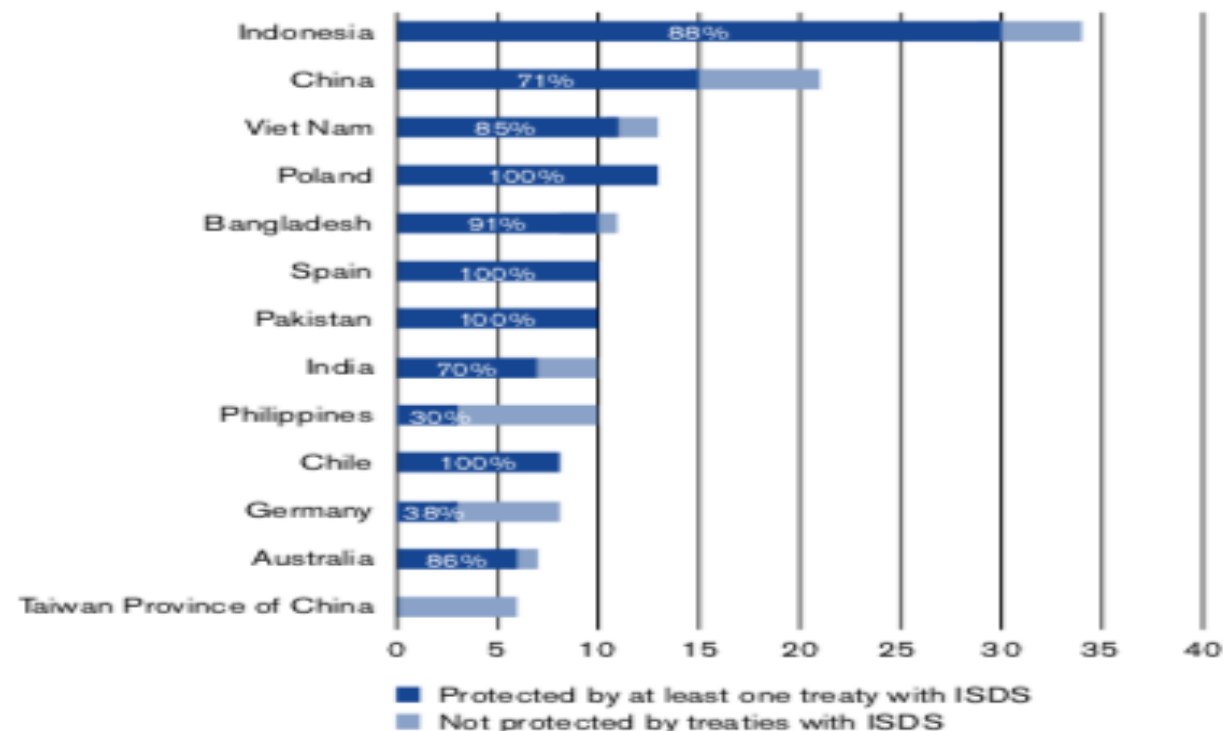
Westmoreland v. Kanada (II) (NAFTA, 2019) (dismissed) → discrimination, selective compensation

Coal power plants as a foreign investment

Study of International Institute for Environment and Development (2020):

- data on 257 foreign-owned coal power plants
- 75% protected by int. investment treaty with investor-state dispute settlement 51 ECT)

Figure 4. Number and percentage of foreign-owned coal plants protected by at least one treaty with ISDS, by host state



Coal Phase-Out in Europe



* V roce 2019 byla Velká Británie ještě členem EU.

Germany / nuclear phase-out

Domestic + Int. investment claims

Vattenfall AB and others (ECT, ICSID ARB 12/12)

- Settlement after 9 years for €2,4 billion
 - investor's claim approx. €3,2-5,7 billion, expropriation, FET
- 2011 decision on acceleration of nuclear phase out by 2022, 2002 initial decision + *Atomkonsens*, 2010 prolonged operational lifetimes, 2011 revocation (12 years less)

German Constitutional Court rulings:

- **2016:** the Amendment is **incompatible** with the Constitution “insofar as it did not include any provision for a settlement for **investments that were made in legitimate expectation** of the additional electricity output allowances allocated in 2010, but were devalued by the Amendment.”.. broad regulatory powers are not absolute, the **State is still obliged to preserve the legitimate expectations** of investors
- 2018 Amendment of Atomic Energy Act (compensation to be calculated in 2023)
- **2020:** conditions for compensation were still unclear

Netherlands / coal phase-out

Uniper v Netherlands (ECT, ICSID, 2021)

RWE v Netherlands (ECT, ICSID, 2021)

- three plants commissioned in 2015 and 2016 respectively
- governmental permits
- Investment decisions taken before the Paris Agreement
- built at the specific request of the Netherlands / importance placed on efficient coal plants to ensure continuity in the power supply during the country's energy transition
- X right to regulate

Dutch Coal Prohibition Act of 2019 :

- 3 phases → as from 1 January 2030 all coal plants will be prohibited
- compensation for the oldest plants (a 35% cap on carbon emissions resulting from the use of coal to generate electricity till 2024 - the legal regulation for this cap provides for a right to compensation)

Renewable energy cases



how can IIAs promote investor confidence and more sustainable investments ?

what protection do IIAs offer to investors in renewables?

Investment disputes – modification to support of RES

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	BIT	Cases	Investor	State
Czech Republic	CZ-DE, CZ-UK, ECT	7	1 ✓	6 ✓
Spain	ECT	46	20 ✓ ❖	3 ✓
Italy	ECT	10	2 ✓	3 ✓
Canada	NAFTA	2	Pending	

❖ €825 mio

Data 2020

Environmental permitting

Aura Energy v Sweden (ECT, EU law, 2019) → ban on uranium mining

Prairie Mining Limited v Poland (ECT, Australia –Poland BIT 2020) → coal mining licenses

Rockhopper v Italy (ECT, 2017) → ban on offshore oil exploration

Ascent Resources v Slovenia (ECT, 2022) → requirement for an environmental impact assessment for a fracking project, ban on the use of hydraulic stimulation for the exploration and exploitation of hydrocarbons

Breach of investment standards

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a) Indirect expropriation without compensation/regulatory taking

b) Breach of FET

- Legitimate expectations of investors
- Specific/general commitments of state, stability, consistency
- Unreasonable, retroactive, disproportionate measures
- Dramatic change in regulation

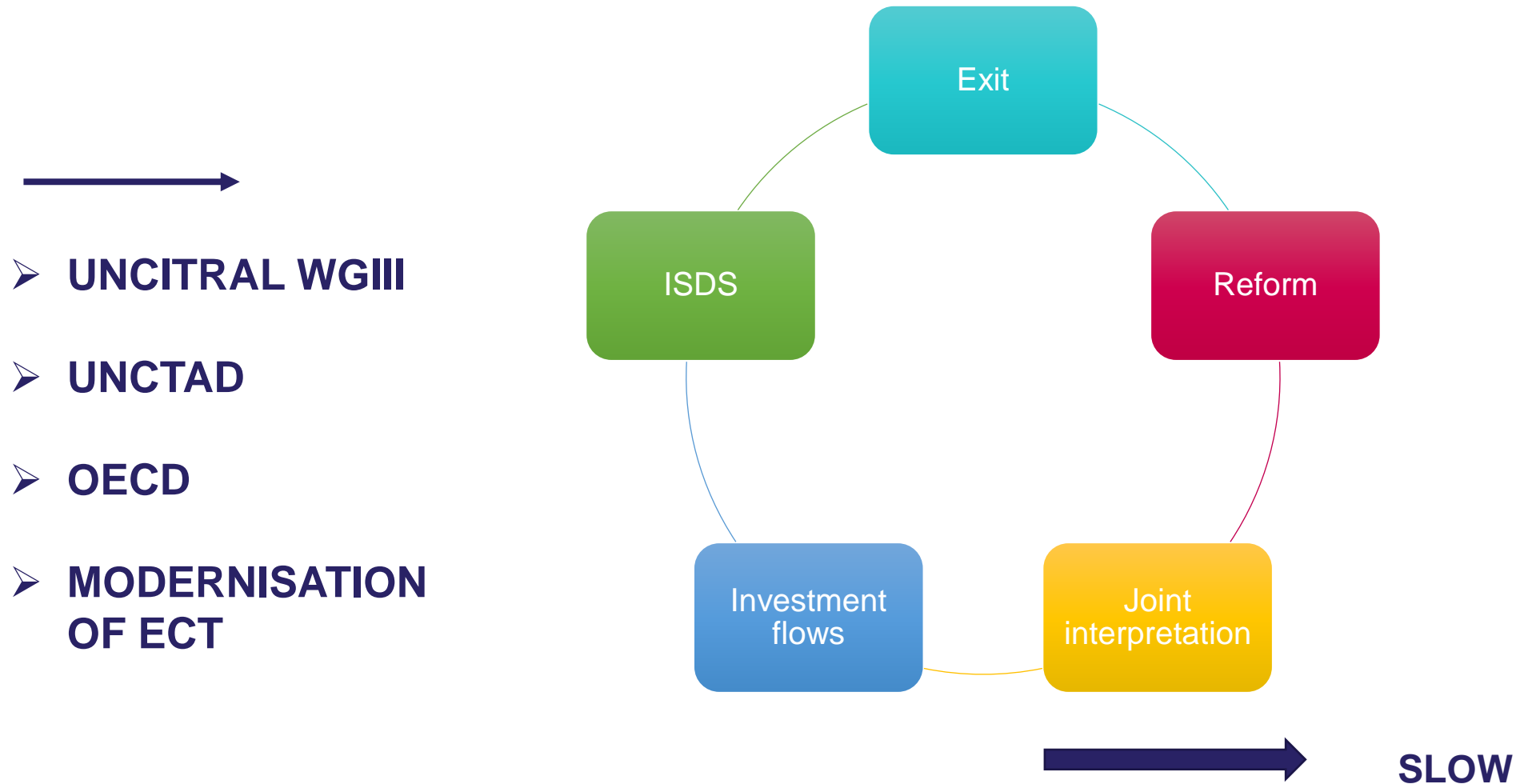
c) Unreasonable and discriminatory measures

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Reform of IIAs

International investment law reform



Potential progress

- Some countries/regions conduct environment & sustainability reviews / assessments of their IIAs
- Certain IIAs contain general exceptions for conservation of natural resources, climate change mitigation and adaptation
- Certain pioneering IIAs also contain sustainable development provisions:
 - Preambular environmental commitments in some BIT
 - Not to lower standards to attract investment' provisions in some BITS
 - CSR provisions in some FTA Investment Chapters
 - Commitments to cooperate on climate (committees) and implementation of international climate agreements

New Generation of International Investment Agreements – selected reformed provisions

	CETA 2016	USMCA 2018	UK-EU TCA 2020
FET	Qualified by a list Art. 8.10(2)	Qualified by reference to customary international law and a list Art. 14.6	X
Legitimate Expectations	Limited Art. 8.10(4) A change in legislation (x expectation of profit) Art. 8.9(2)	No breach of FET Art. 14.6.4	X
ISDS	Investment court system	X US -Canada Modified for US- Mexico	X

IIAs – greening of the definition of investment

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- **Pre-establishment model IIAs**

Acquisition/
establishment

Post-entry
protection

- **Post-establishment model IIAs**

Positive
/negative list
of
sectors/indu
stries

Investment

- Reservations

Greening investment

Lack of an internationally agreed definition of green investment:

- **OECD paper in 2012** (a 'governance approach to green investment' and providing guidance instead of setting standards)
- **UN Principles for Responsible Investment**

Approaches to the definition of investment:

Global definition - a standardised definition of low-emission investment in abstract

Inspiration by taxonomies (classification systems)

'environmentally sustainable economic activities' (EU Regulation 220/852)

WB guides, Indicative lists of FDI sustainable characteristics

A state approach - mirroring the NDCs under Paris Agreement

Distinguishing 'sustainable' and 'unsustainable' investments for each state

(Bernasconi-Osterwalder and Brauch proposal for ECT modernisation, academic Model Treaty on Sustainable Investment for Climate Change Mitigation and Adaptation)

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Investor's obligations and responsibility in IIL - CSR clauses

- **Direct legal obligations**
- **Legality clauses (obligation to comply with Host States' laws)**
 - sanctions for non-compliance
 - denying treaty protections to investments
 - considering investor conduct when interpreting IIA protection standards
 - providing for State's right to bring counterclaims in ISDS from investor's violations of HS law
- **Incorporating soft law approaches on investor's responsibilities**
 - encouraging investors to comply with UNGPs, OECD / to carry out corporate climate due diligence
- **Agreement between State Parties on strengthening HS laws, including mandatory due diligence**
- **Home State's measures**
 - promote investor's compliance with CSR standards

Investor's obligations and responsibility in IIAs

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Modernisation of the Energy Charter Treaty - 'agreement in principle'

ARTICLE 19: ~~ENVIRONMENTAL ASPECTS~~ SUSTAINABLE DEVELOPMENT

(6) The Contracting Parties recognise the importance of responsible business conduct in contributing to the sustainable development goals. Each Contracting Party shall encourage Investors operating within its Area or subject to its jurisdiction, to adopt and implement voluntarily, into its policies and practices, principles of responsible business conduct consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Contracting Party, such as the United Nations Guiding Principles on Business and Human Rights, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multilateral Enterprises.

Academic Proposals under Discussion

Considering measures to more fully take into account the issues associated with investment treaties and ISDS:

- Fossil Fuel Non-Proliferation Treaty (Newell and Sims 2019)
- Coal Elimination Treaty (Burke and Fishel 2020)
- operating reverse auctions to acquire out-standing debt on power plants in exchange for closure where appropriate (Caldecott and Mitchell 2014, Rocky Mountain Institute et al. 2020) / transparency and avoidance of excess profits / including green conditions to ensure money is reinvested in renewables
- suspending any programmes offering fossil fuel exploration licences or contracts

Conclusion

CCL – IIL nexus

Consensus

IAs are not aligned with CCL

Asymmetric structure of IIL

IAs are not primarily intended to address public policy issues, but do interfere with non-commercial values

Absence of precedent – inconsistent arbitral awards

ISDS is being used for climate-related regulatory measures

Divergence

Conciliatory approach (tools to reconcile CCL and IIL already exist in IAs)

- State's ability to bring counterclaims
- Civil society's role in ISDS as amici
- Climate considerations in compensation amounts

Fundamental reform of the regime is needed

- Reforming nature of IAs
- IIL defenses (national security)
- Third party intervention
- Direct claims of states
- Obligations of investors
- Just transition issues

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Thank you for your attention!

Questions & Comments

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