China and WTO Review (CWR)
2024, 10(1), 1-14
ISSN: 2384-4388
https://cwto.net
Review

Navigating Investor-state Dispute Settlement: The Dynamics between Investment Protection and Sovereign Control

Muhammad Salman Shafiq [1*]

[1] S.J.D Scholar, Guanghua Law School, Zhejiang University, Hangzhou, China
* **Corresponding Author:** salmanshafiq1@zju.edu.cn

Citation: Shafiq, M. S. (2024). Navigating investor-state dispute settlement: The dynamics between investment protection and sovereign control. *China and WTO Review (CWR), 10*(1), 1-14. https://doi.org/10.52152/cwr.2024.10.1.01

ARTICLE INFO

Received: 10 Jun 2024
Accepted: 03 Aug 2024

ABSTRACT

An emerging key issue in international investment law is the interaction between investor protection and sovereign immunity. This study examines how Investor-State Dispute Settlement (ISDS) has developed recently and considers whether it achieves an equitable equilibrium between maintaining state sovereignty and safeguarding investors. Three main areas of disagreement regarding how ISDS affects State sovereignty are the validity of the ISDS mechanism; the scope of obligations subject to enforcement under ISDS; and the occurrence of a "Regulatory Chill." The paper analyses ISDS provisions over three important treaties that balance the needs of investors for a dependable dispute resolution process with state immunity. Recent modifications and court orders shed light on ISDS's difficulties and detractors, including worries about the policy's goals being undermined. The study finds that while the most current treaty offers a far better balance between investor protection and State sovereignty than previous ones, there remains scope for betterment, especially regarding the alleged credibility of the ISDS system. Four significant reforms are proposed to solve long-standing issues: Updating International Investment Agreements (IIAs); Endorsing Regulatory Impact Evaluations (RIE); Establishment of a permanent international investment court; and Creation of appellate body to examine rulings.

Keywords: Investor-state Dispute Settlement, Sovereign Immunity, Investor Protection, Regulatory Chill, Appellate Body.

INTRODUCTION

Two fundamental ideas in international law, state immunity, and investor protection, often come together in conflicts involving foreign investments. Comprehending the concepts and their interplay is necessary to grasp the legal framework that governs foreign investments and the corresponding rights and obligations of states and investors (Meng, 2022).

State immunity, referred to as sovereign immunity, is an international legal doctrine, that shields nations from being sued without their permission in the courts of other nations. A state's right to interfere with the other's sovereign act is guaranteed by the principle, which is founded on the equality and independence of sovereign states (Dautaj, 2024). No matter what kind of actions they do, a state and its entities are completely immune from being brought before international tribunals under the idea of absolute immunity (Kumar, 2024).

Another key component of international investment law is investor protection, which aims to maintain a balance between the host government's and investor's interests while promoting an environment that is favorable to foreign investments. These safeguards support the integration and growth of the world economy by guaranteeing the preservation of investor's rights and providing channels for conflict resolution (Subedi, 2024).

Regarding investor-state conflicts, the convergence of investor protection and state immunity is a complicated area of international law. A state's sovereign immunity and the systems in place to defend and uphold the rights of foreign investors must be balanced to comprehend how these ideas interact. States frequently give up

Copyright © 2024 by Author/s and Licensed by China and WTO Review (CWR). This is an open access article distributed under the Creative Commons Attribution License which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

their protection from arbitration proceedings by signing investment treaties and agreements. This enables investors to file lawsuits in impartial forums against states (Rao, 2023).

The subject of Investor-State Dispute Settlement (ISDS) has received a lot of attention lately from media outlets, academics, politicians. The addition of ISDS clauses in the Trans-Pacific Partnership Agreement, if approved by the participating parties, may encircle around 40% of the world economy, which is one reason for this increased attention (Yin, 2018).

If a host state breaches the terms of the agreement, covered foreign investors have the right to appeal it before an ISDS arbitral tribunal thanks to the presence of ISDS provisions in the pact. A foreign investor can argue against acts such as outright takings and obstructions in the way of justice (Du & Zhang, 2024).

ISDS proponents contend that to meet the requirement for investor protection, ISDS is required. Investors are susceptible to the capricious application of government authority, particularly by states with a dismal track record of enforcing the law (Alvarez, 2021).

To find the dynamics between investment protection and sovereign control, this paper is organized into four parts. Here is the layout of the paper: In Part A, the three main grounds of disagreement about the effect of ISDS on State sovereignty, which include the legality of the ISDS procedure, the range of responsibilities binding under ISDS, and the term "regulatory chill", are discussed from both sides of the issue. In Part B, the development of ISDS is examined through three treaties: The North American Free Trade Agreement (NAFTA), the Energy Charter Treaty (ECT), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Part C evaluates whether ISDS appropriately balances State sovereignty and investor protection and finally, Part D offers suggestions to solve lingering issues.

ISDS AND STATE SOVEREIGNTY

The discussion of ISDS's effect on state sovereignty, which has divided supporters and detractors, is examined in this part.

Legality of the ISDS Procedure

State sovereignty and investor protection may be jeopardized if the ISDS system lacks credibility, given the substantial authority and responsibility bestowed onto ISDS tribunals (Stephan, 2023). Two major issues with ISDS validity are the arbitrators' selection process and the inconsistent nature of ISDS tribunal rulings (Taylor, 2023).

Selection of Arbiters

The composition of ISDS arbitral tribunals typically consists of three participants. It is customary for each disputing party to designate one arbitrator, and both sides decide about the third arbitrator (Cahill-O'Callaghan, Howard, & Brekoulakis, 2023).

Because ISDS arbitral courts are ad hoc in nature, arbitrators lack the tenure security that judges generally enjoy and are instead dependent on recurrent appointments. According to some scholars, the possibility of reappointment may make judges less impartial (Jarrett, 2024).

The neutrality of the participants of ISDS tribunals will suffer if arbitrators are selected to shape a favorable tribunal. These profiling methods have only increased in frequency in tandem with the rise in ISDS litigation (Zhang, Ab Rahman, & Khan, 2023).

Another component of arbitrator appointment that raises questions is the "double hat dilemma." It brings up issues that are comparable to those regarding the insecure term of arbitrators. There are questions regarding the independence and fairness of arbitrators while making decisions in dispute resolution if they are concurrently serving on arbitration panels and representing clients (Colombo, 2024). ISDS followers contend that these arguments are not correct, instead, they stem from an unwarranted assumption of arbitrators' lack of integrity and a generalized mistrust. They provide empirical as well as theoretical justifications for their responses. The argument put up as a theoretical counterargument is that policies now in existence are inclined to guarantee the fairness and impartiality of arbitrators. Parties may do this by contesting arbitrators that the other side has selected. In addition, arbitrators are subject to duties under the frequently utilized rules that govern ISDS (Ngobeni, 2024).

Arbitrators must meet certain requirements set down by “ICSID Arbitration (Additional Facility) Rules”, that include having a strong moral code and being renowned experts in their respective fields related to trade, industry, law, or economics. They must also be able to make autonomous decisions. The United Nations Commission on

International Trade Law's Arbitration Rules, generally known as the "UNCITRAL Arbitration Rules,"(United Nations, n.d.) mandate that arbitrators be unbiased and independent and are obligated to reveal every detail that would give rise to legitimate concerns regarding their objectivity or impartiality (Gildemeister, 2023).

Decision-making Coherence

It's critical to keep in mind that uniformity is the foundation for the credibility of the overall dispute resolution system. Users will eventually lose faith in a dispute settlement procedure that yields inconsistent results, which undermines the system's intended goals (Cortés, 2023).

ISDS has come under fire for encouraging an unpredictable pattern of outcomes that frequently exhibit imaginative reasoning and an annoyance for the authority of the State to regulate. Several elements contribute to this like, International investment law does not follow the precedent doctrine, ISDS arbitration panels are established on an as-needed basis, and these bodies are asked to settle issues based on disparate clauses in various treaties (Martini, 2024).

Opponents contend that while in certain instances these disparate outcomes can be linked to significant factual variations or different treaty clauses, an increasing number of instances have seen separate tribunals reach opposite decisions that aren't consistent with variations in the facts or law of the demands (Bodansky, 2024).

ISDS vs Other Alternatives

In addition to the particular refutations mentioned above, proponents of the ISDS mechanism also contend that, despite its shortcomings, ISDS is preferable to more conventional approaches like seeking local relief and diplomatic safeguards (Chernykh & Sattorova, 2024).

Nonetheless, there are significant disadvantages to diplomatic immunity. From the standpoint of the home state, the politics and tactics related to diplomatic protection may cause annoyance and conflict with the host state. Three primary disadvantages are seen from the investor's point of view. First of all, diplomatic protection usually necessitates the previous, costly, and lengthy exhaustion of local remedies. Furthermore, a home state's choice to offer diplomatic safeguards is totally up to its will. It depends on the significance of the claim to the state, how close the investor is to the state, and the status of diplomatic ties between the home and the host state. Ultimately, the investor forfeits all authority over its claim while it is covered by diplomatic immunity (Forere, 2024).

ISDS tackles the shortcomings of both local remedies and diplomatic safeguards. Because it doesn't require local exhaustion, ISDS may be less costly and more effective than diplomatic protection while giving investors more power and allowing the conflict to be moved from the political and diplomatic domain into the legal sphere (Habyyev, 2019). Arbitral verdicts are acknowledged and executable in several jurisdictions, and ISDS is arguably more impartial and outside the control of the host State than regional remedies. It also offers assurance by keeping nations to agreed-upon legal norms of the treatment of investments. Proponents of ISDS contend that, despite certain shortcomings, ISDS remains a superior system for protecting investors than other alternatives by stressing its benefits above diplomatic recourse and seeking remedies locally (Howse, 2019).

Responsibilities Binding under ISDS

States may find it more difficult to formulate public policy in areas like environmental protection and public health care when their duties are written generically or are open to excessively broad meanings. ISDS's ability to give investors the capacity to contest public interest regulation raises concerns among some opponents that it may overreach and trample on state authority (Bjorklund, 2021).

In *Daimler AG* v. *Bauman* (2014), the tribunal declared that BITs, as international agreements, under ISDS, are sovereign practices wherein States carefully negotiate their diverse internal policy concerns. States have to choose the best strategies for safeguarding and advancing investment. The final word on how they have decided to proceed is found in the provisions of the agreements they have concluded.

Regulatory Chill

"Regulatory Chill" under ISDS describes the circumstance in which governments delay or decide not to implement new regulations, especially in areas such as health, environment, or safety, because they are afraid of expensive legal battles and compensation demands from foreign investors (Garcia Sanchez, 2023).

The number of ISDS hearings has increased significantly during the previous 20 years. Even though IIAs have had ISDS clauses for a long time, the very first ISDS case was brought to arbitration in 1990. Since then, the number of complaints has increased rapidly, in 2014, there were 608 documented claims whereas, by the end of 2023, that number had nearly doubled to 1275 disputes (Giroud, 2024).

It has been reported that by the end of 2023, more than 90% of the almost 2,400 BITs that were in effect had not experienced any single investor allegation of a treaty infringement. This suggests that there were over 2,160

BITs against which no ISDS claims were made. This illustrates how, despite the several treaties in existence, ISDS provisions are used rather infrequently (Mehranvar & Sachs, 2024).

ISDS'S EVOLUTION OVER THREE TREATIES

This part examines how ISDS has changed throughout three treaties namely the North American Free Trade Agreement (NAFTA), the Energy Charter Treaty (ECT), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The study will examine the significance of these treaties, procedural aspects of ISDS, methodology applied by ISDS courts, and enforceable obligations under ISDS.

Significance of Treaties

The ISDS clauses of chapter 11 of NAFTA, which have made it one of the most notorious and frequently challenged free trade accords in history, are a major factor in the agreement's relevance. This made it possible for investors to sue host states for claimed infringements of investment regulations including expropriation and unjust treatment. These investors included those from the United States, Canada, and Mexico. Several prominent arbitration proceedings resulting from the ISDS provisions in NAFTA shaped international investment arbitration procedures and the evolution of ISDS sections in other trade-related treaties (Reiss, 2024).

Concerning ISDS, the Energy Charter Treaty (ECT) is important because it offers a strong structure for safeguarding overseas financial investment in the energy industry. The ECT was created in 1994 and has extensive ISDS clauses that enable investors to sue host states in arbitration for violations of the investment safeguards included in the treaty, including inequality, expropriation, and unfair treatment. Due to this, international investment law has evolved and the difficulties in finding a balance between state regulatory authority and security for investors have come to attention (Tienhaara & Downie, 2018).

In the framework of ISDS, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which went into force in 2018, is noteworthy as it updates and improves investor-state conflict procedures. With measures to promote transparency, prevent baseless claims, and strike a balance between investor protections and governments' rights to regulate in the public interest, the CPTPP includes ISDS provisions that give investors a way to settle issues with host states. These improvements aim to address critiques of ISDS, including worries about sovereignty and regulatory chill, and they reflect lessons learned from past treaties (Chandler, 2020).

ISDS Procedure-related Aspects

Procedure-related aspects are discussed in this part which include Alternate Dispute Resolution (ADR), the statute of limitations, procedural regulations, available remedies under ISDS, and appellate mechanism in ISDS.

Alternate Dispute Resolution

In terms of both legal fees and tribunal awards, as discussed in Chapter One, ISDS may become costly. By encouraging ADR between States and disgruntled investors, one can lessen the financial strain of ISDS on States. The application of ADR in three selected treaties is discussed as follows.

Although ISDS is the main topic of Chapter 11 of the NAFTA, other ADR techniques, such as mediation, are permitted as first steps before official arbitration. These actions can assist in settling disputes without getting through the full arbitration procedure (Donoso, 2024). ADR procedures like consultation are required under the contract before proceeding to arbitration for state-to-state conflicts. This guarantees that both sides will first have the chance to settle their disputes via discussion and negotiation. While expert panels and discussions have frequently been utilized to address issues and establish mutually beneficial solutions, ADR has been especially useful in addressing problems about labor and environmental regulations within the context of NAFTA (Jablonski, 2003).

Article 26 of ECT promotes the peaceful resolution of disagreements between an investor and the other party to the contract through dialogue and discussion. Additionally, it offers conciliation as an optional, non-binding form of alternative dispute resolution that both parties may choose to use. This may entail the use of a conciliator to assist the parties in coming to a compromise (Tuna, 2022). The ECT Secretariat is in favor of the creation of centers for dispute resolution that offer mediation services to mediate conflicts about energy in a less combative way. In contrast to formal arbitration, ADR within the context of the ECT facilitates faster, less confrontational, and more economical means of settling issues between investors and states. This strategy is in line with the ECT's mission to advance an open and sustainable investment climate in the energy industry (Bates, 2024).

In the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), ADR procedures are specifically encouraged by the agreement's terms as a component of the ISDS procedure. The CPTPP places a

strong emphasis on the value of discussions and negotiations as the first stages in settling conflicts. Before going to arbitration, disputing parties are required by Article 9.18 to attempt to resolve their differences through talks and negotiations (Calamita & Giannakopoulos, 2024). The agreement offers a structure that is flexible enough to allow disputing parties to settle their differences amicably without going through formal arbitration by selecting mediation or other ADR procedures (Verma & Arvind, 2024).

The Statute of Limitations

Introducing claim limitation periods reduces the susceptibility of States to ISDS claims resulting from previous grievances, thus mitigating the possible impact of ISDS on them.

NAFTA's Chapter 11, which addresses ISDS, stipulates a statute of limitations of three years for filing complaints. As per the provisions of article 1116(2), any party can submit a claim independently, provided that the claim is made not later than three years from the date the investor first became aware of the claimed violation and should have become aware that it has suffered an injury or loss. Additionally, a similar three-year statute of limitations applies to claims made by an investor of a Party on behalf of an organization under Article 1117(2). The company must file the claim within three years of the date it first learned, or should have learned, about the alleged violation and realize it had suffered harm or loss (Hurd, 2024).

The statute of limitations for filing an ISDS suit is established under the Energy Charter Treaty (ECT). Article 26(3) sub-clause (b)(i) contains the pertinent clause. The ECT says that an investor is not permitted to bring a case before arbitration if a period of three years or more has elapsed after the investor first learned about the violation and should have learned about loss or damage (Ngobeni, 2024).

According to Article 9.20 of the CPTPP, an investor is not permitted to file a claim for arbitration if it has been more than three years and six months since the investor first learned about the alleged violation and discovered that the investor had suffered loss or damage (Chernykh & Sattorova, 2024). Legal clarity and fairness in the CPTPP dispute resolution procedure are upheld by this statute of limitations, which guarantees that claims are brought forth on time.

Procedural Regulations for ISDS

The numerous procedural requirements for ISDS are outlined in considerable detail under NAFTA, ECT, and CPTPP.

Investors have the option to resolve disputes through arbitration under the ICSID Convention if both, the state involved in the dispute and the state of the investor, are party to the ICSID Convention, as stipulated by all three treaties, NAFTA, ECT, and CPTPP. If the requirements for the ICSID Convention are not fulfilled, it is still possible to lodge complaints under the ICSID Additional Facility Rules. These rules allow for arbitration even if any of the parties involved is not a participant in the ICSID Convention. Investors have the option to choose to utilize the UNCITRAL Arbitration Rules to resolve their disputes (Arsa, 2024).

Additionally, under ECT, investors also have the option to take their claims to the Stockholm Chamber of Commerce Arbitration Institute (Tambe, 2024). Moreover, the disputing parties may also choose to use any alternative arbitration rules that they have agreed upon under the CPTPP (Pomfret, 2024).

Selection of Arbiters

There are significant parallels as well as variances in the processes for selecting arbitrators under the CPTPP, the ECT, and NAFTA.

Generally, a tribunal consisting of three arbitrators is involved in all three agreements. The parties in dispute select one arbiter apiece in each instance. The agreement of the two selected arbitrators is necessary for a third arbitrator to act as the presiding arbitrator. In case of a difference of opinion, in the selection of a third arbitrator, the following method will be applied. NAFTA: The Secretary General of ICSID appoints the presiding arbitrator if the arbitrators are unable to reach a consensus (Kryvoi, 2023).

ECT: The Secretary-General of the Permanent Court of Arbitration at The Hague may designate a presiding arbitrator in case of disagreement (Menaker, 2017).

CPTPP: The presiding arbitrator may be chosen by the proposal from the ICSID Secretary General if the designated arbitrators are unable to reach a consensus on that matter within a given time frame (Abid, 2020).

The Potential for an Appellate Process

Even while none of these agreements have a formal appellate procedure at this time, one may be developed in the future. The dynamic character of ISDS and the growing emphasis on enhancing the uniformity and legitimacy of arbitral verdicts through appeal procedures are underscored by the continuous debates and reform initiatives in

international fora as well as the modernization projects of these accords. For example, The United States-Mexico-Canada Agreement (USMCA), which replaced NAFTA, expressed a desire to discuss the possibility of an appeals process suggesting that this issue may come up in future talks. Appellate mechanism concerns are part of broader ISDS reform talks at organizations such as the United Nations Commission on International Trade Law (UNCITRAL). These discussions may have an impact on future revisions to the USMCA or other agreements of a similar nature (Santos & Wilson, 2021). Moreover, the ongoing attempts to modernize the ECT, which were started in 2017, have included talks about implementing an appellate process. Improving ISDS rulings under the ECT in terms of legitimacy, uniformity, and predictability is the aim (Ergüden, 2023).

The talks about modernizing are part of a larger movement to make the ISDS system better, which could ultimately result in the addition of an appeals process (Ahmadzadeh, 2022). In the case of CPTPP, the parties shall take into consideration the creation of an appeal process to review awards made by ISDS tribunals. This shows a dedication to investigate this choice later on. The CPTPP reflects the increasing trend towards improving ISDS systems, and conversations about international reform may have an impact on future modifications that include an appellate procedure (Chandler, 2020).

The Interpretive Methodology of ISDS Tribunals

The growth of the interpretive process used by ISDS arbitral tribunals is examined in this part. As mentioned in Part 1, there can be significant worries about how ISDS may affect state sovereignty due to the uneven execution of the law by ISDS courts and their unduly expansive interpretations of State responsibilities.

NAFTA

NAFTA-based ISDS tribunals use a systematic interpretation approach to make sure that treaty obligations are implemented uniformly and in line with accepted legal standards worldwide. The tribunals analyze NAFTA provisions concerning the Vienna Convention's article (31), considering the goals and objectives of the agreement. Tribunals may use further methods, such as the treaty's preliminary work and the events surrounding its conclusion in case when the interpretation under Article 31 is unclear or ambiguous or produces a decision that is ludicrous or illogical (Thakur, 2021). NAFTA created a Commission, the Free Trade Commission (FTC), that consists of cabinet-level officials of the Parties as stated in Article 2001(1). NAFTA gives the Commission the authority to interpret its clauses, and once it does so, arbitral tribunals must follow its rulings. ISDS tribunals are required to apply these interpretations as they are considered an element of the treaty framework (Brodlija, 2024).

In *Methanex Corporation* v. *United States of America* (2005), the court determined whether the challenged action constituted expropriation under NAFTA Article 1110 by applying the interpretive technique described in the VCLT. The tribunal looked at pertinent state law, arbitral examples, and the wording, context, and intent of the agreement's provisions.

In *Pope & Talbot Inc.* v. *Canada* (2001) while interpreting the FET standard by NAFTA Article 1105, the tribunal used the VCLT rules. In addition to considering the parties' representations and pertinent standards of international law, the tribunal also took into account the usual meaning of the terms and the context provided by the treaty.

ECT

To guarantee the equitable and uniform implementation of treaty terms, ISDS courts operating under the ECT utilize a systematic interpretation approach. The VCLT general principles of international law are upheld by the interpretive process. Articles 31 and 32 of VCLT are applied concerning generally accepted Interpretations. This covers well-established ideas including expropriation norms, complete security and safety, and fair and equal treatment (Hinrichsen, 2024).

In *Plama Consortium Limited* v. *Republic of Bulgaria* (2005)**,** the tribunal interpreted the FET and expropriation clauses of the ECT by using the rules of the VCLT. To make its determination, it considered the terms' common meaning, the treaty's context, and pertinent standards of international law.

In *Yukos Universal Limited (Isle of Man)* v. *The Russian Federation* (2014), the tribunal determined whether the respondent's acts qualified as expropriation under the ECT by applying the interpretive process specified in the VCLT. The tribunal looked at pertinent state practice, arbitral precedents, and the wording, its proper context, and intent of the treaty's clauses.

CPTPP

International social and legal doctrines, especially those found in the VCLT, serve as the foundation for the systematic interpretive technique used by ISDS tribunals operating under CPTPP. Although many examples of particular CPTPP ISDS cases may not exist, CPTPP courts are likely to adhere to the clear structure provided by

comparable treaties such as NAFTA. The examination of jurisdiction and admissibility in light of the terms of the treaty and analyses of substantive protections like FET and expropriation in the context of the CPTPP's overall meaning, object, and purpose. Consultation before pertinent arbitral rulings and customary principles of international law for direction. Consideration of the CPTPP Commission's binding findings and explanatory notes.

Enforceable Obligations under ISDS

This part looks at the extent of the ISDS-enforceable obligations under each treaty.

Expropriation

Generally, International investment agreements (IIA) stipulate that states can only "expropriate" investments under specific conditions. Within ISDS and the law governing international investments, one of the more contentious issues has been the extent of what constitutes an "expropriation." The development of "expropriation" from the NAFTA, ECT, and CPTPP is examined in this section.

NAFTA

In the context of ISDS, both lawful and unlawful expropriation are covered by Article 1110 of the NAFTA. NAFTA permits lawful or direct expropriation as long as it satisfies the following requirements which are outlined in Article 1110(1). The expropriation needs to serve the public interest. It needs to be done without discrimination. Due process of law must be followed throughout the expropriation. It must adhere to the treatment standards outlined in Article 1105, which guarantees just and equitable treatment (Georgieva, 2024). Compensation ought to be sufficient, efficient, and paid on time. It ought to match the expropriated investment's fair market worth as of the moment the expropriation occurred, be reimbursed right away, be easily transportable and completely realizable, and add interest from the beginning of expropriation until the date of reimbursement at a commercially reasonable rate (Soloway, 2018).

There are several situations in which an expropriation is indirect or unlawful under NAFTA. a) If the expropriation is being used for a purpose that is not considered public; b) If the investor is being discriminated unfairly based on their nationality or any other unlawful basis; c) If the expropriation takes place without following just and equitable legal processes; d) If the payment is not commensurate with the fair market value or fails to satisfy the requirements of being timely, sufficient, and effective (Accaoui Lorfing, 2023).

ECT

Article 13 of the ECT contains provisions about expropriation, both direct and indirect, and compensation. The ECT's Article 13(1) outlines the circumstances in which direct expropriation is permitted which include: Public purpose: Any use of expropriation must serve a goal that is broadly beneficial to the public. Non-Discriminatory Basis: It needs to be carried out without discrimination. Due Process of Law: Expropriation must follow the prescribed legal procedures (Dimitrov, 2019).

If any of the requirements listed in Article 13(1) are not met and the state has expropriated the investor's asset then that expropriation will be indirect. In particular: Lacking of Public Purpose: Expropriation is illegal if it is not carried out for a reason that serves the public interest. Discriminatory Actions: If the expropriation targets particular investors or investments without a valid reason, it can be considered biased. Absence of Due Process: Expropriation is illegal if it takes place without following the right legal channels and safeguards. Insufficient Remuneration: The expropriation is illegal if the compensation is not given in a timely, efficient, or fair manner, or if it does not correspond to the fair market worth (Mejía-Lemos, 2018).

CPTPP

Expropriation clauses are included in Chapter 9 of the CPTPP. Article 9.8 sub-clause 1 & 2 forbids the expropriation, direct or indirect, of a covered investment, except in certain circumstances, either directly or indirectly by actions that have the same effect as expropriation or nationalization. These conditions include serving a public purpose, acting impartially, adhering to due process, and requiring payment of prompt, sufficient, and efficient compensation (Abid, 2020).

Article 9.8(4) contains provisions regarding indirect expropriation which make it clear that, in the absence of an official change of title or outright seizure, an action or set of actions by a Party can have the same impact as direct expropriation. The following factors are considered: the government action's effect on the economy; the degree to which the action obstructs clear, reasonable expectations backed by investments; and the nature of the government's intervention (Gantz, 2021).

Fair and Equitable Treatment (FET)

States are required by the FET standard to provide covered investments with a minimum level of treatment. This part looks at how FET provisions have changed over time and how NAFTA, ECT, and CPTPP have

interpreted them.

NAFTA

Article 1105 of NAFTA contains the FET clause, and it is interpreted about ISDS disputes. In compliance with international law, this article guarantees that investments receive complete safety and security as well as equitable and impartial treatment. In 2001, the Federal Trade Commission (FTC) published a legally binding notice elucidating that the FET threshold found in NAFTA Article 1105 confers no real rights besides those granted by customary international law (Monti & Fermegli, 2024).

Important ISDS Cases that Explain FET in Light of Article 1105 are *Metalclad Corporation* v. *The United Mexican States* (2000), Pope & Talbot Inc. v. Canada (2001), *Mondev International Ltd.* v. *United States of America* (2002), and *Glamis Gold, Ltd.* v. *The United States of America* (2009). According to the tribunal's decisions in these cases, article 1105 mandates treatment that complies with the principles of customary international law.

ECT

ECT's article 10(1), primarily deals with the FET requirement and covers the Promotion, Protection, and Treatment of Investments.

The decision in *Plama Consortium Limited* v. *Republic of Bulgaria* (2005), highlighted that FET encompasses safeguarding investors' reasonable expectations and necessitates openness in the actions of the host state. It concluded that Bulgaria's lack of a dependable legal and corporate environment constituted a violation of the FET norm.

The arbitrator's panel found that discriminatory and arbitrary behavior is prohibited by FET under the ECT in the *AES Summit Generation Limited and AES-Tisza Erömü Kft* v. *Hungary* (2010). The case made clear that modifications to regulations must be enforced consistently and without bias or caprice. The legal precedent set by the seminal *Yukos Universal Limited (Isle of Man)* v. *The Russian Federation* (2014), defined procedural equity and due process as part of FET. The court concluded that Russia had breached FET by acting in a way that was opaque, unfair, and unpredictable when utilizing its legal and tax systems.

The tribunal in the matter of *Charanne B.V. and Construction Investments S.a.r.l.* v. *Kingdom of Spain*(2016), noted that the fulfillment of the FET criterion requires a predictable and secure legal framework. It did, however, acknowledge the state's authority to regulate and modify its laws in response to evolving conditions, so long as those modifications are public and do not go against investors' reasonable expectations.

CPTPP

The CPTPP's Chapter 9, specifically Article 9.6, contains the FET-related provisions. By the minimum norm of treatment for aliens set down by customary international law, this article guarantees that investments get complete safety and security as well as fair and equal treatment. It highlights the importance of protecting investments in compliance with customary international law. The essential tenets of the interpretation of FET in ISDS disputes are legitimate expectations, openness, due process, and non-arbitrariness (Schil & Tams, 2022).

STATE SOVEREIGNTY & INVESTOR PROTECTION: STRIKING A BALANCE

This part of the study assesses the current status of the ISDS's investor protection and state sovereignty balance and suggests multiple ways forward concerning NAFTA, ECT, and CPTPP.

NAFTA

With the shift to the United States-Mexico-Canada Agreement (USMCA), the balance between sovereign state rights and investor safety under ISDS has changed dramatically, especially regarding NAFTA. Several modifications have been made to rebalance this balance since the USMCA replaced NAFTA.

Limited Scope: Since the USMCA went into effect, there has been a considerable restriction on the use of ISDS. ISDS provisions, which are identical to those under NAFTA, are only available to investors in select industries involved in government contracts. The range of claims for other investors is restricted and does not include accusations of indirect expropriation, thereby highlighting the safeguarding of state regulatory authority (Chernykh & Sattorova, 2024).

Local Solutions: First, the USMCA requires nonprivileged investors to bring claims in their home jurisdictions for 30 months before beginning arbitration, unless there is clear evidence that doing so would be ineffective (Baker & Keiser, 2019). This strengthens state sovereignty and the importance of local juridical systems.

Legacy NAFTA Claims: Under a transitional clause, new NAFTA claims for investments made while NAFTA remained in effect might be submitted until July 1, 2023 (Lilly, 2023). This offers a window for resolving unresolved issues under the previous system while switching to the new one.

ECT

Significant obstacles and changes are currently facing the ISDS framework as it tries to strike a balance between investor protection and state sovereignty under ECT.

Regulatory Chill and Ecological Worries: States are concerned that the ECT's ISDS provisions could deter them from passing important environmental laws by threatening to sue them in expensive arbitration proceedings. This has been a major source of disagreement because tribunals have occasionally found that state regulations intended to safeguard the environment violated investment agreements (Hokkanen, 2021).

Balancing Mechanism: To achieve this, new reforms and proposals place a strong emphasis on boosting the legitimacy of dispute resolution procedures, improving transparency, and acknowledging governments' powers to establish rules for public policy goals including public health and ecological preservation (Verburg, 2019).

CPTPP

The CPTPP uses several procedures under its ISDS framework to attempt to strike a compromise between investor protection and state sovereignty. The main features of the existing situation concerning this balance are as follows:

Protections for Regulatory Targets: The CPTPP has clauses designed to make sure that states can implement regulations in ways that benefit the public without having to deal with excessive opposition from investors. To protect state sovereignty and preserve investor trust, Article 9.16, for example, offers protections that let states legislate for health, environmental, and other public policy goals without running the risk of being sued by ISDS (Monardes Novik & Portales, 2021).

Corporate Social Responsibility (CSR): Businesses are encouraged to implement globally accepted CSR standards by Article 9.17 of the CPTPP. Through the promotion of ethical and sustainable investing methods, this clause seeks to harmonize investor actions with more general social objectives (Rioux & Vaillancourt, 2020).

Public Perception and Negotiations: Member states have approached the incorporation of ISDS clauses in the CPTPP in different ways. To opt out of ISDS procedures in specific accords, some nations, including New Zealand, have prepared side letters, expressing deeper worries about state sovereignty. Such acts show that investor protection and national policy interests can be balanced flexibly (Wu, 2020).

Safeguarding Against Abuse Of ISDS: The CPTPP preserves ISDS procedures but adds procedural protections to prevent abuse of these mechanisms. The framework seeks to minimize the impact on the state's capacity to rule effectively while offering a fair and open dispute-resolution mechanism (Bi, 2024).

RECOMMENDATIONS FOR REFORMS

The following suggestions are put forth in this section.

Updating International Investment Agreements (IIAs)

To ensure that IIAs remain applicable and successful in tackling modern concerns, they must be regularly reviewed and updated. This will help to maintain an appropriate balance between state sovereignty and investor protection. Some recommendations are:

Creating Mechanisms for Regular Reviews: Establish standardized timeframes, such as yearly or biennial assessments, for the periodic evaluation of IIAs. This guarantees that the agreements are flexible enough to adjust to evolving social, cultural, and environmental circumstances. Include a wide range of stakeholders in the appraisal process, including investors, authorities, representatives of civil society, and legal specialists, to acquire a variety of thoughts and perspectives.

Handling New Concerns (*Environment & Digital Economy*): Update IIAs with measures addressing the preservation of the environment and the impacts of climate change. This may entail making sure that investments are in line with environmentally friendly development objectives and incorporating pledges made under the Paris Agreement. IIAs should be modified to reflect the quickly changing digital economy and technology sectors, making sure that investments in these fields are adequately protected while maintaining the confidentiality of data and national security.

Improving Accountability and Transparency: To improve openness and permit public review, requires the

publication of ISDS dispute outcomes and associated documentation. To aid in the early identification and resolution of problems, regular reporting on the application and effects of IIAs must be mandated.

Endorsing Regulatory Impact Evaluations (RIE): An important technique for evaluating the possible impacts of new or current regulations is the RIE. It guarantees initiatives are successful, economical, and in line with more general social and economic objectives.

Provide unambiguous policies and procedures: Create and put into practice standardized procedures for carrying out RIEs. This guarantees uniformity, dependability, and comparability among various agreements and jurisdictions. Gather and share RIE best practices by referencing successful applications across industries and nations.

Include RIEs in the provisions of the treaty: Before new rules are introduced that can affect foreign investment, RIEs should be made mandatory. To guarantee a thorough review of potential consequences on state interests and investor rights, this might be specified in the treaty articles. Include clauses requiring periodic evaluations of current laws and how they affect the autonomy of states and investment, with modifications made in light of RIE results.

The Creation of an International Investment Court with Perpetual Jurisdiction

The creation of an Investment Court may strengthen the ISDS procedure's credibility. Here are some key features of this court.

Permanent Judges: To guarantee consistency and fairness in decisions, a group of exceptionally qualified judges should be appointed permanently. Diversified Representation: To improve legitimacy and justice, make sure judges from different legal systems and geographic areas are included. Accountability and Transparency: To promote accountability and public trust, demand open hearings and the release of comprehensive rulings. Appealing Body: Create an appellate body to examine rulings and guarantee that procedural and legal inaccuracies are corrected. Wide Jurisdiction: Grant more court authority to consider cases arising from a variety of international investment agreements. Frequent Assessments: Establish systems for ongoing assessment and enhancement of the efficiency and functioning of the court.

CONCLUSION

The purpose of this article was to respond to the query of whether investor protection and state sovereignty in ISDS are appropriately balanced or not. Regarding the effect of ISDS on State sovereignty, Part One delineated three primary areas of disagreement between ISDS proponents and opponents: the legality of the ISDS mechanism, the extent of enforceable responsibilities under ISDS, and the concept of "regulatory chill." The development of ISDS across three treaties, NAFTA, ECT, and CPTPP, was examined in Part Two. In particular, the second part looked at the development of ISDS's procedural elements, its interpretive framework, and the substantive range of its responsibilities.

After analyzing ISDS from the NAFTA baseline to the CPTPP, part three found that ISDS had advanced significantly in the correct direction. Despite some potential for betterment, it is observed that the current equilibrium between investor protection and State sovereignty is fairly suitable. Specifically, concerns about the ISDS mechanism's legitimacy still exist, and states must continue to exercise caution to make sure ISDS keeps up with changing public policy requirements. To solve these unaddressed issues, four measures are proposed. (a) IIAs should be examined and revised regularly; (b) Developing states should get assistance in completing comprehensive legislative impact evaluations; (c) The creation of an International Investment Court with perpetual jurisdiction; and (4) The establishment of an Appellate Court.

In the twenty-first century, states' economies are more intertwined and dependent on one another than ever before due to rising levels of industrialization and foreign direct investment. A few decades ago, the speed and volume with which free-flowing capital crossed state lines would have seemed unthinkable. Given this context, it is critical to have an investor protection structure in place that is both strong enough to provide actual protection to investors and adaptable enough to allow countries to enact public interest legislation and exercise effective governance. ISDS can handle the work with little adjustments.

REFERENCES

Abid, Y. (2020). The quest for domestic regulatory space in the investment chapter of the comprehensive and progressive trans-pacific partnership. *Willamette Journal of International Law and Dispute Resolution*, *27*(1/2), 28-78.

Accaoui Lorfing, P. (2023). Unsustainable investment: Scoping expropriation without compensation. In *The European Union and the Evolving Architectures of International Economic Agreements* (pp. 95-108). Singapore, Republic of Singapore: Springer.

AES Summit Generation Limited and AES-Tisza Erömü Kft v. Hungary, ICSID Case No. ARB/07/22 (2010).

Ahmadzadeh, S. (2022). *Replacing Investment treaty arbitration? Problems, reform, and transformation* (Master's thesis, Uppsala University, Uppsala, Sweden). Retrieved from https://www.diva-portal.org/smash/get/diva2:1664739/FULLTEXT01.pdf

Alvarez, J. E. (2021). ISDS reform: The long view. *ICSID Review-Foreign Investment Law Journal*, *36*(2), 253-277.

Arsal, F. R. (2024). The role of international arbitration institutions in resolving business disputes between countries. *Indonesian Journal of Law and Justice*, *1*(4). https://doi.org/10.47134/ijlj.v1i4.2137

Baker, J. S., & Keiser, L. (2019). NAFTA/USMCA dispute settlement mechanisms and the constitution. *University of Miami Inter-American Law Review*, *50*.

Bates, C. F. (2024). The effect of empathic mediation in conflict resolution. In *Accessing the Public Sphere: Mediation Practices in a Global World* (pp. 113-134). Cham, Switzerland: Springer.

Bi, Y. (2024). Experimentation at the WTO lab: Towards a better ‘Interface' to accommodate State-owned enterprises. *Journal of International Dispute Settlement*, idae004. https://doi.org/10.1093/jnlids/idae004

Bjorklund, A. K. (2021). Arbitration, the World Trade Organization, and the creation of a multilateral investment court. *Arbitration International*, *37*(2), 433-447.

Bodansky, D. (2024). Four treaties in one: The biodiversity beyond national jurisdiction agreement. *American Journal of International Law*, *118*(2), 299-323.

Brodlija, F. (2024). The multilateral investment court: Necessary ISDS reform or self-fulfilling prophecy?. *Arbitration Law Review*, *15*(1), 1-18.

Cahill-O'Callaghan, R., Howard, A., & Brekoulakis, S. (2023). Influence in investor-state dispute settlement: A dynamic concept. *Journal of International Dispute Settlemen*t, *14*(1), 24-46.

Calamita, N. J., & Giannakopoulos, C. (2024). Adapting multilateral ISDS reform to regional needs: A proposal for a chambers mechanism. *Vanderbilt Journal of Transnational Law*, *57*(2).

Chandler, A. (2020). Investor-state Dispute Settlement in the CPTPP: Perspectives from Australia, Japan and New Zealand. In *New Zealand Yearbook of International Law* (pp. 3-38). Leiden, Netherlands: Brill Nijhoff.

Charanne B.V. and Construction Investments S.a.r.l. v. Kingdom of Spain, ICSID Case No. ARB/13/30 (2016).

Chernykh, Y., & Sattorova, M. (2024). The afterlife of ISDS awards: Post-award settlements and the limits of transparency reforms. http://dx.doi.org/10.2139/ssrn.4848623

Colombo, G. F. (2024). The role of culture in international commercial arbitration. *Pravovedenie*, *68*(1), 37-57.

Cortés, P. (2023). Embedding alternative dispute resolution in the civil justice system: A taxonomy for ADR referrals and a digital pathway to increase the uptake of ADR. *Legal Studies*, *43*(2), 312-330.

Daimler AG v. Bauman, 571 U.S. 117 (2014).

Dautaj, Y. (2024). Sovereign immunity from execution of foreign arbitral awards in India: The "New" kid on the (Super) pro-arbitration block. *Arbitration Law Review*, *15*(1), 19-37.

Dimitrov, V. (2019). *Article 13 of the ECT in practice and its role in expropriation disputes: What is the scope of Article 13 of the ECT with respect to expropriation disputes?* (Master's thesis, Uppsala University, Uppsala, Sweden). Retrieved from https://www.diva-portal.org/smash/get/diva2:1320607/FULLTEXT01.pdf

Donoso, P. N. (2024). International investment law in Chile: Recent developments in times of reform check for updates. In *International Investment Law and Arbitration from a Latin American Perspective* (pp. 51-87). Cham, Switzerland: Springer

Du, J., & Zhang, Y. (2024). The impact of ISDS arbitration claims and adjudication on cross-border direct

investment. *Transnational Corporations Review*, *16*(2), 200053.

Ergüden, T. (2023). What is the role of international arbitration in resolving investor-state disputes in the energy sector?. In *The Palgrave Handbook of Arbitration in the African Energy and Mining Sectors* (pp. 1-27). Cham, Switzerland: Springer.

Forere, M. A. (2024). Towards foreign direct investment for development in the host state? Revisiting charter cities. *The Journal of World Investment & Trade*, *25*(1), 58-92.

Gantz, D. A. (2021). Protecting investment under NAFTA, the Trans-Pacific Partnership and the Comprehensive and Progressive TPP. In *The Comprehensive and Progressive Trans-Pacific Partnership: The Trans-Pacific Partnership, the Comprehensive and Progressive TPP, their Roots in NAFTA and Beyond* (pp. 314-326). Cambridge, UK: Cambridge University Press.

Garcia Sanchez, G. J. (2023). Defrosting regulatory chill. *University of Pennsylvania Journal of International Law, Forthcoming, Texas A&M University School of Law Legal Studies Research Paper*, (23-14).

Georgieva, V. P. (2024). Mexico in International Investment Law: From NAFTA to USMCA. In *International Investment Law and Arbitration from a Latin American Perspective* (pp. 243-271). Cham, Switzerland: Springer.

Gildemeister, A. E. (2023). The independence and impartiality of arbitrators. In *Alternative Dispute Resolution and Tax Disputes* (pp. 240-259). https://doi.org/10.4337/9781803920382.00021

Giroud, A. (2024). World Investment Report 2023: Investing in sustainable energy for all. *Journal of International Business Policy*, *7*, 128-131.

Glamis Gold, Ltd. v. The United States of America, UNCITRAL (2009).

Hinrichsen, E. (2024). Reconciling International Climate Law and the Energy Charter Treaty through the use of integrative interpretation in arbitration. *Laws*, *13*(2), 24.

Hokkanen, A. (2021). *The energy charter treaty and decarbonization of foreign investments—is the investor arbitration warming the world by chilling the regulatory environment?* (Master's thesis, University of Helsinki, Helsinki, Finland). Retrieved from https://helda.helsinki.fi/server/api/core/bitstreams/ff1a3d8a-721f-469d-a710-8f8bb860352d/content

Howse, R. (2019, June). International investment law and arbitration: A conceptual framework. In *International law and litigation* (pp. 363-446). Baden-Baden, Germany: Nomos Verlagsgesellschaft mbH & Co. KG.

Hurd, I. (2024). *International organizations: Politics, law, practice*. Cambridge, UK: Cambridge University Press.

Habyyev, Resul. "Diplomatic protection as a dispute settlement mechanism in investor-state arbitration, in the light of modern international law." PhD diss., Brunel University London, 2019.

Jablonski, S. R. (2003). NAFTA Chapter 11 Dispute Resolution and Mexico: A healthy mix of international law economics, and politics. *Denver Journal of International Law & Policy*, 32, 475.

Jarrett, M. (2024). ISDS 2.0: Time for a doctrine of precedent?. *Journal of International Economic Law*, *27*(1), 41-53.

Kryvoi, Y. (2023). *International centre for settlement of investment disputes (ICSID)*. Retrieved from http://digital.casalini.it/9789403515175

Kumar, A. (2024). Legal immunity of international organisations: Reception, praxis, and trends in India. In *Indian Practice of International Law* (pp. 118-136). New Delhi, India: Routledge.

Lilly, M. (2023). Beyond NAFTA: Canada and USMCAs initial implementation, 2020-2022. In *The Future of Trade* (pp. 152-173). Cheltenham, UK: Edward Elgar Publishing.

Martini, C. (2024). From fact to applicable law: What role for the International climate change regime in investor-state arbitration?. *Canadian Yearbook of International Law*, 1-36.

Mehranvar, L., & Sachs, L. (2024). The role and relevance of investment treaties in promoting renewable energy investments. http://dx.doi.org/10.2139/ssrn.4781814

Mejía-Lemos, D. (2018). Expropriation. In *Commentary on the Energy Charter Treaty* (pp. 211-232). Cheltenham, UK: Edward Elgar Publishing.

Menaker, A. (2017). *International arbitration and the rule of law: Contribution and conformity*. Alphen aan den Rijn, Netherlands: Kluwer Law International B.V.

Meng, Z. (2022). *State immunity and international investment law*. Cham, Switzerland: Springer.

Metalclad Corporation v. The United Mexican States, ICSID Case No. ARB(AF)/97/1 (2000).

Methanex Corporation v. United States of America, UNCITRAL (2005).

Monardes, R., Novik, A., & Portales, C. (2021). Addressing the right to regulate in the CPTPP investment chapter: Identifying new treaty practice. In *The Comprehensive and Progressive Trans-Pacific Partnership: The Trans-Pacific Partnership, the Comprehensive and Progressive TPP, their Roots in NAFTA and Beyond* (pp. 288-313). Cambridge, UK: Cambridge University Press.

Mondev International Ltd. v. United States of America, ICSID Case No. ARB(AF)/99/2 (2002).

Monti, A., & Fermeglia, M. (2024). The FET standard between treaty reform and ISDS practice: An analysis of the modernized ECT. *Journal of International Arbitration*, *41*(2). https://doi.org/10.54648/joia2024008

Ngobeni, L. (2024). The international court system: A solution to the crisis in investor-state arbitration?. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, *27*(1). http://dx.doi.org/10.17159/1727-3781/2024/v27i0a14259

Plama Consortium Limited v. Republic of Bulgaria (ICSID Case No. ARB/03/24) (2005).

Pomfret, R. (2024). The crisis in World Trade Law: How the dust is settling. *SAIS Review of International Affairs*, *44*(1), 5-20.

Pope & Talbot Inc. v. Canada, Award on the Merits of Phase 2, UNCITRAL (NAFTA) (2001).

Rao, W. (2023). Large corporations and investor-state arbitration. *Harvard International Law Journal*, *65*(1). http://dx.doi.org/10.2139/ssrn.4412161

Reiss, P. N. (2024). The Good, the Bad and the Not Necessarily Ugly Future of Investor State Arbitration. What will become of the investor-state dispute settlement system?. *Iurgium [previously Spain Arbitration Review]*, *49*, 9-26.

Rioux, M., & Vaillancourt, C. (2020). Regulating Corporate Social Responsibility (CSR) for economic and social development through trade rules. *Journal of Developing Societies*, *36*(3), 335-352.

Santos, A., & Wilson, C. (2021, May). Trade, economy, and work: A shared agenda for a stronger economic future. Retrieved from https://scholarship.law.georgetown.edu/facpub/2378

Schill, S. W., & Tams, C. J. (2022). International investment protection and constitutional law: Between conflict and complementarity. In *International Investment Protection and Constitutional Law* (pp. 2-37). Cheltenham, UK: Edward Elgar Publishing.

Soloway, J. (2018). Environmental expropriation under NAFTA Chapter 11: The phantom menace. In *Linking Trade, Environment, and Social Cohesion* (pp. 131-144). Abingdon, UK: Routledge.

Stephan, P. B. (2023). *The world crisis and international law: The knowledge economy and the battle for the future*. Cambridge, UK: Cambridge University Press.

Subedi, S. P. (2024). *International investment law: Reconciling policy and principle*. London, UK: Bloomsbury Publishing.

Tambe, R. (2024). Investor state dispute settlement and net zero initiatives: Case study of Germany's coal exit auctions. *Chicago Journal of International Law*, *25*(1). Retrieved from https://chicagounbound.uchicago.edu/cjil/vol25/iss1/7

Taylor, A. (2023). Much dispute about nothing? A critical examination of the backlash against investment treaty arbitration in International intellectual property disputes. *Cybaris®, An Intellectual Property Law Review*, *14*(1). Retrieved from https://open.mitchellhamline.edu/cybaris/vol14/iss1/2

Thakur, T. (2021). Reforming the investor-state dispute settlement mechanism and the host state's right to regulate: A critical assessment. *Indian Journal of International Law*, *59*(1), 173-208.

Tienhaara, K., & Downie, C. (2018). Risky business? The Energy Charter Treaty, renewable energy, and investor-state disputes. *Global Governance: A Review of Multilateralism and International Organizations*, *24*(3), 451-471.

Tuna, M. O. (2022). *Alternative dispute resolution in energy industries*. Abingdon, UK: Routledge.

United Nations. (n.d.). UNCITRAL Arbitration Rules. Retrieved from https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration

Verburg, C. (2019). Modernising the Energy Charter Treaty: An opportunity to enhance legal certainty in investor-state dispute settlement. *The Journal of World Investment & Trade*, *20*(2-3), 425-454.

Verma, A., & Arvind, K. S. (2024). Growth of alternative dispute resolution method in the legal system. *International Journal of Advanced Research in Science and Technology*, 13(4), 1313-1323.

Wu, C. H. (2020). ASEAN at the Crossroads: Trap and Track between CPTPP and RCEP. *Journal of International Economic Law*, *23*(1), 97-117.

Yin, W. (2018). Challenges, issues in China-EU investment agreement and the implication on China's domestic reform. *Asia Pacific Law Review*, *26*(2), 170-202.

Yukos Universal Limited (Isle of Man) v. The Russian Federation (PCA Case No. AA 227) (2014).

Zhang, X., Ab Rahman, R., & Khan, H. A. (2023). How to break the arbitrator's trust dilemma?. *International Journal of Academic Research in Business & Social Sciences*, *13*(5), 2225-2243.

ETHICAL DECLARATION

Conflict of interest: No declaration required. **Financing:** No reporting required. **Peer review:** Double anonymous peer review.