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DOCTORAL (PhD) DISSERTATION

THE IMPACT OF THE INTERNATIONAL INVESTMENT REGIME ON SUSTAINABLE DEVELOPMENT IN DEVELOPING COUNTRIES: A CASE STUDY OF CENTRAL ASIA

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A very deep, special thanks and appreciation must go to my family, especially my mother and my daughter for continuous support, encouragement and for prayers which gave me the strength and persistence to complete this study.

DECLARATION

I certify that the thesis I have presented for examination for the PhD degree of the Universityof Miskolc is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

I warrant that this authorization does not, to the best of my belief, infringe the rights of any third party.

Errors and omissions remain my own.

Miskolc, 21 August 2025

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signature

RECOMMENDATION

Student: *Aida Bektasheva, PhD candidate, Ferenc Deák Doctoral School of law, University of Miskolc.*

Title: *Impact of the International Investment Regime on Sustainable Development in Developing Countries: A Case Study of Central Asia.*

Aida Bektasheva began her studies in the LLM program five years ago. Following her successful admission to the Doctoral program, she has dedicated her research to a highly relevant and contemporary topic. Throughout her Doctoral studies, she consistently consulted with experts, structured her research framework, and developed the agenda for her dissertation. She has successfully met all the requirements of the Doctoral School.

The dissertation adopts a sophisticated comparative approach to the recognition and enforcement of arbitral awards in international commercial arbitration, with a particular almost exclusive focus on the public policy exception. The doctrine of public policy remains a critical bottleneck in private international law, often posing significant challenges to the enforcement of both arbitral and judicial awards across jurisdictions.

As a result of this rigorous and productive academic journey, she is now preparing for the workplace discussion of her dissertation. Her research explores the foreign direct investment (FDI) regimes of Central Asian countries, with a particular emphasis on the integration of sustainable development principles. The dissertation critically examines the international investment frameworks in the region by analyzing national legal systems, international investment agreements, investor–state dispute settlement (ISDS) mechanisms, and region-specific case studies.

The study begins by reviewing fundamental investment concepts, the evolution of the global investment system including its origins, sources, and core elements and key theoretical approaches such as the Calvo Doctrine, the Hull Formula, classical and dependency theories, as well as the role of “soft law” principles. It then delves into the investment regimes of Central Asian countries, assessing bilateral investment treaties (BITs) and investor-state arbitration mechanisms. The research highlights that most BITs in the region lack explicit references to sustainable development, including environmental, health, labor, and human rights standards.

The thesis presents an in-depth analysis of the subject from a distinctive comparative perspective, using the foundational principles of various national legal systems as the basis for discussion. Through a detailed exposition and the rigorous application of multiple legal research methods, the work is meticulously constructed. The comparative method serves as the primary research approach and is employed in a way that brings originality and depth to the analysis. The terminology is consistently clear and well-defined, with particular attention given to the precise wording of relevant international legal sources.

Aida Bektasheva successfully presented a well-developed first draft for the workplace discussion that was approved by the academic community, both scholars and practitioners. I am convinced that her hard work resulted in a dissertation meeting all necessary academic requirements. Therefore, I am looking forward to the final steps of the doctoral procedure.

Miskolc, 22 August 2025

Imre Mátyás PhD, Associate Professor of Law, University of Miskols

Supervisor

TABLE OF CONTENTS

LIST OF MAIN CASES

1. Al-Bahloul v. Tajikistan, Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan, (SCC Case No. 064/2008), 2008.
2. Bear Creek Mining v. Peru, Bear Creek Mining Corporation v. Republic of Peru, (ICSID Case No. ARB/14/21), available at https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/589/bear-creek-mining-v-peru.
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5. Case No. A-2013/29, Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic (I), Moscow Chamber of Commerce and Industry, Award, at 58.
6. Centerra Gold Inc. and Kumtor Gold Company v. The Kyrgyz Republic, PCA Case No. 2007-01/AA278.
7. Görkem Inşaat v. Turkmenistan, Görkem Inşaat Sanayi ve Ticaret Limited Şirketi v. Turkmenistan, (ICSID Case No. ARB/16/30).
8. Inceysa Vallisoletana S.L. v. Republic of El Salvador, Award of 2 August 2006, ICSID Case No. ARB/03/26, para 225.
9. ICSID Case No. ARB/09/12, Pac Rim Cayman LLC v. Republic of El Salvador, 2012.
10. ICSID Case No. ARB/96/1, Compañia del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica, 2000.
11. ICSID Case No. ARB/09/12, Pac Rim Cayman LLC v. Republic of El Salvador, 2012.
12. Newmont USA Limited and Newmont (Uzbekistan) Limited v. Republic of Uzbekistan, 2020. ICSID, Case No. ARB/06/20 (ICSID), 2020.
13. Methanex v. United States, Final Award of 3 August 2005, NAFTA, Part II, Chapter B, para 3.

14. MTS v. Turkmenistan (I), Mobile TeleSystems OJSC v. Turkmenistan (I), (ICSID Case No. ARB(AF)/11/4), 2011.
15. Oxus Gold plc v. Republic of Uzbekistan, the State Committee of Uzbekistan for Geology & Mineral Resources, and Navoi Mining & Metallurgical Kombinat, 2011.
16. PCA Case No. 2013-22, Windstream Energy LLC v. Government of Canada, Counter Memorial, 20 January 2015, para. 501.
17. Petrobart v. Kyrgyz Republic, Stockholm Chamber Case No. 126/2003, Final Award, 29 March 2005.
18. Saluka Investments BV (The Netherlands) v. The Czech Republic, UNCITRAL, Partial Award, 17 March 2006, para 483.
19. Schönberger v. Tajikistan, Alois Schönberger v. Republic of Tajikistan, (ICSID Case No. ARB(AF)/19/1), 2019.
20. Saluka Investments BV (Netherlands) v. Czech Republic, Partial Award of 17 March 2006, UNCITRAL, para 449.
21. SECE v. Turkmenistan, SECE İnşaat ve Ticaret A.Ş. v. Turkmenistan, (ICSID Case No. ARB/18/34), 2018.
22. Treaty of Amity, Commerce and Navigation, between His Britannic Majesty and the United States of America, Ratified June 24, 1795.
23. Ulysseas, Inc. v. Ecuador, UNCITRAL, Final Award of 12 June 2012, para 272.
24. Valeri Belokon v. Kyrgyz Republic, UNCITRAL, Award, 4 November 2019.
25. Vladislav Kim and others v. Republic of Uzbekistan, 2020, ICSID, Case No. ARB/13/6.

LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific
AIFC	Astana International Financial Centre
BIT	Bilateral Investment Treaty
CAIF	Central Asia Investment Forum
CDM	Clean Development Mechanism
CIS	Commonwealth of Independent States
CSTO	Collective Security Treaty Organization
DSU	Dispute Settlement Understanding
DTT	Double Taxation Treaty
EAEU	Eurasian Economic Union
EPA	Economic Partnership Agreement
FCN	Treaties of Friendship, Commerce and Navigation
FDI	Foreign Direct Investment
FEZ	Free Economic Zone
FET	Fair and Equitable Treatment
FPS	Full Protection and Security
FTA	Free Trade Agreement
GDP	Gross Domestic Product
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
HKIAC	Hong Kong International Arbitration Centre
ICJ	International Court of Justice
ICT	Information and Communication Technologies
IIA	International Investment Agreement
IIAs	International Investment Agreements
ICC	International Chamber of Commerce

ICSID	International Centre for Settlement of Investment Disputes
ICJ	International Court of Justice
IISD	International Institute for Sustainable Development
ILA	International Law Association
IMF	International Monetary Fund
ISDS	Investor-State Dispute Settlement
LCIA	London Court of International Arbitration
MFN	Most-Favoured-Nation Treatment
NAFTA	North American Free Trade Agreement
NDC	Nationally Determined Contribution
NT	National Treatment
NYC	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)
OECD	Organisation for Economic Co-operation and Development
PCA	Permanent Court of Arbitration
SCC	Stockholm Chamber of Commerce
SDGs	Sustainable Development Goals
SEZ	Special Economic Zone
SOEs	State-Owned Enterprises
TIPs	Treaties with Investment Provisions
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRIMs	Trade-Related Investment Measures
UN	United Nations
UNCHE	United Nations Conference on the Human Environment
UNCITRAL	United Nations Commission on International Trade Law
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNIDROIT	International Institute for the Unification of Private Law
USSR	Union of Soviet Socialist Republics
VAT	Value Added Tax
VCLT	Vienna Convention on the Law of Treaties
WB	World Bank

WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

SUMMARY

Attracting foreign direct investment (FDI) has become a central component of state strategies to promote economic growth and development worldwide. International Investment Law is one of the most rapidly evolving fields of international law, as evidenced by the increasing number of Bilateral Investment Treaties (BITs) and the inclusion of investment chapters in regional and megaregional trade agreements.

In the Central Asian context, the investment regime underwent a dramatic transformation following the collapse of the Soviet Union. The region was perceived as a key destination for foreign direct investment, leading to a significant increase in FDI inflows. Central Asia, with its abundant natural resources and relatively low labor costs, continues to be viewed as an attractive investment hub. It is widely acknowledged that FDI plays a crucial role in fostering economic growth and sustainable development. The link between investment regimes and the concept of Sustainable Development is grounded in the way investment policies and practices can either support or hinder the achievement of long-term social, economic, and environmental goals.

Sustainable Development aims to meet the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development, as established in the UN 2030 Agenda, represents a broadly accepted political commitment among states. However, there remains debate over whether and to what extent sustainable development constitutes a binding international legal obligation. Investment can yield both positive and negative consequences for local communities. In developing countries, FDI is particularly important, as it helps compensate for a shortage of domestic capital, increases tax revenues, enhances employment opportunities, and contributes to economic development. However, foreign investors may also engage in activities that result in adverse social, environmental, or economic impacts.

Despite the significance of sustainable development, traditional investment agreements in Central Asia have primarily focused on promoting foreign investment and economic growth. They typically do not incorporate explicit commitments to sustainable development or related priorities, such as environmental protection, public health, or social welfare. This gap raises

important questions about the future alignment of investment policies with broader sustainability objectives.

Given the significant role of foreign investment in driving economic growth, particularly in developing countries such as those in Central Asia, this research aims to examine international standards, national legal frameworks governing investment, international arbitration procedures, and investment treaties. These instruments have been instrumental in reducing investment barriers, as well as in protecting and attracting foreign investors to host states in alignment with sustainable development principles.

This thesis provides a comprehensive analysis of the investment regimes in Central Asia, evaluating the extent to which these frameworks may constrain legitimate policymaking. The research also investigates how national legal structures in countries like Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan, and Tajikistan interact with international norms, focusing on how they integrate or conflict with the principles of sustainable development. Through case studies, the thesis explores the challenges these nations face in reconciling the need for foreign direct investment (FDI) with broader environmental, social, and governance objectives.

In addition to the assessment of legal frameworks, this research examines the evolving role of international arbitration in investment disputes. It discusses how the dispute resolution mechanisms, such as Investor-State Dispute Settlement (ISDS), influence state sovereignty and policymaking, and their potential implications for achieving sustainable development goals (SDGs). This analysis highlights the tensions between the protection of investor rights and the ability of host states to regulate in the public interest, particularly in sectors critical for sustainable development, such as natural resources, energy, and agriculture.

By exploring the intersection of international investment law and sustainable development, the study identifies gaps in existing legal frameworks that may hinder the effective promotion of sustainable investment. Furthermore, the research proposes recommendations on how states can contribute to the evolution of international investment law, suggesting reforms that would encourage greater alignment between foreign investment and sustainable development principles. These recommendations focus on the development of more flexible, context-specific legal provisions that allow states to meet both their economic and environmental goals, while ensuring investor protection.

This work also underscores the importance of strengthening regional cooperation among Central Asian countries to create a more cohesive investment framework that fosters sustainable development. It calls for a balanced approach, where the benefits of foreign investment are maximized while minimizing negative externalities through stronger regulatory frameworks and sustainable development clauses in international investment agreements (IIAs).

РЕЗЮМЕ

Привлечение прямых иностранных инвестиций (ПИИ) стало центральным элементом государственной стратегии по стимулированию экономического роста и развития во всем мире. Международное инвестиционное право является одной из наиболее стремительно развивающихся отраслей международного права, о чём свидетельствует рост числа двусторонних инвестиционных соглашений (БИТ) и включение инвестиционных разделов в региональные и мегарегиональные торговые соглашения. В контексте Центральной Азии инвестиционный режим претерпел значительные изменения после распада Советского Союза. Регион стал рассматриваться как ключевое направление для ПИИ, что привело к значительному увеличению объема инвестиций. Центральная Азия, обладая богатыми природными ресурсами и относительно низкой стоимостью рабочей силы, продолжает восприниматься как привлекательный инвестиционный центр. Широко признано, что ПИИ играют важную роль в стимулировании экономического роста и устойчивого развития. Связь между инвестиционными режимами и концепцией устойчивого развития основана на том, как инвестиционная политика и практика могут способствовать или, наоборот, препятствовать достижению долгосрочных социальных, экономических и экологических целей. Устойчивое развитие направлено на удовлетворение потребностей настоящего без ущерба для возможностей будущих поколений удовлетворять свои собственные потребности. Эта концепция, закреплённая в Повестке дня ООН на период до 2030 года, представляет собой широко признанное политическое обязательство государств. Однако до сих пор ведутся споры о том, насколько устойчивое развитие может считаться обязательной нормой международного права. Инвестиции могут приносить как положительные, так и отрицательные последствия для местных сообществ. В развивающихся странах ПИИ особенно важны, так как они компенсируют нехватку внутреннего капитала, увеличивают налоговые поступления, способствуют созданию рабочих мест и развитию экономики. В

то же время деятельность иностранных инвесторов может вызывать негативные социальные, экологические или экономические последствия.

Несмотря на значимость устойчивого развития, традиционные инвестиционные соглашения в Центральной Азии в основном сосредоточены на поощрении иностранных инвестиций и экономического роста. Они, как правило, не содержат явных обязательств в области устойчивого развития или связанных с ним приоритетов, таких как охрана окружающей среды, общественное здравоохранение или социальное благополучие. Этот пробел поднимает важные вопросы о необходимости согласования инвестиционной политики с более широкими целями устойчивости. Учитывая важную роль иностранных инвестиций в обеспечении экономического роста, особенно в развивающихся странах, таких как государства Центральной Азии, данное исследование направлено на анализ международных стандартов, национальных правовых режимов регулирования инвестиций, процедур международного арбитража и инвестиционных договоров. Эти инструменты сыграли ключевую роль в снижении инвестиционных барьеров, а также в защите и привлечении иностранных инвесторов в принимающие государства в соответствии с принципами устойчивого развития.

Диссертация представляет собой всесторонний анализ инвестиционных режимов Центральной Азии, оценивая, в какой степени эти правовые рамки могут ограничивать законную возможность проведения государственной политики. Исследование также рассматривает, как национальные правовые системы таких стран, как Казахстан, Кыргызстан, Узбекистан, Туркменистан и Таджикистан, взаимодействуют с международными нормами, с акцентом на степень их интеграции с принципами устойчивого развития или конфликта с ними. Посредством кейс-стади в работе рассматриваются вызовы, с которыми сталкиваются эти страны при необходимости сбалансировать потребность в ПИИ с более широкими экологическими, социальными и управленческими (ESG) целями. Кроме анализа правовых рамок, исследование рассматривает эволюцию международного арбитража в инвестиционных спорах. Обсуждаются такие механизмы разрешения споров, как разрешение споров между инвестором и государством (ISDS), их влияние на государственный суверенитет и процесс разработки государственной политики, а также их возможные последствия для достижения целей устойчивого развития (ЦУР). Анализ подчеркивает напряженность между защитой прав инвесторов и возможностями государств регулировать в общественных интересах, особенно в таких критически важных для устойчивого развития секторах, как природные ресурсы, энергетика и сельское хозяйство. Изучая пересечение международного инвестиционного права и устойчивого развития, исследование выявляет пробелы в существующих правовых режимах, которые могут препятствовать эффективному продвижению устойчивых инвестиций. Более того, работа предлагает рекомендации для государств о том, как они могут содействовать эволюции международного инвестиционного права, предлагая реформы, направленные на укрепление соответствия между иностранными инвестициями и принципами устойчивого развития. Эти рекомендации сосредоточены на разработке более гибких, контекстно-ориентированных правовых положений, которые позволят государствам достигать как экономических, так и экологических целей при одновременном обеспечении защиты инвесторов. Также в работе подчеркивается важность укрепления регионального сотрудничества между странами Центральной Азии с целью создания более согласованной инвестиционной политики, способствующей устойчивому развитию. Исследование призывает к сбалансированному подходу, при котором выгоды от иностранных инвестиций максимизируются, а негативные внешние эффекты минимизируются за счёт усиления регуляторных механизмов и включения положений об устойчивом развитии в международные инвестиционные соглашения.

CHAPTER 1: INTRODUCTION

1.1. Background

Global trade has been accompanied by a steady increase in the volume and significance of foreign investments in recent decades. In the first half of 2022, global FDI flows rebounded to USD 972 billion, with the United States emerging as the leading recipien followed by China and Brazil.[1] Foreign investment serves as a key driver of international development, contributing to economic growth, technology transfers, infrastructure development, capacity building, innovation, and even the promotion of good governance and rule of law[2] and other benefits. With its extensive network of international investment treaties and an effective arbitration framework, international investment law provides foreign investors with robust mechanisms to safeguard their economic interests in host states[3]. Such extensive territorial reach of the regime and its capacity to encroach on policy space of home states and the ability to interfere with the critical social concerns from environmental issues to national heritage, puts international investment law in the spotlight and subject to scrutiny and criticism Moreover, today sustainable development has been vigorously debated within the field of international investment law as well[4] and it has now been acknowledged that world is going to the 'Age of Sustainable Development'[5]. National investment laws have undergone significant transformations over time. The earliest investment laws emerged in developing countries in the 1950s, and throughout the 1960s and 1970s, they were primarily shaped by domestic policy objectives. However, in the 1980s, investment laws began to evolve as instruments for incorporating international standards, particularly those related to investment protection, into domestic legal frameworks. Between 1980 and 2010, many developing countries revised their investment laws, often aligning them more closely with

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[1]Organisation for Economic Co-operation and Development (OECD) (2022). *Foreign direct investment statistics: Data, analysis and forecasts* https://www.oecd.org/investment/statistics.htm (Retrieved on 10 March 2025).

[2] Schill, S. W. (Ed.). (2010). *International investment law and comparative public law*. Oxford: Oxford University Press.

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[4] Newcombe, A. P., Gehring, M., & Cordonier Segger, M.-C. (2010). Introduction to *Sustainable development in world investment law*. Leal-Arcas, R. (2015). Megaregionals and sustainable development: The Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership. *Renewable Energy Law and Policy Review*, 4, 248–264.

[5] Sachs, J. D. (2015). *The age of sustainable development*. New York, NY: Columbia University Press.

international investment treaties[6]. While this trend was widespread, it was not universal, as countries adopted diverse approaches to reforming their investment regimes. During the same period, several developed countries also enacted or amended their investment laws. However, these reforms primarily focused on regulating the admission and screening of inbound foreign investment and were guided by domestic policy considerations rather than international standards. International investment law operates alongside a wide range of other bodies of international law, encompassing both public and private legal frameworks that are diverse and continuously evolving. Due to its dominance by bilateral and regional treaties, the legal framework governing investments varies depending on the specific host and home states involved. Investment treaties can take multiple forms, including bilateral investment treaties (BITs), multilateral[7], regional[8] and other like trade, and economic partnership agreements increasingly include investment provisions. For example, according to database of UNCTAD, the total number of IIAs was over 3297 by May 2024, of which 2854 were BITs[9] and there have been more than 1332 known investment arbitration cases[10].Many treaties present broadly comparable terms and significant uniformity of underlying principles[11]. Yet the detailed wording can vary considerably, and so can the specific standards of treatment to which investors are entitled. Commonly used standards of treatment include:

- "National treatment" and "most-favoured-nation" clauses that typically require states to treat foreign investors or investments no less favourably than investments in similar circumstances by their own nationals (national treatment) or by nationals of other states (most-favoured nation treatment).

- "Fair and equitable treatment" clauses that require states to provide foreign investors with a minimum standard of fairness, regardless of the treatment applied to domestic investors under national law.

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[6] Spears, S. A. (2010). The quest for policy space in a new generation of international investment agreements. Journal of International Economic Law, 13(4), 1037–1075.
[7] World Trade Organization (WTO). (1994). *Agreement on Trade-Related Investment Measures (TRIMs).*
[8] Energy Charter Treaty (1995). *34 I.L.M. 360.*North American Free Trade Agreement (NAFTA). (1994). *Chapter 11: Investment*.Framework Agreement on the ASEAN Investment Area. (1998). ASEAN Comprehensive Investment Agreement. (2009). Protocol of Colonia for the Promotion and Reciprocal Protection of Investments in MERCOSUR. (1994). MERCOSUR Protocol on Promotion and Protection of Investments Coming from Non-MERCOSUR State Parties. (1994).
[9] United Nations Conference on Trade and Development (UNCTAD). (2024). *Investment policy hub: Database of international investment agreements (IIAs).* https://investmentpolicy.unctad.org/international-investment-agreements (Retrieved on 10 March 2025).
[10] United Nations Conference on Trade and Development (UNCTAD). (2024). *Investment dispute settlement navigator.* Retrieved from https://investmentpolicy.unctad.org/investment-dispute-settlement (Retrieved on 10 March 2025).
[11] Schill, S. W. (2009). *The multilateralization of international investment law.* Cambridge: Cambridge University Press.

- “Full protection and security” clauses, generally interpreted as obligating states to safeguard the physical integrity of foreign investments. In some cases, these clauses have been extended to include legal protections as well.

- Clauses that limit a government’s ability to expropriate foreign investments. Such clauses typically require that expropriation be for a public purpose, nondiscriminatory, conducted with due process, and accompanied by compensation based on specified standards, often linked to market value.

- Provisions on currency convertibility and profit repatriation, which allow investors to repatriate returns from their activities. Ensure that investors can convert local currency and repatriate their earnings, protecting their ability to transfer profits abroad.

In addition to establishing substantive standards of treatment, most investment treaties provide investors with the option to bring disputes against the host state before international investor-state arbitration, rather than through national courts. International investment law is characterized by various dispute settlement mechanisms, adjudicative bodies, and applicable rules. Several international arbitration centers exist, each with its own procedural framework, allowing for flexibility in resolving investment disputes. One prominent institution is the World Bank-hosted International Centre for the Settlement of Investment Disputes (ICSID). The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID)[12] and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)[13] are two widely recognized international instruments that play a critical role in the global investment regime. The ICSID Convention provides a specialized forum for resolving investment disputes between foreign investors and host states, thereby enhancing investor confidence by offering a neutral and enforceable dispute resolution mechanism. The New York Convention, on the other hand, facilitates the recognition and enforcement of foreign arbitral awards across more than 170 countries, ensuring the legal effectiveness of investor-state arbitration outcomes and reinforcing the enforceability of investment protections on a global scale.

[12] Broches, A. (1972). *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. *Recueil des Cours*, 136, 331.
[13] United Nations Commission on International Trade Law (UNCITRAL). (1958). *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).*

Investment-related norms are also included in treaties relating to the WTO, particularly the General Agreement on Trade in Services (GATS)[14] and the Agreement on Trade-Related Investment Measures (TRIMs). Additional rules regarding the interaction and trade relations between parties also regulate by Vienna Convention on the Law of Treaties[15] and soft law instruments in international investment law and evident that the growing arbitral case law was contributing to an increasingly elaborate body of international investment law[16]. For example, the New York Convention provides for a multilateral legal process to enforce *non-ICSID arbitral* awards and does not contain substantive rules. In most cases, be enforced by means of investor-state arbitration (which is often referred to as investor-state dispute settlement- ISDS) provides most favoured nations (MNEs) with unique access to remedy at the international level. To date, investors have lodged more than 800 known treaty-based investor-state claims[17]. Most cases take place at a tribunal operating under the rules of the United Nations Centre for International Trade Related Arbitration Law (UNCITRAL)[18] or at the International Court for the Settlement of Investment Disputes (ICSID) at the World Bank. Also, other private bodies like the International Chamber of Commerce, the London Court of International Arbitration[19], the Stockholm Chamber of Commerce[20] or the Hong Kong International Arbitration Centre administer arbitration rules and have their own procedural ones. Unlike ICSID, these institutions are mainly concerned with business disputes between private parties but are also used for investor-state disputes. Arbitrations are also carried out outside any standing institutions so-called 'ad hoc arbitration', often following the rules of UNCITRAL Arbitration Rules. In addition, states are responding to challenges and concerns surrounding ISDS through different avenues. ISDS continues to be controversial, spurring debate in the investment and development community and the public at large[21].

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[14] World Trade Organization (WTO). (1994). *General Agreement on Trade in Services (GATS)*.

[15] United Nations. (1980, January 27). *Vienna Convention on the Law of Treaties*.

[16] Muchlinski, P., Ortino, F., & Schreuer, C. (Eds.). (2008). *The Oxford handbook of international investment law*. Oxford and New York: Oxford University Press.

[17] United Nations Conference on Trade and Development. (2024). *Investor–State dispute settlement: Review of developments in 2023*

[18] United Nations Commission on International Trade Law (UNCITRAL). (2013). *Guide to UNCITRAL: Basic facts about*. United Nations. International Centre for Settlement of Investment Disputes (ICSID). (2006). *ICSID Convention, regulations and rules*. Washington, D.C.: International Bank for Reconstruction and Development. International Chamber of Commerce (ICC). (n.d.). The world's leading arbitral institution since 1923. Retrieved from https://iccwbo.org/(Retrieved on 10 March 2025)

[19] London Court of International Arbitration (LCIA). (n.d.). *International arbitration services*. Retrieved from https://www.lcia.org/(Retrieved on 10 March 2025)

[20] International Chamber of Commerce (ICC). (1919). Paris.

[21] United Nations Conference on Trade and Development. (2019). *Reforming investment dispute settlement: A stocktaking*. https://unctad.org/system/files/official-document/diaepcbinf2019d3_en.pdf(Retrieved on 10 March 2025)

1.1.1. The link between investment regime and Sustainable Development concept

The concept of "sustainable development" remains the only universally accepted goal in international policy that integrates both economic and social objectives. While frequently reiterated, the dynamic goal of sustainable development has not always been embraced by those primarily focused on the more static objective of economic growth. However, an effective investment regime must ensure that sustainable development goes beyond a mere declarative principle, becoming an essential and actionable goal across the entire system. The connection between investment, economic growth, welfare, and sustainable development is often assumed, with the prevailing belief that "sustainable development requires increased investment'.[22]

In 1992, United Nations Conference on Environment and Development (UNCED) held in Rio to shape the concept of sustainable development. As a result, the Rio Declaration on Environment and Development [23]was adopted. Moreover, during the Rio+10 summit in 2002, Plan of Implementation of the World Summit on Sustainable Development[24], later at the Rio+20 summit in 2012 concept 'The Future We Want' were adopted with including the following important thematic focuses such as Poverty Eradication, Food Security, Sustainable Agriculture, Energy, Sustainable Transport, Sustainable Cities, Health and Population and Promoting Full and Productive Employment[25]. However, world political leaders committed sustainable development in the spirit of global partnership and solidarity during third International Conference on Financing for Development in Addis Ababa in July 2015[26]. In this regard, later in September 2015, 193 countries adopted a resolution called 'Transforming our world: the 2030

[22] United Nations Conference on Environment and Development. (1992). *Agenda 21, Rio Declaration, and Forest Principles* (Vol. I, A/CONF.151/26). https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (Retrieved on 10 March 2025)
[23] United Nations. (1992). *Rio Declaration on Environment and Development* (A/CONF.151/26, Vol. I). Rio de Janeiro, Brazil, 3–14 June 1992. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (Retrieved on 10 March 2025)
[24] United Nations General Assembly. (2002). *World Summit on Sustainable Development* (A/C.2/57/L.83). https://www.un.org/ga/search/view_doc.asp?symbol=A/C.2/57/L.83&Lang=E
[25] United Nations. (2012). *The future we want: Outcome document of the United Nations Conference on Sustainable Development, Rio de Janeiro, Brazil, 20–22 June 2012.* https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf (Retrieved on 10 March 2025)
[26] United Nations General Assembly. (2015a). *Addis Ababa Action Agenda of the Third International Conference on Financing for Development* (A/RES/69/313). https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/69/313&Lang=E (Retrieved on 10 March 2025)

Agenda for Sustainable Development'[27] with 17 sustainable development goals during the United Nations Sustainable Development Summit.

The concept of sustainable development has more recently become relevant in the context of international investment law and policy. The organization for Economic Co-operation and Development (OECD) has found that more than 75 percent of treaties signed between 2008 and 2013 refer to at least one of four concerns: environment, labour, anti-corruption and human rights[28]. The 2030 Agenda, adopted by Heads of 193 State in 2015, recognizes the importance of mobilizing adequate financial flows in order to realize the Sustainable Development[29]. It was the Hebrew and Christian theology, giving expression to the linear conception of time as a directed succession of events that transformed the way of thinking about history and progress.[30] It has now been acknowledged that we arrived at the "Age of Sustainable Development". For example, the International Institute for Sustainable Development (IISD), a non-governmental organization, already developed the Model International Agreement on Investment for Sustainable Development (IISD Model) back in April 2005.[31] The UNCTAD Investment Policy Framework and the Road Map for International Investment Agreements Reform promotes new generation of investment policies[32]. It should be emphasized that a central aspect of sustainable development is the integration principle, which includes the assimilation of environmental concerns, human rights into economic development along with the reciprocal integration of economic and social concerns mostly into environmental policies and obligations.

Another important document in international issues is the Policy Framework for Sustainable Development[33] , which offers guidance and core principles for creating investment policies. For instance, it emphasizes that investment policies should align with a country's overall development strategy, involve all stakeholders, prioritize the public good, and minimize potential negative effects. It also stresses the importance of non-discriminatory treatment and other key principles. Promoting sustainable development requires greater attention to social,

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[27] United Nations General Assembly. (2015b). *Transforming our world: The 2030 Agenda for Sustainable Development* (A/RES/70/1). https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E(Retrieved on 10 March 2025)

[28]Gordon, K., Pohl, J., & Bouchard, M. (2014). *Investment treaty law, sustainable development and responsible business conduct: A fact-finding survey* (OECD Working Papers on International Investment, 2014/01). OECD

[29] United Nations General Assembly Resolution.Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015.

[30] Du Pisani, J. A. (2006). Sustainable development—Historical roots of the concept. *Environmental Sciences, 3*(2), 83–96. Sachs, J. D. (2015). *The age of sustainable development*. Columbia University Press.

[31] International Institute for Sustainable Development. (2005). *Model international agreement on investment for sustainable development*. IISD.

[32] Sands, P. (2003). *Principles of international environmental law* (2nd ed.). Cambridge University Press.

[33] United Nations Conference on Trade and Development. (2015). *Investment policy framework for sustainable development*. UNCTAD https://unctad.org/en/PublicationsLibrary/diaepcb2015d5_en.pdf(Retrieved on 10 March 2025).

environmental, and economic factors. For example, international treaties may allocate resource rights, define investment terms, outline how returns will be shared between the investor and the state, and establish social and environmental safeguards.

In addition, UNCTAD Investment Policy Framework and the Road Map for International Investment Agreements Reform[34] from 2015 promotes a new generation of investment policies in support of the spirit of the Addis Ababa Action Agenda[35] calling for reorienting the national and international investment regime towards sustainable development. The guidelines have been used by more than 100 countries in reviewing their investment treaty networks and formulating a new generation of international investment policies[36]. United Nations Climate Change Conference in Paris in December 2015, as part of the annual session of the United Nations Framework Convention on Climate Change and the annual meeting of the parties to the Kyoto Protocol, which adopted the Paris Agreement on Climate Change[37]. While it has become increasingly common to include references to sustainable development, at least in the preamble of treaties, the number of Bilateral Investment Treaties (BITs) explicitly referring to sustainable development continues to grow each year. A significant milestone occurred in 2004, when the International Institute for Sustainable Development (IISD) introduced the Model International Investment Agreement for the Promotion of Sustainable Development, designed as a template for states in drafting International Investment Agreements (IIAs).[38] The evolving relationship between international investment law and sustainable development is unfolding in an era of unprecedented interconnectedness, driven by globalization. International investment law is facing significant challenges and serious critiques[39]. One key question is whether developing states who stand to benefit from the inclusion of social provisions will attempt to incorporate labor, human rights, and environmental standards into investment agreements and apply them effectively, free from obstacles or barriers. Investment arbitration, being a private forum

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[34] United Nations Conference on Trade and Development. (2015). *Investment policy framework for sustainable development*. UNCTAD. https://unctad.org/en/PublicationsLibrary/diaepcb2015d5_en.pdf(Retrieved on 10 March 2025).

[35] United Nations. (2015). Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13–16 July 2015). United Nations. https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf(Retrieved on 10 March 2025).

[36] United Nations Conference on Trade and Development. (2016). *World investment report 2016: Investor nationality – Policy challenges*. UNCTAD. https://unctad.org/en/PublicationsLibrary/wir2016_en.pdf (Retrieved on 10 March 2025).

[37] United Nations Framework Convention on Climate Change. (2015, december 12). *Adoption of the Paris Agreement* (FCCC/CP/2015/L.9/Rev.1). UNFCCC .https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf (Retrieved on 10 March 2025)

[38] International Institute for Sustainable Development. (2004). *Adel international investment agreement for the promotion of sustainable development*. IISD. https://www.iisd.org/publications/model-international-investment-agreement-promotion-sustainable-development(Retrieved on 10 March 2025)

[39] Schill, S. W. (2011). Enhancing international investment law's legitimacy: Conceptual and methodological foundations of a new public law approach. *Virginia Journal of International Law, 51*(1), 57–102

designed for individual investors to protect their commercial interests, presents a controversial backdrop for addressing public interest-driven sustainable development issues.

Several controversial and high-profile arbitration cases involving sustainable development issues like environmental damage, exploitation of natural resources and extortionate damages awarded to investors were rather a painful start to the relationship between sustainable development concept and international investment[40]. International investment law already offers several examples where it crossed the path with sustainable development. One of the first investment arbitration cases involving sustainable development considerations was *Santa Elena v. Costa Rica* [41], which was decided in 2000. In one of the most controversial and high-profile arbitration cases, *Pac Rim v. El Salvador*[42], *Windstream v. Canada*[43], Canada is bringing into its defense against Windstream principles the United Nations Rio Declaration on Environment and Development[44]. Without a doubt, sustainable development issues are behind an increasing number of arbitration cases[45]. They surface in arbitration, provoke discussion, contribute to the body of arbitrate jurisprudence and help to develop this dynamic area of law.

1.1.2. International investment regime in the Central Asian countries

Several international institutions and private equity funds recognize Central Asian countries as emerging destinations for FDI, driven by two main factors: abundant natural resources and a growing population that is expanding the market size. These countries are rich in natural resource deposits, but more importantly, they boast a young and well-educated workforce capable of transforming raw metals, minerals, and energy wealth into long-term sustainable economic growth and regional prosperity. Additionally, the region benefits from its proximity to

[40] Miles, K. (2013). The origins of international investment law: Empire, environment and the safeguarding of capital. Cambridge University Press

[41] International Centre for Settlement of Investment Disputes (ICSID). (2000). *Compañia del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1. https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/96/1(Retrieved on 10 March 2025)

[42] International Centre for Settlement of Investment Disputes (ICSID). (2012). *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12. https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/12(Retrieved on 10 March 2025)

[43] Permanent Court of Arbitration (PCA). (2015, January 20). *Windstream Energy LLC v. Government of Canada*, PCA Case No. 2013-22, Counter-Memorial, para. 501. https://www.italaw.com/sites/default/files/case-documents/italaw4137.pdf

[44] United Nations. (1992). *Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. I). United Nations Conference on Environment and Development. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf(Retrieved on 10 March 2025)

[45] Cotula, L. (2016). Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries. IIED, London, https://www.iied.org/12587iied(Retrieved on 10 March 2025).

rapidly growing economies such as India and China. Central Asia serves as a crucial geostrategic and economic hub, acting as a trade and transit corridor that links Asia with Europe, Africa, and the Middle East.It is widely recognized that FDI is a cornerstone of growth and sustainable development. In response to this, Central Asian states (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) have been actively working to attract foreign investment through structural reforms. Since the collapse of the Union of Soviet Socialist Republics (USSR) [46] FDI inflows into the Central Asia region have significantly increased, reflecting the growing importance of these economies in the global market. In the investment regime's context, also the Central Asian states have been active in the international investment law arena also, through both signing IIAs and being involved in investor state arbitration. From the historical point of view, all Central Asian states went through a broadly similar transition trajectory after the collapse of the Soviet Union[47]. The Central Asian markets form an important geo-strategic and economic trade hub and transit corridor, linking Asia with Europe, Africa and the Middle East.[48] Central Asia is the region situated east of the Caspian Sea and its FDI potential estimated at $170 billion, including $40-70 billion in non-industries, over the next 10 years. The total GDP of around $265 billion in 2017, is comparable to Central America ($255 billion), Finland ($252 billion), or Chile ($277 billion) taken individually.[49] Countries benefit from macroeconomic stability, a large domestic market, and a cheap and abundant labour force but have non-harmonized regulatory investment environments. The country's investment legislation contains numerous investment-friendly provisions resulting from accession to the World Trade Organization (WTO), which has evolved into a global mechanism capable of liberalizing trade and investment generally[50], Energy Charter Treaty[51], CIS Investor Rights Convention[52], Organization of Islamic Conference Investment Chapter (OICIC) subsequent legislative revisions. Although Central Asian states currently participate in a number of alliances, both within and outside the region, there is no

[46] Kim, A., & Alvarez-Perez, F. (2024, February). International investment law and investor-state disputes in Central Asia: Emerging issues – Book review. *Transnational Dispute Management (TDM)*. https://www.transnational-dispute-management.com(Retrieved on 10 March 2025).
[47] Sattorova, M. (2015). International investment law in Central Asia: The making, implementation and change of investment rules from a regionalist perspective. *Journal of World Investment & Trade*, *16*(5–6), 1005–1032.
[48]Williams, A. (2018). EBRD forum in Beijing to promote investment in Central Asia. *European Bank for Reconstruction and Development (EBRD)*. https://www.ebrd.com/news/2018/ebrd-forum-in-beijing-to-promote-investment-in-central-asia.html(Retrieved on 10 March 2025)
[49] Boston Consulting Group. (2018). *Investing in Central Asia: One region, many opportunities*. https://www.bcg.com/(Retrieved on 10 March 2025)
[50] Mathis, J. H. (2002). *Regional trade agreements in the GATT/WTO: Article XXIV and the international trade requirement*. T.M.C. Asser Press.Petersmann, E.-U. (1997). *The GATT/WTO dispute settlement system: International law, international organizations and dispute settlement*. Kluwer Law International.
[51] Energy Charter Treaty. (1998). *Energy Charter Treaty and related documents: A legal framework for international energy cooperation*. 34 I.L.M. 373. https://www.energycharter.org/(Retrieved on 10 March 2025)
[52]Commonwealth of Independent States. (1997). *Convention on the Protection of Investor Rights*. Signed in Moscow by Armenia, Belarus, Moldova, Tajikistan, Kazakhstan, and Kyrgyzstan.

regional agreement on investment between them. Central Asian countries are signatories to several international investment agreements and frameworks that shape their investment regimes. These include[53]:

Multilateral Agreements and Memberships

- World Trade Organization (WTO): Kazakhstan (2015) and Kyrgyzstan (1998) are WTO members, while Uzbekistan joined in 2023. Tajikistan (2013) is also a member. Turkmenistan has observer status.
- International Centre for Settlement of Investment Disputes (ICSID): Kazakhstan, Kyrgyzstan, Uzbekistan, and Tajikistan are contracting states, allowing investors to seek dispute resolution under ICSID.
- Energy Charter Treaty (ECT): All Central Asian countries except Turkmenistan are members, providing protection to energy sector investments.
- Eurasian Economic Union (EAEU): Kazakhstan and Kyrgyzstan are members, with common investment policy and market integration with Russia, Belarus, and Armenia.

Bilateral and Regional Investment Treaties

- Bilateral Investment Treaties (BITs): Each country has signed numerous BITs, offering protection against expropriation, fair and equitable treatment (FET), and dispute resolution mechanisms.
- China-Central Asia Investment Agreements: Given China's major role as an investor in Central Asia, various agreements promote investment under the Belt and Road Initiative (BRI).
- EU-Central Asia Partnership Agreements: These agreements encourage European investment in sectors like infrastructure, energy, and digital economy.

Investor-State Dispute Settlement (ISDS) Cases

Central Asia has been involved in multiple ISDS cases under ICSID and UNCITRAL arbitration rules, often related to energy, mining, and infrastructure projects. In the case of Central Asian countries, several potential obstacles still exist that hamstring host country efforts to carry out investment objectives. Such obstacles range from a lack of awareness of the home

[53] Mátyás, I., & Bektasheva, A. (2022). *Correlation between international investment law and rule of law: Constitutional characteristics of the Republic of Kazakhstan, Studia Iurisprudentiae Doctorandorum Miskolciensium, 23.* 7-22.

countries to the transparency and consistent application of laws and regulations[54].For example, a tribunal case, Stans *Energy v. Kyrgyzstan*[55], tribunal concluded that the Kyrgyz Republic acted contrary to the legal expectations of the investor. When acquiring the company with the license, the investor could not ‘legitimately expect’ that after three years it would actually be deprived of the license. But there are also cases that include elements of sustainable development in international investment agreements in Central Asia for example have started raising human rights concerns in BIT negotiation. Such as BITs that Austria concluded with Kazakhstan[56] and Tajikistan both refer to human rights in the preamble. To sum up, it is important to emphasize that predictability and transparency are essential components of national systems related to foreign investment legislation and policy. Clear entry requirements, such as positive and negative lists, help make the legal framework for foreign investments both transparent and predictable. In this context, foreign investors in Central Asia can make informed investment decisions based on the legal framework, allowing them to align their strategies with the host country's regulations[57].

1.1.2.1. Kazakhstan

Kazakhstan has taken an active role in promoting foreign investment since the collapse of the USSR. The country is often recognized as the most favorable destination for foreign investment among the Central Asian countries:

- National legislation: Law on investments, Kazakhstan, January 8, 2003. Program for attracting investments, National investment strategy, August 22, 2017[58]
- Case law:_International investment agreements (IIAs), bilateral investment treaties (BITs - 51), Treaties with investment provisions (TIPs)-12. Some cases with UNCITRAL, ICSID, PCA, SCC, ICC.

In recent years, incremental progress has been made in improving the business climate, particularly through reforms to the legal and regulatory framework for investment. Kazakhstan's ranking in the World Bank’s “Doing Business” report rose from 74th in 2010 to 25th in 2020,

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[54] Muminov, F. (2019). Protection of foreign investment in Central Asia. *Russian Law Journal*, *7*(4), 125–150.
[55] Moscow Chamber of Commerce and Industry. (n.d.). *Stans Energy Corp. & Kutisay Mining LLC v. Kyrgyz Republic (I), Case No. A-2013/29*, Award, at 58.
[56] United Nations Conference on Trade and Development (UNCTAD). (2010). *Bilateral Investment Treaty between Austria and Kazakhstan*. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/otheriia/250/austria--kazakhstan-bit-2010-(Retrieved on 10 March 2025)
[57] OECD. (2021). Investment policy review: Central Asia. Organisation for Economic Co-operation and Development.
[58]Government of the Republic of Kazakhstan. (2017, August 22). *Decree No. 498 on approval of the National Investment Strategy program*

clearly reflecting these efforts. However, for these de iure improvements to have real impact, effective implementation of modern regulatory reforms is necessary. The limited private foreign and domestic investment in the non-oil sector highlights broader issues, such as the significant state presence in the economy, as well as challenges related to consistent regulatory enforcement, dispute resolution, and taxation. All legal entities established in Kazakhstan, including branches and representative offices of foreign legal entities, must be registered with the relevant governmental authorities[59]. The registration procedure is governed by the Law on the State Registration of Legal Entities and the Registration of Branches and Representative Offices, along with its subordinate regulations. The Ministry of Justice serves as the "one-stop shop" responsible for registering legal entities, branches, and representative offices[60].

1.1.2.2. Kyrgyzstan

Kyrgyzstan is a party to more than 36 bilateral investment treaties (BITs) and the Energy Charter Treaty. However, challenges remain in implementing its investment policies. Political stability is widely recognized as a key factor in attracting foreign investment.

- National Legislation: The investment framework in Kyrgyzstan is primarily governed by the Law on Investments of the Kyrgyz Republic (March 27, 2003)[61]. Additionally, several other laws directly or indirectly regulate investment activities, including the Licensing Law, Joint-Stock Companies Law, Mining Law, Free Economic Zones Law, Tax Code, Land Code, Customs Code, Civil Code, and Public-Private Partnership Law.
- Case Law and International Agreements: Kyrgyzstan has signed 38 BITs and 9 Treaties with Investment Provisions (TIPs)**.** It has also been involved in investment disputes under arbitration rules of UNCITRAL, ICSID, PCA, SCC, and ICC**.**

Kyrgyzstan's BITs include general principles governing foreign investment, similar to those in other jurisdictions. Notably, Kyrgyzstan and Kazakhstan share provisions in their BITs, such as a mandatory waiting period (typically six months) before initiating international arbitration. Additionally, most Kyrgyzstan BITs contain territoriality requirements and offer national

[59] OECD. (2021). Investment policy review: Kazakhstan. Organisation for Economic Co-operation and Development. https://www.oecd.org/investment/kazakhstan-investment-policy-review.htm(Retrieved on 10 March 2025)
[60] Republic of Kazakhstan. (2020). Law on the State Registration of Legal Entities and Registration of Branches and Representative Offices. Ministry of Justice of the Republic of Kazakhstan.
[61] Kyrgyz Republic. (2003). Law on Investments of the Kyrgyz Republic (No. 66, March 27, 2003). Retrieved from http://cbd.minjust.gov.kg/act/view/en-r/202398(Retrieved on 10 March 2025)

treatment and most-favored-nation (MFN) treatment to foreign investors. However, some treaties specify or limit the scope of these clauses[62].

1.1.2.3. Uzbekistan

Following growth of 5.6% in 2019, the economy slowed sharply in 2020, with real GDP growth slowing to 0.7% as the pandemic hit. In recent years, growth has been largely driven by state-led investment, with the impact of foreign direct investment (FDI) still limited. Private consumption growth remains low. Uzbekistan is party to more than 55 BITs and the Energy Charter Treaty. Uzbekistan has entered new era in liberalization of its national economy, including, beginning in 2017, comprehensive reform of its FDI regime.

- National legislation: Law on investments and investment activities, Uzbekistan, 2019. Other legal acts[63].
- Case law:_International investment agreements (IIAs), bilateral investment treaties (BITs - 55), Treaties with investment provisions (TIPs)-5. Some cases with UNCITRAL, ICSID, PCA, SCC, ICC.

The 1998 investment law was replaced in early 2020 with the enactment of a new Law on Investment and Investment Activities, which expanded upon and consolidated earlier legislation on foreign investment and investor protection. A well-designed investment law enhances transparency and clarity within a country's investment framework by defining market access conditions, investment protections, and dispute resolution mechanisms. While many OECD countries regulate investment through broader legal frameworks, over 100 countries have adopted specific investment laws to signal their commitment to investors. The new law aims to systematize existing laws and regulations while ensuring equal treatment for both foreign and domestic investors[64]. However, it excludes several types of investment, including those under production sharing agreements, concession contracts, public-private partnerships, and special economic zones. As a result, it is unlikely to govern many high-value natural resource and infrastructure investment projects, which typically involve project-specific contractual arrangements with the state.

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[62] UNCTAD. (2020). Investment policy review: Kyrgyzstan. United Nations Conference on Trade and Development. https://unctad.org/webflyer/investment-policy-review-kyrgyzstan(Retrieved on 10 March 2025)

[63] Law of the Republic of Uzbekistan No. ZRU-598. (2019, December 25). *On investments and investment activities*

[64] OECD. (2021). Investment policy review of Uzbekistan. Organisation for Economic Co-operation and Development. https://www.oecd.org/investment/investment-policy-review-of-uzbekistan.htm(Retrieved on 10 March 2025).

1.1.2.4. Tajikistan

Tajikistan is party to more than 36 BITs, the Eurasian Investment Agreement, and the Energy Charter.

- National legislation: Law on investment, Tajikistan, May 12, 2007[65]. Other regulatory acts[66].
- Case law: International investment agreements (IIAs), bilateral investment treaties (BITs - 36), Treaties with investment provisions (TIPs)-9. Some cases with UNCITRAL, ICSID, PCA, SCC, ICC.

Concrete improvements to the legal environment have been made evidenced by Tajikistan rising 10 places in the 2019 World Bank Doing Business Indicators (DBI), placing it among the Bank's top ten reformers and the government has taken several steps towards a long-term strategy for improving the business climate. For example, the National Development Strategy to 2030 (NDS)[67] denotes the improvement of the business climate and the attraction of FDI as central pillars of its long-term vision, setting out a coherent, non-extractive dependent vision for the country's economy.[68]This means that foreign investors can choose between domestic courts and international arbitration for dispute resolution. Once the prescribed time limit has expired, foreign investors are permitted to seek international arbitration. However, investment contracts may impose requirements for exhausting local remedies before accessing international arbitration. When disputes arise from treaty violations rather than breaches of investment contracts, investors may be able to bypass local remedy requirements and proceed directly to international arbitration, as treaty rights cannot be overridden by contractual provisions. International investors have emphasized the need for greater certainty in the enforcement of international arbitration awards[69].

1.1.2.5. Turkmenistan

Since independence, Turkmenistan's economy has grown on the back of hydrocarbon exports, with the country holding the fourth largest natural gas reserves in the world. This

[65] Republic of Tajikistan. (2007). Law on Investment of the Republic of Tajikistan (No. 260, May 12, 2007). Retrieved from http://www.adlia.tj/show_doc.fwx?rgn=21908(Retrieved on 10 March 2025)
[66] Law of the Republic of Tajikistan. (2007, May 12). *Law on investment in the Republic of Tajikistan*
[67] Republic of Tajikistan. (2016). National Development Strategy of the Republic of Tajikistan for the period up to 2030. Dushanbe. Retrieved from https://www.mehnat.tj/documents/nds2030_en.pdf(Retrieved on 10 March 2025)
[68] National Development Strategy of Tajikistan to 2030. (2016). *National Development Strategy of Tajikistan to 2030*.
[69] European Bank for Reconstruction and Development. (2021). Assessment of investment laws: Tajikistan. https://www.ebrd.com/news/publications/institutional-reform/investment-policy-and-promotion.html(Retrieved on 10 March 2025)

natural-resource led development has come at the expense of export diversification, while strong state control over the economy has hindered private-sector development. Turkmenistan is highly reliant on hydrocarbon exports to China, in particular natural gas. Early data from China suggests that the country will see a significant decline in economic output, which may have serious ramifications for Turkmenistan's hydrocarbon exports.

- National legislation: Law on investment activities, Turkmenistan, 1992. Other regulatory acts[70]
- Case law: International investment agreements (IIAs), bilateral investment treaties (BITs - 28), Treaties with investment provisions (TIPs)-7. UNCITRAL, ICSID, PCA.

The Law on Investment, amended in 2015, is the main piece of legislation governing investment activity. Even though it establishes equal rights for all investors, it does not specify non-discrimination, as do other regional investment laws. It also establishes the main rights and duties of investors, such as use of property as pledge, and the obligations of the investor to declare to the authorities the volumes and sources of investments made[71].

1.2. Problem statement

Investments are interdependent and complementary. About half of world trade today takes place between branches of multinational enterprises that sell intermediate goods and services. Business activity is increasingly carried out with the participation of private foreign capital (investments), which is why the problem of legal regulation of foreign investments is becoming more important not only at the national, supranational but also at the international level, and for legal science is to understand and develop effective regulation of this issue[72]. In addition, the provisions of many international investment treaties, due to a compromise between developed and developing countries are not sufficiently clear and allow for different interpretations. Sustainable development has now been vigorously debated within the field of international investment law[73]. The year 2015, in particular, marked a turning point, with three major global

[70] Law of Turkmenistan. (1992, May 19). *On investment activities in Turkmenistan*.
[71] European Bank for Reconstruction and Development. (2021). Assessment of investment laws: Tajikistan. https://www.ebrd.com/news/publications/institutional-reform/investment-policy-and-promotion.html(Retrieved on 10 March 2025).
[72] Columbia Center on Sustainable Investment. (2019). Legal frameworks and foreign investment. https://ccsi.columbia.edu/sites/default/files/content/docs/Legal-Frameworks-and-Foreign-Investment-CCSI-2019.pdf(Retrieved on 10 March 2025).
[73] Leal-Arca, R. (2015). Megaregionals and sustainable development: The Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership. *Renewable Energy Law and Policy Review*, *4*, 248–264. Segger, M., Gehring, M., & Newcombe, A. (Eds.). (2011). *Sustainable development in world investment law*. Oxford University Press.

initiatives making it a landmark year for the sustainable development agenda. In July 2015, Third International Conference on Financing for Development took place in Addis Ababa, during which the world leaders affirmed their "*strong political commitment to address the challenge of financing and creating an enabling environment at all levels for sustainable development in the spirit of global partnership and solidarity*."[74] In comparison with developed and developing countries, foreign direct investment in the Central Asian states, however, remains at a low level. Still, poor-quality regulations, as well as inconsistent interpretation and arbitrary application of laws, continue to be a major problem. A number of existing potential obstacles still hamstring host country's efforts to carry out investment objectives[75]. The Central Asian countries are signatory to several international investment agreements (IIAs) which protect covered investors against expropriation without compensation and against discrimination, and grant access to investor-state dispute settlement mechanisms (ISDS). Generally, the Central Asian states are not classified as low risk for foreign investments. One of the explanations for this classification is that all Central Asian states have serious problems with the rule of law, control of corruption, and transparency[76]. These factors play crucial roles in determining the host country's attractiveness for foreign investors. Kazakhstan fares better in all criteria compare to Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.[77] From the Central Asian state's perspective, Kazakhstan[78], Kyrgyzstan[79], Tajikistan[80], and Uzbekistan[81] do not apply strict procedures to the admission of foreign investment, while Turkmenistan[82] does. In Central Asian states, it is common practice for certain economic sectors to remain under absolute or quasi-monopolies. In the case of Uzbekistan, for example, the list of state assets that cannot be

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[74] United Nations General Assembly. (2015, July 27). *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (A/RES/69/313).* http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/69/313&Lang=E(Retrieved on 10 March 2025).
[75]World Bank Group. (2019). *Belt and road economics: Opportunities and risks of transport corridors*. https://www.worldbank.org/en/publication/belt-and-road-economics(Retrieved on 10 March 2025).
[76] Transparency International. (2024). CPI 2024 for Eastern Europe & Central Asia: Vicious Cycle of Weak Democracy & Flourishing Corruption. https://www.transparency.org/en/news/cpi-2024-eastern-europe-central-asia--vicious-cycle-weak-democracy-flourishing-corruption(Retrieved on 10 March 2025).
[77] World Bank. (2019, November 4). *Worldwide Governance Indicators*. The World Bank. Retrieved from https://www.worldbank.org/en/publication/belt-and-road-economics(Retrieved on 10 March 2025).
[78] Law of the Republic of Kazakhstan No. 373-II of January 8, 2003. (2003). *On investments. Journal of Parliament of the Republic of Kazakhstan, 2003*(14), 274.
[79]Law of the Republic of Kyrgyzstan No. 66 of March 27, 2003. (2003). *On investments in the Kyrgyz Republic*. *Journal of Jogorku Kenesha of the Republic of Kyrgyzstan, 2003*(7), 252.
Law of Turkmenistan No. 184-111 of March 20, 2008. (2008). *On foreign investments. Journal of Majlis of the Republic of Turkmenistan, 2008*(1), 17.
[80] Law of the Republic of Tajikistan No. 260 of May 12, 2007. (2007). *On investments*. *Mazhlisi Oli of the Republic of Tajikistan, Collection of Legislation, 2007*(5), 65.
[81] Law of the Republic of Uzbekistan No. ZRU-598 of December 25, 2019. (2020). *On investments and investment activities*. *Official Gazette of the Republic of Uzbekistan*.
[82] Law of Turkmenistan No. 184-111 of March 20, 2008. (2008). *On foreign investments. Journal of Majlis of the Republic of Turkmenistan, 2008*(1), 17.

privatized includes oil transportation, oil production, gas and gas pipelines, electricity production and transportation, railways, public mail services, water and sewer services, air navigation services, and ports and airports. Similar laws and regulations exist in the legal frameworks of Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan. Theoretically, these policies ensure equal treatment for both domestic and foreign investors. However, the FDI regimes in Turkmenistan and Uzbekistan are governed by distinct laws that offer different rights to foreign investors compared to domestic ones. In fact, foreign investors may receive preferences and incentives that are not available to domestic investors. It is crucial for the host country to maintain a balance between promoting and protecting investments from both domestic and foreign sources.

Below I suggest the main key points to consider during my research:

- International organizations such as the OECD indicate that Central Asian states do not have clear investment policies. These points pose problems for foreign investors who desire to invest in the region. At the same time, the multiplicity of existing international legal frameworks means that international law is highly fragmented, with little clarity on the relationships between different frameworks with conflicting rules. This problem is further compounded by the lack of a comprehensive international Treaty that sets out the main provisions for regulating foreign investment in the Central Asian countries also.
- Now it is increasingly believed that the investment law does not meet social needs, sustainable development is not ensured, and its institutional processes are criticized for failing. For example, it is indicated by the work on the proposed draft of the UN Convention 'Business and human rights'[83]. Sustainable development should not only guide governments in the process of concluding contracts, interpret contracts but should also inform arbitrators of how they conduct arbitration.
- Also, some concerns include secrecy and lack of public participation opportunities in investor-state dispute settlement procedure and arbitration tribunals. Further, there is no appellate mechanism, to bring about some cohesion and consistency in jurisprudence. In the, the law of foreign investment is in a state of flux and the investor state dispute settlement (ISDS) mechanism has been criticized and has structural gaps for producing

[83] Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (OEIGWG). (2014). *Report of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*. United Nations, https://www.ohchr.org/en/issues/business/oeigwg(Retrieved on 10 March 2025).

inconsistency and confusion in jurisprudence and need of reform[84] (public 'backlash' against ISDS). Finally, transparency and third-party participation, introduction of codes of conduct for arbitrators, counsel are important issues for sustainable development as well[85].

- Investment disputes can also involve political dimensions, particularly where politically sensitive assets are at stake, and several arbitral tribunals have dealt with arguments that politics unduly influenced the government's handling of investment issues. Different governments and interest groups can legitimately have diverse positions on how to mediate the ensuing tradeoffs, outlining horizons beyond which technical analyses give ground to political considerations.

OECD finds particular investment challenges in Central Asia with the following[86]:

- Despite efforts to modernize business regulation, much of the region continues to have complicated and unconsolidated legal frameworks for entrepreneurial activity and small firms, with often overlapping or contradictory regulations making regulatory compliance difficult.
- Regulations are also subject to frequent change, with little input from or notice to the business community, with amendments and new laws often implemented through decree. This also creates implementation challenges for the public administration, leading to inconsistent and unpredictable interpretation and application of the rules.
- Despite significant reforms in most countries, especially in digitalizing tax administration, tax policy and administration remain a widespread cause for concern for the business community across the region. This not only constrains investment and growth but also impedes efforts to draw firms into the formal sector and widen the tax base.
- Customs regulations and border procedures remain expensive and complicated, reducing trade flows, and undermining the region's competitiveness as a transit hub and as a location for export-orientated manufacturing. Opaque administration and high tariffs impede regional integration, which in turn has adverse implications for both consumers and firms.

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[84] United Nations Commission on International Trade Law (UNCITRAL) Working Group III (WGIII). (n.d.). *Investor-State Dispute Settlement (ISDS)*. UNCITRAL https://uncitral.un.org/en/working_groups/3/investor-state(Retrieved on 10 March 2025).

[85] Bonnitcha, J., & Williams, Z. (2019, April 23). Politically motivated conduct in investment treaty arbitration. Investment Treaty News. https://www.iisd.org/itn/2019/04/23/politically-motivated-conduct-in-investment-treaty-arbitration-jonathan-bonnitcha-zoe-williams/(Retrieved on 10 March 2025).

[86] Organisation for Economic Co-operation and Development. (2021). *Promoting investment in Central Asia*. OECD Publishing. https://www.oecd.org/eurasia/competitiveness-programme/central-asia/(Retrieved on 10 March 2025).

- Dispute settlement remains a key concern for firms, especially in domestic courts. While progress has been made in improving the efficiency of judicial procedures and in the development of alternative dispute resolution mechanisms, the quality, fairness and independence of judicial processes are questioned by private sector stakeholders. Many are particularly reluctant to go to court against state entities, for fear of repercussions[87].

For example, under Kazakh IIAs, the state may not expropriate unless for public interest purposes, on a non-discriminatory basis and under due process of law and with prompt, adequate and effective compensation[88]. The countries of Central Asia have reformed their investment climates along parallel trajectories, albeit at varying speeds. Significant legislative renewal has taken place throughout the region, and on paper each country is endowed with a fairly modern framework for the regulation of investment. Uzbekistan has a new Law on Investment and Investment Activities (2019); Tajikistan adopted a Law on Investment in 2016; and Kazakhstan introduced an Entrepreneurial Code in 2016 which superseded the 2003 Investment Law. Only in Kyrgyzstan is the Investment Law (2003) from the earlier 2000s, with Turkmenistan's Law on Foreign Investment (1993) the most dated investment legislation in the region. While a vigorous reform agenda can bring about rapid change and provide an important signal to potential investors, in many cases, the pace of legislative change has been so rapid as to raise compliances cost for investors significantly. Reforms are necessary and valuable in many areas, but regulatory change imposes costs, and repeated changes can cause uncertainties and compliance costs[89].Central Asian states have made some achievements about attracting foreign investment since the fall of the Soviet Union. However, the effectiveness of economic reforms and the liberalization process, including FDI regimes, is dubious in the region. In particular, the rule of law, and the transparency and predictability of the legal framework governing foreign investment, continue to be major problems. Beyond these bounds, some of Central Asia's states do not have clear national investment policies. It is common tendency in Central Asian states' BITs to restrict the scope of such treaties with domestic laws. That is especially true in the case of Turkmenistan, Tajikistan, and Uzbekistan. This phenomenon may reduce the impact of investment treaties and negatively impact the flow of foreign investment into Central Asia. Furthermore, Central Asian states' BITs provide more favorable conditions for foreign

[87] World Bank. (2020). *Doing business 2020: Comparing business regulation in 190 economies*. World Bank Group
[88] United Nations Conference on Trade and Development. (2011). *Expropriation: A sequel*. UNCTAD Series on Issues in International Investment Agreements II. https://unctad.org/system/files/official-document/unctaddiaeia2011d7_en.pdf(Retrieved on 10 March 2025).
[89] Kim, A., & Alvarez-Perez, F. (2024, forthcoming). *International investment law and investor-state disputes in Central Asia: Emerging issues – Book review. TDM, Transnational Dispute Management*. ISSN 1875-4120. Retrieved from https://www.transnational-dispute-management.com(Retrieved on 10 March 2025)

investment compared to the Eurasian Investment Agreement and the CIS Investor Right Convention. It should be kept in mind that foreign investors desire to have their investments protected in the context of international standards because national investment legislation usually provides less protection for foreign investors than international standards. Additionally, problems with the transparency and predictability of the host country's legislation may create risks for foreign investment. These are the main reasons for the avoidance of host country legislation and for pressuring the host country to adhere to international standards[90].

1.3. Research hypothesis

It is hypothesized that strengthening international investment regulations in Central Asia through the modernization of bilateral investment treaties (BITs), incorporation of sustainable development provisions, and adoption of transparent, inclusive legal frameworks will facilitate the emergence of a new investment regime that aligns more effectively with the principles of sustainable development.This hypothesis rests on the assumption that the current investment frameworks in Central Asian countries often prioritize investor protection without adequately addressing environmental, social, and governance concerns. As such, regulatory reforms that integrate sustainability-related obligations (e.g., environmental impact assessments, corporate social responsibility standards, and labor rights protections) can foster a more balanced investment climate. Such a regime is expected to promote not only economic growth but also long-term social equity, environmental protection, and institutional accountability.Moreover, it is assumed that alignment with international standards such as the United Nations Sustainable Development Goals, OECD Guidelines for Multinational Enterprises, and principles of responsible business conduct can increase foreign investors' confidence and attract high-quality, sustainable foreign direct investment (FDI) into the region. This, in turn, would enhance the capacity of Central Asian states to meet their development priorities while ensuring greater policy space for host governments. The hypothesis will be tested through a comparative legal analysis of existing investment treaties, stakeholder interviews, and an assessment of regional investment trends in correlation with sustainability indicators. The aim is to determine whether legal and institutional reforms in the investment regime can serve as a catalyst for sustainable development in Central Asia.

[90] Karton, J. (2019). *International investment law and arbitration: Cases, materials, and commentary*. Oxford University Press.

1.4. Aim of Research

The primary aim of this research is to analyze the international investment regime of Central Asian countries including Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan—with a particular emphasis on the integration of sustainable development principles into legal and policy frameworks.This study seeks to identify and evaluate how international investment agreements (IIAs), bilateral investment treaties (BITs), domestic investment laws, and regional cooperation mechanisms either support or hinder the achievement of sustainable development goals (SDGs) in the region. It aims to assess the extent to which current investment regimes incorporate environmental, social, and governance considerations, and to what degree they reflect emerging international legal trends such as responsible investment, corporate accountability, and policy space for host states.

1.5. Major Objectives of the Research

1. **Examine International Investment Law and Treaties:** Conduct a thorough analysis of the international investment law and treaties in Central Asia, comparing them with global standards and focusing on how they incorporate sustainable development concepts.
2. **Identify Structural and Legal Drivers:** Investigate the structural and legal factors influencing international investment relationsin Central Asia, including gaps, barriers, conflicts, challenges, emerging trends, and the region's investment potential.
3. **Propose Policy Recommendations:** Based on the findings, propose policy recommendations to strengthen the international investment regime in Central Asia, with the aim of aligning it more closely with sustainable development goals.

1.6. Research Questions

1. *What is the concept of investment and the role of investors within the context of Central Asia?*
2. *What are the current trends, legal gaps, and challenges facing the investment regime in Central Asia?*
3. *How does the concept of Sustainable Development impact the International Investment regime in the Central Asian context?*
4. *How does international investment law align with Sustainable Development Goals (SDGs) in Central Asia, and how can this be compared at the regional level?*

1.7. Research methodology

The theoretical and methodological foundation of this research is interdisciplinary, enabling the examination of key elements of international investment law from political, economic, legal, international relations, and sustainable development perspectives. The research employs a qualitative methodology supported by evidence-based approaches such as problem-theoretical, chronological, systemic, literature review, historical-comparative, comparative analysis, critical assessment, formal-legal (normative-dogmatic), and economic methods (including FDI, trade statistics in each country, and international production). The primary research methods include *literature reviews, policy documents, relevant legislation on international and national investment law, trade and investment treaties, legal dispute settlement, and findings from fieldwork with conceptual modeling*. The dissertation is approached from both *legal-normative-dogmatic and comparative perspectives*, focusing on normative legal analysis of core legal texts, including international treaties and domestic legislation. This analysis incorporates the main objectives of these texts, key standards for investment protection, and the inclusion of investor-state dispute settlement clauses.

Empirical data for this study has been collected from various sources, including the legal databases of Central Asian countries, international documents (such as conventions, guides, publications, soft law, and others) from organizations like the UN, WTO, OECD, ILO, and the World Bank. Additionally, the study draws on investment agreements from Central Asian countries, as well as data from ICSID, UNCTAD, WTO, UNCITRAL databases, the Investment Arbitration Reporter, itaLAW, and other relevant official websites. The regional investment policy aspects of Central Asian countries have been analyzed through comparative methods, both between countries and within each country. This comparative approach highlights the differences in investment regimes across the Central Asian host countries. Furthermore, the researcher will focus on secondary data analysis, which includes literature from academia and practice, peer-reviewed books, articles, conference papers, working papers, reports from national and international organizations, unpublished archival documents, and online resources from both government and non-government organizations. Legal documents from international institutions have been studied. A significant amount of the information has been gathered from sources published in English, Russian, and local languages, except for Turkmen and Tajik, as I do not speak to them. I am fluent in Kazakh, Uzbek, and Kyrgyz, and these materials have been translated into English to enrich the content. Russian is the main official language in all five Central Asian countries, and most of the documents and literature are in Russian.

1.8. Significance of the research

- Understanding the perspective on international investment law and the role of sustainable development within it is crucial for fostering a constructive and informed dialogue about the future of both international investment law and the sustainable development agenda in Central Asia.
- While there are numerous provisions designed to protect foreign investors in Central Asian countries, these are often insufficient to meet the expectations of foreign investors. Without effective legal and political mechanisms for implementation, such provisions are unlikely to encourage substantial foreign direct investment (FDI) inflows into the host country. The practical significance of this research lies in its potential to inform the design and decision-making processes for legal and economic policies, offering actionable proposals, conclusions, and recommendations for policymakers.

1.9. Structure of the Research

In terms of format this dissertation consists of the following five chapters.

- **Chapter 1** describes more background, problem statement, research hypothesis, research questions, research methodology.
- **Chapter 2** provides theoretical foundations for the remainder of the thesis. Dissertation begins with reviewing basic concepts, evolution of the investment system as a whole including its origin, sources and definition of core elements, key theories like Calvo doctrine, Hull formula, classical and dependence theories, "Soft law" rules. Discussion of investment and investment-related issues without understanding its concept would not be effective. Among jurists there is no consensus on the definition of foreign investment, and they have provided various definitions of investment despite numerous bilateral and multilateral treaties concerning foreign investment.
- **Chapter 3** examines whether the international investment framework has been including sustainable development principles into investment treaties. This chapter investigates whether the expanding presence of sustainable development on the agenda of major global political initiatives has been reflected in the international investment law by including sustainable development.
- **Chapter 4** reviews international investment law of Central Asian countries and to what extent sustainable development is present in investment regime. Discussion of investment and investment-related issues without understanding its concept would not be effective

and this chapter descript investment regime provides Central Asian countries such as fair and equitable treatment, full protection and security, national treatment and most-favored-nations treatment have arisen in order to encourage to investment in safe and stable situation for investor in the territory of the host State. These standards are found in most regional investment protection treaties. Sustainable development mostly represents public interests and merges social and environmental interests, current issues and concerns for the future generations.

- **Chapter 5** summarizes all analytics, theory and opportunities and offers recommendations for the investment regime of Central Asian countries by taking into account sustainable development. Despite the positive role of foreign investment in promoting economic development, some foreign investment activities still do not lead to sustainable development in Central Asian countries. Even some investment activities cause serious damages to the Central Asian' environment and the local communities. however, there are also cases that include elements of sustainable development in BITs in Central Asia have started raising human rights concerns, environmental measures as well as labor rights in BITs for example, Austria- Kazakhstan BIT, Hungary - Kyrgyzstan BIT, Korea - Uzbekistan BIT and others only in the preamble.

CHAPTER 2: REVIEW OF INTERNATIONAL INVESTMENT LAW

2.1. Introduction

The 1990s was marked by the increasing role of FDI in international capital flows. It has accounted for about a quarter of total international capital outflows in the 1990s and appears to have grown, relative to other forms of international investment, since the 1970s. This change in the composition of capital flows has been synchronous with a shift in emphasis among policymakers to attract more FDI, especially following the 1980s debt crisis and the recent turmoil in emerging economies[91]. The reason for increased efforts to attract more FDI stems from the fact that FDI has been the least volatile source of international investment for most countries.[92] For emerging economies, foreign direct investment (FDI) has been a crucial and reliable source of capital. The competition among developing countries to attract more FDI has led them to adopt various legal measures aimed at boosting FDI inflows. These legal measures can be classified into bilateral and unilateral efforts. Bilateral efforts typically involve the negotiation and signing of Bilateral Investment Treaties (BITs), and in some cases, Free Trade Agreements (FTAs)[93]. These agreements are designed to provide legal protection and incentives to foreign investors, making the host country more attractive for investment. On the other hand, unilateral efforts involve the host countries reforming their domestic legal frameworks to create a more favorable investment environment. One such example is the introduction of specific investment laws that regulate all aspects of investment, with a particular focus on foreign investors. These efforts aim to streamline the legal processes and provide greater legal certainty and protections to encourage FDI.

International investment law has become one of the most dynamic and rapidly evolving fields of international law in recent decades. This transformation is largely a response to globalization and the widespread belief among States that foreign direct investment (FDI) can significantly boost their economies[94]. The investment process has been greatly facilitated and

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[91] Mallampally, P., & Sauvant, K. P. (1999). Foreign direct investment in developing countries. Finance & Development, 36(3). https://www.imf.org/external/pubs/ft/fandd/1999/03/mallampa.htm (Retrieved on 3 of February 2025).
[92] Mark Carlson, Leonardo Hernandez, Determinants and Repercussions of the Composition of Capital Inflows, Board of Governors of the Federal Reserve System International Finance Discussion Papers, 2002
[93] Sauvant, K. P., & Sachs, L. E. (2009). The effect of treaties on foreign direct investment: Bilateral investment treaties, double taxation treaties, and investment flows. Oxford University Press.
[94] Sauvant, K. P. (2013). Enhancing the role of investment facilitation in global investment governance. International Centre for Trade and Sustainable Development (ICTSD). https://www.ictsd.org/themes/investment (Retrieved on 3 of February 2025).

accelerated through globalization, which has liberalized markets and removed barriers to the movement of products, services, capital, and information. In turn, companies have developed strategies to expand their business activities and strengthen their presence in the global market, seeking to tap into new opportunities and benefit from the broader, interconnected global economy. One of the most fundamental provisions that exist in these agreements is international treatment standards that the host states, when dealing with foreign investment, are required to follow. These standards include fair and *equitable treatment (FET), full protection and security (FPS), national treatment (NT) and most-favored-nations treatment (MFN*).[95] Standards of fair and equitable treatment and full protection and security are independent and absolute in nature because there are no special conditions for their implementation by the host state. National treatment and most-favored-nations treatment standards are contingent or relative because their application depends on the conduct taken by the host state with respect to other investors[96].Discussion of investment and investment-related issues without understanding its concept would not be effective. Among jurists there is no consensus on the definition of foreign investment, and they have provided various definitions of investment and despite numerous bilateral and multilateral treaties concerning foreign investment, general and uniform definition is not mentioned in them. International investment agreements usually define investment in very broad terms. They refer to "*every kind of asset*" followed by an illustrative but usually non-exhaustive list of assets, recognizing that investment forms are constantly evolving. So, most of the treaties adopt an asset-based, rather than a process-based, definition of investment[97]. States define investment in their national legislation; also, when they are parties to a bilateral agreement, they can provide a definition of investment with the consent of the other party so that in the case of any dispute could be used in arbitral tribunals[98].

2.2. Historical and theoretical background

The origins of international investment can be found in the expansion of European trade and investment activity from the seventeenth to early twentieth centuries. Historical development of foreign investment and its protection can be distinguished into four different phases: early

[95] World Trade Organization. (January 1995) Principles of the trading system. https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm (Retrieved on 3 of February 2025).
[96] Salacuse, J. W. (2015). *The law of investment treaties*. Oxford International Law Library.
[97] Schreuer, C. (2013). Investment, international protection. In *Max Planck encyclopedia of public international law*. Oxford University Press.
[98] UNCTAD. (2006). Bilateral investment treaties 1995–2006: Trends in investment rulemaking. United Nations Conference on Trade and Development. https://unctad.org/system/files/official-document/iteiia20065_en.pdf:contentReference[oaicite:4]{index=4}(Retrieved on 3 of February 2025).

17th century, phases during and after World War Two, and the present global era[99]**.** Historical analysis shows that colonial institutions and international law governing the resources of different countries have dealt principally with the situation of foreign-owned property.

During this first stage of western capitalist expansion, public international law addressed the pressure exerted on foreign-owned private property through the institution of diplomatic protection. This mechanism allowed home states to present a claim against the host state at an international level. Latin American States, which were the recipients of substantial American investment, rejected the American approach. To counter the minimum standard theory, the Argentine jurist, Carlos Calvo, devised in the mid-19th century what later became known as the *Calvo doctrine*[100] and later also The US Secretary of State, *Cordell Hull*, in 1938 described idea as: "*the right of prompt and just compensation for expropriated property* (Hull formula)." This statement solidified the American position.

*Phases before and during World War Two***:** Customary international law, the Treaties of friendship, commerce and navigation (FCNT) became primary instruments of global economic relations which is seen as the root of modern treaties. These commercial treaties became an important tool in the articulation and implementation of US economic policy regarding standards of treatment and protection of US investments abroad. The first commercial treaty can be traced back to 1778 when the United States and France concluded their cooperation treaty[101]. The second was between the United States and the British Parliament signed the Jay Treaty in 1795 that provided, among others, protection of their national's assets in each other's territory.[102] These treaties were not confined to commerce. Footnote they extended to military matters and ensured freedom of worship and movement, in addition to granting most-favoured-nation and national treatment status.[103] These treaties, however, did not contain investor-State dispute resolution mechanics, although some of them provided that State-to-State disputes over the agreement's interpretation or application could be submitted to the ICJ. The 1899 and 1907 Hague peace conferences, which created the Permanent Court of Arbitration (PCA), were

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[99] Neufeld, H. (1971). *The international protection of private creditors from the treaties of Westphalia to the Congress of Vienna (1648–1815): A contribution to the history of the law of nations* (p. 6). Sijthoff.Dawson, F., & Head, I. (1971). *International law, national tribunals, and the rights of aliens* (pp. 4–5). Syracuse University Press.
[100] Cremades, B. M. (2004). Disputes arising out of foreign direct investment in Latin America: A new look at the Calvo doctrine and other jurisdictional issues. *Dispute Resolution Journal, 59*(3), 78
[101] US and France. (1778). *Treaty of Alliance*
[102] United States & United Kingdom. (1795). *Treaty of Amity, Commerce and Navigation, between His Britannic Majesty and the United States of America, ratified June 24, 1795*.
[103] Lipson, C. (n.d.). In Sornarajah, p. 180.Blumenwitz, D. (1992–2002). *Treaties of friendship, commerce and navigation*. In R. Bernhardt (Ed.), *Encyclopedia of public international law*. Elsevier Science & Technology.Walker, H. (1957). Modern treaties of friendship, commerce, and navigation. *Minnesota Law Review, 42*(5), 805.

perhaps the first successful efforts at creating the blue print of a system that was later largely adapted to be used in disputes between States and foreign nationals.[104]51 Alongside the rise of the PCA, the first wave of ad hoc international arbitral disputes initiated based on arbitration clauses in major contracts were probably those against the Soviet Union in the early 1920s.[105]

After the World War II, legal uncertainty covered the international field of trade and commerce. Many developing countries closed their economics in the face of new foreign investors and began to nationalize existing foreign investors, such as the expropriation of the petroleum sector in Iran in 1951 and in Libya in 1955[106]. This post-war period of the anti-colonial movements witnessed antagonism and hostility towards foreign investment. Newly independent developing countries started growing in number and hostilities about the status of customary law governing foreign investment started to change in capital-exporting states between 1945 and 1990. The 1949 International Chamber ofCommerce International Code for Fair Treatment of Foreign Investment (state-to- state arbitration, Article 13), The 1948 International Law Association Draft Statutes of the Arbitral Tribunal for Foreign Investment and the Foreign Investment Court (foreign investor-state arbitration, Article 3), and the 1959 Abs-Shawcross Draft Convention, which introduced the concept of foreign investor-state arbitration in Article VII, were pivotal initiatives in the evolution of international investment law. These early drafts were designed to separate foreign investors from the influence of their home states, allowing disputes to be resolved through either state-to-state or foreign investor-state arbitration. While these drafts were never formally adopted, they were significant for signaling a conceptual and semantic shift from traditional notions of protecting aliens and their property. This shift marked the beginning of a more investor-centric approach in international investment law, where foreign investors were granted direct legal recourse against host states, independent of their home countries' involvement.[26]The Bretton-Woods System envisaged the global regulation of trade and investment along with supranational institutions and also in the 1974 General Assembly of UN also adopted the Charter of Economic Rights and Duties of States that states that "very State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources, and economic activities. Similarly, the United Nations General Assembly Resolution 317 declared that a host state that expropriates foreign property "*Is*

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[104] Permanent Court of Arbitration. (n.d.). History. https://pca-cpa.org/en/about/introduction/history/ (Retrieved on 3 of February 2025).

[105] Veeder, V. V. (1998). The Lena Goldfields arbitration: The historical roots of three ideas. *International and Comparative Law Quarterly, 47*, 718–747.Nussbaum, A. (1950). Arbitration between the Lena Goldfields Ltd. and the Soviet Government. *Cornell Law Review, 36*, 31–32.

[106] Vandevelde, K. J. (2005). A brief history of international investment agreements. *U.C. Davis Journal of International Law & Policy, 12*(1), 157. Available at SSRN: https://ssrn.com/abstract=1478757(Retrieved on 3 of February 2025).

entitled to determine the amount of possible compensation and the mode of payment." Subsequently, developed countries signed BITs with developing countries because of their fear of uncompensated expropriation. The global actors of international investment law started increasingly concluding bilateral investment treaties. The first BIT was the Treaty for the Promotion and Protection of Investments between Germany and Pakistan from 1959.[107] In the end, two less comprehensive efforts materialized in 1959 and 1965: the signature of the first BIT between Germany and Pakistan, and the conclusion of the Convention for the ICSID. Consequently, other European countries followed Germany's path and concluded their first investment treaties starting with Switzerland in 1961[108] and France in 1972[109]. Regarding dispute settlement, there were no direct investor-state dispute settlement procedures in the early treaties; rather, disputes were submitted to the International Court of Justice[110] or settled through ad-hoc state-to-state arbitration. In the mid-1960s one major innovation of BITs was the inclusion of an investor-state dispute settlement (ISDS) clause[111].

The current global era of the history of international investment law starts at the end of 1990. The 1990s boom made this regime as relevant as the World Trade Organization (WTO). At the start of the 1980s, there were just 250 investment treaties and only 9 registered cases at the ICSID. Unlike in the postcolonial era, hostility towards foreign investors has been abundant. A more liberal approach to attracting foreign investment has been adopted by developing countries. The significance of this era can be seen through the establishment of the World Trade Organization), which covers investment-related issues in its jurisdiction, notably through the General Agreement on Trade and Services (GATS)[112]. GATS aimed to remove barriers to cross-border trade in services and it concerns the treatment of service providers in host states. This idea of a correlation between BITs and the encouragement of foreign investment is supported by international financial institutions, such as the World Bank and the IMF, which have made the adoption of BITs among the conditions required for granting development loans. Conclusion of BITs has coincided with the implementation of more fundamental economic policies including

[107]Treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments, 457 *United Nations Treaty Series* 23 (April 28, 1962).
[108] Treaty between Switzerland and Tunisia. (2014). *Replacement treaty entered into force*.
[109] Treaty between France and Tunisia. (1999). *Replacement treaty entered into force*.
[110]Treaty of Friendship, Commerce, and Navigation between the United States of America and the Republic of China, signed November 4, 1946.Treaty and protocol between the United States of America and Japan, *Friendship, Commerce, and Navigation Treaty* (1953). *Article XXIII (2)*: "Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means."
[111]Vandevelde, K. J. (2017). *First bilateral investment treaties: US post-war friendship, commerce, and navigation treaties* (592 + xii pages). Oxford University Press.
[112] UNCTAD. (2000, May 24). Bilateral Investment Treaties Quintupled During the 1990s. https://unctad.org/es/node/20674 (Retrieved on 10 March 2025).

privatization of State-owned assets and enterprises across a variety of economic sectors in the 1990s, paving the way for the disputes that emerged in the following decade.

From the end of the Cold War (1990s), capital importing countries intended to attract foreign investment by pushing for a new regime of rights and protections afforded to foreign investors by the host State in addition to those required by customary international law. This new approach became definite in the Preamble of the World Bank's Guidelines on the Treatment of Foreign Direct Investment[113]. In that sense, the Preamble recognized the importance of foreign investment for developing countries. The result of the post-Cold War approach toward foreign investors was proliferation of the BITs and multilateral agreements granting greater protection than *the minimum standards* to the foreign investor. International Investment Law is a branch of public international law and regulates the legal realtions between multinational undertakings and host states see Article 38 of the Statute of the International Court of Justice (ICJ).[114] It is, however, noteworthy that not all rules of public international law are relevant to relationships between host states and foreign investors[115]. So International Investment Law focuses on treaty-based rights, obligations mainly which are applied to commercial activities[116]. The reason why considering it a part of public international law is because in essence, it is the sovereign states themselves who commit to the development of this field with the primary instrument being *International Investment Agreements (IIAs).* However, the role of private law should not be ignored since companies also contract directly with the states. In fact, investment law may consist of a mixture of public international law such as international law, bilateral treaties or multilateral treaties accompanied by the contract law between the host state and the investor. One of the exceptional features of international investment law relates to the major role of bilateral treaties in investment relations and international instruments such as UNIDROIT Principles[117], the OECD Guidelines for Multinational Enterprises[118], Institute de Droit

[113] World Bank. (1992). *Legal framework for the treatment of foreign investment (Vol. 2): Guidelines* (English). Washington, D.C. Retrieved from http://documents.worldbank.org/curated/en/955221468766167766/pdf/multi-page.pdf(Retrieved on 3 of February 2025).
[114] International Centre for Settlement of Investment Disputes (ICSID). (2006). *Report of the Executive Directors on the Convention*. Retrieved from https://icsid.worldbank.org/en/Documents/resources/2006%20CRR_English-final.pdf(Retrieved on 3 of February 2025).
[115] International Centre for Settlement of Investment Disputes (ICSID). (2006). *Report of the Executive Directors on the Convention*. Retrieved from https://icsid.worldbank.org/en/Documents/resources/2006%20CRR_English-final.pdf/ (Retrieved on 3 of February 2025).Inceysa Vallisoletana S.L. v. Republic of El Salvador, ICSID Case No. ARB/03/26, Award of 2 August 2006, para. 225.Methanex v. United States, Final Award of 3 August 2005, NAFTA, Part II, Chapter B, para. 3.
[116] Echandi, R., & Sauvé, P. (2013). *Prospects in international investment law and policy*. Cambridge University Press.
[117]UNIDROIT. (2007). *UNIDROIT Principles of International Commercial Contracts 2004*, endorsed by the UN Commission on International Trade Law, UN Doc A/62/17 (Part I), 23 July 2007, 52–4.

International resolutions[119], OECD Model Tax treaties[120], the Ruggie-commissioned study on stabilization clauses[121], the Association of International Petroleum Negotiators standardized oil and gas contracts[122], Energy Charter Treaty Secretariat model agreements[123], etc., are scrutinized with a view to their adaptability for investment law purposes also. The first modern Arbitration, under the ICSID Convention and commenced under an investment treaty, was the *AAPL v. Sri Lanka* in 1989[124]. This was the first known case where an investor (*Asia American Arbitration Pty Ltd, AAPL*) used the ICSID mechanism to bring a dispute against a host state (Sri Lanka) under a bilateral investment treaty. The case marked a significant precedent in investor-state dispute settlement because it set the stage for how future investment treaty arbitrations would be conducted[125]. Then, in 1994 NAFTA came into force. Within three years of the ratification of NAFTA, several arbitrations were commenced under NAFTA Chapter 11 against all the NAFTA parties. In 1997, the number of cases registered each year had already reached 10, and since 2000 the annual average has remained well above 20.

2.3. Some doctrines, theories, sources of international investment law.

The evolution of international investment law has been significantly shaped by a range of legal doctrines, political-economic theories, and normative sources that inform both the development and application of this complex field. In this section, the author highlights selected concepts that are particularly relevant for understanding the legal and ideological foundations of the international investment regime. The Calvo Doctrine and the Hull Formula represent contrasting views on the rights and obligations of host states and foreign investors, reflecting broader tensions between sovereignty and investor protection. Similarly, the Classical Theory and Dependency Theory offer opposing perspectives on the role of foreign investment in developing countries, with direct implications for legal frameworks and policy choices. In addition, a clear understanding of the sources of international investment law, including customary international

[118] Organisation for Economic Co-operation and Development (OECD). (2001). *Guidelines for multinational enterprises* (DAFFE/IME/WPG (2000)15/FINAL). 31 October 2001.
[119] UNIDROIT. (n.d.). *Resolutions.* https://www.idi-iil.org/en/publications-par-categorie/resolutions/ (Retrieved on 25 of February 2025)
[120] Organisation for Economic Co-operation and Development (OECD). (2008). *Articles of the model convention with respect to taxes on income and capital*, http://www.oecd.org/(Retrieved on 10 March 2025)
[121] Shemberg, A. (2008, March 11). *Stabilization clauses and human rights: A research project conducted for IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights*.
[122] Association of International Energy Negotiators. (n.d.). *Model contracts*. https://www.aipn.org/model-contracts/ (Retrieved on 10 March 2025)
[123] Energy Charter Secretariat. (2007). *Model intergovernmental and host government agreements for cross-border pipelines* (2nd ed.). Energy Charter Secretariat
[124] Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka (ICSID Case No. ARB/87/3). Award of June 27, 1990
[125]Schill, S. W. (2010). The multilateralization of international investment law. Cambridge University Press.

law and general principles of law, is essential for interpreting investment treaties and resolving disputes. These doctrines and sources have been selected for their enduring influence on the normative and practical dimensions of international investment law, particularly in the context of developing economies and evolving global standards.

2.3.1. Calvo doctrine

It is wirth mentioning that Southern American states, which were significant recipients of American investment, rejected the American approach to international investment law. In response to the minimum standard theory, Argentine jurist Carlos Calvo developed what became known as the *Calvo Doctrine* in the mid-19th century. Under this doctrine, a host government was not required to grant foreign investors treatment any more favorable than that granted to its own nationals[126]**.** According to the *Calvo Doctrine*, foreign investors were entitled to the same rights and remedies as domestic investors, and if their rights were violated, they were expected to address their claims within the national courts of the host state where they resided or invested. Foreign investors, however, have always perceived domestic jurisdictions as biased against their interests**.** According to *the Calvo doctrine*, the state should not offer more protection to the investors that to its nationals. By stating the equality of treatment between national and foreign investors, the doctrine resonates with the National Treatment clauses in modern international investment law. If the investor's rights are violated, foreign investors should address the claim to the national courts of the host state, where they reside or invest. *The Calvo Doctrine* questioned the legality of the invocation of diplomatic protection and involved two main propositions: a) The doctrine of state sovereignty precludes states from intervening in the affairs of another, both diplomatically and by force. b) Aliens should be afforded no more than the same treatment as nationals and must limit themselves to filing claims in the local judicial system[127]. Under the doctrine, a host Government did not have to grant treatment any more favorable than that granted to its own nationals. According to the Calvo doctrine, foreigners investing in host countries have the same rights and remedies as nationals[128].

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[126] Cremades, B. M. (2004). Disputes arising out of foreign direct investment in Latin America: A new look at the Calvo doctrine and other jurisdictional issues. *Dispute Resolution Journal, 59*(3), 78-80. Harvard Law School. (1929). The law of responsibility of states for damage done in their territory to the person or property of foreigners. *American Journal of International Law, Special Supplement, 23*, 131-203. [Draft Articles on State Responsibility] (providing a historical background on the Calvo Doctrine under the commentary of Article 17 of the rules).
[127] Dolzer, R., & Schreuer, C. (2012). Principles of international investment law (2nd ed.). Oxford University Press.
[128] Muchlinski, P. (2007). Multinational enterprises and the law (2nd ed.). Oxford University Press.

The supporters of the *Calvo doctrine* were mostly developing states as the doctrine puts host countries interest above else such as Mexico, Peru[129] and Venezuela implemented the *Calvo doctrine* in their foreign investment regimes and their constitutions. Britain and the United States took the view that a Calvo Clause did not in any way affect their rights and duties under international law, but that it might be a factor taken into account when considering whether or not to intervene on behalf of their national. International treaties such as the American Treaty on Pacific Settlement also known as Pact of Bogota of 1948 also included that superiority of national courts clause[130].

2.3.2. Hull formula

Later in 1917, the Mexican agrarian revolution also triggered mass expropriations and in course of their diplomatic communications with the US to resolve the claims between each other. The US Secretary of State, Cordell Hull, in 1938 described this idea as: "*the right of prompt and just compensation for expropriated property….*". This statement solidified the American position. Cordell Hull mentioned in his letter that the taking of property without compensation is confiscation. He goes on stating that the applicable precedents and recognized authorities on international law support its declaration that, under every rule of law and equity, no government is entitled to expropriate private property, for whatever purpose, without provision for prompt, adequate and effective payment.[131] *The Hull Formula* is very specific in that it espouses a formula for compensation. Under this principle, compensation must be *prompt, adequate and* The *Hull Formula,* also known as the *Hull Formula,* is a specific and widely recognized standard in international law that defines compensation for expropriation. According to this principle, compensation must be prompt**,** adequate, and effective [132]. It is often referred to as *full compensation*, and it applies regardless of whether the expropriation is lawful or unlawful. In other words, the expropriating state is required to pay full compensation, which should reflect the market value of the expropriated enterprise as well as any lost future profits.[133] It is no surprise that the Hull formula was widely supported by developed states whose nationals were mainly investors in developing states. Later the *Hull formula* found its way in international investment law and got accepted by majority of nations. *The Hull Formula* was particularly

[129] Constitution of Peru, Article 17. (1939). *Commercial companies, national or foreign, are subject, without restrictions, to the laws of the Republic*.

[130] American Treaty on Pacific Settlement (Pact of Bogota), April 30, 1948. 30 UNTS 55.

[131] U.S. Secretary of State. (1938, July 21). Letter to the Mexican Ambassador to the United States. *United States Office of the Historian*. https://history.state.gov/(Retrieved on 10 March 2025)

[132] Hackworth, G. H. (1942). *Digest of International Law* (Vol. III, Chapters IX IX XI). Washington, DC: Government Printing Office.

[133] Smith, R. J. (1976). The United States government perspective on expropriation and investment in developing countries. *Vanderbilt Law Review, 9*(3), 517-530.

supported by developed countries, whose nationals were often investors in developing nations. These states advocated for this standard to ensure that their investors would be compensated if their investments were expropriated by foreign governments. Over time, the *Hull Formula* gained widespread acceptance in international investment law, and it became a standard approach in dealing with expropriation claims, influencing the terms of many bilateral investment treaties (BITs) and international investment agreements[134].

2.3.4. The classical theory

The Classical Theory asserts that foreign investment ultimately benefits the economy of the host state by increasing domestic capital, introducing new technology, and creating additional jobs[135]. This theory is grounded in the principles of economic liberalism, which have been supported by investment-exporting states and international organizations like the World Trade Organization (WTO) and the International Monetary Fund (IMF). The outcomes of economic liberalism are evident in the establishment of the WTO and its subsequent international agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Investment Measures (TRIMs)[136].

2.3.5. Dependency theory

The next economic theory of foreign investment is the *Dependency Theory* that directly contradicts the views of classical theory. It states that foreign investment will not bring meaningful economic development to the host state, instead it will maintain the regular business objectives of the foreign investors and generate revenue for the business only[137]. Forexample, in employment generating theory, it is explained that the foreign investor's managerial positions that develop that human resources seldom filled by the national personnel and new technologies that are introduced in the host state would be irrelevant. This theory was developed by Raúl

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[134] Newcombe, A., & Paradell, L. (2009). Law and practice of investment treaties: Standards of treatment. Kluwer Law International.

[135] Caves, R. E. (1996). Multinational enterprise and economic analysis (2nd ed.). Cambridge University Press.

[136] International Monetary Fund. (2020). *World economic outlook: A long and difficult ascent*. IMF. https://www.imf.org/en/Publications/WEO(Retrieved on 10 March 2025).

[137] Dos Santos, T. (1970). The structure of dependence. American Economic Review, 60(2), 231–236.

Prebisch in 1949 in his work *The Economic Development of Latin America and Its Principal Problem*.[138]

2.3.6. Source of international investment law

International investment law falls within the scope of both international economic law and international public law in a wider sense. International investment law is based on the conventional sources of international law as laid down in Article 38 of the Statute of the International Court of Justice (ICJ), that is, treaties, customs, and general principles of law, and relies on judicial decisions and writings of publicists too, it also displays certain specificities in its particular mix of sources.[139]

2.3.7. Customary international law

The one of source of international investment law is *customary international law***.** One ofthe commonly referred principles of customary international law is the principle of prohibition of expropriation without compensation, also known as the Hull Doctrine. Other principles include state responsibility, state of necessity and compensation for wrongful expropriation.[52]The important role of treaties in international investment law should not lead to an underestimation of the significance of non-treaty rules in investment disputes. Unlike the situation prevalent in many branches of international law, most rules of investment law are included in treaties. A sense of obligation (i.e., whether a certain behavior is considered as legally obligatory or not) may be manifested by various means, including states' declarations, resolutions of international organizations, international treaties and decisions of international tribunals. Soft's declarations of international institutions may provide evidence for establishing the existence of opinion juris[140].

2.3.8. General principles of law

Besides customary international law, *general principles of law* are another source of international investment law. General principles of law are broadly defined basic principles that

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[138] Peet, R. (1991). *Global capitalism: Theories of social development* (pp. 43–51). Hettne, B. (1995). *Development theory and the three worlds: Towards an international political economy of development* (Subsequent ed.). Longman Development Studies.

[139] Tams, C. (2012). The sources of international investment law: Concluding thoughts. In T. Gazzini & E. De Brabandere (Eds.), *International investment law: The sources of rights and obligations* (pp. 319–332). Martinus Nijhoff.

[140]Shaw, M. (2008). *International law* (6th ed., pp. 88–89). Cambridge University Press.

are used to ‘fill the gaps where specific treaty clauses failed to give a clear answer and define vaguely formulated international investment law standards[141]. Examples of general principle of law that are relevant in international investment law are unjust enrichment and acquired rights (in relation to the expropriation and its compensation); due process; and fair and equitable treatment that is derived from good faith principle of law.[56] This source of international law, established by Article 38(1)(c) of the ICJ statute, was adopted by the drafters in response to the need for completeness of law, and to avoid non-liquate situations.Investment tribunals have stated that some legal principles, such as good faith, unjust enrichment[142], and res judicata constitute ‘general principles of law’ and applied them. The principle of ‘fair and equitable treatment’ is also often discussed in the context of general principles of law derived from domestic legal systems. General principles of law are recognized as a legitimate source of law in contemporary international investment law. However, some authors have criticized their application by investment tribunals, arguing that they tend to favor investors and disadvantage developing countries[143]. General principles of law were particularly influential during the formative period of international investment law, notably in the oil concession arbitrations and in the pre-Bilateral Investment Treaty (BIT) era, such as in the Iran-US Claims Tribunal. Despite this, contemporary arbitral tribunals appear to have largely overlooked these principles. The limited role of general principles of law in modern investment jurisprudence can be attributed to the complex interrelationships between the various sources of international investment law, as well as the general nature of this source of law.

2.3.9. Domestic legislation

Next source of international investment law is *domestic legislation*. Traditionally, public international tribunals consider domestic laws as ‘facts’.[59] This approach was adopted by Permanent Court of International Justice[60], International Court of Justice, European Court of Human Rights, European Court of Justice and World Trade Organization’s Appellate Body.[61]

2.3.10. Judicial Decisions and Case Law

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[141] Dolzer, R., & Schreuer, C. (2012). Principles of international investment law (2nd ed.). Oxford University Press.
[142] Saluka Investments BV (Netherlands) v. Czech Republic, *Partial Award of 17 March 2006*, UNCITRAL, para. 449.
[143] Bungenberg, M. (2010). General principles of law in international investment arbitration. The Law & Practice of International Courts and Tribunals, 9(1), 55–92.

Article 38(1)(d) of the *Statute of the International Court of Justice* provides that judicial decisions (along with scholarly writings) constitute 'subsidiary means for the determination of rules of law'. *Decisions of international tribunals* also play a significant role in the reality of international investment jurisprudence. Accordingly, almost all investment awards in the past two decades include numerous references to prior decisions of investment tribunals[144]. One of sources of international investment law is *precedent*, comprehensive and Progressive Agreement for Trans-Pacific Partnership explicitly mentioned that the award mad by the tribunal has binding force only for the disputing parties of the specific case.[63] It is clear that 'a de facto practice of precedent certainly' exists in international investment law, and most tribunals carefully examine earlier decisions and accept these as authority most of the time.

2.3.11. Investment treaties

International investment law can be differentiated into several key sources, including Bilateral Investment Treaties (BITs), multilateral agreements, customary international law, general principles of international law, and domestic law. Among these, BITs and multilateral agreements are the most used sources in investment arbitration today. Bilateral Investment Treaties (BITs) play a crucial role in international investment law, as they establish important standards such as fair and equitable treatment, Most Favoured Nation (MFN) treatment, National Treatment, and protection against expropriation. These standards are often defined broadly in BITs, which allows arbitrators significant interpretative discretion. Article 30(2) of the Vienna Convention on the Law of Treaties states: "When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail." This provision implies that if two treaties address the same subject matter with similar generality, and the parties express a preference for one over the other, the normative order specified by the contracting parties in the relevant treaty takes precedence.

The relationship between customary international law and treaty law in international investment law.

Customary international law and treaty law are two of the primary sources of international law, as recognized in Article 38(1) of the Statute of the International Court of Justice (ICJ). In the field of international investment law, the interaction between these two sources is

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[144] Bjorklund, A. (2008). Investment treaty arbitral decisions as jurisprudence constant. In C. Picker, I. Bunn, & D. Arner (Eds.), *International economic law: The state and future of the discipline* (pp. 265–269). Hart.

both complementary and dynamic.

Treaty law, particularly in the form of bilateral investment treaties (BITs) and multilateral agreements, provides the most explicit and detailed rules governing the treatment of foreign investors. These treaties often contain provisions on fair and equitable treatment (FET), national treatment, most-favoured-nation (MFN) clauses, and investor-state dispute settlement (ISDS) mechanisms.

Customary international law, on the other hand, consists of general practices accepted as law *(opinion juris and state practice*). It plays a particularly important role in situations where treaties are silent, ambiguous, or do not exist. For example, in cases where BITs do not contain explicit FET clauses, tribunals may refer to the customary minimum standard of treatment (MST) under customary international law.

The relationship between these two sources is not hierarchical but often interdependent:

- Treaties may codify or crystallize customary norms, such as expropriation standards and protections against denial of justice.
- Conversely, customary international law may fill gaps in treaty interpretation or serve as a background framework for treaty obligations.
- In some arbitral practice, customary norms have been invoked even where treaties exist, especially when interpreting vague treaty standards or when tribunals seek to rely on widely accepted state practices.

This interplay is especially relevant in developing countries or regions like Central Asia, where the treaty landscape is rapidly evolving, but customary principles continue to provide foundational legal certainty. Additionally, customary law can help harmonize disparate treaty standards, contributing to greater consistency and predictability in investment dispute resolution.

2.3.12. “Soft law” rules

"Soft law" texts, adopted by States or international organizations on a non-binding basis, are important elements of the framework. While not legally binding, soft law can become binding through several processes: incorporation into domestic legislation, codification into treaties, emergence as customary international law through consistent state practice and opinio juris, reference in binding agreements, or application by international institutions and tribunal[145]. Corporate codes of conduct and other texts of private origin help to formulate widely accepted prescriptions. Transnational arbitration not only provides useful procedures for dispute settlement but also, through the corpus of its awards, gradually fills in the normative conceptual framework for FDI issues. *"Soft law"* rules are not legally binding, and investment arbitrators have discretion whether to apply them in a particular dispute or not. Though not mandatory, the preceding sections on treaties and customary law show that such soft norms often influence investment tribunals. These nonbinding instruments fulfill three major functions in investment jurisprudence: interpreting ambiguous provisions included in international treaties, filling gaps in existing international investment law, and supporting legal findings arising from other sources of investment law (e.g., deriving from treaty or customary law)[146].The broad consensus on the general meaning of soft law does not extend to its utility or role within the international law system. There is a wide spectrum of views held by scholars on this issue, which ranges from those who consider soft law to be an essential element of international law (soft law advocates), to those who are highly skeptical, even dismissive, of the very concept of soft law (soft law sceptics); there is also a third and significant group of scholars in the middle who take more nuanced approaches to soft law, dismissing it as irrelevant for certain purposes while in the same breath considering it useful for other purposes (the third group).[147]

2.4. Broad investment provisions

2.4.1. Theoretical concept of FDI

Foreign *Direct Investment means* cross border investment made by a resident in one economy in an enterprise in another economy, with the objective establishing a lasting interest in the investee economy FDI is also described as investment into the business of a country by a company in another country[148]. The term FDI refers to an investment by a foreign entity to a host legal entity by which the foreign investor acquires participation or shares in the core capital of that legal entity, and in terms of the laws acquire all the rights based on that venture, i.e., investment. In other words, FDI means *investment of foreign capital by the resident investor*

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[145] Boyle, A. (1999). Some Reflections on the Relationship of Treaties and Soft Law. International and Comparative Law Quarterly, 48(4), 901–913.
[146] Kaufmann-Kohler, G. (2010). Soft law in international arbitration: Codification and normativity. *Journal of International Dispute Settlement*, 1(1), 1–23.
[147] Abbott, K. W., & Snidal, D. (2000). Hard and soft law in international governance. *International Organization, 54*(3), 421–456.
[148] OECD. (2009). *Main concepts and definitions of foreign direct investment*. In *OECD benchmark definition of foreign direct investment 2008: Fourth edition*.

from one country to a resident in another country to achieve common interests[149]. The theorists emphasize that, aside from their basic role, the FDI encourage the development of tertiary activities such as trade, traffic, tourism etc. because they contain material and non-material resources. Material resources are tangible assets (capital and technology) which are important factors and drivers of growth and development of the whole economy. On the other side, the non-material resources are intangible assets (intellectual resources in different shapes - entering foreign markets, registered product brands, marketing knowledge, managing skills etc.) which mobilize and professionally upgrade the domestic economy and influence the workers' education[150]. Traditionally, investment has two different types: *direct or portfolio investments*. *Portfolio investments* are the ones which are issues as a bond to the financial markets by the governments of developing countries. The actual difference between these two investments lies in two categories: risk and protection in a court of law. In portfolio investments the investor himself usually takes upon the risk of making such an investment. If the investors wereto face losses, then they cannot sue the national stock exchange or the public entity that runsthe market. The classic definition of FDI[151] states that it happens by buying physical capital from a company in another country or by buying a significant part of the shares of a company in order to obtain control over it. FDI are different from portfolio investments in a way that the first ones have the aim to gain control over the company, which is not a case in the portfolio investments.

The neoliberal concept of foreign investment is increasingly considered to be outdated, especially considering scientifically grounded anti-globalist criticisms that argue foreign investment does not always positively influence the economy of the host country. As a result, a more moderate interventionist stance is advocated, emphasizing the active role of the host country in driving economic growth and using foreign direct investment (FDI) to improve the domestic economy. In this context, the role of the host country's institutions becomes crucial in creating conditions that promote positive spillover effects, particularly in less developed countries that lack a stable industrial base. State regulation plays a significant role here, as it is impossible for foreign investment to have a positive impact in a country where the rule of law is not respected and where economic freedom is constrained by the whims of political leaders. Modern theories of international trade, unlike classical theories that focused on the state as the

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[149] Organisation for Economic Co-operation and Development. (2008). OECD Benchmark Definition of Foreign Direct Investment (4th ed.). https://www.oecd.org/daf/inv/investmentstatisticsandanalysis/40193734.pdf (Retrieved on 10 March 2025).

[150]Moran, T. H. (1998). *Foreign direct investment and development: The new policy agenda for developing countries and economies in transition*. Washington, DC: Institute for International Economics.

[151] Dunning, J. H. (1992). *Multinational enterprise and the global economy*. Wokingham, England: Addison-Wesley Publishing.

key actor in international trade, view enterprises as the primary actors. These theories emphasize the microeconomic factors that affect their access to markets and investment opportunities, suggesting a shift towards focusing on the business environment rather than solely state-level policies.FDI can be classified in many forms or types. The classification of the FDI in the literature today is complex and varies from author to author. There are three models under which investment can be defined in investment laws. In a wide range of BITs and model BITs, investment is broadly defined in a general phrase to include 'any assets and contains a non-exhaustive list of specified assets that are protected under the BIT[152]. Most Bilateral Investment Treaties (BITs) and model BITs adopt a broad and inclusive definition of investment. Typically, investment is described in general terms such as "any assets," accompanied by a non-exhaustive list of specific asset types protected under the treaty. This list commonly includes tangible and intangible assets like movable and immovable property, shares, stocks, bonds, intellectual property rights, contractual rights, and concessions[153].

In international investment law, three primary models are commonly used to define investment: the asset-based model, the enterprise-based model, and the rights-based model. These models provide different legal frameworks for recognizing and protecting investments.

First model definition	***Second model definition***	***Third model definition***
The first model is *an asset-based model* - assets as a foreign investment. Definition contained in the *US Model BIT 2012*[154] In some asset-based models, the list of specified assets contains the right to claim money or any other performance having an economic value, associated with an investment.	The second model is *a transaction-based model,* used in the *OECD Code of Liberalization of Capital Movements*[155], which does not define investment but lists capital movements to be liberalized, including direct investment.	Third is *enterprise-based model,* definition under the *India Model BIT 2015*[156], where lists the business organization formed by the investor.

[152] Schlemmer, E. (2008). Investment, investor, nationality and shareholders. In P. Muchlinski, F. Ortino, & C. Schreuer (Eds.), *The Oxford Handbook of International Investment Law* (pp. [insert page range]). Oxford University Press.
[153] Dolzer, R., & Schreuer, C. (2012). Principles of international investment law (2nd ed.). Oxford University Press.
[154] United States Trade Representative. (2012). *2012 U.S. Model Bilateral Investment Treaty*. Retrieved from https://ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf (Retrieved on 10 March 2025).
[155] Department of Economic Affairs, Government of India. (2015). *Model text for the Indian Bilateral Investment Treaty*. Retrieved from https://dea.gov.in/sites/default/files/ModelBIT_Annex_0.pdf (Retrieved on 10 March 2025)
[156] This general definition of FDI is based on OECD, Detailed Benchmark Definition

Furthermore, some BITs defining investment require that the investment must be in accordance with the host State law. According to OECD the Foreign direct investment (FDI) is defined as an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the foreign direct investor (FDI enterprise or affiliate enterprise or foreign affiliate).[157]On the other hand, BITs have a purpose to narrow down the categories of definition on investment. But most of them have the same structure specifying investment as every kind of asset, followed by a non-exhaustive list of categories of covered investments. The most common categorizations are movable and immovable property; interest in companies (debt, equity investment); claims to money and claims under a contract with financial value (except NAFTA countries); intellectual property rights; business concession under public law. The analysis of different investment treaties and international arbitration procedures reveals that there is no general definition of investment applicable to all investment relations, despite of some common features between the definitions, so the concept of what constitutes foreign investment has changed over time but finally, according to the common points of different definitions, a less comprehensive definition of investment can be expressed as follows[158]: *"Investment" means every kind of asset, owned or controlled by an investor and includes the following:*

- *Movable and immovable property and any other property rights such as mortgages, liens and pledges.*
- *Shares, stocks and debentures of companies or interests in the property of such companies.*
- *Claims to money or to any performance under contract having a financial value.*
- *Intellectual property rights and goodwill.*
- *Business concessions conferred by law or under contract include concessions to search for, cultivate, extract or exploit natural resources.*

2.4.2. Definition of "Investor"

of Foreign Direct Investment, third edition OECD, 1996, and International Monetary Fund, Balance of Payments Manual, fifth edition IMF, 1993.

[157] Harb, J. (2008). *Definition of investments protected by international treaties*. Journal of World Investment & Trade, 9(1), 53–84.

[158] Sornarajah, M. (2017). The international law on foreign investment (4th ed.). Cambridge University Press.

The definition of "Investor" in international investment law typically includes both natural persons and legal persons (i.e., companies or other entities).

Natural persons

It is a firmly established principle in international law that the nationality of the investor as a natural person is determined by the national law of the state whose nationality is claimed. However, some investment agreements introduce alternative criteria such as a requirement of residency or domicile. Article 201 of NAFTA equally provides in part that: "National means a natural person who is a citizen or permanent resident of a Party." Some Bilateral Investment Treaties (BITs) include a single definition of "*national*" which applies to both parties. Other BITs offer two definitions, one relating to one Contracting Party and the other to the second Contracting Party. For example,

- The *Finland-Egypt BIT*[159] provides that the term "national" means:

"a) In respect of Finland, an individual who is a citizen of Finland according to Finnish law.

b) In respect of Egypt, an individual who is a citizen of Egypt according to Egyptian Law."

- The *US-Uruguay BIT*[160] defines national to mean:

"a) For the United States, a natural person who is a national of the United States as defined in Title III of the Immigration and Nationality Act.

b) For Uruguay, a natural person possessing the citizenship of Uruguay, in accordance with its laws." Some investment agreements require some link beyond nationality.

- The *Germany-Israel BIT* [161]provides in its article (1)(3)(b), that the term "nationals" means with respect to Israel, "*Israeli nationals being permanent residents of the State of Israel"*.

The ICSID Convention requires nationality to be established on two important dates: *the date of consent to arbitration and the date of registration*. Article 25(1) of the ICSID Convention provides that: " Any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contacting State party to the dispute." The ICSID

[159] Finland & Egypt. (2005, February 5). *Bilateral investment treaty between the Government of the Republic of Finland and the Government of the Arab Republic of Egypt*. Entered into force February 5, 2005.

[160] United States & Uruguay. (1 November 2006). *Bilateral investment treaty between the Government of the United States of America and the Government of the Oriental Republic of Uruguay*. Entered into force November 1, 2006.

[161] Germany & Israel. (1974, June 24). *Bilateral investment treaty between the Federal Republic of Germany and the State of Israel*. Signed June 24, 1974, not yet in force.

Convention requires claimants to establish that they had the nationality of a Contracting State on two different dates: the date at which the parties consented to ICSID's jurisdiction and the date of the registration of the request for arbitration. An extension of treaty rights to permanent residents cannot extend ICSID's jurisdiction beyond nationals of Contracting States to the ICSID Convention. With respect to dual nationality, the ICSID Convention excludes dual nationals, if one of the nationalities is that of the host state[162].

2.4.3. Legal persons

Companies today operate in ways that can make it very difficult to determine nationality. Layers of shareholders, both natural and legal people themselves, operating from and in different countries make the traditional picture of a company established under the laws of a particular country and having its center of operations in the same country, more of a rarity than a common situation. It is quite common that a company can be established under the laws of country A, have its center of control in country B and do its main business in country C[163]. Tribunals have usually refrained from engaging in substantive investigations of a company's control and they have usually adopted the test of incorporation or seat rather than control when determining the nationality of a juridical person.

2.4.4. Nature of the investors

The ICSID definition is not explicit as to whether eligibility is limited to investors who are private entities or whether they could be state-controlled ICSID was confronted with this question of the access to the Centre of an investor with legal personality but controlled by a state in the case *CSOB v. Slovak Republic*[164] (the state retained 65% of the capital). The tribunal noted that the term "investor" in the Convention, did not exclusively concern the companies with private capital but also companies partially or entirely controlled by a state. It therefore decided that a legal person could have access as an investor to proceedings under ICSID unless it acts as a state agent or undertakes a governmental function.[165] There is no single test used by all

[162]Schreuer, C. H. (2001). *The ICSID Convention: A commentary*. Cambridge University Press.
[163] Vandevelde, K. J. (2010). U.S. international investment agreements. Oxford University Press.
[164]International Centre for Settlement of Investment Disputes (ICSID). (1999, May 24). *Ceskoslovenska Obchodni Banka, A.S. v. Slovak Republic, ICSID Case No. ARB/97/4, Decision on Jurisdiction.*
[165]Manciaux, S. (2004). *Investissements étrangers et arbitrage entre États et ressortissants d'autres États: trente années d'activité du CIRDI.* Litec

investment treaties to define the link required between a legal person seeking protection under the treaty and the contracting state under whose treaty the investor asks for protection[166].

Bilateral investment treaties have essentially relied on the following tests for determining the nationality of legal persons[167]:

i) *the place of constitution in accordance with the law in force in the country;*

ii) *the place of incorporation or where the registered office is;*

iii) *the country of the seat, i.e., where the place of administration is; and*

iv) *less frequently, the country of control. Most investment treaties use a combination of the tests for nationality of legal people so that a company must satisfy two or more of them to be covered.*

The most common approach is a combination of the place of incorporation or constitution and seat, although the combination of incorporation or constitution and control and of all three tests are also found.

2.5. Investment Protection

International standards of investment include fair and equitable treatment, full protection and security, national treatment and most-favored-nations treatment have arisen to encourage investment in safe and stable situations for investors in the territory of the host State. These standards may be found in most investment protection treaties. Some arbitral tribunals have regarded some of these standards as being closely interrelated. In fact, fair and equitable treatment was realized as a comprehensive standard that embraced the other standards.

2.5.1. Fair and equitable treatment

The *fair and equitable treatment (FET)*[168] standard as an absolute, non-contingent and independent principle is deemed the most basic standard of treatment which according to accepted standards of international law provides favorable conditions for protecting foreign investors and their property in the territory of the host state. The Fair and Equitable Treatment standard establishes one of the most important elements available to a foreign investor to protect

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166 Jessup, P. C. (1970, February 5). *Separate opinion in Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain),* International Court of Justice, 1964–1970.

167 Newcombe, A., & Paradell, L. (2009). Law and practice of investment treaties: Standards of treatment (Vol. 1). Kluwer Law International.

168 Angelet, N. (2011). *Fair and equitable treatment*. In *Max Planck Encyclopedia of Public International Law*. Oxford University Press.

his investment in a foreign country, because it provides him with a certain treatment that the host state must grant regardless of the treatment given to its own nationals.

Fair and equitable treatment standard is still a complex[169] legal term although in recent years to be fully brought in most of the documents related to investment and in many international arbitration cases have been invoked but its meaning has not yet been completely clarified. So, the concept of fair and equitable treatment does not have accuracy and objectivity, and it cannot be easily noted with an accurate and comprehensive definition. However, several international arbitral tribunals tried to collect and set different ordinary definitions of this standard about its dynamics and flexibility to achieve a precise definition. Finally, *in Tecmed v Mexico case*[170] a definition of this standard mentioned that according to many scholars of international law it can be the most comprehensive definition for understanding the meaning of this standard and even in awards of other tribunals it has been invoked. It should be noted; this standard is often used in bilateral investment treaties (BITs) and its main purpose is to fill possible gaps in regulations that protect investors to obtain the level of favorable protection of investors. So, the great majority of BITs have included fair and equitable treatment clauses.

The Fair and Equitable Treatment (FET) standard is a norm of international law and must not be interpreted or applied solely through the lens of the host State's national law. Its origin lies in the principles and values of international law, particularly the protection of foreign investors against arbitrary, discriminatory, or abusive treatment. The host State bears an international obligation to uphold this standard, and its application is not subject to the host State's unilateral discretion or domestic legal framework. FET serves as an autonomous standard that operates independently of national legal systems, ensuring the protection of legitimate expectations, transparency, due process, and the rule of law in the treatment of foreign investors.[171]

2.5.2. Full protection and security (FPS) standard

The second standard is the *full protection and security (FPS)*. It can be a complement to fair and equitable treatment and just like fair and equitable treatment standard it is general in nature and its flexibility makes it applicable to different situations. Most investment treaties contain

[169] Bronfman, M. K. (2006). Fair and equitable treatment — An evolving standard. *Max Planck Yearbook of United Nations Law*, 10, 457-480.
[170] International Centre for Settlement of Investment Disputes (ICSID). (2003, May 29). *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States, ICSID Case No. ARB(AF)/00/2, Award*.
[171] Tudor, L. (2008). The FET in international investment agreements: A typology of drafting formulations. In L. Tudor (Ed.), *The fair and equitable treatment standard in international foreign investment law* (pp. 1–24). Oxford University Press.

provisions granting protection and security for investments. Many of these treaties, including the North American Free Trade Agreement (NAFTA), in article 1105 (1) and Energy Charter Treaty (ECT), in article 10 (1) refer to *protection and security*. This standard imposes an obligation of vigilance and care by the State under international law comprising a duty of due diligence for the prevention of wrongful injuries inflicted by third parties to property of aliens in its territory[172]. Tribunal in *Saluka v The Czech Republic*[173] noted that the standard applies essentially when the foreign investment has been affected by civil strife and physical violence.[174]

2.5.3. National treatment

National treatment is considered as one of the important standards in international investment law to ensure optimal performance of the host state with foreign investments so that the host state in the same way which treats domestic investors also deal with foreign investors[175]. In order to set out the concept of national treatment, Article 1102(1) NAFTA reads: each party shall accord to investors of another party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, a*cquisition, expansion, management, conduct, operation, and sale or other disposition of investments* and Article 10 (3) of the Energy Charter refer to national treatment standard in which the parties are obliged to treat with investors of each other that at least are similar to its investors. The classical concept of national treatment was that the foreign investor should not have a better situation than the nationals of the host state and higher points for foreign investors were not considered at the international *level so that if the host state conditions are lower than the minimum international standards*. Foreign investors cannot request favorable international rules, but on the contrary, according to the modern concept of national treatment standard if protection standards of international law are considered higher level for foreign investors, the host State should provide favorable international rules for foreign investors or host State amend their internal rules in this

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[172]UNCITRAL. (2012, June 12). *Ulysseas, Inc. v. Ecuador, Final Award*, para. 272.
[173] Saluka Investments B.V. v. The Czech Republic case (2001)**:** Saluka Investments B.V. v. The Czech Republic, UNCITRAL, 2001. Retrieved from https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/57/saluka-v-czech-republic
[174]Saluka Investments B.V. v. The Czech Republic case (2001)**:** Saluka Investments B.V. v. The Czech Republic, UNCITRAL, 2001. Retrieved from https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/57/saluka-v-czech-republic
[175] Kurtz, J. (2010). The merits and limits of comparativism: National treatment in international investment law and the WTO. In S. W. Schill (Ed.), *International Investment Law and Comparative Public Law* (pp. 289-311). Oxford University Press

context in accordance with international law[176]. *Nowadays national treatment standard is included as a minimum treatment in most bilateral and multilateral investment treaties.*

2.5.4. Most-favored-nation treatment

The last protection standard to be discussed in this article will be the *most favored-nation* treatment that can be a complement to national treatment. According to this standard, *the host state must treat third state investors as it treats foreign investors because this standard is used to prevent discrimination against foreign investment*. *Most-favored-nation treatment clauses* commit contracting parties to treating each other's investors no less favorably than investors of any non-party. So, if the host state does not grant interests and favorable treatment to third states, the most-favored-nation treatment will not be applied in practice[177]. The *purpose of MFN clause* in a treaty is to guarantee 'treatment' that an investor finds more favorable in the host state. If the raison d'être of MFN clause is to guarantee 'treatment' then it is essential to consider the scope and ambit of the word treatment to have a grasp over MFN clause and its applicability in a treaty framework[178].Accordingly, the primary goal of this standard is that the parties treat each other at least as favorable as which they treat with third states and their investors. In the World Trade Organization (WTO) that the most-favored-nation treatment to be considered as a fundamental principle of the multilateral trading system, this standard has been applied to both trade in services and trade-related aspects of intellectual property. The scope of the most-favored-nation treatment clauses in investment treaties is quite various. Some of these clauses are limited and others are more comprehensive. In addition, the meaning of these clauses is different as the object and purpose of treaties which contained clauses, are different[179]. So, this standard has both expansion and flexibility.[180] One of the most common exemptions concerns taxation measures. Given the technical and bilateral nature of tax arrangements, most investment treaties explicitly exclude the MFN clause from applying to matters governed by double taxation treaties. This allows states to negotiate specific tax arrangements without the risk of having those benefits automatically extended to other investors through MFN provisions. Another frequent exemption

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[176] Salacuse, J. W. (2015). *The law of investment treaties*. Oxford International Law Library. Oxford University Press.
[177] Titi, C. (2016). Most-favored-nation treatment: Survival clauses and reform of international investment law. *Journal of International Arbitration, 33*(5), 425–446.
[178] Thulasidhass, P. R. (2015). Most-favored-nation treatment in international investment law: Ascertaining the limits through interpretative principles. *Amsterdam Law Forum, 7*(2), 25–43.
[179]Government of the United Kingdom & Government of the Republic of Albania. (1994). *Agreement for the Promotion and Protection of Investments*, Article 3.
[180] Federal Republic of Germany. (2008). *German Model Bilateral Investment Treaty*, Article 3(1) –(2). Kingdom of the Netherlands. (2019). *Netherlands Model Bilateral Investment Treaty*, Article 3.

relates to regional economic integration agreements, such as customs unions or free trade areas. Treaties often permit states to provide more favorable treatment to investors from regional partners such as members of the European Union (EU), Eurasian Economic Union (EAEU), or USMCA without triggering the MFN clause. This reflects the recognition that deeper economic cooperation within regional frameworks may justify preferential treatment. In response to controversial arbitral decisions, many states have also begun excluding dispute settlement procedures from the scope of MFN clauses. For example, the landmark *Maffezini v. Spain* case[181] allowed an investor to use the MFN clause to access a more favorable dispute resolution process available in another treaty. However, this broad interpretation led to pushbacks. In later cases, such as *Plama v. Bulgaria*[182], tribunals rejected this approach, and many modern treaties now contain language that explicitly prohibits the use of MFN to import procedural advantages. Additionally, MFN clauses may not apply where states have made specific reservations or listed sensitive sectors such as natural resources, public utilities, or defense industries that are excluded from the treaty's substantive protections. These exemptions are typically detailed in annexes or schedules attached to the agreement. Finally, MFN provisions are generally understood not to override a state's right to take measures in the interest of public order, national security, or public morality. These public policy exceptions ensure that the pursuit of core sovereign interests remains protected, even in the context of investor-state relations. In sum, while MFN clauses are intended to promote non-discrimination and equality of treatment among foreign investors, states retain the right to define the scope of their commitments, limiting the application of MFN through carefully crafted exemptions. These carve-outs reflect the delicate balance between promoting investor confidence and safeguarding sovereign policy space.

2.6. International Investment Agreements (IIAs)

With the ascendancy of FDI as one of the main factors driving international economic relations in the era of globalization, international investment rulemaking has come to the forefront of economic diplomacy. It may well be that, as the second half of the 20th century was characterized by the establishment of an international trade law system, the first half of the 21st century may be described by the establishment of an international investment law system. An international legal framework for FDI consists of many kinds of national and international rules and principles, of diverse form and origin, differing in strength and degree of specificity. The entire structure rests on the twin foundations of customary international law and national laws

[181] Maffezini v. Spain (ICSID Case No. ARB/97/7)
[182] Plama Consortium Limited v. Republic of Bulgaria (ICSID Case No. ARB/03/24)

and regulations and relies for its substance on a multitude of international investment agreements (IIAs) and other legal instruments[183]. Indeed, countries' efforts to attract FDI and benefit from it increasingly take place in an environment characterized by a proliferation of investment rules at the bilateral, sub-regional, regional and multilateral levels. The resulting investment rules – laid out now in over than 3000 active International Investment Agreements, the number of investment disputes is also on the rise. In the agreements that are in force today, the ISDS clause is included in more than 90% of Bilateral Investment Treaties (BITs) and other international treaties such as Free Trade Agreements (FTAs), Multilateral Investment Treaties and over 2,300 double taxation treaties, numerous preferential free trade agreements with investment components, and multilateral agreements are multi-layered and multi-faceted, with obligations differing in geographical scope and coverage and ranging from the voluntary to the binding[184]. However recently, preferential trade agreements have increasingly contained standard investment promotion and protection provisions. Currently, those instruments are not only contributing to increasing transparency and predictability for foreign investors, but the presence of such a framework for foreign investment can also potentially encourage countries to adopt similar standards for domestic investors.

2.6.1. Multilateral agreements

Relevant multilateral agreements in existence, some deal with broader issues that are important for FDI, as in the case of the *Articles of Agreement of the International Monetary Fund*[185], the *GATT*[186], or even the international conventions concerning intellectual property, within the framework of the World Intellectual Property Organization (WIPO) or the World Trade Organization (WTO). The pertinent international organizations constitute in fact the sole existing institutional structure at the worldwide level that is directly or indirectly relevant to FDI.

The WTO initiatives that impact foreign investment are largely contained in four agreements: Trade Related Investment Measures (TRIMs)[187], General Agreement on Trade in Services

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[183] Sauvant, K. P., & Sachs, L. E. (Eds.). (2009). The effect of treaties on foreign direct investment: Bilateral investment treaties, double taxation treaties, and investment flows. Oxford University Press.

[184] Sauvant, K. P., & Mann, H. (2017). Yearbook on international investment law & policy 2015–2016. Oxford University Press.

[185] International Monetary Fund (IMF). (1944, July 22). *Articles of Agreement of the International Monetary Fund*. Adopted at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire. https://www.imf.org/external/pubs/ft/aa/ (Retrieved on 15 May 2025)

[186] World Trade Organization (WTO). (1947). *General Agreement on Tariffs and Trade (GATT 1947).* https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm(Retrieved on 10 March 2025)

[187] World Trade Organization (WTO). (1994). *Agreement on Trade-Related Investment Measures (TRIMs)*. In *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (pp. 143–146). https://www.wto.org/english/docs_e/legal_e/18-trims_e.htm(Retrieved on 10 March 2025)

(GATS)[188], Trade Related Aspects of Intellectual Property Rights (TRIPS), and Dispute Settlement Understanding (DSU). While TRIPS and DSU provide minimal standards of protection for investment, the main provisions affecting investment are contained in TRIMS and GATS. GATS leaves member countries considerable flexibility on the scope and speed of liberalizing services activities. It is the only agreement that provides an unambiguous definition of foreign investment. The GATS address foreign investment in services as one of four modes of supply of services, including services provided by nationals of one party in the territory of any other party.

2.6.2. Free Trade and Regional Integration Agreements

Regional and/or plurilateral international agreements are agreements in which only a limited number of countries participate, and which are often not open to the participation of all countries. They are of course binding on the participating countries alone and applicable only to them. Such instruments are increasingly important in FDI matters. Regional economic integration agreements are a significant subcategory. They often involve a higher than usual degree of unity and cooperation among their members, sometimes marked by the presence of "supranational" institutions, and it is therefore difficult to draw general conclusions from their provisions.

- The case of the European Union is probably the most telling; the extensive liberalization of capital movements, the effective elimination of discriminatory measures and the adoption of common rules among its members has had far-reaching effects on FDI among member countries and an important impact on investment in and from third countries.
- NAFTA is a significant illustration of a regional agreement which is not limited to developed countries only and may indeed be extended to other countries. It is pertinent to note that, although NAFTA is formally only a "free trade zone" -- and not a common market or an economic union like the European Union -- the agreement covers FDI. Its provisions on the subject have already significantly influenced other arrangements. It may in fact be considered as characteristic of a recent trend for free trade agreements to include FDI in their scope.

In parallel with the increasing number of BITs negotiations, there is also an upward trend in the conclusion of Free Trade Agreements and Regional Integration Agreements containing market

188 World Trade Organization (WTO). (1947). *General Agreement on Tariffs and Trade (GATT 1947).* https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm(Retrieved on 10 March 2025)

access for investors, moreover, investment protection and promotion provisions. International investment rules are no longer exclusively contained in BITs and are increasingly being formulated as part of agreements that encompass a broader range of issues (including trade, services, competition, intellectual property). There are also economic agreements containing only some investment provisions, usually focusing on promotion, but not the full set of investment protection provisions as found in BITs (i.e., United States' Trade and Investment Framework Agreements). There are approximately 300 FTAs globally, covering trade in goods and/or services[189].

2.6.3. Economic Partnership Agreements

This agreement can be considered an intermediate step between the free trade area and the single market in the process of economic integration. For example, *Economic Partnership Agreements (EPAs) are* trade and development agreements negotiated between the EU and African, Caribbean and Pacific partners engaged in regional economic integration processes. The EU is currently negotiating with 75 of its former colonies in Africa, the Caribbean and the Pacific (ACP). EPAs are essentially free trade agreements (FTAs) that envisage the creation of a free trade area between the EU and ACP countries, in which there are no duties on goods imported and exported between these countries. FTAs, such as EPAs, are based on the principle of reciprocity that is, when one party to the agreement makes a concession by lowering its tariffs on goods, the other parties reciprocate by lowering their tariffs, as well. The lowering of tariffs in this way is commonly known as trade liberalization.

2.6.4. Bilateral Investment Treaties (BITs)

Bilateral investment treaties (BITs) are agreements between two countries for the reciprocal encouragement, promotion and protection of investments in each other's' territories by companies based in either country.[190] They constitute to date the most important instrument for the international protection of foreign investment by providing higher legal protection, guarantees, and security. BITs constitute an important pillar of investment protection at the

[189]United Nations Conference on Trade and Development (UNCTAD). (2017). World investment report 2017: Investment and the digital economy. https://unctad.org/system/files/official-document/wir2017_en.pdf (Retrieved on 10 March 2025)
[190] UNCTAD. (1998). *World investment report 1998: Trends and determinants*. United Nations Conference on Trade and Development. https://unctad.org/publication/world-investment-report-1998(Retrieved on 10 March 2025)

international level. The first BIT[191] was signed at the end of the 1950s and took over the function of the old Friendship, Commerce, and Navigation Treaties. It is estimated that 2854 such treaties have been concluded as of today. BITs have been continuously proliferating and increasing in complexity, diversity and interaction with each other through a denser network of treaties and through the MFN treatment provisions. BITs also cover several other areas in particular, non-discrimination in the treatment (national treatment, and most favored nation treatment). An important characteristic of the new generation of BITs is considerable uniformity in the broad principles underlying the agreements. In addition, an increasingly high number of BITs are now being concluded at the intra-regional level and between developing countries. Although the treaties remain quite standardized, they can reflect in their provisions the differing positions and approaches of the many countries which have concluded such agreements. Most BITs concluded in the last decade have a similar basic structure and content[192]. However, this does not mean that agreements would be more or less identical or that there would not have been any normative developments. On the contrary, by looking into the details of each treaty one can distinguish a broad variety of approaches regarding individual provisions. Differences exist regarding the underlying rationale of BITs, the degree of protection and the number of qualitative innovations.

2.6.5. Double taxation treaties (DTTs)

Double Taxation Treaties (DTTs') are conventions between two countries that aim to eliminate double taxation of income or gains arising in one territory and paid to residents of the other. They work by dividing the tax rights which each country claims under its domestic laws over the same income and gains. DTTs are international agreements that aim to alleviate double taxation arising from cross-border business activities. They are the central pillars of international tax coordination and despite their bilateral nature and divergent details[193]. Double taxation arises where comparable taxes are imposed in two or more jurisdictions on the same taxpayer in respect of the same income or capital and for identical periods. The obstacles it presents can hamper investment. To avoid this, jurisdictions with significant ongoing cross-border trade and investment may opt to conclude a double taxation treaty (DTT) (for example, The UK is party to more than 100 DTTs).

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[191] Neumayer, E., & Spess, L. (2005). Do bilateral investment treaties increase foreign direct investment to developing countries? *World Development*, 33(10), 1567–1585.

[192] Wälde, T., & Kolo, A. (2001). Dispute settlement in international investment protection treaties: Problems of legal fragmentation and jurisgenerativity. *European Journal of International Law*, 12(4), 723–757.

[193] UNCTAD. (2024). *Double taxation treaties and their implications for investment: What investment policymakers need to know*. United Nations Conference on Trade and Development. https://unctad.org/system/files/official-document/diaepcb2024d1_en.pdf(Retrieved on 10 March 2025)

2.7. Investor-State Dispute Settlement Mechanism (ISDS)

Increased number of international investment agreements, respectively the number of investor-state dispute settlements has risen. ISDS is a legal mechanism allowing an investor from one contracting state to an international investment agreement to bring a claim against another contracting state in which it has made an investment (also known as the host state), because relying on the national courts of the host country to enforce obligations in an investment agreement is not always easy, may be time-consuming or may even be impossible.[194]

The legal bases for ISDS cases are found in more than 3 000 international investment agreements (IIA) concluded between parties to determine investors' rights in each others' territories. Most of the (BITs), and some plurilateral ones (including the Energy Charter Treaty), contain clauses providing for consent for arbitration in case of a dispute between the host state and investor. Sometimes they also include alternative mechanisms, such as proceedings before domestic courts of the host state, or another procedure agreed by both parties to a dispute. Most international investment agreements incorporate provisions relating to the investment dispute settlement mechanism. ISDS is, usually, investor-state dispute settlement, the most important feature of international investment agreements. They, namely, enable the foreign investor to bring claims in an independent international tribunal in order to avoid possible bias in host state's judicial system. Investors usually do not rely on the national courts of the host state for resolving their disputes as the respondent in the case is the host state itself. Therefore, international arbitration is deemed to be more neutral and flexible in comparison to state-to-state dispute settlements.

2.7.1. Applicable rules

The availability of investment dispute forums through international arbitration courts, rules and mechanisms has widened the possibility of settling disputes. Among the most active institutions for investment dispute settlement such as:

- *International Center for the Settlement of Investment Disputes (ICSID)*[195]
- *International Chamber of Commerce (ICC)*[196].
- *Stockholm Chamber of Commerce*[197].

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[194] United Nations Conference on Trade and Development. (2014). *Recent developments in investor-State dispute settlement (ISDS)* (IIA Issues Note No. 1)
[195]International Centre for Settlement of Investment Disputes, World Bank Group. (n.d.).
[196] International Chamber of Commerce. (n.d.). *Homepage*. https://iccwbo.org/(Retrieved on 10 March 2025)

- *London Court of International Arbitration (LCIA)*[198].
- *Hong Kong International Arbitration Centre (HKIAC).*[199]
- *Ad hoc arbitration proceedings (mostly United Nations Commission on International Trade Law (UNCITRAL) rules*[200].

As to the stages of an ISDS procedure, there are common procedural steps under these different sets of rules:

- Notice of arbitration is usually sent by an investor to the host state.
- Both parties choose the arbitration tribunal and proceed to selection of arbitrators: usually each party chooses one, with the third appointed jointly to chair the tribunal.
- Proceedings, in which both parties are represented by teams of lawyers, may last several years.
- The award determines the amount of compensation, if so decided, and allocates legal costs. It is final and binding on the parties but does not create a binding precedent applicable in other cases, although in practice tribunals often refer to earlier arbitration decisions.

International investment arbitration has been greatly acclaimed as it removed international investment from politicizing and greatly contributed to the development of international investment law and rule of law in investor-state relations. However, with theincrease of investment treaty arbitration, the concerns with the existing investor-state disputesettlement mechanism started to surface. Internationally and regionally, global actors of international investment law started focusing on possible reforms of the IIA and ISDS. On an international level, a big number ofnegotiations and amendments are in process including UNCITRAL Working Group III, which initiated the process of examining the possible reform in ISDS area and ICSID Amendment Proposal IV.

2.7.2. International Center for Settlement of Investment Disputes (ICSID)

The *International Centre for Settlement of Investment Disputes (ICSID)*[201] is an international arbitration institution established in 1966 for legal dispute resolution and

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[197] Stockholm Chamber of Commerce. (n.d.). *About us*. https://stockholmshandelskammare.se/en/about-us/(Retrieved on 10 March 2025)
[198] London Court of International Arbitration. (n.d.). *Homepage*. https://www.lcia.org/(Retrieved on 10 March 2025)
[199] Hong Kong International Arbitration Centre. (n.d.). *Homepage*. https://www.hkiac.org/(Retrieved on 10 March 2025)
[200] United Nations Commission on International Trade Law (UNCITRAL). (n.d.). *Arbitration Rules*. https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration(Retrieved on 10 March 2025)
[201]International Centre for Settlement of Investment Disputes, World Bank Group. (n.d.). *Homepage*. https://icsid.worldbank.org/(Retrieved on 10 March 2025)

conciliation between international investors and States. ICSID is part of and funded by the World Bank Group. ICSID provides for settlement of disputes by conciliation, arbitration or fact-finding. The ICSID process is designed to take account of the special characteristics of international investment disputes and the parties involved, maintaining a careful balance between the interests of investors and host States. Each case is considered by an independent Conciliation Commission or Arbitral Tribunal, after hearing evidence and legal arguments from the parties. A dedicated ICSID case team is assigned to each case and provides expert assistance throughout the process. More than 600 such cases have been administered by ICSID to date. The ICSID Convention provides for a unique annulment mechanism, under which ad hoc committees may annul awards for specific grounds regarding the legitimacy of proceedings provided in the Convention. They consist of three persons, appointed by the Chairman of ICSID's Administrative Council. To this date there are 149 known annulment cases, out of which 93 resulted in decisions rejecting the application for annulment, 20 resulted in decisions annulling the award in part or in full, and 36 were discontinued[202].

2.7.3. International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC)[203] is the largest, most representative business organization with over 45 million members from 100 countries. ICC has three main activities: rule setting, dispute resolution, and policy advocacy. The International Court of Arbitration of the International Chamber of Commerce steers ICC Arbitration and has received over 27,000 cases since its inception in 1923**.** ICC Dispute Resolution Services exist in many forms:

1) Arbitration is a flexible and efficient dispute resolution procedure leading to binding and final decisions subject to enforcement worldwide.

2) Mediation is a flexible technique, conducted privately and confidentially, in which a neutral facilitator helps parties to seek a negotiated settlement of their dispute.

3) Dispute boards are independent bodies designed to help resolve disagreements arising out of international investment contracts.

4) Expertise is a way of finding the right person to make an independent assessment on any subject relevant to business operations.

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[202] United Nations Conference on Trade and Development. (2014). *Recent developments in investor-State dispute settlement (ISDS)* (IIA Issues Note No. 1)

[203] International Chamber of Commerce. (n.d.). *Homepage*. https://iccwbo.org/(Retrieved on 10 March 2025)

2.7.4. Stockholm Chamber of Commerc (SCC)

Since 1917, *Stockholm Chamber of Commerce Arbitration Institute*[204] *provides* a neutral, independent, and impartial venue for dispute resolution in commercial business around the world. The SCC Arbitration Institute (SCC) is an institution established, in 1917, to administer arbitration proceedings. Though the SCC is established as a part of the Chamber of Commerce, the SCC is independent from the Chamber of Commerce in its function. The SCC consists of a Board and a Secretariat to efficiently handle arbitration proceedings. The SCC handles both commercial arbitration (dispute between private parties) and investment arbitration (dispute between a foreign investor and a State). The SCC Arbitration Institute (the "SCC") administers disputes in accordance with the Arbitration Rules of the SCC, the Rules for Expedited Arbitrations of the SCC and other rules and procedures adopted by the Stockholm Chamber of Commerce (together, the "SCC Rules"). SCC Arbitration Rules provides for special rules applicable in case of investment arbitration like setting the default number of arbitrators as three, rules for submissions by a third person and submissions by a non-disputing treaty party. The SCC has also adopted Mediation Rules[205] to govern mediations instituted under these rules. The SCC has handled investment arbitrations under the Energy Charter Treaty6 and many bilateral investment treaties (for example: Czech Republic-United Kingdom BIT[206], Russian Federation-United Kingdom BIT[207], Kazakhstan-United States of America BIT[208]). In some investment arbitrations handled by the SCC, the arbitration clause is part of the investment contract.

2.7.5. London Court of International Arbitration (LCIA)

The *London Court of International Arbitration (LCIA)*[209] is a private not-for-profit institution for commercial dispute resolution, administering arbitration, mediation and other alternative dispute resolution proceedings. The London Court of International Arbitration is one of the most prestigious arbitral institutions in the world. It is the oldest arbitral body in the world dealing

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[204] Stockholm Chamber of Commerce, https://stockholmshandelskammare.se/en/about-us/(Retrieved on 10 March 2025).

[205] Stockholm Chamber of Commerce, Mediation Rules, January 2023. https://sccarbitrationinstitute.se/sites/default/files/2022-12/scc_mediation_rules_2023_english.pdf(Retrieved on 10 March 2025).

[206] Czech Republic - United Kingdom BIT (1990), https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/1243/czech-republic---united-kingdom-bit-1990-(Retrieved on 10 March 2025).

[207] Russian Federation - United Kingdom BIT (1989), https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2861/russian-federation---united-kingdom-bit-1989-(Retrieved on 10 March 2025).

[208] Kazakhstan - United States of America BIT (1992), https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/2218/kazakhstan---united-states-of-america-bit-1992-(Retrieved on 10 March 2025).

[209] London Court of International Arbitration, https://www.lcia.org/(Retrieved on 10 March 2025).

with international disputes. It was founded as a British private company limited by guarantee with a head office in London. While the LCIA is a London-based institution, less than 20% of parties in pending LCIA cases are of English nationality.

Established in 1892 as the "City of London Chamber of Arbitration", the LCIA evolved over the course of more than a century and in 1981 was renamed the London Court of International Arbitration, reflecting its status as a world-leading international arbitration institution. The LCIA was ranked second by corporate users of arbitration in the rankings of most used arbitral institutions worldwide, both in terms of general commercial arbitration, as well as in terms of sector-specific arbitration. The Arbitration Court, which is the final authority for the proper application of the LCIA Rules[210], is composed of up to 35 members. Its principal functions are the appointment of tribunals, the determination of challenges and the supervision of costs.

2.7.6. Hong Kong International Arbitration Centre (HKIAC)

The *Hong Kong International Arbitration Centre (HKIAC)*[211] *is* an institution based in Hong Kong, providing alternative dispute resolution services from administered and ad hoc international arbitration to mediation, adjudication and domain name dispute resolution. It was founded in 1985. While HKIAC is a Hong Kong-based institution, it has representative offices in both Seoul and Shanghai. Also, based on its 2020 case statistics, more than 70% of the arbitrations submitted to the HKIAC are international in nature. HKIAC is governed by a Board of Council Members, which consists of leading businesspeople and professionals across different disciplines who possess a wide variety of skills and experience.4 Also, it has an International Advisory Board to provide guidance and advice on a policy level. The Executive Committee, consisting of three standing committees, namely Proceedings, Appointments, and the Finance and Administration Committees, serves as the principal body directing the activities of HKIAC.

For institutional arbitrations, the HKIAC Administered Arbitration Rules were first issued in 2008, and subsequently updated in 2013 and 2018 respectively. The Rules have been adopted by the Council of the HKIAC for use by parties who seek the procedural flexibility and cost-effectiveness of arbitration administered by HKIAC. Separately, the HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules were first issued in 1986 (and updated in 2005 and 2015 respectively). HKIAC has also administered investor-State

[210] LCIA Arbitration Rules 2020, https://www.lcia.org/dispute_resolution_services/lcia_arbitration.aspx
[211] International Centre for Settlement of Investment Disputes, World Bank Group. (n.d.). *Homepage*. https://icsid.worldbank.org/(Retrieved on 10 March 2025).

arbitrations. In 2018, two investor-State arbitrations were submitted to HKIAC under the UNCITRAL Arbitration Rules. The HKIAC also administered the case *Jin Hae Seo v. Republic of Korea*[212].

2.7.7. Ad hoc arbitration incluing (UNCITRAL) rules

Ad hoc arbitrations are conducted without recourse to institutional arbitration rules and without the oversight of an arbitral institution. Institutions may, however, provide administrative or logistical services to ad hoc tribunals. Most BITs provide for the investor's choice or the disputing parties' agreement between institutional rules (usually the ICSID Arbitration Rules) and ad hoc arbitration (predominantly under *the UNCITRAL Arbitration Rules*)[213]. Ad hoc arbitration is said to be more cost-efficient than institutional arbitration because of the absence of administrative fees. Any such difference, however, is likely to be negligible, since the disputing parties' own legal costs are usually the key cost driver.

The UNCITRAL Arbitration Rules were adopted by the General Assembly of the United Nations in 1976 after extensive deliberations and consultations with various interested international organizations and leading arbitration experts conducted under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). The UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations. The Rules cover all aspects of the arbitral process, providing a model arbitration clause, setting out procedural rules regarding the appointment of arbitrators and the conduct of arbitral proceedings, and establishing rules in relation to the form, effect and interpretation of the award. At present, there exist four different versions of the Arbitration Rules: (i) the 1976 version; (ii) the 2010 revised version; and (iii) the 2013 version which incorporates the UNCITRAL Rules on Transparency for Treaty-based Investor-State Arbitration and (iv) the 2021 version which incorporates the UNCITRAL Expedited Arbitration Rule.

2.7.8. Conclusion

[212] International Chamber of Commerce. (n.d.). *Homepage*. https://iccwbo.org/ (Retrieved on 10 March 2025).
[213] United Nations Commission on International Trade Law (UNCITRAL) rules, 1976 https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration(Retrieved on 10 March 2025).

In today's world foreign investment is an important component of international economy so that it plays an important role in the economic development of countries, especially developing countries. Therefore, foreign investment attraction has become one of the main directions of economic policymaking in developing countries. In this regard, the aforesaid countries compete by making different conditions for foreign investors in their territory in order to attract more foreign investments. However, foreign investment attraction in any country needs proper conditions. So, a set of standards arose to attract foreign investment and to encourage investment in a safe and stable situation for investors in the territory of the host state. These standards are treaty-based and are not a rule of customary international law. These standards include fair and equitable treatment, full protection and security, national treatment and most-favored-nations treatment. These standards mean that the host state acts in good faith with foreign investors without violating its sovereignty. Therefore, the main purpose of the standards is that they consider the legitimate expectations of the parties and cause increasing the host State favorableness to attract foreign investment. Accordingly, the common point of these standards is that non-compliance with obligations arising from them leads to loss of the host state favorableness for foreign investment[214].

[214] Sornarajah, M. (2017). *The international law on foreign investment* (4th ed.). Cambridge University Press.

CHAPTER 3: CONCEPTS OF SUSTAINABLE DEVELOPMENT IN INTERNATIONAL INVESTMENT LAW

3.1. Introduction

It is difficult to imagine economic, social and environmental development without investment. Foreign direct investment is a major source of international development capital for developing countries, providing for much-needed infrastructure development, technology transfers, capacity building and more. It has now been acknowledged that we arrived at the '*Age of Sustainable Development.'*[215] The concept of sustainable development implies the protection of the future generations, however, for an accredited definition of sustainable development we had to wait until 1987. In this year the Report "Our Common Future" of World Commission on Environment and Development (so called Brundtland Report in recognition of former Norwegian Prime Minister Gro Harlem Brundtland's role as Chair of the World Commission on Environment and Development), was published, in which sustainable development was defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". This is the first and the most accredited definition of sustainable development and links the two concepts of development and protection of the future generations, highlighting their interdependence.[216] Sustainable development thinking has evolved considerably since 1992. Follow-on summits have further developed the concept, particularly through the Plan of Implementation of the World Summit on Sustainable Development, adopted at the *Rio+10 summit in 2002*, and the document '*The Future We Want'*, adopted at the Rio+20 summit in 2012. In September 2015, during the historic United Nations Sustainable Development Summit, all 193 countries of the United Nations General Assembly adopted a resolution called "*Transforming our world: the 2030 Agenda for Sustainable Development", which outlines 17 sustainable development goals and its associated 169 targets*[217]. Sustainable development concerns are increasingly brought into the debate about the future of the international investment regime. Sustainable development has now been vigorously debated within the field of international investment law as well[218]. Tribunals' assessments of

[215] Sachs, J. D. (2015). *The age of sustainable development*. Columbia University Press.
[216] World Commission on Environment and Development (WCED). (1987). Our Common Future. Oxford University Press.
[217] United Nations General Assembly (2015) United Nations General Assembly. (2015, September 25). *Transforming our world: The 2030 Agenda for Sustainable Development* (A/RES/70/1).
[218] Cordonier Segger, Gehring & Newcombe (2011) Cordonier Segger, M., Gehring, M., & Newcombe, A. (Eds.). (2011). *Sustainable development in world investment law*. Kluwer Law International.

these matters and their jurisdiction have significant impacts on the scope of an IIA and host states' obligations and possible liabilities under it. These issues, in turn, impact the evaluation of whether and to what extent IIAs serve the goal of promoting investment and development.

3.2. Global commitment to promote sustainable development

In 1972, the United Nations Conference on the Human Environment (UNCHE) was held in Stockholm, also known as the Stockholm Conference. This conference heightened the global nature of environmental challenges and decided to take measures that lead to the general acceptance of sustainable development as a means of realizing the developmental needs of all people without sacrificing the earth's capacity to sustain life. Out of the Stockholm Conference, the United Nations Environmental Program (UNEP) was formed in Nairobi, Kenya, in 1972, with a mandate to promote development that is friendly towards the environment. The Stockholm Conference on Human Environment was attended by 113 countries, which adopted a Declaration and an Action Plan. Although the Declaration[219] is not a binding document on states, it establishes the basic rules of international environmental law

The 1972 Stockholm Declaration recognized the need to safeguard the environment against degradation 'for the benefit of present and future generations through careful planning or management'. *The term "sustainable development*" has first been conceptualized in the 1987 "Brundtland Report" as *development that meets the needs of the present without comprising the ability of future generations to meet their own needs*. The commonly shared view is that the 1987 Brundtland Report is the watershed mark from which sustainable development became a broad global policy objective and set the international community on the path which led UNCED, and the body of rules referred to as international law in the field of sustainable development but distinguished from international environmental law. The definition often given to the concept of sustainable development is that found in the Brundtland Report. The report itself notes that the definition contains within it two key concepts. In the first place, the definition contains recognition of the 'essential needs of the poor, to which overriding priority should be given'. Second, it recognizes the 'idea of limitations on the environment's ability to meet present and future needs. The first concept implies equity within generations. The second concept implies that there should be equity between generations. Along with integration, the principles of integrand intragenerational equity are, therefore, under the Brundtland definition of

[219] United Nations (1972) – Stockholm Declaration United Nations. (1972). *Stockholm Declaration, 1972*. https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf(Retrieved on 10 March 2025)

sustainable development, key concepts in the conceptualization of sustainable development. These principles have formed the basis of the early conceptualization of sustainable development.

In the 1990s, sustainable development became a primary focus of the international agenda. One of the most important documents that resulted from the 1992 Earth Summit was *Agenda 21*[220], a planning-oriented framework on redefining economic growth while also promoting social equity and ensuring environmental protections and *Rio Declaration on Environment and Development*[221]. The Rio Declaration consisted of 27 principles intended to guide countries in sustainable future development. It was signed by over 175 countries. It was approved by the United Nations during the Conference on Environment and Development held in Rio de Janeiro in June 1992. It was aimed at reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm in June 1972. In principle 5 of the "Rio Declaration of Environment and Development", it is established that "all States and all people shall co-operate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world", whereas the principle 8 identifies sustainable patterns of production and consumption and appropriate demographic policies as measures to achieve sustainable development, extended this concept even beyond the environmental issues. The concept of sustainable development has shifted to focus more on economic development and social development and the concern for future generations, issues that are linked to environmental protection. In this holistic approach, the consideration for the carrying capacity of natural systems is connected with the social, political and economic challenges of our time. The concept of sustainability can be expressed by using a three-pillar model: environment dimension (intergenerational equity), social dimension (intergenerational equity), and economic dimension; these dimensions must be considered in an equal way to achieve sustainable development.[222]*The 1993 Report of the Secretary- General* was intended to provide a practical guide for the agenda for development in the economy and social fields. These included: poverty and equity issues both inter-State and infra-State; unemployment;

[220]United Nations. (1992). *Agenda 21: Programme of action for sustainable development.* https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf (Retrieved on 10 March 2025).
[221]United Nations. (1992). *Rio Declaration on Environment and Development.* https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (Retrieved on 10 March 2025).
[222] Kerschner, F., & Wagner, E. (2016). Sustainability – A long, hard road. In V. Mauerhofer (Ed.), *Legal aspects of sustainable development: Horizontal and sectorial policy issues* (pp. 57–77).

vulnerable groups and countries, and patterns of economic exclusion; social security issues and safety nets; migration and patterns of human end economic movement.

In 1994, the General Assembly held a special plenary meeting at a high level "to consider ways of promoting and giving political impetus to an agenda for the development." The 1994 Agenda for Development stated that development is the fundamental human right and the most secure ground for peace. In 2002, the World Summit on Sustainable Development (WSSD) adopted the Johannesburg Declaration on Sustainable Development (*Johannesburg Declaration*)**[223]**. This Declaration is a milestone document that clearly records the expansion of sustainable development from the environmental dimension to the social dimension. It not only recalls the evolution of sustainable development from Stockholm to Rio de Janeiro and to Johannesburg, but more importantly, it also clearly recognizes the three "interdependent and mutually reinforcing pillars of sustainable development", namely economic growth, social development and environmental protection. The adoption of the Johannesburg Declaration demonstrates that sustainable development, though originally developed in the environmental discourse, is no longer intended only to "serve the needs of the environment". Also, in 2002, another milestone document was adopted in the evolution of sustainable development. The International Law Association (ILA) adopted a resolution, titled "the New Delhi Declaration of Principles of International Law Relating to Sustainable Development" (New Delhi Declaration[224]), which identifies the following seven sustainable development-related principle**.**
The 2012 United Nations Conference on Sustainable Development ("Rio+20") will provide "a historic opportunity to define pathways to a safer, more equitable, - leaner, greener and more prosperous world for all. "Rio+20" comes twenty years after the 1992 Earth Summit in Rio, where participating governments agreed to several historic accords to promote a more sustainable environment. Rio+20 seeks to improve this record by creating a consensus among international governments and institutions on ways to reduce poverty, promote sustainable jobs, clean energy, and create an equitable distribution of resources. Subsequent conferences followed suit with more accords aimed at improving and augmenting preceding commitments. In September 2015, during the historic United Nations Sustainable Development Summit, all 193 countries of the United Nations General Assembly adopted a resolution called "Transforming our world: the 2030 Agenda for Sustainable Development", which outlines 17 sustainable

[223] United Nations. (2002). *Johannesburg Declaration on Sustainable Development: World Summit on Sustainable Development.*
[224] International Law Association. (2002). *New Delhi Declaration of Principles of International Law Relating to Sustainable Development. International Environmental Agreements: Politics, Law and Economics, 2*(3), 211–21.

development goals and its associated 169 targets[225]. The UN 2030 Agenda for Sustainable Development prominently suggests that foreign investment and sustainable development are closely linked allies that mutually reinforce each other. Sustainable foreign investment requires that foreign investors not only focus on the financial aspects and profit maximization but also consider the environmental, social, and human rights dimensions of their investment, thus complementing their host state's sustainable development policies. While the UN 2030 Agenda stresses that foreign investment can play a substantial role in achieving sustainable development, the current international legal framework governing foreign investment is frequently perceived to impede rather than encourage sustainable development[226].

3.3. Concept of sustainable development integrated in the investment law

The *UN 2030 Agenda* prominently points out the links between sustainable development and foreign investment. It acknowledges that foreign investment can play an essential role in implementing the SDGs by building up infrastructure, producing food supply, exploiting natural resources, and creating jobs. At the same time, the *UN 2030 Agenda* requires foreign investors to comply with the sustainable development policies of their host states and conduct their business accordingly, which implies that foreign investors ought to focus not only on the maximization of their profits but also complying with the environmental, social labor, and human rights standards and policies of their host states[227].

It is difficult to imagine economic, social and environmental development without investment. Foreign direct investment is a major source of international development capital for developing countries, providing for much-needed infrastructure development, technology transfers, capacity building and more. It has now been acknowledged that we arrived at the 'Age of Sustainable Development'.[228] Sustainable development thinking has evolved considerably since 1992. Follow-on summits have further developed the concept, particularly through the Plan of Implementation of the World Summit on Sustainable Development, adopted at the Rio+10 summit in 2002, and the document 'The Future We Want', adopted at the Rio+20 summit in 2012, 2030 Agenda for Sustainable Development in 2015. Sustainable development concerns are

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[225] United Nations General Assembly Resolution (2915), Transforming our world: the 2030 Agenda for Sustainable Development. A/RES/70/1. 25 September 2015.
[226] United Nations General Assembly. (2015). *Transforming our world: The 2030 agenda for sustainable development* (A/RES/70/1). https://sdgs.un.org/2030agenda (Retrieved on 10 March 2025).
[227] United Nations Conference on Trade and Development (UNCTAD). (2015). *World investment report 2015: Reforming international investment governance*. https://unctad.org/webflyer/world-investment-report-2015 (Retrieved on 10 March 2025).
[228] Sachs (2015) Sachs, J. D. (2015). *The age of sustainable development*. Columbia University Press.

increasingly brought into the debate about the future of the international investment regime. Sustainable development has now been vigorously debated within the field of international investment law as well[229]. Tribunals' assessments of these matters and their jurisdiction have significant impacts on the scope of an IIA and host states' obligations and possible liabilities under it. These issues, in turn, impact the evaluation of whether and to what extent IIAs serve the goal of promoting investment and development. International investment law already offers several examples where it crossed the path with sustainable development. In one of the most controversial and high-profile arbitration cases, *Pac Rim v. El Salvador*[230], El Salvador is supporting its defense against powerful l oil company Pac Rim by invoking constitutional obligation of the state to guarantee sustainable development. In *Windstream v. Canada*[231], Canada is bringing into its defense against Windstream principles the United Nations Rio Declaration on Environment and Development[232]. *UNCTAD Investment Policy Framework and the Road Map for International Investment Agreements Reform*[233] promotes new generation of investment policies in support of the spirit of the Addis Ababa Action Agenda calling for reorienting the national and international investment regime towards sustainable development. The guidelines have been used by more than 100 countries in reviewing their investment treaty networks and formulating a new generation of international investment policies[234].

3.3.1. The Investment Policy Framework for Sustainable Development

In 2012, UNCTAD launched the Investment Policy Framework for Sustainable Development.[235] A revised edition was released in 2015 in light of the emergence of new generation investment

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[229] Cordonier Segger, Gehring & Newcombe (2011) Cordonier Segger, M., Gehring, M., & Newcombe, A. (Eds.). (2011). *Sustainable development in world investment law*. Kluwer Law International.Leal-Arcas (2015), Leal-Arcas, R. (2015). Megaregionals and sustainable development: The Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership. *Renewable Energy Law and Policy Review*, *4*(4), 248–264.

[230] ICSID Case: International Centre for Settlement of Investment Disputes (ICSID). (2012). *Pac Rim Cayman LLC v. Republic of El Salvador* (ICSID Case No. ARB/09/12)

[231]PCA Case**:** Permanent Court of Arbitration (PCA). (2015, January 20). *Windstream Energy LLC v. Government of Canada*, Counter-Memorial, PCA Case No. 2013-22, para. 501.

[232] United Nations. (1992, August 12). *Rio Declaration on Environment and Development* (A/CONF.151/26, Vol. United Nations General Assembly.United Nations Conference on Trade and Development (UNCTAD). (2015). *Investment policy framework for sustainable development*. United Nations.

[233] United Nations Conference on Trade and Development (UNCTAD). (2016). *World investment report 2016: Investor nationality – Policy challenges*. United Nations.

[234] UNCTAD (2016) – World Investment Report United Nations Conference on Trade and Development. (2016). *World investment report 2016: Investor nationality—Policy challenges*. United Nations. https://unctad.org/webflyer/world-investment-report-2016 (Retrieved on 10 March 2025)

[235] UNCTAD (2015) – Investment Policy Framework for Sustainable Development United Nations Conference on Trade and Development. (2015). *Investment policy framework for sustainable development*. United Nations. https://unctad.org/webflyer/investment-policy-framework-sustainable-development (Retrieved on 10 March 2025)

policies[236].The framework provides authoritative guidance on how to ensure that investment policy promotes sustainable development. It establishes 'Core Principles for investment policy making. These principles include:

- 'The overarching objective of investment policy making is to promote investment for inclusive growth and sustainable development'.
- 'Investment policies should be grounded in a country's overall development strategy
- 'Investment policies should be developed involving all stakeholders.
- 'Investment policies should be regularly reviewed for effectiveness and relevance and adapted to changing development dynamics.
- 'Investment policies should be balanced in setting out rights and obligations of States and investors in the interest of development for all'.
- 'Each country has the sovereign right to establish entry and operational conditions for foreign investment, subject to international commitments, in the interest of the public good and to minimize potential negative effects.
- 'In line with each country's development strategy, investment policy should establish open, stable and predictable entry conditions for investment.
- 'Investment policies should provide adequate protection to established investors. The treatment of established investors should be non-discriminatory in nature'.
- 'Policies for investment promotion and facilitation should be aligned with sustainable development goals.
- 'Investment policies should promote and facilitate the adoption of and compliance with best international practices of corporate social responsibility and good corporate governance.
- 'The international community should co-operate to address shared investment-fore-for development policy challenges, particularly in the least developed countries.

The framework contains detailed policy guidelines and options on how to integrate these principles into national and international investment policy. The subject of sustainable development within international investment law has generated plentiful academic attention already[237]. The relationship between foreign investment and sustainable development is being described as "critical" and international investment law is being sought out to shift to "fully

[236]United Nations Conference on Trade and Development. (2015). *Investment policy framework for sustainable development*. United Nations. https://unctad.org/webflyer/investment-policy-framework-sustainable-development
[237] Cordonier Segger, M., Gehring, M., & Newcombe, A. (Eds.). (2011). *Sustainable development in world investment law*. Kluwer Law International. Cosbey, A., & Mann, H. (2004). *Reconceptualizing international investment law: Its role in sustainable development*. Lewis & Clark Law Review, 17, 521.

encompass" this central issue[238]. For example, in the preamble of *BIT between Canada and Tanzania*[239] recognizes that promotion and protection of investments favours economic prosperity and sustainable development by "stimulating investment initiatives", which implies that investment serves two parallel purposes – economic prosperity and sustainable development. In *BIT between Mauritius and Egypt* [240]contribution to sustainable development is categorized as an investment eligible for protection under the treaty. Also, one of the categories of investors falling within the protection of the treaty is legal entities that have made an investment "if it contributed to sustainable development. The most striking example was in 2004, the International Institute for Sustainable Development (IISD) put forward a *Model International Investment Agreement for the Promotion of Sustainable Development***,** to serve as a template for states in IIA-making[241] and the latest undated version of the International Institute for Sustainable Development (IISD) Model International Agreement on Investment for Sustainable Development[242]. Despite the positive role of foreign investment in promoting economic development, not all foreign investment leads to sustainable development in the host states. In many parts of the world, it is frequently seen that transnational investment activities cause serious damage to the host states' environment and the local communities and even give rise to international disputes and conflicts[243]. Although it is becoming more common to include sustainable development wording at least in the preamble to the treaty, every year the number of BITs increases which expressly refer to sustainable development. Subtypes of the SDPs, depending mainly on the nature of the obligation imposed by the SDPs on the contracting states or foreign investors, as the subtypes of the SDPs largely decide the practical effectiveness of the IIA in addressing sustainable development concerns. *New Delhi Declaration*[244] may offer some help in identifying elements of sustainable development concept. Although the declaration offers a very broad definition of sustainable development in its preamble, it also identifies seven.

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238 Cosbey, A., & Mann, H. (2004). *Reconceptualizing international investment law: Its role in sustainable development*. Lewis & Clark Law Review, 17, 521.
239 Agreement between the Government of Canada and the Government of the United Republic of Tanzania for the Promotion and Reciprocal Protection of Investments, 17 May 2013, entered into force 9 December 2013.
240 Agreement between the Government of the Republic of Mauritius and the Government of the Arab Republic of Egypt on the Reciprocal Promotion and Protection of Investments, 25 June 2014, entered into force 17 October 2014.
241 International Institute for Sustainable Development (IISD). (2004). *Model international investment agreement for the promotion of sustainable development*.
242 International Institute for Sustainable Development (IISD). (2005, April). *Model international agreement on investment for sustainable development*.
243 Schutter, D. O., Swinnen, J., & Wouters, J. (Eds.). (2013). *Foreign direct investment and human development: The law and economics of international investment agreements*. Routledge. Schill, S. W., Tams, C. J., & Hofmann, R. (Eds.). (2015). *International investment law and development: Bridging the gap*. Edward Elgar Publishing.
244 International Law Association. (2002, April 2). *New Delhi Declaration on principles of international law relating to sustainable development* (Resolution 3/2002). UN Doc. A/57/329.

Principles of international law, which would be instrumental in pursuing the objective of sustainable development. These principles include:

(1) the duty of states to ensure sustainable use of natural resources.

(2) equity and eradication of poverty.

(3) commonbut differentiated responsibilities.

4) precautionary approach to human health, natural resources and ecosystems.

(5) participation and access to information and justice.

(6) good governance.

(7) integration and interrelationship inrelation to human rights and social, economic and environmental objectives.

This list presents a very wide formulation of sustainable development, beyond classic proposition of three pillars of sustainable development: social development, economic development and environmental protection. Sustainable development in the formulation proposed in the *New Delhi Declaration* could be categorized as "balanced development", the development that considers several interests concerning not only environment, but also fairer wealth distribution, access to justice and wider social participation. The International Law Association's (ILA) New Delhi Declaration outlines seven principles of sustainable development, emphasizing a holistic approach that integrates environmental protection, social equity, and economic growth. These principles serve as a framework for states to incorporate sustainable development into international and domestic legal systems[245].

The first principle, sustainable use of natural resources, is a matter of responsibility ofa host state in establishing criteria for investments eligible for protection and excluding from the protection regime investments that do not contribute to sustainable use of resources. The states could also seek to meet the objective of this principle by drafting definitions clauses in the treaties to include or exclude certain categories of investments or investors from the protection regime.

The second principle that focuses on equity and eradication of poverty relates to issues of economic growth and wealth distribution, which are two separate topics. Whereasthe correlation between increased flow of investment and economic growth is less controversial, the extent to which investment treaties contribute to increased investment flows is disputable at best. In terms of wealth distribution, the states have a prerogative to redistribute wealth created by foreign investment through taxation, social regulations and similar measures.

[245] Bonnitcha, Jonathan, Lauge Poulsen, and Michael Waibel – The Political Economy of the Investment Treaty Regime (Oxford University Press, 2017)

The principle of common but differentiated responsibilities could be difficult to find expressed in the treaties. Although investment treaties, traditionally, have been knownto be entered into by states of unequal bargaining power, the provisions of the treaties are reciprocal and do not differentiate between the obligations of each of the parties.

The fourth principle of precautionary approach to human health, natural resources and ecosystems could be addressed in investment treaties, for example, through impact assessment obligation provisions. Appropriate policy space could also serve to introduce measures relating to the protection of human health and natural resources, subject to principles of expropriation, national treatment and fair and equitablestandards.

Principal of public participation and access to information and justice is another difficult one to find in the treaties. It is more commonly addressed in the context of arbitration proceedings rather than treaties themselves. Only very few treaties include provisions where parties are obliged to notify of impeding law changes that could affect investments. There is only a little scope for including specific language in the treaties that would address this principle.

*The principle of good governance refers to several issu**es***, transparent decision making, financial accountability, combating of corruption, rule of law, human rights, public procurement, corporate social responsibility and socially responsible investments. Individual aspects of this principle, for example corporate social responsibility, or socially responsible investments, or some aspects of human rights, can potentially be found in very few of the treaties

Principles of integration and interrelationship have a range of meanings and involve interdependence of social, economic, financial, environmental and human rights aspects of principles and rules of international law relating to sustainable development at all levels of governance and in normative process.[246]

Tracing sustainable development provisions in international investment treaties through New Delhi principles alone could be conceptually and methodologicallyproblematic. The declaration has been created with general international law as its background reference. International investment law is only a narrow discipline within international law and not all New Delhi principles are easily applicable to it. The principles are widely worded with overlapping issues.

[246] Dupuy, P.-M., Francioni, F., & Petersmann, E.-U. (Eds.). (2016). Human Rights in International Investment Law and Arbitration.

3.4. Sustainable development clauses in international investment agreements

United Nations Framework Convention on Climate Change [247] was adopted at the Rio Conference and entered into force in 1994. In 1997 the parties to the Framework Convention adopted the Kyoto Protocol which established legally binding limits for emissions in developed countries and countries with economies in transition. The Kyoto Protocol not only establishes legally binding emissions limits for developed countries, it also creates, as a means of achieving emissions reduction, flexible mechanisms, namely, the so-called bubble, joint implementation (JI),30 the clean development mechanism (CDM) and emissions trading. It is these flexible mechanisms that give the Protocol its character and, for that reason, form the core of the analysis. Article 3(3) of the Climate Change Convention, to this end, calls on parties to 'take precautionary measures to anticipate, prevent or minimize the causes of climate change'. The precautionary principle in the climate change regime is considered further below. Article 4 of the UNFCCC spells out commitments that state parties undertake. Reflecting the developed/developing world debate highlighted above, article 4 provides different commitments for different categories of state parties. First, for all states, article 4 declares general (and very soft) commitments such as, inter alia, the commitment to develop and update national inventories of anthropogenic emissions, formulate national programmers containing measures to mitigate climate change and the commitment to take climate change into account in social, economic and environmental policies[248].The *Biodiversity Convention*[249] was adopted at the 1992 UN Conference on Environment and Development as part of the Rio instruments. The Convention's objectives are three-fold: (i) the conservation of biological diversity; (ii) sustainable use of the components of biodiversity; (iii) the fair and equitable sharing of the benefits arising out of the benefits of the utilization of genetic resources. *In the Biodiversity Convention*[250] the common but differentiated responsibilities principle is invoked in the preamble. The Cartagena Protocol includes provisions that are designed, specifically, with the recognition of the special position of developing countries in mind.

These provisions include the advanced informed agreement procedure and the risk management procedures allowing recourse to socio-economic considerations.79 In addition, both the

[247] United Nations Framework Convention on Climate Change (UNFCCC). (1992). *United Nations Framework Convention on Climate Change*. https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf (Retrieved on 10 March 2025)

[248] Titi, Aikaterini – The Right to Regulate in International Investment Law (Nomos/Hart, 2014)

[249] United Nations. (1993). *Convention on Biological Diversity*. https://www.cbd.int/doc/legal/cbd-en.pdf (Retrieved on 10 March 2025).

[250] United Nations. (1993). *Convention on Biological Diversity*. https://www.cbd.int/doc/legal/cbd-en.pdf (Retrieved on 10 March 2025)

Biodiversity Convention and Cartagena Protocol on Biosafety require transfer of financial resources under much the same terms as the climate change agreements. The *Kyoto Protocol* was an international treaty adopted in 1997 under the United Nations Framework Convention on Climate Change (UNFCCC). It committed its state parties, primarily developed countries, to legally binding targets to reduce greenhouse gas emissions in order to combat global warming. The Protocol officially entered into force in 2005 after sufficient countries ratified it [251]. It was based on the principle of common but differentiated responsibilities, because individual countries have different capabilities in combating climate change, owing to economic development; it put the obligation to reduce current emissions on developed countries on the basis that they are historically responsible for the current levels of greenhouse gases in the atmosphere. The Protocol lays down limits on emissions of greenhouse gases to be met within certain specified commitment periods. These specific obligations are placed only in developed states. The Protocol does not impose any hard obligations in terms of emission reductions on developing states, at least not in the first commitment period. Article 10 of the Protocol reiterates that the states have 'common but differentiated responsibilities towards the environme[252].

The *Paris Agreement*[253], which was adopted on 12 December 2005, marks a significant departure from the Kyoto Protocol and also from many other international agreements on climate change. It is the world's first comprehensive climate agreement, and it aims to strengthen the global response to the threat of climate change by 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. To achieve the greatest possible consensus, the Paris Agreement abandons the Kyoto Protocol's dualistic scheme. Article 4(7) of the Climate Change Convention, for example, provides that the extent to which developing states 'will effectively implement their commitments under the Convention will depend on the effective implementation' of financial transfers by developed states[254]. In all these instruments state parties recognize the common but differentiated responsibilities principle by imposing less or different obligations on developing states, delaying compliance with obligations and requiring

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[251] United Nations Framework Convention on Climate Change (UNFCCC). (1998). *Kyoto Protocol to the United Nations Framework Convention on Climate Change*. https://unfccc.int/resource/docs/convkp/kpeng.pdf (Retrieved on 10 March 2025).
[252] Schill, Stephan W., Tams, Christian J., and Hofmann, Rainer (eds.).
International Investment Law and Development: Bridging the Gap (Edward Elgar, 2015).
[253] United Nations. (2015). *Paris Agreement*. https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Retrieved on 10 March 2025).
[254] Rajamani, L. (2012). The Durban Platform for Enhanced Action and the Future of the Climate Regime. International & Comparative Law Quarterly, 61(2), 501–518.

the transfer of both funds and technologies required for a cleaner environment. By so doing these instruments contribute to the implementation of intragenerational equity[255].

3.4.1. International economic agreements

There are a few other types of international economic agreements, which are not BITs, but which also govern, to some extent, investment relations between the states. There are currently 369 such international economic treaties[256] in place. They include free trade agreements, economic partnership agreements, regional economic partnership agreements and framework agreements on economic cooperation among others. Some of them contain investment provisions equivalent to BITs, including investor-state dispute settlement provisions. Others contain only limited investment provisions and often no investment dispute mechanism for investors. There are also many other international economic treaties, which provide only general investment cooperation provisions or mandate for future negotiation of investment provisions and, as such, their impact on international investment law is, at least for now, very limited. They also contain separate article dedicated to corporate social responsibility, which emphasizes the obligation of investors and their investments to "strive to achieve the highest level of contribution to sustainable development"[257]. Corporate social responsibility will be analysed in more detail further below as a separate category of provisions contributing to sustainable development. Overall, these agreements emphasize primarily promotion and protection of investments. They encourage mutual investments through institutional governance solutions like joint committees. They also create a compulsory mechanism of mitigation and prevention of disputes and provide only state-to-state arbitration and do not include investor-state arbitration avenue.

- Another example of a more comprehensive approach to sustainable development and investment can be found in two Free Trade Agreements (FTAs) between EFTA and *Montenegro and between EFTA and Bosnia.*[258]
- Japan has included not lowering standards principle in almost all its investment

[255] Voigt, C. (2008). State Responsibility for Climate Change Damages. Nordic Journal of International Law, 77(1), 1–22.
[256] WTO, Trade Agreement database, https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx (Retrieved on 10 March 2025).
[257] OECD Guidelines for Multinational Enterprises (2011) https://www.oecd.org/daf/inv/mne/(Retrieved on 10 March 2025).
[258] Free Trade Agreement between EFTA States and Bosnia and Hercegovina signed on 24 June 2013 (not yet in force).

treaties, with only a very few exceptions of, for example, *EPA with Australia*[259], *EPA with Vietnam*[260] *and FTA with Peru.*[261]

Remaining international economic treaties contain scattered references to sustainable development, but they usually are not linked directly to investment provisions of the agreements. Unlike provisions on trade, which are more commonly linked with sustainable development agenda, investment chapters in the international economic agreements tend to be silent or vague at best on sustainable development goals. In summary, investment chapters of international economic treaties other than BITs tend to be silent on sustainable development issues. Usually, general acknowledgment of sustainable development is contained in preambles to such treaties and mostly without any specific link or connection to investment.

3.4.2. Bilateral investment treaties (BITs).

More than 3000 BITs exist by the end of 2023 and bot all of them expressly mention the term of sustainable development. Majority of these references can be found in preambles to the treaties. Even though treaty preambles do not, in themselves, create rights and obligations of the parties, including sustainable development references in preambles, they could potentially influence interpretation of the treaties themselves. *Article 31(2) of Vienna Convention*[262] provides that for the purpose of interpretation, the context of the treaty includes its preamble.

First BIT that expressly refers to sustainable development in its preamble was enteredinto between *Costa Rica and the Netherlands*[263], which recognised “that the treaty will stimulate the flow of capital and technology and sustainable development” The investment is seen in this example as a fostering element for two parallel aims - flow of capital and technology and sustainable development.[264] First BIT with sustainable development references in 1999 and one

[259] Agreement between Australia and Japan for an Economic Partnership, signed 8 July 2014, entered into force 15 January 2015.
[260] Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership, signed on 25 December 2008, entered into force 1 October 2009.
[261]Agreement between Japan and the Republic of Peru on Economic Partnership, signed 31 May 2011, entered into force 1 March 2012.
[262] United Nations. (1969, May 23). *Vienna Convention on the Law of Treaties*. United Nations Treaty Series, vol. 1155, p. 331. https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf(Retrieved on 10 March 2025).
[263] Agreement on Encouragement and Reciprocal Protection of Investments between the Republic of Costa Rica and the Kingdom of the Netherlands, signed 21 May 1999, entered into force 1 July 2001.
[264]Agreement on Encouragement and Reciprocal Protection of Investments between the Republic of Costa Rica and the Kingdom of the Netherlands, signed 21 May 1999, entered into force 1 July 2001. *“Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and sustainable economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable.”*

of the latest BITs of 2015, sustainable development concept seems to have been assimilated by investment and became a part of it. Investment appears to be portrayed as indispensable for sustainable development. References to sustainable development in other BITs vary from "the promotion and the protection of investments" as "conducive to the promotion of sustainable development" to "recognizing the need to promote investment based on the principles of sustainable development". Three Austrian BITs go a little bit further by stating in the preamble that "investment agreements and multilateral agreements on the protection of environment, human rights or labour rights are meant to foster global sustainable development",[265] implying that the purpose of investments agreement is to advance sustainable development as a global objective.BIT between *China and Uzbekistan*[266] stresses the aim of cooperation to promote "*healthy, stable and sustainable development of economy and to improve welfare of the peoples*" associating therefore sustainable development with the economy and wealth. In another *Austrian BIT with Tajikistan*[267], investment is being recognised as an "*engine of economic growt*h" that "*can play a key role in ensuring that economic growth is sustainable*", which again links sustainability with economic growth. Austria started to include not lowering standards provisions only after 2010. *Austria BIT with Kazakhstan*[268] includes two relevant clauses. Preamble states that "*investment agreements and multilateral agreements on the protection of environment, human rights or labour rights are meant to foster global sustainable development and that any possible inconsistencies should be resolved without relaxation of standards of protection*". In addition, article 4 states that the parties "*do not encourage an investment by weakening the requirements of its national legislation in the field of environment*". *Austrian BIT with Tajikistan*[269] contains slightly different wording in article 4 but similar meaning: "*The Contracting Parties recognize that it is inappropriate to encourage an investment by weakening domestic environmental laws*". Same wording is included in the

[265]Canada–China BIT (2012)
Canada & China. (2012, September 9). *Agreement between the Government of Canada and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments*, entered into force October 1, 2014.

[266]China–Uzbekistan BIT (2011) China & Uzbekistan. (2011, April 19). *Agreement between the Government of the People's Republic of China and the Government of the Republic of Uzbekistan on the Promotion and Protection of Investments*, entered into force September 1, 2011.

[267] Austria–Tajikistan BIT (2010) Austria & Tajikistan. (2010, December 15). *Agreement for the Promotion and Protection of Investment between the Republic of Austria and the Republic of Tajikistan*, entered into force December 21, 2012. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/279/austria---tajikistan-bit-2010- (Retrieved on 10 March 2025).

[268] Austria–Kazakhstan BIT (2010)
Austria & Kazakhstan. (2010). *Agreement between the Republic of Austria and the Republic of Kazakhstan for the Promotion and Protection of Investments*. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/250/austria---kazakhstan-bit-2010-(Retrieved on 10 March 2025).

[269] Austria - Tajikistan BIT 2010 https://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/279/austria---tajikistan-bit-2010-(Retrieved on 10 March 2025).

latest *BIT Austrian beetween Nigeria*[270] *and BIT Austria between Kyrgyzstan*[271]. Azerbaijan started including sustainable development wording in its BITs since 2007, stating that the objectives of the treaty should be achieved "*in a manner consistent with the protection of health, safety and the environment and the promotion of sustainable development*". This language is included in few Azerbaijan BITs.[272]

3.4.3. Indirect provisions

Another category of provisions, with similar effect as preserving policy space language, are the provisions which provide that environmental measures taken in order to protect public welfare do not constitute indirect expropriation. Whilst most investment treaties recognise direct expropriation and include provisions dealing with classification of such expropriation, compensation measures and exceptions, only very small proportion of treaties also recognise indirect expropriation. Treaty provisions clarifying that general public measures on environmental and health protection, do not constitute indirect expropriation are not overwhelmingly common and the practice of including them is not consistent among states. *FTA between China and Switzerland*[273] refers to all important internationalinstruments dealing with sustainable development issues: *The Stockholm Declaration*[274] on the Human Environment of 1972, the Rio Declaration on Environment and Development of 1992, Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the Rio+20 Outcome Document "*The Future We Want*" of 2012[275]. It also recognises that economic development, social

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270 Austria–Nigeria BIT (2013)
Austria & Nigeria. (2013). *Agreement for the Promotion and Protection of Investment between the Republic of Austria and the Federal Republic of Nigeria*. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3434/austria---nigeria-bit-2013-(Retrieved on 10 March 2025)

271 Austria–Kyrgyzstan BIT (2016)
Austria & Kyrgyzstan. (2016). *Agreement between the Republic of Austria and the Kyrgyz Republic for the Promotion and Protection of Investments.* https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3688/austria---kyrgyzstan-bit-2016-(Retrieved on 10 March 2025)

272 Czech Republic–Azerbaijan BIT (2011)
Czech Republic & Azerbaijan. (2011, May 17). *Agreement on the Promotion and Reciprocal Protection of Investments*, entered into force February 9, 2012. https://investmentpolicy.unctad.org/international-investment-agreements/countries/13/azerbaijan(Retrieved on 10 March 2025)

273 Switzerland–China Free Trade Agreement (2013)
Switzerland & China. (2013, July 6). *Free Trade Agreement between the Swiss Confederation and the People's Republic of China*, entered into force July 1, 2014.

274United Nations Conference on the Human Environment (1972)
United Nations. (1972). *Declaration of the United Nations Conference on the Human Environment*. United Nations. https://www.un.org/en/conferences/environment/stockholm1972

275 United Nations. (2012). *The future we want* (Report of the United Nations Conference on Sustainable Development, Rio+20, A/CONF.216/L.1). https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.216/L.1(Retrieved on 10 March 2025)

deelopment and environmental protection are interdependent and mutually supportive components of sustainable development. It specifically underlines the benefit of cooperation on environmental issues as part of aglobal approach to sustainable development. With that, the parties reaffirm their commitment to promote economic development in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the bilateral economic relationship between them. The language is not limited to trade relations as in many other FTAs and it could be argued that investment relations fall within the scope of these provisions. However, overall, the treaty contains very limited investment promotion and protection provisions, and it has limited application to the international investment regime.

3.4.4. Corporate social responsibility

Principles of corporate social responsibility is a wide concept consisting of multiple sources, recommendations and guidelines. It is relevant to the world of international investment as much as it is generally applicable to multinational companies, which tend to be among the investors seeking protection under investment treaties[276]. Not only is there currently no single binding source of corporate social responsibility obligations for the investors, the provisions currently included in a very limited number of treaties, tend to be only high-level declarations of the states to encourage companies to implement corporate social responsibility practices. development has generally been linked with responsible corporate social behaviour. One of the most commonly referred to sources setting out corporate social responsibility principles and practices are the *OECD Guidelines for Multinational Enterprises*[277], nonbinding recommendations providing principles and standards for responsible business conduct for multinational corporations. They are annexed to the *OECD Declaration on International Investment and Multinational Enterprises*[278]*. Canada has been including commitment to corporate social responsibility principles in all recent BITs*. These principles address issues

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[276] Muchlinski, P. (2021). Corporate Social Responsibility and International Investment Law: Challenges and Opportunities. In Bungenberg, M., et al. (Eds.), European Yearbook of International Economic Law 2021 (pp. 121–146)

[277]OECD Guidelines for Multinational Enterprises (2023)

OECD. (2023). *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. Organisation for Economic Co-operation and Development. https://mneguidelines.oecd.org/mneguidelines/(Retrieved on 10 March 2025).

[278] OECD Declaration on International Investment and Multinational Enterprises (1976, with revisions)

OECD. (1976). *OECD Declaration on International Investment and Multinational Enterprises* (as revised in 1979, 1984, 1991, 2000, and 2011). Organisation for Economic Co-operation and Development. https://www.oecd.org/daf/inv/investment-policy/oecddeclarationoninternationalinvestmentandmultinationalenterprises.htm(Retrieved on 10 March 2025) such as labour, the environment, human rights, community relations and anticorruption. Interestingly, in *BIT between Canada and Senegal*[279], in addition to standard corporate social responsibility language, the parties included provisions to encourage enterprises to make investments whose impacts contribute to the resolution of social problems and preserve the environment. In some *EU Association Agreements, for example with Georgia*[280], *Ukraine*[281] *and Moldova*[282], the parties commit to promote social corporate responsibility principles through exchange of information and best practices. They refer also to the relevant internationally recognised principles and guidelines, especially to the OECD Guidelines for Multinational Enterprises.

3.5. Analysis of investment law cases regarding sustainable development

The status of sustainable development in international law remains contested. It is in the context of this uncertainty that the *Gabcikovo-Nagymaros*[283] decision of the International Court of Justice, along with the contribution by Vaughan Lowe commenting thereon provide a good starting point for exploring the legal status of sustainable development under international law. In terms of article 31(3)(c) of the *Vienna Convention on the Law of Treaties*[284], when interpreting treaties, binding customary international law 'shall be taken into account'.18 Certainly no one would suggest that customary international law is not legally binding under international law. Thus, the fact that the court says these norms and standards must be taken into consideration does not necessarily mean they lack the force of law.

[279] Canada–Senegal Foreign Investment Promotion and Protection Agreement (2014)
Canada & Senegal. (2014, November 27). *Foreign Investment Promotion and Protection Agreement between Canada and Senegal*, Art. 16. *(Entered into force August 5, 2016).*

[280] Association Agreement – EU & Georgia
European Union & Georgia. (2014, June 27). *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part*, Art. 231. *(Not in force).*

[281] Association Agreement – EU & Ukraine
European Union & Ukraine. (2014, June 27). *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part*, Art. 422. *(Entered into force January 1, 2016).*

[282] Association Agreement – EU & Moldova
European Union & Republic of Moldova. (2014, June 27). *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part*, Art. 35. *(Not in force).*

[283] Case Concerning Gabcikovo-Nagymaros (Hungary v. Slovakia)
International Court of Justice. (1997). *Case concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, 1997 ICJ 3, reprinted in 1998 *International Legal Materials*, 37(1), 162.

[284] Vienna Convention on the Law of Treaties (1969)
United Nations. (1969). *Vienna Convention on the Law of Treaties*. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (Retrieved on 10 March 2025)

3.5.1. Bear Creek v. Peru

The Bear Creek v. Peru arbitration[285] illustrates the extent to which it is important that foreign investors as well as the host state engage in public consultation and outreach with the local population to guarantee that investment projects are well received and viewed positively. Canadian investor Bear Creek had found indications of significant silver ore deposits in the Santa Ana mine in Peru but was ultimately barred from pursuing the exploitation of the mine due to the significant mistrust of the local population toward the project and the investor, which culminated in violent protests and social unrest. In August 2014, Bear Creek filed a claim against Peru under the Canada–Peru Free Trade Agreement (FTA). It argued that Decree 032 breached the requirements of the FTA, namely, to protect investors against unlawful expropriation, to afford them fair and equitable treatment (FET), to grant them full protection and security and to not impair the investment with unreasonable and discriminatory measures. The investor claimed damages of USD 522 million, representing the expected profitability of the Santa Ana project. Moreover, the tribunal received three amicus curiae applications, of which two were accepted (brought by a Peruvian human rights organization and a Peruvian lawyer) and another (brought by an American think tank) which was rejected with the argument that it had not sufficiently been shown that it would be able to contribute any further information or arguments that would assist the tribunal (Procedural Order No. 6, para. 38). In its award, the tribunal rejected the jurisdictional objections raised by Peru and accepted that Bear Creek must be compensated for the unlawful expropriation of its investment by Peru. The tribunal declined to make any finding on the investor's additional FTA claims, reasoning that any such finding would not change or add to those that follow from the finding of expropriation. While accepting that there had been an indirect expropriation, the tribunal did not follow Bear Creek's reasoning for the number of damages claimed, awarding it sunk costs only[286].

3.5.2. Urbaser v. Argentina

[285] Bear Creek Mining v. Peru Bear Creek Mining Corporation v. Republic of Peru, ICSID Case No. ARB/14/21. *International Centre for Settlement of Investment Disputes (ICSID)*. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/589/bear-creek-mining-v-peru

[286] UNCTAD. (2022). Investment Dispute Settlement Navigator: Bear Creek Mining Corporation v. Peru. United Nations Conference on Trade and Development. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/403/bear-creek-v-peru

The Urbaser v. Argentina case[287]was rendered while the international accountability of corporations is the subject of intense debates within the international community. Most prominent are the discussions at the United Nations Human Rights Council. An open-ended intergovernmental working group was established in 2014 to work toward a binding treaty for transnational corporations and other business enterprises with respect to human rights. The present award thus feeds into the current discussion on foreign investment and human rights in the context of sustainable development. The dispute in the Urbaser case arose as a result of the Argentina's financial crisis. Urbaser was a shareholder in a concessionaire that was in charge of the supply of water and sewerage services. Argentina's emergency measures led to financial losses of the concessionaire, resulting into its insolvency. Urbaser initiated arbitral proceedings against Argentina. For its parts, Argentina filed a counterclaim in which it alleged that the concessionaire's failure to provide the necessary level of investment in the supply services led to violations of the human right to water the dissenting arbitrator seems to continue a trend, illustrated by *Urbaser v. Argentina*, to increase the international accountability of foreign investors with respect to certain social and human rights obligations. These cases also underline the fact that the need for corporate liability is gaining more attention, and tribunals must provide more space for consideration of human rights in investment disputes.

3.5.3. Pope & Talbot Inc. v. Canada

Pope & Talbot Inc. v. Canada[288] is a significant investor-state dispute under NAFTA Chapter 11, and it played an influential role in shaping the interpretation of investment protection provisions, particularly regarding fair and equitable treatment (FET) and expropriation.It is indirectly relevant to the broader discourse on sustainable investment in several ways, especially when we analyze how international investment law interacts with regulatory autonomy, public interest, and long-term development goals. Sustainable investment frameworks emphasize a state's right to regulate in the public interest for the environment, social welfare, or economic development. Pope & Talbot, a U.S. paper company, owned a softwood lumber businessin British Columbia. The dispute arose from Canada's implementation of the 1996 Softwood Lumber Agreement (SLA) between the U.S. and Canada. Under this agreement, Canada imposed

[287] Urbaser S.A. & Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic, ICSID Case No. ARB/07/26. (2007). *International Centre for Settlement of Investment Disputes (ICSID).* https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/263/urbaser-and-cabb-v-argentina (Retrieved on 10 March 2025)
[288] Pope & Talbot Inc. v. Canada, UNCITRAL (NAFTA Ch. 11), Award on the Merits of Phase 2, April 10, 2001; Award on Damages, May 31, 2002.

quotas on softwood lumber exports from certain provinces. British Columbia was covered, so Pope & Talbot's operations were affected. Pope & Talbot claimed that Canada's quota system:

- Unfairly limited its export rights, thus reducing profits.
- Discriminated against U.S.-owned operations in Canada.
- Violated its legitimate expectations and rights under NAFTA.

In Pope & Talbot, Canada was regulating softwood lumber exports under a bilateral agreement with the U.S., which can be seen as an exercise of policy spacea crucial element in sustainable investment. The Tribunal held that Canada had breached the obligation to accord fair and equitable treatment**.** Specifically, the unreasonable and aggressive conduct of Canadian officials during the verification process violated Article 1105 under NAFTA.This decision was key in clarifying the scope of Article 1105 and its distinction from domestic legal standards, emphasizing that FET under NAFTA is linked to customary international law, not just domestic administrative fairness. The ruling on FET under customary international law limits the use of FET to challenge general regulations that may support sustainable development. By rejecting an overly broad interpretation of FET, the tribunal reinforced the principle of legal predictability and good governance, which aligns with Goal 16 of the SDGs (peace, justice, and strong institutions). The Tribunal awarded $461,566 USD plus interest to Pope & Talbot for the Article 1105 breach.

3.5.4. Bilcon of Delaware et al. v. Government of Canada

The Bilcon of Delaware et al. v. Government of Canada[289] is an investor-state dispute under NAFTA Chapter 11 and administered by the Permanent Court of Arbitration. While not directly about "sustainable development" per se, it raises important legal and policy questions that intersect with sustainable development concepts, particularly in the balance between foreign investment protection and environmental regulation. Bilcon proposed a quarry and marine terminal projectin Nova Scotia. The project was rejected after an environmental assessment found it inconsistent with community values and sustainable development.

Bilcon argued that the decision was arbitrary and violated NAFTA Articles 1105 (Minimum Standard of Treatment) and 1110 (Expropriation). The majority of the tribunal found Canada liable, ruling that Bilcon was denied fair and equitable treatment, and that the decision was inconsistent with NAFTA obligations.Canada’s decision was based in part on sustainable development principles and local community input.The ruling has been criticized for

[289] Bilcon of Delaware et al. v. Government of Canada, PCA Case No. 2009-04, Award (Mar. 17, 2015). Permanent Court of Arbitration

discouraging states from enforcing rigorous environmental standards, potentially chilling environmental regulation.This raises concerns about "regulatory chill", where governments may avoid enforcing or strengthening environmental or social protections due to fear of investor claims.The rejection of the project emphasized community values and intergenerational equity, which are core to sustainable development. The tribunal’s decision arguably undermined inclusive decision-making and local empowerment, both important elements of the UN SDGs, particularly Goal 16 (Peace, Justice, and Strong Institutions) and Goal 11 (Sustainable Cities and Communities). The case illustrates tension between investor protections in IIAs (International Investment Agreements) and domestic measures aimed at sustainable development. It highlights the need for balance and possibly the reform of ISDS mechanisms to better align with sustainability goals. This case is often cited in discussions around modernizing investment treaties to include explicit sustainable development provisions, such as 1) Carve-outs for environmental measures. 2) Enhanced transparency and stakeholder participation. 3) Greater deference to host state regulatory autonomy for sustainable development.

3.5.5. Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador

TexPet was accused of causing massive environmental contamination: dumping billions of gallons of toxic wastewater, oil spills, and failure to clean up affected areas. Integrating the *Chevron v. Ecuador case*[290] into the sustainable development framework involves examining its implications through the lens of environmental justice, corporate accountability, rule of law, and responsible investment. Texaco Petroleum Company (TexPet), a subsidiary of Chevron Corporation, entered Ecuador in the 1960s and operated in a consortium with Ecuador's state-owned oil company, PetroEcuador, for exploration and production of oil in the Amazon region. TexPet exited Ecuador in 1992 after allegedly completing environmental remediation work, which was certified by the Ecuadorian government through “settlement and release” agreements. Despite this, local communities filed a class-action lawsuit in Ecuador against Chevron (Texaco's parent company) in the early 2000s, alleging severe environmental harm caused by the operations. This led to a highly controversial judgment in Ecuador in 2011, awarding over $9 billion against Chevron.Chevron, contesting the legitimacy and fairness of the Ecuadorian court system, initiated international arbitration under the U.S.–Ecuador BIT in 2009, claiming that Ecuador: 1) Violated the BIT by denying justice, 2) Failed to provide fair and equitable treatment (FET), 3) Violated the 1995 settlement agreement releasing TexPet from further

[290] Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador, PCA Case No. 2009-23, Final Award (Aug. 30, 2018).

liability. Indigenous communities and affected residents filed a class-action lawsuit in the U.S. in 1993, but it was dismissed for forum non conveniens, redirecting the case to Ecuador. In 2011, after a lengthy legal battle, an Ecuadorian court in Lago Agrio ruled that Chevron (as Texaco's successor) was liable for environmental harm and ordered it to pay $9.5 billion in damages. Chevron refused to pay, alleging fraud, corruption, and denial of justice in the Ecuadorian proceedings. In 2018 Ecuador breached its obligations under the BIT by allowing enforcement of a judgment obtained via fraud and corruption. The tribunal found serious due process violations in the Ecuadorian judgment, including ghostwriting of the verdict and bribery of the judge. As of 2024, enforcement of the arbitral awards continues to face legal and political hurdles. Ecuador attempted to annul the award, but the Hague-based tribunal upheld its jurisdiction and findings. Meanwhile, enforcement actions by Chevron in various jurisdictions to recover damages are ongoing. The case highlights the need for sustainable environmental practices by corporations and robust enforcement by states. It also underscores the importance of remediation and restoration of damaged ecosystems as part of sustainable development.

3.5.6. Glamis Gold Ltd. v. United States of America

Glamis Gold Ltd. v. United States of America[291]is a prominent case in the field of international investment arbitration under Chapter 11 of the North American Free Trade Agreement (NAFTA)**.** It involves a Canadian mining company**,** Glamis Gold Ltd.**,** and its dispute with the United States over measures taken by federal and state authorities in California aimed at protecting cultural and environmental resources**.** The case validates environmental regulation as a legitimate state function under international investment law. The case reaffirms state responsibility to prioritize Indigenous concerns over purely economic interests. Supports ecosystem protection, sustainable use of land, and conservation of sacred natural sites. Recognizes the rights of Indigenous peoples, including protection of cultural heritage and participation in decisions affecting their lands. Gold Ltd., a Canadian mining company, proposed an open-pit gold mine project in Imperial County, California, near lands sacred to the Quechan Indian Nation. The area held cultural, spiritual, and archaeological significance for Indigenous communities. California and U.S. federal authorities denied key permits and imposed additional environmental and cultural preservation requirements. Glamis claimed these actions: 1) Expropriated its investment without compensation. 2) Violated the Minimum Standard of Treatment (MST) under international law. The tribunal rejected all claims and found no breach

[291] Glamis Gold, Ltd. v. United States of America, UNCITRAL (NAFTA Ch. 11 Arb.), Award (June 8, 2009).

of NAFTA obligations. The measures were deemed non-discriminatory, taken in the public interest, and aligned with U.S. regulatory standards. The tribunal emphasized that cultural heritage protection and Indigenous rights are legitimate grounds for state regulation. No expropriation occurred, as Glamis retained ownership and there was no substantial deprivation of its investment.

3.5.7. Conclusion

In 1972, the *Declaration of the United Nations Conference on the Human Environment*[292] signed the first step in the evolution of the concept of sustainable development in the legal field. A link between environmental protection and economic development was clearly established in the Stockholm Declaration of Principles. The Declaration was adopted during an international Conference, held in Stockholm, in which countries agreed on the necessity of a common outlook and for common principles to inspire and guide the world in the preservation and enhancement of the human environment. It was some 15 years later that the expression 'sustainable development' was formulated, and a first version of its meaning articulated. The most fundamental landmark in sustainable development's history is, however, certainly the *Rio Conference on Environment and Development and its famous Declaration of Principles*[293]which brings sustainable development within the legal sphere. Law and policy are essential tools to tackle ongoing and emerging environmental challenges and are critical to the fulfilment of sustainable development. Adopted *by all 193 United Nations (UN) Member States, the 2030 Sustainable Development Goals (SDGs, also known as the 2030 Agenda) act as the 21st-century framework for sustainable development Promoted by the United Nations*, it is central to a vast number of Resolutions, Declarations, Conventions, and international judicial decisions. The Rio instruments also contain references to intergenerational equity. The Rio Declaration requires the 'right to development' to be fulfilled 'to equitably meet the developmental and environmental needs of present and future generations[294]. This formulation, while containing the essential character of intergenerational equity requiring the present generation to consider future generations in developmental activities, is a little different from previous formulations. Principle 3, as formulated, may be interpreted as placing the right to development' as the central concern,

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[292] United Nations. (1972). *Declaration of the United Nations Conference on the Human Environment*. United Nations. https://www.un.org/en/conferences/environment/stockholm1972 (Retrieved on 10 March 2025)
[293] United Nations. (1992). *United Nations Conference on Environment and Development (UNCED), Rio de Janeiro, 3–14 June 1992*. United Nations. https://www.un.org/en/conferences/environment/rio1992(Retrieved on 10 March 2025)
[294] Shelton, D. (2004). Intergenerational equity: Environmental justice and sustainable development. Fordham Environmental Law Review, 15(1), 1–22.

and not the environment, as in previous formulations. Nevertheless, the principle further illustrates the centrality of the principle of intergenerational equity in sustainable development discourse.[295]

[295] Sands, P., Peel, J., & Fabra, A. (2018). Principles of international environmental law (4th ed.). Cambridge University Press.

CHAPTER 4: INVESTMENT REGIME OF CENTRAL ASIAN COUNTRIES AND ITS LINK WITH CONCEPTS OF SUSTAINABLE DEVELOPMENT

4.1. Introduction

Foreign direct investment (FDI) inflow into the Central Asia region has significantly increased since the collapse of the Soviet Union. Central Asia (Uzbekistan, Kazakhstan, Tajikistan, Kyrgyzstan, and Turkmenistan) is the region east of the Caspian Sea and its inward FDI stock in Central Asia totals $211 billion. In 2021, the region's foreign trade in goods totalled $165.5 billion, a sixfold increase over the last 20 years. Central Asia is one of the region's most vulnerable to climate change, food, water, and energy resources particularly susceptible to climate challenges. Countries benefit from macroeconomic stability, a large domestic market, cheap and abundant labor force but have non-harmonized regulatory investment environments and yet are not fully aligned with sustainable development concepts. But in recent years business community, investors and international organizations ensuring that the necessary steps are taken to achieve sustainable development for example, Central Asia Investment Forum (CAIF)[296]-2022, UN – Second Regional SDG Summit of Central Asian countries – 2022. In recent years 2023-2024, making sustainable development-oriented investment treaties has become a global trend and countries have put remarkable emphasis on sustainable development in negotiation of the investment treaties. Also at the Central Asian level, states have been active in the international investment law arena also through both signing various investment treaties and being involved in investor state arbitration[297]. Central Asia state's investment legislation contains numerous investment-friendly provisions resulting from accession to World Trade Organization[298], Eurasian Economic Union (EAEU)[299], Energy Charter Treaty[300], Commonwealth of Independent States (CIS) Investor Rights Convention[301], International Center for the Settlement of Investment Disputes (ICSID) Convention, New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UNCITRAL), which have evolved

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[296] European Bank for Reconstruction and Development. (2022). *Central Asia Investment Forum 2022.* https://www.ebrd.com/news/events/central-asia-investment-forum-2022.html (Retrieved on 10 March 2025)

[297] Mavluda Sattorova. (2015). International investment law in Central Asia: The making, implementation and change of investment rules from a regionalist perspective. *Journal of World Investment & Trade, 16*(5–6), 1089–1123.

[298] Petersmann, E.-U. (1997). *The GATT/WTO dispute settlement system: International law, international organizations and dispute resolution*. Kluwer Law International

[299] Treaty on the Eurasian Economic Union, signed 29 May 2014

[300] Energy Charter Treaty, adopted 17 december 1991, entered into force 16 April 1998. (1995). *34 International Legal Materials*, 373.

[301] Commonwealth of Independent States (CIS). (1997). *Convention on the Protection of Investor Rights*, signed in Moscow by Armenia, Belarus, Moldova, Tajikistan, Kazakhstan, and Kyrgyzstan.

into Central Asian regional mechanism capable of liberalizing investment and its protection. For example, CIS Investor Rights Convention of 28 March 1997 was signed and ratified by four Central Asian states (Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan), Belarus, and Moldova.Although the Convention does not contain all of the traditional standards of treatment, it features the obligation of national treatment and the prohibition of expropriation and nationalization. With their consistent emphasis on the primacy of national laws in determining the scope of substantive protection guarantees, the CIS investment instruments provide a stark contrast to the modern generation of investment agreement. According to the official interpretation of the agreement by the Economic Court of the CIS, intra-regional investments by investors of one contracting party in the territory of another contracting party ought to be treated as national investments and not as foreign investments, thus excluding them from benefits and privileges that the host state party may grant to the latter[302].Many recent International Investment Agreements (IIAs) and Bilateral Investment Treaties (BITs) are beginning to explicitly integrate environmental and climate considerations:

- Sustainable Development Clauses: Modern IIAs often reference sustainable development goals (SDGs), aiming to balance investment protection with environmental stewardship.
- Right to Regulate: Treaties now frequently affirm the state's right to regulate public policy objectives, including climate change and environmental protection.
- Non-lowering of Standards: Some IIAs prohibit countries from relaxing environmental laws to attract investment.
- Environmental Impact Assessment (EIA) Requirements: Provisions require investors to comply with environmental laws and conduct EIAs.
- Reference to Multilateral Environmental Agreements (MEAs): Some treaties refer to compliance with MEAs like the Paris Agreement or UNFCCC

Countries are updating their foreign investment frameworks to align with climate goals:

- Green Investment Incentives: States offer incentives for low-carbon or renewable energy investments.
- Environmental Due Diligence Requirements: Investors may be obligated to assess and mitigate environmental risks.
- Climate Risk Disclosure: Emerging laws require foreign investors to disclose potential climate-related financial risks.

[302] Komarov, V. (2002). *Investments in the CIS*. *Society and Economy*, 24(4), 363–379. Budapest: Akadémiai Kiadó.

- Sustainable Finance Taxonomies: Domestic classifications increasingly define what counts as a “climate-aligned” or “green” investment.

As far as the individual countries are concerned

USA

The U.S. prioritizes balancing investor protections with preserving regulatory space, especially for climate action and environmental policy. In the United States-Mexico-Canada Agreement (USMCA)[303], the U.S. significantly narrowed access to Investor-State Dispute Settlement (ISDS), The USMCA explicitly safeguards the right to regulate in areas such as public health, the environment, and climate[304]. U.S. Model BITs (especially the 2012 version)[305] include environmental exceptions and reaffirm the right to regulate for sustainable development. The U.S. successfully defended its environmental and cultural protection measures against a Canadian mining company in case of Glamis Gold Ltd. v. United States (2009)[306]. The tribunal upheld the U.S. regulatory measures, recognizing the legitimacy of public interest goals, including indigenous rights and land preservation. This case is frequently cited as a model of how domestic environmental regulations can prevail over investor claims when properly justified.

The Netherlands

Holland is a leading advocate for “sustainable investment”, aiming to align investment protection with climate goals, corporate social responsibility (CSR), and the UN Sustainable Development Goals (SDGs). The 2019 Dutch Model BIT includes progressive climate and sustainability features[307]:

- Explicit right to regulate in the public interest, including environmental and climate protection.
- Emphasis on CSR obligations for investors, encouraging compliance with international environmental standards.

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[303]Office of the United States Trade Representative. (2020). *United States-Mexico-Canada Agreement (USMCA).* https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement (Retrieved on 10 March 2025).

[304] Sornarajah, M. (2017). The international law on foreign investment (4th ed.). Cambridge University Press.

[305] U.S. Department of State. (2012). U.S. model bilateral investment treaty (2012 version). https://www.state.gov/u-s-model-bilateral-investment-treaty/(Retrieved on 10 March 2025).

[306]Glamis Gold, Ltd. v. United States, ICSID Case No. ARB(AF)/04/3 (2009).

[307] Schill, S. W. (2020). *Sustainable development in international investment law.* Oxford University Press.

- Reference to the SDGs, linking investment to broader sustainability objectives.
- Require tribunals to consider environmental and human rights norms when interpreting investment protections.

The Netherlands has been a vocal proponent of reforming the Energy Charter Treaty (ECT):

1) Advocates for phasing out fossil fuel protections under the ECT.

2) Supports termination or modernization of the treaty to prevent it from obstructing national climate transition policies.

3) Announced intention to withdraw from the ECT, alongside other EU countries, due to its incompatibility with Paris Agreement goals.

France

The country is a strong advocate for "*climate-compatible*" investment treaties, emphasizing alignment with international environmental commitments and protection of regulatory space. The 2018 Draft Model BIT by France[308] explicitly references the Paris Agreement and broader environmental protection objectives. Promotes corporate social responsibility (CSR) and sustainable development as key investor obligations. Encourages investors to respect human rights, labor standards, and climate norms. Includes a carve-out provision that excludes climate-related regulatory measures from ISDS claims, affirming. The state's right to regulate climate, public health, and environmental protection. France has joined EU-wide efforts to reform or exit the Energy Charter Treaty (ECT). Strongly supports reforming ISDS mechanisms to avoid "regulatory chill" on climate action[309].

Hungary

Hungary, as an EU member state, aligns its international investment policy and treaties with European Union standards, which increasingly emphasize sustainable development and environmental protection, including climate goals consistent with the European Green Deal[310].

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[308] France. (2019). *Draft model bilateral investment treaty* [Model BIT]. Ministry of Economy and Finance. https://www.tresor.economie.gouv.fr/Articles/2019/01/28/draft-model-bilateral-investment-treaty(Retrieved on 10 March 2025).

[309] Netherlands Ministry of Foreign Affairs. (2019). Model bilateral investment treaty. https://www.government.nl/documents/publications/2019/10/18/model-bilateral-investment-treaty

[310] European Commission. (2020). *EU model investment protection agreement.* https://trade.ec.europa.eu/doclib/docs/2020/june/tradoc_158857.pdf (Retrieved on 10 March 2025).

Hungary follows the EU's approach to investment treaties, including its 2020 EU Model Investment Protection Agreement (IPA), which stresses the right to regulate for environmental and climate protection.Hungarian investment agreements typically include explicit safeguards for regulatory measures aimed at fulfilling climate change obligations and environmental protection without constituting indirect expropriation or unfair treatment[311].The EU's investment policy (to which Hungary contributes) promotes coherence with the Paris Agreement and integrates sustainability provisions and corporate social responsibility clauses in its treaties.The investment regimes of Central Asian countries Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan are evolving in response to increasing global demands for responsible investment and sustainable development. Positioned at the crossroads of Europe and Asia, these countries hold significant natural and human resources, making them attractive for foreign direct investment (FDI). However, to attract quality investment that supports long-term development, these countries must align their investment regimes with the principles of sustainable development economic growth, social inclusion, and environmental protection.

Kazakhstan

Kazakhstan's investment climate is relatively strong to attract foreign investment. It receives most of the foreign direct investment (FDI) in Central Asia to develop its abundant mineral, petroleum, and natural gas resources. Over the years of the existence of investment legislation, its change and transformation have systematically sought to implement the strategies laid down by the President of Kazakhstan at different times, the investment needs were different[312]. The protection of investors' rights and the stability of concluded contracts are guaranteed by law (free movement of capital, repatriation of capital, freedom to use profits, the right of private ownership of land, including foreign companies). In addition, the President adopted a National Development Plan to 2025 in February 2021 and investment climate is a part of this course.[313]

Kyrgyzstan

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[311] Government of Hungary. (2021). Hungary's international investment policy and sustainable development.

[312] Tukulov, B. (2013). *Discussion of possible ways to reduce the legal risks faced by foreign investors in the implementation of activities in the Republic of Kazakhstan*. data!!!

[313]Republic of Kazakhstan. (2021). Decree of the President of the Republic of Kazakhstan No. 520 "On the approval of the National Development Plan of the Republic of Kazakhstan until 2025". https://adilet.zan.kz/eng/docs/U2100000520(Retrieved on 10 March 2025).

According to UNCTAD's World Investment Report 2022[314], FDI flows to Kyrgyzstan reached USD 248 million in 2021, up by the level recorded one year earlier when inflows were negative by USD 402 million. In the same year, 2021 the stock of FDI reached USD 4.2 billion, or around 49.6% of the country's GDP. In the industry and mining sectors, most of the planned investments are in gold mining (64%) and cement (31%), followed by copper mining (5%). In fact, gold remains the primary mineral in terms of value mined in the Kyrgyz Republic. Gold mining is the backbone of Kyrgyzstan's mineral extraction industry, attracting significant foreign investment but also facing scrutiny regarding environmental impacts and social license to operate. The government aims to balance mineral resource development with sustainability goals, including improving regulatory frameworks and environmental standards. Kyrgyzstan has undertaken reforms to enhance the investment climate, such as improving legal protections for investors and streamlining procedures.

Uzbekistan

In the World Bank's 2020 Doing Business ratings, Uzbekistan was among the world's top 20 reformers, rising from 76th to 69th place in one year[315]. These reforms reflect efforts to streamline business procedures, enhance regulatory transparency, and attract foreign investment. In general, Uzbekistan's economy demonstrated relative resilience in 2020 with 1.6% GDP growth. This growth underscores the country's commitment to structural reforms and economic diversification. Uzbekistan has been actively working to modernize its investment framework with growing attention to sustainability and environmental protection. The government promotes green investments, particularly in renewable energy and water resource management, aligning national development strategies and international commitments like the Paris Agreement. Efforts include integrating environmental standards into investment policies and encouraging corporate social responsibility (CSR) among investors.

Tajikistan

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[314] United Nations Conference on Trade and Development (UNCTAD). (2022). *World investment report 2022: International tax reforms and sustainable investment*. https://unctad.org/system/files/official-document/wir2022_en.pdf(Retrieved on 10 March 2025).

[315] World Bank. (2019, October). *Doing business 2020*. https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020 (Retrieved on 10 March 2025).

According to the Statistical Agency under the President of Tajikistan, the total inflow between 2007-2021, foreign investments totaled about $11 billion, of which $4.8 billion were direct investments, $5.7 billion were other types of investments, and $500 million were portfolio investments. Tajikistan is a challenging place to do business but presents potential high-risk, high-reward opportunities for foreign investors who have experience in the region. Tajikistan's vast hydropower potential is a major magnet for investment, with projects focused on expanding capacity and exporting electricity. Rich mineral resources, including gold and other metals, attract foreign capital, though the sector is politically sensitive. Agriculture and food processing are emerging sectors for investment but face infrastructural challenges. Tajikistan is known for a challenging business environment due to bureaucratic hurdles, regulatory unpredictability, infrastructure deficits, and corruption risks. The country scores lower on international ease-of-doing-business rankings but has made some progress in simplifying registration and licensing procedures[316].

Turkmenistan

As far s UNCTAD's 2022 World Investment Report is concerned, FDI inflows to Turkmenistan increased by 24.2% year-on-year in 2021, reaching USD 1.45 billion. Nevertheless, the figure is still much lower than the three-year average recorded before the pandemic (USD 2 billion between 2017-19). In 2021, the estimated FDI stock stood at USD 40.7 billion, representing around 64.3% of the country's GDP. Oil and gas, agriculture and construction are the main investment sectors. Despite the obstacles in the country, hydrocarbons and petrochemicals Peru attracting foreign investment and there has recently been an interest in the manufacturing sector.[317]

4.2. Case study of Kazakhstan

Kazakhstan is an upper-middle income and the world's largest landlocked developing country with the largest economy and highest GDP per capita in Central Asia. Since its independence in 1991, Kazakhstan has made significant progress toward creating a market economy and has attracted

[316] Statistical Agency under the President of the Republic of Tajikistan. (2022). Foreign investment statistics 2007–2021. http://stat.tj(Retrieved on 10 March 2025).
[317] UNCTAD. (2022). World Investment Report 2022: International tax reforms and sustainable investment [Report]. United Nations Conference on Trade and Development. https://unctad.org/system/files/official-document/wir2022_en.pdf(Retrieved on 10 March 2025).

significant foreign investment given abundant mineral, petroleum, and natural gas resources[318]. For example, Kazakhstan is ranked 25th for Ease of *Doing Business in the World Bank's Doing Business 2020 report*[319].

According to UNCTAD's World Investment Report 2023, FDI inflows into the country recorded an increase of 83.1% in 2022, reaching USD 6.1 billion, almost twice the amounts recorded before the pandemic, with increases in the extractive industries (to USD 4.1 billion), mainly from MNEs in the Netherlands and the United States[320]. During the first half of 2023, Kazakhstan experienced a net inflow of FDI amounting to USD 4.1 billion, marking an 86% increase compared to the corresponding period one year earlier, as reported by the Kazakh Invest National Company. In 2023, construction and installation activities commenced on 42 projects exceeding $3 billion in value. These projects included the production of thermal insulation materials by the Italian company Cormatex, the construction of a new KIA plant valued at USD 250 million, and the creation of 1,500 job opportunities. Furthermore, notable entities such as Italian ENI, French Total Energies, German Svevind, China Power, Emirati Masdar, Saudi ACWA Power, among others, expressed interest in advancing renewable energy sources in Kazakhstan.In Kazakhstan, there are 13 special economic zones and 36 industrial zones[321], which exempt investors from various types of taxes and customs duties. While Kazakhstan's vast hydrocarbon and mineral reserves remain the backbone of the economy, the government continues to make incremental progress toward diversification into other sectors. A positive element is the diversity of investment sources. During the last five years, massive foreign investment has poured into Kazakhstan from diverse countries like Netherlands ($33.8 billion), the United States ($19.4 billion), Switzerland $12.5 billion), China ($6.2 billion) and France ($4.7 billion). A bulk of this investment (60 percent) has been attracted into the non-extractive sectors such as trade, transportation, manufacturing, financial and insurance services.

Kazakhstan joined:

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[318]Abykanova, B. T., Sariyeva, A. K., Bekalay, N. K., Syrbayeva, S. J., Rustemova, A. I., & Maatkerimov, N. O. (2019). Technology and prospects of using solar energy. *News of the National Academy of Sciences of the Republic of Kazakhstan, Series of Geology and Technical Sciences*.

[319] World Bank. (2020). *Doing business 2020: Comparing business regulation in 190 economies*. https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf(Retrieved on 10 March 2025).

[320]United Nations Conference on Trade and Development (UNCTAD). (2023). *World investment report 2023: Investing in sustainable energy for all*. https://unctad.org/system/files/official-document/wir2023_en.pdf(Retrieved on 10 March 2025).

[321] Law of the Republic of Kazakhstan. (2019, April 3). *On special economic and industrial zones* (No. 242-V). Retrieved from https://adilet.zan.kz/eng/docs/Z1900000242(Retrieved on 10 March 2025).

- World Trade Organization (WTO) on 30 November 2015 as the 162nd member and Eurasian Economic Union (EEU) in 2015. From January 2020, the WTO framework has been implemented in Kazakhstan. Therefore, Kazakhstan has removed restrictions on opening branches of foreign banks and insurance companies.
- Eurasian Economic Union (EEU) in 2015. The EEU aims to promote cooperation among member countries in a number of areas, including the harmonization of macroeconomic policies, payment of indirect taxes in mutual trade, customs matters, nontariff regulations (such as import licenses and certificates of compliance), financial matters, intellectual property, procurement, energy, labor migration and transportation.
- Kazakhstan adopted the OECD Declaration and Decisions on International Investment and Multinational Enterprises and became an associate member of the OECD Investment Committee in June 2017.[322]

In 2017, the country launched the "*Kazakhstan National Technology Initiative*" program which by 2025 is supposed to accelerate technology renewal and create new digital-based industries in all sectors. In July 2018, the government of Kazakhstan officially opened the Astana International Financial Center (AIFC)[323], an ambitious project modelled on the Dubai International Financial Center, which aims to offer foreign investors an alternative jurisdiction for operations, with tax holidays, flexible labor rules, a Common Law-based legal system, a separate court and arbitration center, and flexibility to carry out transactions in any currency. In 2019, the government founded Kazakhstan's Direct Investment Fund which became resident at the AIFC and aims to attract private investments for diversifying Kazakhstan's economy. The state company *KazakhInvest* located in this hub, offers investors a single window for government services[324]. Also, in April 2019, the Prime Minister created the Coordination Council for Attracting Foreign Investment. The Prime Minister acts as the Chair and Investment Ombudsman. In December 2018, the Investment Committee was transferred to the supervision of the Ministry of Foreign Affairs, which took charge of attracting and facilitating the activities of foreign investors. In January 2021, the Minister of Foreign Affairs received an additional title of Deputy Prime Minister due to the expanded portfolio of the Ministry. The Investment Committee at the Ministry of Foreign Affairs takes responsibility for investment climate policy issues and works with potential and current investors, while the Ministry of National

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[322] Abykanova, B. T., Sariyeva, A. K., Bekalay, N. K., Syrbayeva, S. J., Rustemova, A. I., & Maatkerimov, N. O. (2019). Technology and prospects of using solar energy. *News of the National Academy of Sciences of the Republic of Kazakhstan, Series of Geology and Technical Sciences*.

[323] Constitutional Law of the Republic of Kazakhstan. (2015, December 7). *On the Astana International Financial Center*.

[324] Abykanova, B. T., Sariyeva, A. K., Bekalay, N. K., Syrbayeva, S. J., Rustemova, A. I., & Maatkerimov, N. O. (2019). Technology and prospects of using solar energy. *News of the National Academy of Sciences of the Republic of Kazakhstan, Series of Geology and Technical Sciences*

Economy and the Ministry of Trade and Integration interact on investment climate matters with international organizations like the OECD, WTO, and the United Nations Conference on Trade and Development (UNCTAD)[325]. In its Strategic Plan of Development to 2025, the government stated that bringing up the living standards of Kazakhstan's citizens to the level of OECD countries is one of its strategic goals. Kazakhstan does not have a screening system in place and does not have legislation specifically focused on the national security implications of FDI akin to the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Kazakhstan's central bank (the National Bank of Kazakhstan) collects standard statistics on FDI and other forms of investments, but mostly for macroeconomic purposes.

4.2.1. Legal framework of Kazakhstan's investment law

The history of the formation and development of Kazakhstan's investment legislation begins with the adoption of the first legislative act in this area - *the Law "On Foreign Investment in the Kazakh SSR" dated December 7, 1990*. This law established a legal regime for investment protection, as well as a number of tax benefits for foreign investors, which played a significant role in attracting the first foreign investments into the economy of the republic[326]. The next step was the *Law "On Foreign Investments" of December 27, 1994,* which is a kind of "second generation law". The changes that were made to it considered changes in the state's policy towards investors, which was dictated by both the economic development of Kazakhstan as a whole and the beginning of the formation of a favorable investment climate in the country. With the adoption of *the Law "On State Support of Direct Investments" of February 28, 1997,* investment legislation received its further development. This legislative act was designed to regulate relations related to investment activities in priority sectors of the economy, which gave a powerful impetus to the development of the production sector. *The adoption of the Law "On Investments" dated January 8, 2003*[327] is a new confirmation of Kazakhstan's efforts to create a favorable investment climate and attract external resources to the country's economy. A characteristic feature of this legislative act is the creation of equal conditions, the provision of

[325] Sanalieva, L. K., Baitenizov, D. T., Akhmetova, G. T., Biryukov, V. V., Maydyrova, A. B., & Goncharenko, L. P. (2018). Intellectual potential of self-employment as the sign of the labor market. *Bulletin of the National Academy of Sciences of the Republic of Kazakhstan*.
[326] Suleimenov, M., & Osipov, E. (2008). Review of the legal framework for investment in the oil and gas sector of Kazakhstan
[327] Law of the Republic of Kazakhstan. (2003, January 8). *On investments* (No. 373).

uniform guarantees and preferences for both foreign and domestic investors[328]. Today, the republic faces the task of stimulating national capital by providing favorable conditions to domestic investors. The Law “On Investments" consists, in essence, of two parts, which were previously regulated by two separate aforementioned legislative acts. The first part establishes the legal regime of investments, the second contains provisions regulating relations on state support of investments. The main regulatory act regulating relations related to investments in the Republic of Kazakhstan is the Entrepreneurial Code of the Republic of Kazakhstan[329], in particular Chapter 25 (hereinafter referred to as the "Entrepreneurial Code"). It defines the legal and economic basis for stimulating investments, guarantees the protection of investors' rights when making investments in Kazakhstan, defines measures of state support for investments, and the procedure for resolving disputes with investors. The Leader of the Nation, N.A. Nazarbayev, addressed the people of Kazakhstan on December 14, 2012, with the message *'Strategy Kazakhstan-2050: A New Political Course of the Established State*'.[330]". The Government of the Republic of Kazakhstan approved *Concept of the Investment Policy of the Republic of Kazakhstan until 2026*[331]. In October 2015, the Entrepreneurship Code[332] (as amended), which superseded the Law on Investments, was adopted in Kazakhstan. The code retained most of the earlier investment guarantees, such as the stability of contracts (with certain exceptions), free use of income, the transparency of state investment policy, the stability of tax and foreign labor law in relation to priority investment contracts, reimbursement of losses in the event of nationalization and requisition, and certain others.

Today, Kazakhstan is taking measures to develop investment activities on the territory of the republic, a legal framework has been formed such as *Enterprise Code* [333], *Law of the*

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[328] Batalov, A. (2003). Legal regulation of investment activities in the Republic of Kazakhstan. *Kazakhstan Investment Promotion Center Kazinvest*. Retrieved from http://www.investkz.com/journals/34/297.html(Retrieved on 10 March 2025).

[329] Entrepreneurial Code of the Republic of KazakhstanLaw No. 375-V ZRK. (2015, October 29). *Entrepreneurial Code of the Republic of Kazakhstan*. Retrieved from https://adilet.zan.kz/eng/docs/K1500000375(Retrieved on 10 March 2025)

[330] Strategy Kazakhstan-2050Nazarbayev, N. (2012, December 14). *Strategy Kazakhstan-2050: New political course of the established state*. Retrieved from https://www.akorda.kz/en/addresses/addresses_of_president/address-by-the-president-of-the-republic-of-kazakhstan-leader-of-the-nation-nnazarbayev-strategy-kazakhstan-2050-new-political-course-of-the-established-state(Retrieved on 10 March 2025)

[331] Concept of Investment Policy of the Republic of Kazakhstan until 2026. Government of the Republic of Kazakhstan. (2022, July 15). *On approval of the Concept of investment policy of the Republic of Kazakhstan until 2026* (Resolution No. 482). Retrieved from https://cis-legislation.com/document.fwx?rgn=141972CIS Legislation+5CIS Legislation+5CIS Legislation+5

[332] Law of the Republic of Kazakhstan, Enterprise Code, January 1, 2016 <https://adilet.zan.kz/rus/docs/K1500000375#z325>(Retrieved on 10 March 2025)

[333] Entrepreneurial Code of the Republic of KazakhstanLaw No. 375-V ZRK. (2015, October 29). *Entrepreneurial Code of the Republic of Kazakhstan*. Retrieved from https://adilet.zan.kz/eng/docs/K1500000375(Retrieved on 10 March 2025)

Republic of Kazakhstan "On Special Economic and Industrial Zones"[334], *Code "On Subsoil and Subsoil Use"*[335], *Law 'On Permissions and Notifications'*[336], *Resolution of the Government 'On Approval of the Rules of Organization of 'One-Stop Shop' for Investors, and Process of Coordination of Attraction of Investment'*[337] and tax, customs and land legislation).

4.2.2. Basic concepts of the investment law of Kazakhstan and its protection

Investments are all types of property (except goods intended for personal consumption), including financial leasing items from the moment of conclusion of the leasing agreement, as well as the rights to them invested by the investor in the authorized capital of a legal entity or an increase in fixed assets used for entrepreneurial activity, as well as for the implementation of a public-private partnership project, including the number of the concession project[338]. *An investor* means individuals and legal entities that invest in the Republic of Kazakhstan. Guarantee of legal protection of investors' activities on the territory of the Republic of Kazakhstan implies the investor's right to compensation for damage caused to him because of the issuance by state bodies of acts that do not comply with the legislative acts of the Republic of Kazakhstan, as well as illegal actions (inaction) of officials of these bodies. The investor is provided with full and unconditional protection of rights and interests, which is provided by the Constitution of the Republic of Kazakhstan, and other regulatory legal acts of the Republic of Kazakhstan, as well as international treaties ratified by the Republic of Kazakhstan. The Republic of Kazakhstan guarantees the stability of the terms of contracts concluded between investors and state bodies of the Republic of Kazakhstan, except in cases when amendments to contracts are made by agreement of the parties. Guarantees of the use of income when investors have the right, at their discretion, to use the income received from their activities after taxes and other mandatory

[334] Law on Special Economic and Industrial Zones**Law** of the Republic of Kazakhstan. (2019, April 3). *On special economic and industrial zones* (No. 242-VI ZRK). Retrieved from https://adilet.zan.kz/eng/docs/Z1900000242 (Retrieved on 10 March 2025)

[335] Code on Subsoil and Subsoil UseLaw of the Republic of Kazakhstan. (2017, December 27). *Code on Subsoil and Subsoil Use* (No. 125-VI ZRK). Retrieved from https://adilet.zan.kz/eng/docs/K1700000125(Retrieved on 10 March 2025)

[336] Law on Permissions and NotificationsLaw of the Republic of Kazakhstan. (2014, May 16). *On permissions and notifications* (No. 202-V ZRK). Retrieved from https://adilet.zan.kz/eng/docs/Z1400000202 (Retrieved on 10 March 2025)

[337] Resolution on One-Stop Shop for Investors
Government of the Republic of Kazakhstan. (2019, August 13). *On approval of the Rules of organization of 'One-Stop Shop' for investors and the process of coordination of attraction of investment* (Resolution No. 585). Retrieved from https://adilet.zan.kz/eng/docs/P1900000585 (Retrieved on 10 March 2025).

[338] Entrepreneurial Code of the Republic of Kazakhstan
Law of the Republic of Kazakhstan. (2015, October 29). *Entrepreneurial Code of the Republic of Kazakhstan* (No. 375-V ZRK; with amendments and additions as of November 18, 2022). Retrieved from https://adilet.zan.kz/eng/docs/K1500000375 (Retrieved on 10 March 2025).

payments to the budget, as well as to open bank accounts in national currency and (or) foreign currency in banks in Kazakhstan in accordance with the banking and currency legislation of the Republic of Kazakhstan. The Law on State Property primarily regulates the privatization of state-owned assets. Although the law allows (with certain exceptions) the privatization of any types of assets, typically, only shares in Kazakhstani companies are privatized. The Committee for State Property and Privatization of the Ministry of Finance carries out the privatization of assets owned by the state (as a whole). Regional executive authorities carry out the privatization of assets owned by various regions of Kazakhstan. *The concept and types of investment preferences***:** Investment preferences are advantages of a targeted nature provided in accordance with the legislation of the Republic of Kazakhstan to legal entities of the Republic of Kazakhstan implementing an investment project and leasing companies importing technological equipment within the framework of an investment project on the basis of a financial leasing agreement for a legal entity of the Republic of Kazakhstan implementing an investment project.*Investment Bodies:* principal state body overseeing investments in Kazakhstan is the Committee on Investments within the Ministry of Foreign Affairs. Among other things, the Committee on Investments is charged with negotiating and concluding investment contracts with investors pursuant to the Entrepreneurship Code. The Council of Foreign Investors under the President of the Republic of Kazakhstan, the Council for Improving the Investment Climate and the Council for Attracting Investors chaired by the Prime Minister of the Republic of Kazakhstan are functioning to address point and systemic problematic issues of investors. The functions of the Investment Ombudsman are assigned to the Prime Minister of the Republic of Kazakhstan. In June 2014, the government created the position of investment ombudsman, i.e., a government official whose purpose is to review and try to resolve investment issues and disputes between investors and the state**.** *Astana International Financial Center (AIFC)*[339]**:** The Astana International Financial Center operates, modelled on the Dubai International Financial Center, one of the tasks of which is to assist in attracting investments into the country's economy on the principles of the law of England and Wales and the standards of international financial centers. It offers foreign investors an alternative jurisdiction for operations, with tax holidays, flexible labor rules, a Common Law-based legal system, and flexibility to carry out transactions in any currency. The GOK recommends that foreign investors use AIFC for contracts with Kazakhstani businesses.

[339]Constitutional Law of the Republic of Kazakhstan. (2015, December 7). *On the Astana International Financial Center*.

4.2.3. Bilateral investment treaties of Kazakhstan

Kazakhstan has concluded bilateral treaties on the encouragement and mutual protection of investments with 49 countries[340]. Kazakhstan is also a party to several multilateral treaties concerning foreign investments (for example, the *Energy Charter*[341]). Kazakhstan's BITs typically define 'investment' broadly, although some of the more recent BITs (eg, with Singapore, UAE) expressly exclude certain types of assets (eg, natural resources, commercial loans) from the definition. Kazakhstan's investment treaties (BITs) define foreign investors as natural persons and entities, including public entities. Comparative analyses of BITs show that the involvement of public entities in a BIT is a common practice in comparison with other host countries. However, most Kazakhstan's BITs do not contain public entities in the scope of foreign investors, whereas some of Kazakhstan's BITs expressly included public entities as foreign investors. For example, Kazakhstan's BITs describe as a "public institution, corporations, partnerships, foundations and associations" "government owned or controlled."[342]. Public entities in some of Kazakhstan's recent BITs have continued to be included in the scope of foreign investors[343].Expropriation is an indispensable part of all investment treaties. Kazakhstan's BITs provide foreign investors protection against expropriation. The scope of such provisions includes direct and indirect expropriations. Some of Kazakhstan's BITs describe no explicit definition relating to indirect expropriations. As a rule, the relevant terms relating to indirect expropriation, in the context of BITs, will be evaluated by arbitral and tribunal reference to their meaning under international law. Expropriation is not illegal on the condition of the existence of international standards (public purpose, non-discrimination and compensation). From this point of view, Kazakhstan's BITs are in line with international law standards. Protection from expropriation is frequently excluded from public purpose and national interest in Kazakhstan's BITs. The scope of national interest may be problematic due to its broad definition. There is no guideline to define the general principle of national interest in Kazakhstan's legislation. The law is less clear about cases of indirect expropriation where the investor still holds the property title but where government measures have an impact on the property that is tantamount to expropriation. The lack of clear statutory protections against

[340] UNCTAD. (n.d.). *International Investment Agreements Navigator: Kazakhstan*. Investment Policy Hub. Retrieved May 3, 2025, from https://investmentpolicy.unctad.org/international-investment-agreements/countries/107/kazakhstan(Retrieved on 10 March 2025).
[341] Energy Charter Secretariat. (1994). *The Energy Charter Treaty*. Signed December 1994, entered into force April 1998. https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/IEC_EN.pdf(Retrieved on 10 March 2025).
[342] Kazakhstan–Japan Bilateral Investment Treaty, Art. 1.3, 2014.
[343] Kazakhstan–Estonia Bilateral Investment Treaty, Art. 1.b, 2014.

indirect expropriation may therefore cause instances to arise where regulatory changes create grounds for license or permit revocations, denying businesses recourse to compensation.

4.2.4. Settlement of Investment disputes

Investment disputes can be resolved through negotiations, including with the involvement of experts, or in accordance with the dispute resolution procedure previously agreed by the parties. If it is impossible to resolve investment disputes through negotiations, disputes are resolved in accordance with international treaties and legislative acts of the Republic of Kazakhstan in the courts of the Republic of Kazakhstan, as well as in international arbitrations determined by agreement of the partiesю.International investment agreements to which Kazakhstan is party typically provide for the following substantive protections, subject to restrictions relating to public interest and sensitive sectors of the economy: *fair and equitable treatment (FET);expropriation (direct and indirect) protections; most-favoured-nation (MFN) treatment; non-discrimination/national treatment; full protection and security; and umbrella clause***.** Kazakhstan is a party to the 1958 New York Convention "On the Recognition and enforcement of foreign arbitral awards". Kazakhstan has signed the Convention on the Settlement of Investment Disputes July 23, 1992, and according to the official case-database of ICSID Convention Kazakhstan[344] participated as a defendant in 14 cases initiated by the foreign investors. Kazakh claimants (with foreign investments) participated in five cases, including against the Republic of Kazakhstan. Under the UNCITRAL rules Kazakhstan and Kazakh nationals participated in five cases regarding investment disputes. Also, under Stockholm Chamber of Commerce Kazakhstan participated as a defendant in three cases.

4.2.5. Case law of Kazakhstan

Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan[345] a majority tribunal at the International Centre for Settlement of Investment Disputes (ICSID) awarded Caratube International Oil Company LLP (Caratube) USD 39.2 million plus interest for the unlawful expropriation of its oil contract rights by Kazakhstan. The claimants were Caratube and its majority shareholder, Mr. Devincci Salah Hourani, a U.S. national. The dispute arose from an oil exploration and production contract concluded between the Kazakh Ministry of Energy and Mineral Resources and Consolidated Contractors in 2002. After a few months, CCC assigned the contract to Caratube. The contract provided for an

[344] United Nations. (1958, June 10). *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).* https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards (Retrieved on 10 March 2025)

[345]Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan, ICSID(Retrieved on 10 March 2025). Case No. ARB/13/13, Award (Sept. 27, 2017).

exploration phase of five years (with the possibility of two extensions) and a subsequent production phase. The exploration phase was extended once, in 2007. The dispute gave rise to several proceedings. The Caratube I ICSID case under the Kazakhstan–United States bilateral investment treaty (BIT) was dismissed for lack of jurisdiction and ultimately upheld in annulment proceedings. The present claims for expropriation, fair and equitable treatment (FET), full security and protection, among others relied on the contract, which includes an arbitration clause, and on Kazakhstan's Foreign Investment Law, which contains substantive protections. The tribunal rejected the claimants' request for lost profit and opportunity, holding that both claims were uncertain and speculative. It also rejected the claims of moral damage due to the alleged harassment that led to humiliation and loss of reputation as claimants failed to meet the burden of proof. The majority awarded sunk investment costs of USD 39.2 million plus interest from the January 2008 termination onwards at the LIBOR rate plus 2 per cent, compounded semi-annually. Each party was left to bear its own legal fees, with arbitration costs split equally.

In the UNCITRA case of Worldwide Minerals v. Republic of Kazakhstan[346]*, dispute arose out of investments made by the claimants Rumeli Telekom* A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S., both incorporated under Turkish laws in the mid-1990's. Rumelijoined with a local Kazakh in a joint venture called KaR-Tel. The aim of this joint venture was to bid for a GSM mobile telecommunications license in Kazakhstan. When the license was obtained, the joint venture received several perks including a five-year tax holiday. The dispute itself, however, involved the termination of an investment contract that had subsequently led to the redemption of the investor's shares in telecommunications enterprise. Thus, the tribunal awarded the claimants US$125 million plus interest for violating the "fair and equitable treatment duty imposed by the MFN clause contained in Article II, para. 1 of the Turkey-Kazakhstan-BIT and for the expropriation of the claimants' investments without following the requirements set forth in Article III, para.1 of the Turkey-Kazakhstan BIT. Thus, the tribunal awarded the claimants US$125 million plus interest for violating the "fair and equitable treatment duty imposed by the MFN clause contained in Article II, para. 1 of the Turkey-Kazakhstan BITS and for the expropriation of the claimants' investments without following the requirements set forth in Article III, para. 1 of the Turkey-Kazakhstan BITs.[347]*Case of Ascom Group S.A., Anatolie Stati, Gabriel Stati, and Terra Raf Trans Traiding Ltd v. Republic of Kazakhstan*[348] raised the tension

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[346] World Wide Minerals Ltd. v. Republic of Kazakhstan, UNCITRAL Arbitration, Award (Dec. 22, 2010)

[347]Republic of Turkey & Republic of Kazakhstan. (1992). *Bilateral investment treaty between Turkey and Kazakhstan*. United Nations Treaty Series. https://treaties.un.org/ (Retrieved on 10 March 2025).

[348] Ascom Group S.A., Anatolie Stati, Gabriel Stati, and Terra Raf Trans Traiding Ltd v. Republic of Kazakhstan SCC Case No. V116/2010.

between environmental and public interest regulation and investor protection under international law. The case is a significant investment arbitration matter conducted under the Energy Charter Treaty (ECT), with arbitration administered by the Stockholm Chamber of Commerce (SCC). The government argued that the investors had: 1) Engaged in transfer pricing manipulation.2) Caused environmental harm through unsafe production practices. The *Stati v. Kazakhstan* arbitration is a landmark case in international investment law, with enduring consequences for energy disputes, arbitral award enforcement, and the legitimacy of the ISDS system. It underscored the importance of accurate financial disclosures, due diligence, and the challenges of balancing investor rights with state regulatory autonomy. The investors claimed this amounted to: *1)* Unlawful expropriation.*2)* Denial of fair and equitable treatment (FET). *3)*Breach of the Energy Charter Treaty obligations. The tribunal found that Kazakhstan had breached its obligations under the ECT, particularly by failing to accord fair and equitable treatment and by unlawfully expropriating the claimants' investments. The tribunal awarded the claimants USD 497.7 million, including damages and interest. *Case - AES Corporation v. Republic of Kazakhstan*[349] *where* AES, through its subsidiaries (AES Kazakhstan), invested in Kazakhstan's electric power generation and distribution sector in the late 1990s and early 2000s, acquiring controlling interests in several regional energy companies. This case is often cited alongside *AES v. Hungary, ICSID Case*[350], where similar issues of electricity pricing, public interest regulation, and legitimate expectations were examined. The dispute arose when the Kazakh energy regulator introduced changes in the electricity pricing system, including: 1) Tariff controls. 2) Pricing caps. 3) Revenue limitations. AES claimed that the new rules undermined its profitability and its legitimate expectations as a foreign investor. Kazakhstan's regulatory measures amounted to unlawful expropriation. The state violated the Fair and Equitable Treatment (FET) standard under *the U.S.–Kazakhstan BIT*[351].Claimed over $100 million in damages, Kazakhstan argued that: "The changes were part of lawful regulatory reforms aimed at consumer protection and market stability. AES had no legitimate or fixed expectation of unchanging tariff regimes in a regulated public utility sector." The tribunal dismissed all AES's claims, concluding that: "*Kazakhstan's actions were within its sovereign right to regulate a public service sector. No breach of fair and equitable treatment occurred because the regulatory changes were transparent, foreseeable, and applied fairly. There was no expropriation, as AES maintained*

[349] ICSID Case No. ARB/10/16, AES Corporation v. Republic of Kazakhstan.
[350] AES Summit Generation Limited and AES-Tisza Erömü Kft v. Republic of Hungary, ICSID Case No. ARB/07/22, Award (Sept. 23, 2010).
[351]United States of America & Republic of Kazakhstan**.** (1992). *Treaty between the United States of America and the Republic of Kazakhstan concerning the encouragement and reciprocal protection of investment*. Signed May 19, 1992; entered into force January 12, 1994.

control and continued to operate. The investor should have anticipated regulatory changes in a heavily regulated and essential sector like electricity". For international law: Clarifies that not every economic loss or regulatory change amounts to a treaty breach. Reaffirms the balance between investor protections and the right of states to regulate in the public interest. Demonstrates how tribunals evaluate "legitimate expectations" within the context of public utility sectors. For Kazakhstan: Marked a significant legal win, reinforcing its ability to regulate the energy sector in line with public interest. Highlighted the importance of transparent and consistent policy-making to avoid future investor-state disputes. Strengthened its international reputation for lawful dispute resolution and regulatory sovereignty.

4.3. Case study of Kyrgyzstan

The Kyrgyz Republic (Kyrgyzstan) is a land-locked country in the north-east of the Central Asia with a land area of 199 951 square kilometers. The country was part of the former Soviet Union until 1991, when it became independent and entered a period of transition (with economic liberalization, market-led economy and democratic structures/processes). Kyrgyzstan is a mountainous country, almost 90% of the total territory is located higher than 1 500 meters above sea level and a population of over 6.6 million people, two-thirds of whom live in rural areas (about 4.3. million people) and urban (about 2.2. million people)· Economic growth is evident mainly in urban areas, driven by the expanding service, housing and construction sectors. They depend heavily on crop and livestock production, although remittances and welfare are also important income supplements[352]. Real Gross Domestic Product (GDP) contracted by 8.6 percent in 2020 because of the COVID-19 outbreak, the policies to limit its impact, and the domestic political turmoil. It was classified by the World Bank as a lower-middle-income country ($1,046 to $4,095) and chronic poverty, related food insecurity, malnutrition, climatic and environmental risks, gender inequalities, disparities in regional economic development and reliance on remittances are major challenges. Foreign investors in the Kyrgyz Republic have mostly been interested in the country's wealth of mineral resources. FDI has historically targeted mining-related sectors, finance, and petroleum product manufacturing, the new government's stated commitment to develop the country's digital economy and to enhance regional trade integration presents numerous long-term investment opportunities in agribusiness and food processing, Information and Communication Technologies (ICTs) infrastructure, energy, and transit and customs. Also, according to data from the National Statistical Committee, FDIs are mostly

[352]Food and Agriculture Organization of the United Nations. (2021). *Country programming framework for the Kyrgyz Republic 2021–2025*. https://www.fao.org/documents/card/en/c/cb3406en(Retrieved on 10 March 2025).

directed towards the mining industry, followed by manufacturing and financial intermediation and insurance. The main investing countries are Russia, Kazakhstan, China, Malta (where many Russian investors reside), and the Netherlands. According to preliminary figures from the National Statistics Committee, the inflow of foreign direct investment in 2022 compared to 2021 increased by 4% and amounted to USD 1.046 billion. The inflow exceeded the outflow rate by USD 290.8 million[353].Green investment is another promising area for potential investors as the Kyrgyz government increased its commitment to fighting climate change and sustainable development. In 2021, the Kyrgyz Republic joined the Global Methane Pledge and unveiled revised Nationally Determined Contributions (NDCs), which also opened many opportunities for foreign firms seeking to invest in industries such as hydropower, energy efficiency, and methane abatement. The Kyrgyz Republic is among the easiest countries in which to register property, ranking 7th out of 190 countries (ranked 8th in 2017, 2018 and 2019) in the *World Bank's 2020 Doing Business report*. Special legal regimes have been established in the free economic zones (FEZ) that provide benefits in the field of external economic and business activity.[354]

Kyrgyz Republic joined:

- In 2014, the Kyrgyz Republic joined the Russian-led Eurasian Economic Union, which consists of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic and the Russian Federation. As part of its integration into the Union, the Kyrgyz Republic reached an agreement with the Russian Federation to establish the Russian Kyrgyz Development Fund, which approved USD 261.5 million in credit in 2017. As a member of the Eurasian Economic Union, the Kyrgyz Republic has preferential trade access to markets in Kazakhstan and the Russian Federation, and it borders China.
- Kyrgyz Republic in support of its accession to the WTO in 1998. The Kyrgyz Republic accepted the 2005 Protocol Amending the TRIPS Agreement on 6 February 2016 and the 2014 Protocol concerning the Trade Facilitation Agreement on 6 December 2016. The Kyrgyz Republic is a member of several groups in the WTO, including the group of Article XII Members and the group of low-income economies in transition.

Many changes that occurred in the economy in 1999-2018 affected the situation with the state budget and external public debt. The country's economic development is characterized by large external borrowings, the funds from which were used to finance both current expenses and investment projects. To ensure both macroeconomic stability and attract private investment, the

[353] National Statistical Committee of the Kyrgyz Republic. (2023). *Foreign direct investment statistics, 2022*. http://www.stat.kg (Retrieved on 10 March 2025).

[354] World Bank. (2020**).** *Doing Business 2020: Comparing business regulation in 190 economies*. World Bank Group. https://www.doingbusiness.org/(Retrieved on 10 March 2025).

state tried to provide maximum opportunities to increase and diversify exports. The government has intensified its efforts to create conditions in foreign markets that are favorable for the export of products of Kyrgyz enterprises and to reduce the costs of their transit through third countries. For this purpose, it was planned to fully use the potential associated with the republic's membership in the WTO. The priority task in the field of foreign economic relations was regional cooperation, where it was necessary to achieve a significant improvement in the export capabilities of local enterprises. The growth of exports would also be facilitated by the development of transport infrastructure, marketing and information support for local export-oriented enterprises[355].Improvement of the investment climate is also a key objective of the National Development Strategy of the Kyrgyz Republic 2018-2040. The Government aims to considerably improve the investment climate to make the country an attractive investment destination that has a competitive advantage. *The Kyrgyz Republic's* Strategy-2040 *and Development Programme*[356] both mention diversification of the industrial sector as key priorities, and name textiles and processed milk products among target sectors.

4.3.1 Legal investment framework of the Kyrgyz Republic

The Kyrgyz Republic maintains an open investment regime, with very few formal entry or ownership restrictions and no formal screening mechanism[357]. The legal framework for foreign investment mostly corresponds to international standards. The Kyrgyz Republic's main legal framework for *FDI remains the "2003 Law on Investments*[358]*,"* which reflects multiple amendments up until September 2021. The Investment Law provides protection against adverse changes in the investment, tax and customs legal framework for a 10-year period following investment. The Foreign Investment Law guarantees national treatment and non-discrimination for foreign investors. Officially, Kyrgyzstan does not restrict investment in any sector, but certain limits do exist for the foreign ownership of land and real estate. It aims to develop a favourable investment climate and attract and stimulate domestic and foreign investment by providing a fair legal

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[355]Government of the Kyrgyz Republic. (2021**).** *Updated Nationally Determined Contributions (NDCs)*. UNFCCC. https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Kyrgyzstan%20First/Kyrgyzstan_NDC_2021.pdf (Retrieved on 10 March 2025).

[356]Government of Kyrgyzstan. (2018). *Republic's strategy-2040 and development programme*. https://adam.edu.kg/media/uploads/2022/04/15/national-strategy-of-kyrgyz-republic-2018-2040.pdf (Retrieved on 10 March 2025).

[357] UNCTAD, Investment Policy Review: Kyrgyzstan, 2016 < https://unctad.org/en/PublicationsLibrary/diaepcb2015d3_en.pdf> (Retrieved on 10 March 2025).

[358]Law of the Kyrgyz Republic. (2003, March 27). *On investments in the Kyrgyz Republic*.

regime and guarantees of protection of investments.[359] First, the Law sets out legal guarantees for foreign investors, including national treatment and non-discrimination; the right of export or repatriation of investments, profits, property, and information; guarantees of protection with respect to expropriation of investments and compensation of losses; freedom of currency transactions; free access to open information; investors' economic independence and recognition of their rights; and rights under concession contracts. Second, the Law provides for the establishment of a state body to facilitate and attract investment. Third, it contains provisions on labour legislation, particularly the employment of foreign workers by foreign investors. Finally, the Law contains provisions on the settlement of investment disputes, including the possibility of recourse to international arbitration[360].In specific cases, the authorities limit participation through licenses and other regulatory requirements. Some of these laws directly or indirectly regulate investments in the Kyrgyz Republic such as Licensing law[361], Joint-Stock Companies law[362], Mining law[363], Free Economic Zones law[364], Tax Code[365], Land Code[366], Customs Code[367], Civil Code[368], Public-Private Partnership law[369].

4.3.2. Basic investment regulation concept and its protection

Investments mean tangible and intangible assets, in particular: money; movable and immovable property; property rights (mortgages, liens, pledges and others);stock and other forms of participation in a legal entity; bonds and other debenture liabilities; non-property rights (right to intellectual property including goodwill, copyrights, patents, trademarks, industrial designs, technological processes, trade names and know-how);any right to activity based on a license or in other form given by State agencies; concessions based on Law including concessions for search, development, mining or exploitation of natural resources; profit and revenue received from investment and reinvested on

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[359] Syrgakova, Z. A. (2016, February). *Historical aspects and development of investments in Kyrgyzstan*. Tauride Scientific Observer. Retrieved from http://www.tavr.science (Retrieved on 10 March 2025).
[360] Problems of investment attractiveness of the Kyrgyz Republic. (2021, September 3). *Modern Management Technology*, (3), Article #9601. ISSN 2226-9339. Retrieved from https://sovman.ru/article/9601/(Retrieved on 10 March 2025).
[361] Law of the Kyrgyz Republic. (2013, October 19). *On the licensing and licensing system*, No. 195.
[362] Law of the Kyrgyz Republic. (2003, March 27). *On joint-stock companies*, No. 64.
[363] Law of the Kyrgyz Republic. (2018, May 19). *On the bowels*, No. 49
[364] Law of the Kyrgyz Republic. (2023, February). *On free economic zones.*
[365] Law of Kyrgyz Republic, Tax Code, January 18, 2022 No. 3
[366] Law of Kyrgyz Republic, Land Code, No. 45 of June 2, 1999
[367] Law of the Kyrgyz Republic on customs regulation No. 52, April 24, 2019. Law of the Kyrgyz Republic, No. 98 About public-private partnership, August 11, 2021
[368] Civil Code of Kyrgyz Republic No. 15 of May 8, 1996 Civil Code of the Kyrgyz Republic, No. 15, adopted May 8, 1996.
[369] Public-Private Partnership Law of Kyrgyz Republic, No. 98 dated August 11, 2021
Law of the Kyrgyz Republic No. 98 on Public-Private Partnership, adopted August 11, 2021.

the territory of the Kyrgyz Republic; other forms of investments that are not forbidden by the legislation of the Kyrgyz Republic[370].

Direct Investments mean the holding, acquisition by an investor of not less than one third percent of stock and stockholders votes in joint stock companies registered or newly created on the territory of the Kyrgyz Republic, or any equivalent of such participation in business entities of other types and all further operations between an investor and a company which is invested in. *Investor* means a subject of investment activity making his own, borrowed or attracted contributions as direct investments. *Foreign investors mean* any natural person or legal entity which is not a domestic investor making contributions to the economy of the Kyrgyz Republic, including: Natural person who is a foreign citizen and legal entity. *Investments* shall not be subject to expropriation (nationalization, requisition, or other equivalent measures, including actions or commissions by the state bodies of the Kyrgyz Republic which have resulted in forced withdrawal of investors' funds or in their deprivation of an opportunity to gain on the investments' results). The compensation shall be equivalent to the fair market price of the expropriated investment or its part, including lost profit, fixed on the date of decision on expropriation. The compensation shall be realizable, paid in a freely convertible currency within the terms agreed by parties. Investors shall be obliged to pay for its employees, who are the citizens of the Kyrgyz Republic, individuals without citizenship, the deductions on social insurance and provision established by the Law[371].*National Investments Agency under the President of the Kyrgyz Republic*[372] is a governmental agency promoting foreign investments and assisting international companies in finding business opportunities in the Kyrgyz Republic. The primary objectives of the National Agency are to attract and promote investment inflow to the national economy, to assist existing and potential exporters in promoting their products to overseas markets, as well as to develop mechanisms for public-private partnership. *The Institute of the Business Ombudsman* was created in January 2019, as an independent non-state body, funded by external donor sources, to protect the rights, freedoms, and legitimate interests of business entities, both local and foreign.

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[370] Law on Investments, 2003
Law of the Kyrgyz Republic on Investments, adopted 2003. https://investmentpolicy.unctad.org/investment-laws/laws/111/kyrgyzstan-investment-law(Retrieved on 10 March 2025).

[371]Syrgakova Z.A., Historical aspects and development of investments in Kyrgyzstan Syrgakova, Z. A. (2016, February). *Historical aspects and development of investments in Kyrgyzstan*. Tauride Scientific Observer. Retrieved from http://www.tavr.science(Retrieved on 10 March 2025).

[372] National Investments Agency under the President of the Kyrgyz Republic National Investments Agency under the President of the Kyrgyz Republic. (n.d.). *About the National Agency*. Retrieved May 3, 2025, from https://invest.gov.kg/about-national-agency/about/(Retrieved on 10 March 2025).

4.3.3. Bilateral investment treaties of the Kyrgyz Republic

Kyrgyz Republic has entered into a number of bilateral agreements on mutual support, encouragement and protection of investment (capital expenditure). Such agreements have been signed with several countries such as United States, Armenia, Azerbaijan, Belarus, China, Finland, France, Georgia, Germany, Hungary, India, Indonesia, Iran, Kazakhstan, the Republic of Korea, Lithuania, Malaysia, Moldova, Mongolia, Pakistan, Sweden, Switzerland, Tajikistan, Turkey, United Kingdom, Ukraine, and Uzbekistan. Kyrgyzstan's BITs include general principles of foreign investment in the country, like typical BITs. There are some similar provisions in Kyrgyzstan's BITs compared to Kazakhstan's BITs. One shared provision is the expiry of a certain amount of time before initiating international arbitration (typically, six months). The vast majority of Kyrgyzstan's BITs also contain territoriality requirements. Kyrgyzstan's investment treaties provide national and most-favored nation treatment. Some Kyrgyzstan BITs specify or limit the scope of national and mostfavored nation clauses. Kyrgyzstan guarantees protection against expropriation in the scope of its BIT. Such provisions provide no explicit definition relating to indirect expropriation. Instead of using this term, it is referred to as "equivalent to nationalization and expropriation." *Valeri Belokon v. Kyrgyz Republic*[373] is good example by which to evaluate Kyrgyzstan's indirect expropriation practice in the light of a BIT. The claimant alleged that Kyrgyzstan authorities restricted the operation of foreign investment (Manas Bank assets) without a legitimate legal reason, which would be a violation of the expropriation provision in Article 5 of *Kyrgyzstan–Latvia BIT*[374]. In response to the claimant's allegations, Kyrgyzstan argued that administration of Manas Bank is examined in the scope of regulatory exercise of the policy powers of the Kyrgyz Republic. The tribunal pointed out that violation of the maximum time limit related to administrative control defined in Kyrgyzstan can be considered expropriation of investment. One of the conditions of expropriation in the scope of Article 5 of the *Kyrgyzstan–Latvia BIT* is public purpose. The tribunal noted that Kyrgyzstan's temporary administrative regime is not consistent with public purpose and that this administrative regime focused on scrutinizing suspicious wrong doing of certain political authorities.

4.3.4. Settlement of investment disputes

[373] Valeri Belokon v. Kyrgyz Republic, UNCITRAL, Award, Nov. 4, 2019 Belokon, V. v. Kyrgyz Republic, UNCITRAL Arbitration, Award (Nov. 4, 2019)

[374] Kyrgyzstan - Latvia BIT, 2008 Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Latvia for the Promotion and Reciprocal Protection of Investments, Kyrgyzstan–Latvia, entered into force Apr. 11, 2008.

The investment dispute shall be resolved in accordance with any applicable procedure agreed in advance between an investor and authorized state bodies of the Kyrgyz Republic. If such agreement is not reached the investment dispute between authorized state bodies of the Kyrgyz Republic and investor shall be resolved by conducting consultation between parties: 1) by applying to the International Center for Settlement of Investment Disputes (ICSID) pursuant to the Convention on settlement of investment disputes between states and citizens; 2) by applying to arbitrage or an international temporary arbitral tribunal (commercial court) formed in accordance with the arbitration rules of United Nations Commission for International Trade Law[375]. While foreign investors claim Article 18 contains the Kyrgyz Republic's consent to arbitration under either the ICSID Convention or UNCITRAL rules, the government argues each side must first seek consent of the other to bring the dispute to arbitration. The Code of Arbitration Procedures allows for international and domestic arbitration of disputes. Parties can agree to any judicial institution, including third-party courts within or outside of the Kyrgyz Republic, or domestic or international arbitration. If the parties fail to settle the dispute within three months of the date of the first written request, any investment dispute between an investor and the public authorities of the Kyrgyz Republic will be subject to settlement by the judicial bodies of the Kyrgyz Republic. Any of the parties may initiate a settlement by recourse to the International Centre for Settlement of Investment Disputes under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States or arbitration or a provisional international arbitration tribunal (commercial court) established under the arbitration procedures of the UNCITRAL. Recognition and enforcement of international arbitration awards in the Kyrgyz Republic is carried out in accordance with the New York Convention and Kyrgyz laws. However, there are a number of features related to the recognition and enforcement of arbitration awards. Kyrgyz law expands a list of the grounds for refusal of recognition and enforcement of foreign arbitration awards in comparison with a list of the grounds referred to in the New York Convention. Additionally, the Kyrgyz government does not consistently recognize an investor's right to seek international arbitration based on its interpretation of the domestic 2003 Law on Investments (see Laws and Regulations on Foreign Direct Investment)[376].

4.3.5. Case law of Kyrgyz Republic

[375] Kyrgyz Republic. (2003). *Law on Investments of the Kyrgyz Republic*, Article 18. https://investmentpolicy.unctad.org/investment-laws/laws/111/kyrgyzstan-investment-law (Retrieved on 10 March 2025).

[376] U.S. Department of State. (2023). *2023 Investment climate statements: Kyrgyz Republic*. https://www.state.gov/reports/2023-investment-climate-statements/kyrgyz-republic/ (Retrieved on 10 March 2025).

Kumtor Gold Company case[377]: In May 2021, the Kyrgyz government raided the offices of Kumtor Gold Company, a local subsidiary of Canadian mining company Centerra Gold, and fined the Canadian firm $3 billion for alleged environmental damages caused by running the Kumtor gold mine. In September 2021, the London Bullion Market Association suspended Kyrgyzaltyn, the state gold refiner, from its Good Delivery List over issues concerning delivery and the potential for fraud, while the sale of Kyrgyz gold still suffers transparency issues. In April 2022, the Kyrgyz government and Centerra reached a conditional agreement by which the Kyrgyz government will take full control of the mine and give up its 26 percent stake in Centerra.In the case *Petrobart v. Kyrgyz Republic*[378] brought under the Energy Charter Treaty (ECT) under the auspices of the Arbitration Institute of the Stockholm Chamber of Commerce, the arbitral tribunal had to decide whether a contract for the sale of gas condensate, which did not involve any transfer of money or property as capital in a business, qualified as an investment under the ECT. It should be pointed out that in a previous action brought by Petrobart against the Kyrgyz Republic under Kyrgyz Foreign Investment Law, an UNCITRAL Tribunal declined jurisdiction. In order to appreciate whether Petrobart's right to payment for goods delivered constituted an investment the tribunal turned to Article 1(6) of the ECT. The tribunal found that relevant items of the provisions were Article 1(6)c) which covers claims to money and claims to performance pursuant to contract having an economic value and associated with an investment and Article 1(6)f) relating to any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector. "Economic Activity in the Energy Sector" is in Article 1(5) defined as "economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex NI, or concerning the distribution of heat to multiple premises". The Tribunal found that a right conferred by contract to undertake an economic activity concerning the sale of gas, including the right to be paid for such a sale, is an investment according to the Treaty.In *Case Itera International Energy LLC v. Kyrgyz Republic*[379] where Investor: Itera International Energy LLC, a U.S. company and part of the Russian Itera Group, engaged in gas supply. Legal Basis: Kyrgyz Republic–USA Bilateral Investment Treaty (BIT) and UNCITRAL Arbitration Rules. Violation of the fair and equitable treatment (FET) standard. The Kyrgyz Republic used state

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[377]Centerra Gold Inc. and Kumtor Gold Company v. Kyrgyz Republic (I), PCA Case No. 2007-01/AA278 Centerra Gold Inc. & Kumtor Gold Company v. Kyrgyz Republic (I), PCA Case No. 2007-01/AA278 (Perm. Ct. Arb.).

[378] Petrobart v. Kyrgyz Republic, Stockholm Chamber Case No. 126/2003, Final Award, 29 March 2005 Petrobart Ltd. v. Kyrgyz Republic, SCC Case No. 126/2003, Final Award (Mar. 29, 2005).

[379] UNCITRAL Arbitration (2003–2008), Itera International Energy LLC v. Kyrgyz Republic.

control over Kyrgyzgaz to delay or block payment. Requested compensation of $27 million in damages. In the late 1990s and early 2000s, Itera entered into gas supply contracts with Kyrgyzgaz, the state-owned gas utility of Kyrgyzstan. Itera claimed that: It supplied natural gas to Kyrgyzgaz under multiple agreements. The government of Kyrgyzstan failed to ensure payment. Kyrgyz-gaz accumulated significant debts, and Itera received no effective recourse. The core of the dispute was Kyrgyzgaz's non-payment, and Itera argued the state was responsible under international investment law. The government argued that Itera's claim was purely commercial, not an "investment" under the BIT. Claimed the dispute should be resolved under commercial contract law, not investor-state arbitration. Emphasized that the state was not directly liable for the obligations of Kyrgyzgaz, which was a separate legal entity[380]. The UNCITRAL Tribunal dismissed Itera's claims. The tribunal concluded: The gas supply contracts did not qualify as an "investment" under the Kyrgyz–U.S. BIT. Itera's activities were commercial sales transactions, not long-term investment. The state was not responsible for Kyrgyzgaz's contract breaches, as no sufficient evidence of state interference or control was presented.

- For International Investment Law: Clarifies the limits of investment treaty protections for purely commercial transactions. Establishes that sale of goods/services, even to state-owned entities, may not constitute a protected investment under BITs. Reinforces the principle of corporate separation between the state and SOEs (state-owned enterprises), unless proven otherwise.
- For Kyrgyz Republic: Demonstrated the state's capacity to defend against treaty abuse. Highlighted the need to clearly define investment activities in BITs and contracts to avoid gray zones in legal interpretation.

4.3.6. Challenges to investment regulations in the Kyrgyz Republic

According to the World Bank study "Investment climate in the Kyrgyz Republic - views of foreign investors"[381], obstacles to attracting investment are:

- Access to the market. Despite significant improvements in regulatory legislation, procedures for registering a business, obtaining permits and licenses, entering the market of the Kyrgyz Republic still imposes a certain burden on foreign investors.

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[380] UNCTAD. (n.d.). *Itera International Energy LLC v. Kyrgyz Republic*. Investment Dispute Settlement Navigator. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/126/itera-v-kyrgyz-republic(Retrieved on 10 March 2025)

[381] World Bank. (2015). *Investment climate in the Kyrgyz Republic: Views of foreign investors*. World Bank Group.

- Access to the information. Some questions remain regarding access to information about the requirements for registering for a company in the Kyrgyz Republic.
- Investor protection and confidence. Both current and past investors cited corruption and low transparency and predictability of government actions as the main obstacles to doing business in the Kyrgyz Republic. Public order and security in the country is another important issue for investors. Investor protection and confidence are low. Investors also fear possible unfair expropriation and confiscation of their assets in the country.
- Investor complaints and dispute resolution. Most investors did not file a formal complaint due to their dissatisfaction with the actions of government authorities. They question the transparency and fairness of the process.
- Investment incentives. Awareness of current incentives is low. Half of the investors surveyed are aware of tax incentives, and only 26% of investors are aware of non-tax incentives offered in the Kyrgyz Republic.
- Access to the information. 43% of investors who had to close their business in the Kyrgyz Republic reported great difficulty in obtaining clear, comprehensive and complete information about the relevant requirements.
- Corruption. The most important limiting factors for doing business in the Kyrgyz Republic, according to respondents, are corruption (80%), low transparency and predictability of government actions (79%), public order and security (62%).
- Relations with the State. Most complaints against government agencies relate to 1) lack of transparency (for example, lack of unclear criteria for applying for or obtaining a license; frequent changes in legislation without proper consultation and notification); 2) unpredictable, arbitrary and inconsistent government actions (for example, inconsistent application of the law by various government agencies)[382].

Also, the financial market has problems that hinder the growth of investments[383]:

- Limited access to capital is a major constraint for the private sector. This is a serious obstacle to expanding exports, competition in international markets, and job creation.
- Interest rates are among the highest in Central Asia and pose one of the most significant constraints for borrowers. Interest rates remain high due to several factors, the most important of which are: (i) limited competition in the banking sector, (ii) lack of adequate

[382] World Bank. (2020). *Kyrgyz Republic country economic update: Strengthening the foundations for economic recovery*. https://www.worldbank.org(Retrieved on 10 March 2025).
[383] International Monetary Fund. (2023). *Republic of Kyrgyzstan: Financial system stability review*. https://www.imf.org(Retrieved on 10 March 2025).

financial information on companies due to weak accounting standards and practices; (iii) weaknesses in credit bureaus; (iv) weak risk management and credit assessment skills in financial institutions; (v) low public confidence in banks, which increases the cost of attracting deposits; and (vi) a weak judicial system leading to poor contract enforcement, which increases lending risks[384].

- Insufficient protection of investor rights and low public awareness of investment issues in the capital market.
- Lack of attractive financial instruments. Corporate securities are mainly represented by shares; the corporate bond market is developing weakly. There is no legal framework regulating the circulation of mortgage, municipal and derivative securities. The supply of financial products for SMEs is particularly limited due to legal restrictions as well as weak banking sector capacity. Factoring (that is, the purchase of commercial receivables to provide short-term financing to small suppliers) does not exist, although all commercial banks and some non-bank institutions have licenses allowing factoring.
- Leasing is also used very little for equipment financing as it is taxed unfavorably compared to borrowing credit. Imported equipment purchased on credit is not subject to value added tax (VAT), while imported equipment that is leased is subject to VAT. Moreover, there are inadequate export finance and financial instruments to finance start-ups and innovations due to weak and time-consuming credit assessment skills in the banking sector and lack of modern credit assessment tools such as credit scoring.[385]
- Collateral requirements, especially the registration and enforcement of lines, are costly and time-consuming. Most loans are secured by real estate, although agricultural land is rarely accepted as collateral.
- Many small firms are considered unbackable due to their weak management skills and poor financial reporting. These firms have low levels of technical and managerial skills, outdated technology, low awareness of financial products, and low trust in the financial system.
- Insufficient transparency of the securities market. The current situation with the disclosure of information by issuers and professional participants in the securities market does not satisfy the information requirements of investors.

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[384] Asian Development Bank. (2022). *Kyrgyz Republic: Financial sector assessment*. https://www.adb.org(Retrieved on 10 March 2025).
[385] OECD. (2021). *SME and entrepreneurship policy in the Kyrgyz Republic 2021: Assessment and recommendations*. https://www.oecd.org(Retrieved on 10 March 2025).

- Imperfect securities legislation. There are gaps in the current legislation related to the issue of securities, regulation, disclosure of information, etc., which sometimes leads to conflict situations.

4.4. Case study of Uzbekistan

Uzbekistan is a populous double land-locked country in the middle of Central Asia with its population exceeding 27 million people, it is the biggest market among other Central Asian countries. Uzbekistan has the most diversified economy in Central Asia, with significant mineral and metals wealth, including gold, as well as textiles and services, and the largest population in the region.[386] Despite 2020's challenges, foreign direct investment (FDI) inflows continued about $6.6 billion in 2020 compared to $9.3 billion in 2019 which is undoubtedly the result of pre-pandemic reforms. Direct investment (FDI) in 2022 by about 27% to $8 billion, of which the manufacturing industry accounted for 48% and the energy industry – 12%. While the government encouraged investors to develop processing and manufacturing industries in support of its import-substitution and export diversification policy, there was a notable increase of FDI in the service, retail, and banking sectors. Uzbekistan is not currently a member of the WTO[387]. It applied for membership in 1994, but the negotiations lost momentum by 2005. Uzbekistan is not a member of either the Eurasian Economic Union (EAEU) or the Collective Security Treaty Organization (CSTO). The environment for foreign investors in Uzbekistan today is radically different from what it was during the closed situation under President Karimov, when currency controls and expropriation were the norm. Under President Shavkat Mirziyoyev, who came to office at the end of 2016, the government has embarked on a rapid and extensive reform programme. Uzbekistan has made, in particular since 2017, important reforms to improve the business environment, including by simplifying and digitalizing procedures. Business registration can now be done online in 20 minutes, using the automated system for registering business entities integrated in the Unified Portal of Interactive State Services and available in Russian language.[388] Tax reforms began with a presidential decree in June 2018 that reduced the tax burden on businesses and employee. The new Tax Code, which became effective on January 1, 2020, lowered corporate and individual income taxes by almost 50% and simplified taxation

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[386] World Bank Group. (2019, Summer). *Uzbekistan: Towards a new economy – Country economic update.* http://documents.worldbank.org/curated/en/866501562572675697/pdf/Uzbekistan-Toward-a-New-Economy-Country-Economic-Update.pdf(Retrieved on 20 April 2025).

[387] World Bank. (2021). *Uzbekistan country economic update: Navigating uncertainty*. https://www.worldbank.org

[388] UNCTAD, Report on the Implementation of the Investment Policy Review of Uzbekistan (UNCTAD/DIAE/PCB/2021/3), 10 Dec 2021, <https://unctad.org/system/files/official-document/diaepcb2021d3_en.pdf>(Retrieved on 20 April 2025).

procedures for private entrepreneurs[389].However, in a survey by the International Monetary Fund (IMF) in 2019, foreign investors said few reforms had had significant positive impacts, besides the easing of rules on repatriation of investments, reducing the costliness of export procedures, and the relaxation of rules for immigration visas for foreign workers[390]. As of January1st, 2022, Uzbekistan had 22 free economic zones (FEZs) offering export-oriented enterprises special benefits and infrastructure[391]. The government is trying to balance the distribution of investments across all of Uzbekistan's regions. Each region has appointed officials responsible for attracting investment and executing investment projects. The government has declared that the process will be under strict monitoring of the presidential Administration. Now, Uzbekistani officials generally welcome all kinds of foreign investment. By law, the government cannot discriminate against foreign investors based on nationality, place of residence, or country of origin. In 2022, the it was introduced additional privileges for foreign investors in the Information Technology (IT) sector. These include lower taxes and IT-Visas three-year long work permits with simplified extension or residence permit options. The Ministry of Investment, Industry and Trade[392] facilitates the registration of investment projects. The Investments Promotion Agency provides foreign investors with consulting services, information and analysis, business registration, and other legal assistance, as does the Chamber of Commerce and Industry of Uzbekistan[393], on a contractual basis. For IT sector investors, the IT Park provides a range of business registration and other services. The Institute of the Business Ombudsperson (IBO) was created in 2017 to protect the rights and legitimate interests of businesses, assist foreign businesses in resolving emerging disputes through extrajudicial and pre-trial procedures, provide other legal support, and apply fines to violators of investor rights. According to Business Ombudsperson official reports, in 2022 it reviewed 9,850 complaints and resolved 48 percent of them in investor's favor[394].The Ministry of Investments and Foreign Trade, as per Presidential Decree DP-5643 of 28 January 2018 on Measures to Improve the Management System in the Areas of Investment and Foreign Trade , designs and implements the country's investment policy, conducts activities to attract investment, particularly FDI,

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389 Asian Development Bank. (2023). *Uzbekistan: Economic outlook and investment trends*. https://www.adb.org(Retrieved on 20 April 2025).

390 International Monetary Fund, Republic of Uzbekistan: 2019 Article IV Consultation-Press Release and Staff Report, May 2019, <https://www.imf.org/en/Publications/CR/Issues/2019/05/09/Republic-of-Uzbekistan-2019-Article-IV-Consultation-Press-Release-and-Staff-Report-46884>(Retrieved on 20 April 2025).

391 Law of the Republic of Uzbekistan "On special economic zones", 2020.

392 Investments Promotion Agency of Uzbekistan Investments Promotion Agency of Uzbekistan. (n.d.). *[Official Website]*. Retrieved from https://miit.uz/en(Retrieved on 20 April 2025)

393 Chamber of Commerce and Industry of Uzbekistan Chamber of Commerce and Industry of Uzbekistan. (n.d.). *[Official Website]*. Retrieved from https://chamber.uz/en/index(Retrieved on 20 April 2025).

394Rustambekov, I. Rustambekov, I. (2019). *Opportunities for investment in Free Economic Zones of the Republic of Uzbekistan* (pp. 18-20). International United Academy of Sciences.

cooperates with international financial institutions and organizations of foreign governments, and coordinates the activities of several departments and executive authorities for the implementation of measures affecting trade activities in domestic and foreign markets[395].

4.4.1. Legal investment framework of Uzbekistan

Uzbekistan in direction of regulation and protection of investments has signed such major conventions as *Washington Convention of 1965*[396] (Uzbekistan participates from August 25, 1995), the *Seoul Convention of 1985*[397] (Uzbekistan participates from November 4, 1993), the Treaty to the Energy Charter and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects signed in Lisbon on April 1995 (Uzbekistan participates from December 22, 1995) and others. The first piece of Uzbek investment legislation appeared in 1994 when

"Law on Foreign Investments and Guarantees of Foreign Investors Activity" (hereafter 1994 FIL) was passed. This initial law was replaced by Law on Investments and Investment Activities, which entered into force on January 27, 2020[398] which currently provide the legal framework for international investment in Uzbekistan. Law "On Investments and Investment Activity" specifies the means of foreign investors' participation, the conditions governing repatriation of profits and earnings as well as the general rights to and guarantees of foreign investors. Law covers all basic principles envisaged at all stages of investments and investment activities in relation to both domestic and foreign investors. Furthermore, the Law upholds the legal regime of foreign investment, which implies special rights for investors (for instance, different types of visas, conditions for obtaining residence permits, etc.), the procedure of attracting foreign employees and investment insurance. At the same time, the Law introduces a more detailed and systematized regulation regime in the sphere of investment, as well as additional instruments for the support of investors, including: 1) investment tax credit taxpayerinvestors within a certain period of time have the right to reduce the amount of taxes owed and then gradually shall pay the loan amount and accrued interest;2) investment subsidies – financial assistance, which is provided by the government in the form of either the construction of external electrical and plumbing systems, or tax and customs incentives.The licensing regime

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[395] Presidential Decree No. DP-5643 of the Republic of Uzbekistan. (2018, January 28).
[396]Convention on the Settlement of Investment Disputes Between States and Nationals of Other States Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (Washington Convention), 14 October 1966. Retrieved from https://treaties.un.org/pages/showDetails.aspx?objid=080000028012a925 (Retrieved on 20 April 2025).
[397] Convention Establishing the Multilateral Investment Guarantee Agency (MIGA),11 Oct 1985.
[398] The Law of the Republic of Uzbekistan Law of the Republic of Uzbekistan. (2019, December 25). *On Investments and Investment Activities* (No. ZRU-598).

was overhauled by Law No. On Licensing, Permitting and Notification Procedures of 14 July 2021 to create favourable conditions for business. By fostering transparency, digitalizing processes, enforcing the obtention of licences and permits prior to starting regulated activities, the new law aims to eliminate bureaucratic barriers and corruption factors. The Law unifies and simplifies the licensing regime, clarifies the list of activities requiring licences, permits and notification procedures. A compliance and monitoring system are also embedded in the law, which will enable its implementation. All licenses can be obtained through the online Single portal of interactive services, available in Russian at my.gov.uz and at Public Service Centers. Moreover, the main legislation governing companies' establishment and operations in Uzbekistan includes the following: Law on Joint Stock Companies and Protecon of Shareholder Rights,[399]Law on Limited and Addional Liability Companies[400]; Resoluon of the Cabinet of Ministers on State Registration of Business Enes.[401] The National Investment Program for 2023-2025[402] contains 768 projects worth $55.4 billion. Investments in import-intensive projects can generally expect very little support, according to the World Bank's "Recommendations for National FDI Strategy and Roadmap for Uzbekistan.

4.4.2. The basic investment law concepts of Uzbekistan

By law investments means tangible and intangible benefits and rights to them invested in objects of economic and other activity. The Law "On Investments and Investment Activity" sets out the types of investments by virtue of their purpose, including: 1) capital investment made for the establishment of capital funds; 2) financial investment made in different types of securities, shares and sovereign bonds; 3) social investment made for the development of human capital, including different forms of intangible benefits. On par with types of investments, the Law also determines permitted modes of investments that are: 1) the incorporation of new legal entities or holding participatory interest (shares) in existing legal entities; 2) different types of concessions;3) the acquisition of ownership rights, including rights to intellectual property and facilities in the field of trade and services together with land plots under such facilities;4)the purchase of land plots and other natural resources on the basis of the right of ownership or possession. *Investor* - a subject of

[399] Law of the Republic of Uzbekistan. Law of the Republic of Uzbekistan. (2014, February 18). *On Joint Stock Companies and Protection of Shareholders' Rights*.
[400] Law of the Republic of Uzbekistan. Law of the Republic of Uzbekistan. (2001, December 6). *On Limited and Additional Liability Companies* (No. 310-II).
[401] Resolution of the Cabinet of Ministers of the Republic of Uzbekistan. Cabinet of Ministers of the Republic of Uzbekistan. (2016, October 28). *On improving the system of state registration and registration of business entities* (No. PP-2646).
[402]Presidential Resolution of Uzbekistan. Presidential Resolution of Uzbekistan. (2022, December 28). *National Investment Program for 2023-2025*.

investment activity that invests its own borrowed and borrowed funds, property assets and rights to them, as well as intellectual property rights in objects of investment activity. In accordance with the Law, an investor`s rights include, among others, the right to: freedom of contract, freedom of carrying out investment activities, free disposal of assets, adequate compensation in case of requisition (expropriation) of the assets etc. However, the Law does not specify whether compensation is provided in the case of legal or illegal requisition[403].Private capital is not allowed in some industries and enterprises. The Law on Denationalization and Privatization (adopted in 1991, last amended in 2020) lists state assets that cannot be sold off or otherwise privatized, including land with mineral and water resources, the air basin (atmospheric resources in the airspace over Uzbekistan), flora and fauna, cultural heritage sites and assets, state budget funds, foreign capital and gold reserves, state trust funds, the Central Bank, enterprises that facilitate monetary circulation, military and security-related assets and enterprises, firearm and ammunition producers, nuclear research and development enterprises, some specialized producers of drugs and toxic chemicals, emergency response entities, civil protection and mobilization facilities, public roads, and cemeteries[404].The volume of incentives and preferences depends on the volume of investment, location, sector of the investment project, expected social and economic effect and creation of new jobs, which are described below. Only those companies that meet the following requirements are recognized as enterprises with foreign investments and can enjoy the benefits provided by the legislation: 1) one of the participants of the enterprise is a foreign legal entity; – the size of the authorized capital of the enterprise must be at least 400 million sum; 2) the share of foreign investments must be at least 15 % of the authorized capital. According to Uzbekistan's law, local companies with at least 15% foreign ownership can qualify as having foreign investment. The minimum fixed charter-funding requirement for a company with foreign investment is 400 million sum (USD35,100, USD 1 equals about 11,400 s'om as of May 2023). The same requirement for companies registered in the Republic of Karakalpak stan and the Khorezm region is 200 million sum. Minimum charter funding requirements can be different for business activities subject to licensing. Foreign ownership and control for airlines, railways, long-distance telecommunication networks, and other sectors deemed related to national security requires special permission, but so far foreigners have not been welcomed in these sectors. By law, foreign nationals cannot obtain a license or tax permit for individual entrepreneurship in Uzbekistan. In practice, therefore, they cannot be

[403] United Nations Conference on Trade and Development (UNCTAD)
UNCTAD. (2021). *Uzbekistan Investment Policy Review.* Retrieved from https://unctad.org/webflyer/investment-policy-review-uzbekistan

[404] UNCTAD, Report on the Implementation of the Investment Policy Review of Uzbekistan (UNCTAD/DIAE/PCB/2021/3), 10 Dec 2021, <https://unctad.org/system/files/official-document/diaepcb2021d3_en.pdf> (Retrieved on 20 April 2025).

self-employed and must be employed by a legally recognized entity. According to Uzbekistan's law, local companies with at least 15% foreign ownership can qualify as having foreign investment.

4.4.3. Bilateral Investment Treaties of Uzbekistan

Uzbekistan has also signed a number of bilateral investment treaties on reciprocal promotion and protection of investment (BITs) which complement the national legislation aimed at protection and promotion of foreign investments. Uzbekistan is a party to 56 BITs, out of which 45 are currently in force[405]. Also, new investors are coming from a wider range of countries, including from the Eurasia and North America regions, with a slight predominance of Asian economies (e.g. India, Islamic Republic of Iran, Japan, United Arab Emirates). Uzbekistan's BITs frequently contain admission provisions like Turkmenistan's and Tajikistan's. In other words, Uzbekistan retains a total right to regulate admission of foreign investment through a controlled entry model. Uzbekistan's BITs provide national and most-favored nation clauses for foreign investors. In the case of the national treatment clause – in contrast to Kazakhstan's, Kyrgyzstan's and Tajikistan's FDI regimes – domestic and foreign investors are regulated by separate laws and regulations. Generally, foreign investors are more favorably treated than domestic investors. Furthermore, there are some economic sectors that are not open to entry by foreign investors in the scope of the Uzbekistan FDI regime, such as the public mail service (which is under natural monopoly). Foreign investors may bring investment disputes to international arbitration after a certain duration of time. The elapse of six months prior to accessing international arbitration exists in nearly all of Uzbekistan's BITs.

4.4.4. Settlement of investment disputes

Article 63 of the Law on Foreign Investments of the Republic of Uzbekistan regulates the settlement of disputes and provides a detailed procedure for resolving investment disputes. This article strengthens the new multi-stage mechanism for resolving investment disputes. The new Law introduces a new multitiered argument resolution mechanism for investment disputes related to foreign investment that arising during the investment activity of a foreign investor in the territory of the Republic of Uzbekistan. An important innovation was the mechanism of dispute resolution. Earlier legislation envisaged an opportunity to choose either a state court of

[405] UNCTAD, Uzbekistan International Investment Agreements Navigator, 2024 <https://investmentpolicy.unctad.org/international-investment-agreements/countries/226/uzbekistan> (Retrieved on 20 April 2025).

the Republic of Uzbekistan or arbitration, but now the following mandatory measures and stages of dispute resolution have been established: 1) peaceful negotiations to resolve disputes; 2) mediation procedure, if the dispute has not been settled through peaceful negotiations; 3) referring the dispute to the Economic Court of Uzbekistan if the previous two measures have not helped to resolve the dispute[406].

4.4.5. Case law of investments in Uzbekistan

Uzbekistan has faced a number of investor-state and commercial arbitration cases[407], which mostly arose from mining activities. One of the first investment cases in mining sphere was the ICSID case: *Newmont USA Limited and Newmont (Uzbekistan) Limited v. Republic of Uzbekistan*[408] involved a dispute between U.S.-based Newmont Mining Corporation and the Republic of Uzbekistan concerning their joint venture, the Zarafshan-Newmont Joint Venture (ZNJV), established in 1992. In 2006, Uzbekistan's government repealed tax terms guaranteed under the joint venture agreement and demanded approximately $48 million in unpaid taxes for the period 2002–2005. Subsequently, Uzbek authorities seized gold, silver, and unfinished products belonging to ZNJV, and an Uzbek court declared the venture bankrupt. In response, Newmont initiated arbitration proceedings in both the International Centre for Settlement of Investment Disputes (ICSID) and the Stockholm Chamber of Commerce Arbitration Institute.The second and one of the most popular cases are the ICSID case: *Metal-Tech Ltd v. Republic of Uzbekistan*[409]**.** In January 2010, Metal-Tech initiated an ICSID arbitration against Uzbekistan under the Israel-Uzbekistan BIT for the alleged expropriation of 50 percent of its shares in a joint metal venture. Metal-Tech Ltd. entered into a joint venture (Uzmetal Technology) with two Uzbek state-owned enterprises to produce molybdenum. Disputes arose when Uzbek authorities initiated criminal investigations and terminated the joint venture, which Metal-Tech claimed expropriated its investment and violated fair and equitable treatment (FET). Uzbekistan challenged the tribunal's jurisdiction, arguing that Metal-Tech failed to comply with Uzbek anti-corruption laws. The ICSID tribunal considered whether the investment was made "in accordance with the laws" of Uzbekistan a common requirement in BITs. During

[406] Republic of Uzbekistan. (2020). *Law on Foreign Investments of the Republic of Uzbekistan*.
[407]Vladislav Kim and Others v. Republic of Uzbekistan Vladislav Kim and others v. Republic of Uzbekistan, ICSID Case No. ARB/13/6 (2020).
[408] Newmont USA Limited and Newmont (Uzbekistan) Limited v. Republic of Uzbekistan Newmont USA Limited and Newmont (Uzbekistan) Limited v. Republic of Uzbekistan, ICSID Case No. ARB/06/20 (2020).
[409] Metal-Tech Ltd v. The Republic of Uzbekistan Metal-Tech Ltd v. The Republic of Uzbekistan, ICSID Case No. ARB/10/3 (2018). Mining in Uzbekistan. Retrieved from https://www.italaw.com/sites/default/files/case-documents/italaw3012.pdf(Retrieved on 20 April 2025)

proceedings, it was discovered that Metal-Tech had paid substantial “consulting fees” to politically connected individuals in Uzbekistan. The tribunal found credible evidence that these payments were acts of corruption. The case showed the importance of transparency and anti-corruption enforcement in the investment process. It reinforced Uzbekistan’s right to deny protection under BITs for investments tainted by illegality. The case set a precedent that compliance with local laws, especially anti-corruption, is essential for treaty protection. Showed that “clean hands” doctrine could bar access to international arbitration. Third case is a UNCITRAL case: *Oxus Gold v. Republic of Uzbekistan*[410]**.** The dispute arose out of UK company Oxus Gold’s mining operations in Uzbekistan. Particularly in August 2011, Oxus Gold initiated arbitral proceedings against the Republic of Uzbekistan under the 2010 UNCITRAL Arbitration Rules, seated in Paris, alleging contract breaches and violations of the expropriation, fair and equitable treatment and full protection and security provisions of the UK-Uzbekistan BIT, claiming damages of approximately US$1.2 billion[411]. There is also another ICSID case involving mining sphere: *Visor Group v. Republic of Uzbekistan*[412]. The 2017 decision was issued after investors with Kazakhstan’s Visor group initiated a damage claim against the government of Uzbekistan of ‘no less than US$500 million’. The case, which was started in 2013, pivots on the same two cement plants - Bekabadcement and Kuvasaycement - in the recent case against Gulnara Karimova, which were apparently purchased from Uzbekistan’s former president’s first daughter[413]. In March 2013, Claimants initiated an ICSID arbitration against Uzbekistan under the Kazakhstan-Uzbekistan BIT. The Claimants allege having suffered losses in their interest in two cement plants based on actions of the Respondent and its courts, including criminal and regulatory investigations and expropriation without due process. In 2017, the tribunal, by a majority denied all jurisdictional objections raised by Respondent 6 and moved forward to merits phase. First hearing on merits were held in May 2019 in Washington and the next proceeding was suspended until September 16, 2020, pursuant to the parties’ agreement and on December 9, 2020, The Tribunal issued an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1) because of the signing of settlement agreement[414].*Güneş Tekstil Konfeksiyon Sanayi ve Ticaret Ltd. Şti. v. Republic of Uzbekistan.*[415]

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[410] Oxus Gold plc v. Republic of Uzbekistan Oxus Gold plc v. Republic of Uzbekistan, the State Committee of Uzbekistan for Geology & Mineral Resources, and Navoi Mining & Metallurgical Kombinat (2011).
[411] Rustambekov, I. (2022) Rustambekov, I. (2022). Some issues of investment and mining arbitration in Uzbekistan. *Beijing Law Review*, *13*(4).
[412] Visor Group v. Republic of Uzbekistan, ICSID Case No. ARB/18/1, Decision on Jurisdiction (Mar. 10, 2021)
[413] Rustambekov, I. (2019) Rustambekov, I. (2019). Opportunities for investment in free economic zones of the Republic of Uzbekistan. *International United Academy of Sciences*, 18-20.
[414] Vladislav Kim and Others v. Republic of Uzbekistan Vladislav Kim and others v. Republic of Uzbekistan, ICSID Case No. ARB/13/6 (2020).

As of early 2024, the case remains pending at ICSID. It is part of a recent wave of ICSID claims reflecting increased scrutiny of Uzbekistan's past investment governance, especially before 2017. The outcome is expected to influence investor confidence, particularly with Turkish investors, who are significant stakeholders in Uzbekistan's textile and construction sectors. Güneş Tekstil operated a textile business in Uzbekistan and invested in a manufacturing facility. The investor claimed that the Uzbek government illegally seized its factory and terminated its investment without compensation. The dispute arose in the context of broader economic reforms and nationalizations that took place in Uzbekistan before the Mirziyoyev administration's liberalization policies. Unlawful expropriation of property.

- Violation of the Fair and Equitable Treatment (FET) standard.
- Failure to provide full protection and security to the investor.
- The investor sought compensation for expropriated assets and alleged procedural unfairness.

The claimant argued that the Uzbek authorities forced the transfer of ownership under threats and violated the BIT. Uzbekistan maintained that the measures were within the framework of domestic law and necessary due to alleged non-compliance by the investor. This case is a test of Uzbekistan's reformed investment climate, following its attempts to attract FDI while shedding past practices. It underscores the importance of judicial reform, clear property rights, and rule of law for investor confidence. It reinforces the role of BITs with investor-state dispute settlement mechanisms (ISDS)as a protection tool. Also highlights the risks of operating in emerging markets with rapidly changing political and economic conditions.

4.5. Case study of Tajikistan

In 2022, overall FDI to Tajikistan was $429 million, out of wich Chinese direct investments accounted for 99.8 per cent. Turkey ($6.5 million) was the second largest source of FDI in 2022, followed by British Virgin Islands ($3.3 million) and Hong Kong ($3.3 million).[416]All sectors of Tajikistan's economy are open to foreign participation except for aviation, defense, security, and law enforcement, which require special government permission for the operation of such types of businesses or services. Tajikistan has a relatively open FDI

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[415] ICSID Case No. ARB/20/20

[416] World Bank Data World Bank. (2022). *Foreign direct investment, net inflows (% of GDP) – Tajikistan.* Retrieved from https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS?locations=TJ(Retrieved on 20 April 2025).

regime, as investment-related legislation, in general, does not address issues such as sectors closed or restricted to FDI. Exceptions include the insurance sector, where certain restrictions to foreign investors are listed. Tajikistan does not restrict foreign investment; it does not mandate local stakeholder equity positions or local partnership. In some cases, the government requires specific licenses. There are no mandatory IP/technology transfer requirements.[417] Despite Tajikistan's accession to the World Trade Organization, the Tajik government has imposed trade policies to protect private domestic interests without notifying its partners, notably in the poultry, mining, and alcoholic beverage sectors. In 2021, the Government adopted the Programme on State Investments 2021–2025. Five new BITs were concluded since 2016, with Algeria, Hungary, Jordan, Saudi Arabia and Uzbekistan. It is worth mentioning that Tajikistan is not a member of the Eurasian Economic Union (EAEU) but member of the Commonwealth of Independent States (CIS). Tajikistan's other investment agreements include: the Eurasian Investment Agreement[418]; the European Community-Tajikistan Partnership Agreement with the European Union; the Commonwealth of Independent States Investor Rights Convention; the Energy Charter Treaty; and the Organization of Islamic Cooperation Investment Agreement.

4.5.1 Legal investment frameworks of Tajikistan

The legislation of Tajikistan in the field of investments is based on 1) Constitution of the Republic of Tajikistan 2) law on investment in the republic of Tajikistan[419] 3) law on foreign investment in the republic of Tajikistan 4) normative legal certificates of the Republic of Tajikistan 5) international the-legal certificates recognized by the Republic of Tajikistan. The Tajik government regulates investments through several laws, *inter alia*, the Law on Investments[420], Law on Investment Agreement[421], Law on Concessions[422], Law on Resources[423], Law on Legal Status of Foreigners[424], Law on Free Economic Zones[425], Concept of State Policy

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[417] World Trade Organization (WTO) Trade Policy Review World Trade Organization (WTO). (2020, March 18). *Trade policy review: Tajikistan*.

[418] Agreement on Promotion and Reciprocal Protection of Investments in the Member States of the Eurasian Economic Community, 2008 <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/3252/eurasian-investment-agreement-2008-(Retrieved on 20 April 2025).

[419]Law of Tajikistan on Investments Tajikistan. (2016, March 3). *Law on investments* (Resolution No. 1996). Retrieved from https://tpp.tj/put2011/pdf/rules/en/10.pdf (Retrieved on 20 April 2025).

[420] Law of Tajikistan on Investment Agreement Tajikistan. (2013, March 19). *Law on investment agreement* (No. 944).

[421] Law of Tajikistan on Concessions Tajikistan. (2011). *Law on concessions* (No. 12).

[422] Law on Environmental Protection Tajikistan. (2011, June 22). *Law on environmental protection* (No. 485).

[423] Law on Environmental Protection Tajikistan. (2011, June 22). *Law on environmental protection* (No. 485).

[424] Law of the Republic of Tajikistan No. 1471 dated January 2, 2018 "on the legal status of foreign citizens and stateless persons in the Republic of Tajikistan"

on Investments and Protection of Investments[426] and others. Article 7of Tajikistan's Investment Law (IL)[427] guarantees equal rights for both local and foreign investors. According to this law, foreigners can invest by jointly owning shares in existing companies with other Tajik companies or Tajik citizens; by creating fully foreign-owned companies; or by concluding agreements with legal entities or citizens of Tajikistan that provide for other forms of foreign investment activity. Foreign firms may acquire assets, including shares and other securities, as well as land leasing and mineral usage rights. Foreign firms may also exercise all property rights to which they are entitled, either independently or shared with other Tajik companies and citizens of Tajikistan. The IL maintains a guarantee of equality of rights between domestic and foreign investors and non-discrimination, including to participate in the privatization of State property. It also provides more information on the implementation of investment projects, the legal stability clause and on expropriation[428]. Most of Tajikistan's current international agreements provide most-favored-nation status. Tajikistan's legislation does not discriminate against foreign investors by prohibiting, limiting, or conditioning foreign investment. To receive permission and licenses for operation, however, a foreign investor must navigate a complicated, cumbersome, and often corrupt bureaucratic system. In practice foreign companies may encounter different types of hurdles while exercising their rights. For example, registration of a company by a foreign entity or foreigner may be a more complicated process than for local founders.

4.5.2. Basic investment concept and its protection of Tajikistan

Tajikistan's legislation provides a right for all forms of foreign and domestic ownership to establish business enterprises and engage in remunerative activity. There are no limits on foreign ownership or control of firms and no sector-specific restrictions that discriminate against market access. Local law considers all land and subsoil resources to belong exclusively to the state, although initial efforts to establish a private land market are underway. Law on investment in the republic of Tajikistan regulates relations connected with the realization of investment activity, legal, economic bases of activation, stimulation and the state support of investments, by means of granting a fair, equal legal regime and a guarantee of protection of the rights of

[425] Law on the Legal Status of Foreign Citizens and Stateless Persons Tajikistan. (2018, January 2). *Law on the legal status of foreign citizens and stateless persons in the Republic of Tajikistan* (No. 1471).
[426] Government Resolution on Investment Policy Government of Tajikistan. (2012, December 29). *On the concept of the state policy of attracting and protecting investments of the Republic of Tajikistan* (Resolution No. 755).
[427] Law on Investments Tajikistan. (2016, March). *The law of the Republic of Tajikistan on investments*. Retrieved from https://investmentpolicy.unctad.org/investment-laws/laws/62/tajikistan-investment-law (Retrieved on 20 April 2025)
[428] World Trade Organization, Trade Policy Review: Tajikistan, 18 March 2020

interests in the territory of the Republic of Tajikistan[429]. *Investment* is all kinds of property, including money resources, securities, industrial technological equipment and the results of intellectual activity. The investor is physical or legal person who is carrying out investment activity in the Republic of Tajikistan. Foreign investors are: 1) foreign states and their administrative - territorial units on behalf of the authorized bodies; International organizations; 2) foreign legal persons; 3) foreign organizations, not being the legal persons, created according to the legislation of the foreign states;4) foreign citizens and persons without citizenship. The Tajik government can *legally expropriate property* under the terms of Tajikistan's Law on Investments, Law on Privatization, Civil code, and Criminal code[430]. Investors must submit their proposals to all relevant government agencies to solicit feedback or objection, and investors report this process can be lengthy and cumbersome. Screening proposals often involve background checks on the company, the person(s) representing the company, and identification of a financial source to comply with anti-money laundering regulations. Investors report that the government process of registration is over-centralized; legal processes can be excessively bureaucratic due to the small circle of authorized, high-ranking decision-makers and the low level of technical expertise in administrative and judicial bodies. The review process could reject proposals that violate Tajik law or flag a proposal as "incomplete." Applicants may appeal the government's decision by submitting a claim to the Tajik Economic Court. Several Tajik government agencies are responsible for investment promotion, but they frequently have competing interests. The State Committee on Investments and State Property Managemen facilitates FDI. In addition, state-owned enterprise Tajin vest under the State Committee on Investments and State Property Management is responsible for attracting investment into Tajikistan. Although a donor-supported Consultative Council on the Improvement of the Investment Climate provides a formal venue for dialogue, investors continue to claim that complaints to the government go unheeded[431].

4.5.3. Bilateral Investment Treaties of Tajikistan

Tajikistan's BITs contain general principles of foreign investment such as admission of investment, treatment of investment, expropriation provisions, transfers, and dispute settlement

[429] United Nations Conference on Trade and Development (UNCTAD). (2023, January 18). *Report on the implementation of the investment policy review of Tajikistan* (UNCTAD/DIAE/PCB/2022/1). Retrieved from https://unctad.org/system/files/official-document/diaepcb2022d1_en.pdf(Retrieved on 20 April 2025).
[430] Government of Tajikistan. (2016). *Law on Investments of the Republic of Tajikistan.*
[431]U.S. Department of Commerce. (2022). *Investment climate statements: Tajikistan*

procedures[432]. Most Tajikistan's BITs impose territoriality requirements in the scope of investments, in a similar manner to Kazakhstan's and Kyrgyzstan's BITs[433]. Public entities are also included in the scope of foreign investors. Special provisions related to the admission of foreign investment are common in Tajikistan's BITs.Tajikistan's FDI regime is open and non-discriminatory in principle, having no economy-wide regulatory restrictions on foreign equity, employment of foreign personnel or screening requirements on foreign investments. Investors can repatriate profits, invest capital and loans, provided they comply with all national fiscal obligations. As in other countries in the region, the main discrimination against foreign investors pertains to land use rights, which are restricted to a limited-term leasehold, or in some sectors altogether prohibited. Tajikistan's BITs include protection against expropriation. The general principles of such provisions are in line with international law standards. Tajikistan's BITs define direct and indirect expropriation, and often explicitly define indirect expropriation. Calculation of expropriation compensation in Tajikistan's BITs does not follow the same formulation. There is frequent reference to the payment of compensation, such as "effective and adequate compensation," "prompt, adequate and effective compensation,"[434] and "fair and equitable compensation."[435]

4.5.4. Settlement of investment disputes in Tajikistan

Tajikistan has taken steps to establish a legal framework for the settlement of investment disputes, primarily through bilateral investment treaties (BITs) and participation in international arbitration mechanisms.

- **Bilateral Investment Treaties (BITs):** Tajikistan has signed several BITs with foreign countries that generally include provisions for the protection of foreign investors, including fair and equitable treatment, protection from expropriation, and guarantees of free transfer of funds. Most BITs include dispute resolution clauses that allow investors to bring claims

[432] UNCTAD International Investment Agreements Reform Accelerator United Nations Conference on Trade and Development (UNCTAD). (2020). *International investment agreements reform accelerator*. United Nations.
[433] EITI 3rd National Report Extractive Industries Transparency Initiative (EITI). (2020). *3rd national report on the implementation of the Extractive Industries Transparency Initiative in the Republic of Tajikistan for 2017–2018* (in Russian).
[434] Bilateral Investment Treaty (BIT) Tajikistan–Austria BIT. (2010). *Agreement between the Republic of Tajikistan and the Republic of Austria for the Promotion and Protection of Investments*, Art. 7(1)(d).
[435] UNCTAD World Investment Report United Nations Conference on Trade and Development (UNCTAD). (2022). *World investment report 2022: International tax reforms and sustainable investment*. United Nations. Retrieved from https://unctad.org/system/files/official-document/wir2022_en.pdf(Retrieved on 20 April 2025)

either to local courts or international arbitration bodies such as the International Centre for Settlement of Investment Disputes (ICSID) or ad hoc tribunals under UNCITRAL rules[436].

- **ICSID Membership:** Tajikistan is a contracting party to the ICSID Convention since 1997, allowing foreign investors to initiate arbitration proceedings under ICSID rules against the state in case of investment disputes[437].
- **Domestic Legislation:** Tajikistan's Law on Investment and other related regulations provide a domestic legal framework for dispute resolution, often encouraging amicable settlement and mediation but also recognizing arbitration as a key mechanism for investor protection.

While the Law of the Republic of Tajikistan on Arbitration Courts recognizes the role of local courts in supporting dispute resolution and arbitration, in practice, there is no reputable or widely trusted domestic arbitration institution capable of effectively resolving disputes between individuals and businessesThis law provides a formal legal framework for the establishment and operation of arbitration courts, including their jurisdiction, procedures, and interaction with the state judiciary. It is modeled partly on international standards such as the UNCITRAL Model Law.Includes provisions allowing courts to refer parties to arbitration if such an agreement exists and outlines the recognition and enforcement of arbitral awards[438].Tajikistan ratifies the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) on August 14, 2012, which governs international arbitration disputes but is not a member state of the International Centre for the Settlement of Investment Disputes (ICSID) Convention. Yet whilst domestic legislation recognizes the validity of rulings by international courts of arbitration, foreign investors report difficulty in ensuring that decisions are enforced in the country, even when covered by a bilateral IIA. In Tajikistan, the Chamber of Commerce and Industry serves as a venue for international commercial arbitration for conflict resolution. However, there are no records of any investment agreement containing an arbitration clause authorizing jurisdiction over disputes with the Chamber of Commerce and Industry. As previously noted, Tajikistan is a signatory to the New York Convention on Arbitration, but in practice the courts have not consistently recognized and upheld foreign arbitral awards.

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436 United Nations Conference on Trade and Development. (n.d.). Bilateral investment treaties: Tajikistan. Investment Policy Hub. Retrieved May 27, 2025, from https://investmentpolicy.unctad.org/international-investment-agreements/countries/167/tajikistan (Retrieved on 20 April 2025).

437 Asian Development Bank. (2017). Investment climate and legal framework in Tajikistan. Retrieved from https://www.adb.org/sites/default/files/publication/32157/investment-climate-tajikistan.pdf (Retrieved on 20 April 2025).

438 Government of Tajikistan. (2015). *Law of the Republic of Tajikistan on Arbitration Courts*.

4.5.5. Case law regarding Tajikistan

In case: Schönberger v. Tajikistan Alois Schönberger v. Republic of Tajikistan[439] . Cotton purchase agreements signed by the claimant's company incorporated in Hong Kong, Super Perfect Investments Limited, with Tajik company Levakan-M. Claims arising out of a local bank's non-payment of bank guarantees to the claimant, allegedly refusing to honour a commercial arbitration award in the claimant's favour. According to the claimant, Agroinvestbank was involved as a guarantor in a transaction under a cotton purchase contract between the claimant's company and a Tajik company, which had failed to deliver the purchased goods and to return money paid by the claimant. Tribunal decides by majority since Tribunal lacks jurisdiction to hear the merits of the case because of the absence of a qualifying investment pursuant to Article 1(2) of the BIT. All other claims have been dismissed. The Respondent shall reimburse the Claimant the amount, which is one half of the costs of the arbitration. In case *of Al-Bahloul v. Tajikistan Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*[440] .Rights under four hydrocarbon exploration agreements concluded between Mr. Al-Bahloul and Tajikistan. Claims arising out of the Government's alleged failure to ensure the issuance of licenses pursuant to several hydrocarbon exploration agreements concluded between Mr. Al-Bahloul and Tajikistan's State Committee for Oil and Gas for four areas (Rengan, Sargazon, Yalgyzkak and East Soupetau) in Tajikistan. In the final award Tajikistan is ordered to pay to Mohammad Ammar Al-Bahloul EUR 300,000, in reimbursement of a portion of Claimant's incurred costs in connection with the arbitration under Article 44 of the SCC Arbitration Rules. Parties are jointly and severally liable for payment of the Costs of the Arbitration under Article 43 of the SCC Arbitration Rules. The Costs of the Arbitration are determined to be EUR 524,977 and SEK 8,125, comprised of the following. Case Study: *Talco Management Ltd. v. Republic of Tajikistan*[441] ALCO, formerly TadAZ, is Tajikistan's largest industrial enterprise and one of the largest aluminum smelters in Central Asia. Talco Management Ltd. (TML) was managing TALCO's sales, exports, and raw materials procurement under contract. The government of Tajikistan unilaterally terminated the management contract, alleging mismanagement and fraud. TML claimed it had made substantial investments and that its contractual rights amounted to protected investments under the BIT. Argued that TML was involved in fraudulent practices, including the diversion of profits through offshore structures. Claimed the contract was terminated due to national interest and legal violations, not expropriation. The tribunal ultimately

[439]ICSID Case International Centre for Settlement of Investment Disputes (ICSID). (2019). *Alois Schönberger v. Republic of Tajikistan*, ICSID Case No. ARB(AF)/19/1.
[440] Al-Bahloul v. Tajikistan, Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan, SCC Case No. 064/2008 (2008).
[441]UNCITRAL Arbitration, 2008–2013, Talco Management Ltd. v. Republic of Tajikistan.

rejected most of TML's claims, agreeing that the contractual rights alone did not amount to protected investments under international law in this case. Also, the tribunal accepted some of Tajikistan's claims of fraudulent misrepresentation and found that TML was not entitled to damages. Contractual rights do not always qualify as "investments" under BIT protections. Due diligence is critical for investors working in state-dominated or politically sensitive sectors demonstrating that States retain regulatory powers when exercised lawfully and proportionately. The case helped to assert sovereign rights over strategic industries. However, it also highlighted that governance and transparency issues, particularly around state-business relations and dispute handling reinforce the need for investment law reform, clearer dispute settlement mechanisms, and domestic legal clarity.

4.6. Case study of Turkmenistan

In 2022, FDI inflows to Turkmenistan increased by 24.2% year-on-year in 2021, reaching USD 1.45 billion[442]. The most promising areas for investment are in the energy, agricultural, financial services, and construction sectors and the government often touts foreign loans as investment. The economy was estimated to have grown by 5.0% in 2021, driven by strong hydrocarbon production and exports. Gas production grew by an estimated 42% despite the muted recovery in other sectors. The economy is forecast to grow by 6.0% in 2022 and by 5.8% in 2023 on higher hydrocarbon prices and export volumes[443]. Most foreign investment is governed by project-specific presidential decrees, which can grant privileges not provided by legislation. Legally, there are no limits on the foreign ownership of companies, the government has only allowed fully owned foreign operations in the oil sector, and foreigners cannot invest in the exploration and production of the country's onshore gas resources. All land belongs to the state and other property rights are limited. In practice, however, the government has allowed fully owned foreign operations only in the energy sector. Some companies take the presidential decree as a sovereign guarantee.

In July 2020, Turkmenistan became an observer to the WTO. Turkmenistan submitted its formal application to join the WTO in 2021. The WTO grants observer status for five years and observer governments are expected to take a decision on access within that period of time. Turkmenistan is not a member of Eurasian Economic Union. Most economic indicators released by the government, including foreign direct investment, are generally unavailable unreliable. A lack of established rule of

[442] UNCTAD. (2022). *World investment report 2022: International tax reforms and sustainable investment*. United Nations.
[443] Asian Development Bank (ADB). (2022). *Asian development outlook (ADO) 2022: Mobilizing taxes for development*. ADB.

law, an opaque regulatory framework, and rampant corruption remains serious problems in Turkmenistan. The government strictly controls foreign exchange flows and limits on currency conversion make it difficult to repatriate profits or make payments to foreign suppliers. Although there are formally no limitations to foreign ownership of companies, the government has only allowed fully owned foreign operations in the oil sector, and foreigners cannot invest in the exploration and production of the country's onshore gas resources. All land belongs to the state and other property rights are limited; moreover, the repatriation of revenues is difficult. Turkmenistan's socioeconomic development programmer for the period from 2019 to 2025 envisages deepening and accelerating structural reforms to stimulate sustainable and inclusive growth in the longer term, based on a more diversified market economy.

4.6.1. Legal framework for investments in Turkmenistan

Incoming foreign investment is regulated by the 1) Law on Foreign Investment (last amended in 2008)[444], 2) Law on Investments (last amended in 1993)[445], 3) Law on Joint Stock Societies (1999)[446]. Also, by the Law on Enterprises (2000)[447], the Law on Business Activities (last amended in 2008), and the Land Code (2004)[448]. Foreign investment in the energy sector is subject to the 2008 Petroleum Law (also known as the Law on Hydrocarbon Resources, which was amended in 201 and 2012)[449]. The Tax Code[450] provides the legal framework for the taxation of foreign investment. The Civil Code (2000) defines what constitutes a legal entity in Turkmenistan. The 2008 Law on the Licensing of Certain Types of Activities[451] lists 44 activities that require government licenses. The Law on Enterprises and the Law on Joint Stock Societies allow acquisitions and mergers.

The Law on Foreign Investment, as amended in 2008, is the primary legal instrument defining the principles of investment. A foreign investor is defined in the law as an entity owning a minimum of 20 percent of a company's assets. The Law on Investment Activities in Turkmenistan prohibits investment in facilities that do not meet environmental standards in their creation and use or damage the legally protected rights and interests of citizens, legal entities, or the state. According to the 2008 Law on Foreign Investment, all foreign and domestic companies and foreign investments

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[444] Law on Foreign Investment, No. 184-III. (2008, March 3).
[445]Law of Turkmenistan No. 698-XII. (1992, May 19). *On investment activity in Turkmenistan* (as amended up to Law No. 274-V of August 18, 2015).
[446] Law on Joint Stock Societies (1999, November 23). No. 400-I.
[447] Law on Enterprises (2000, June 15). No. 28-II.
[448]Code of Turkmenistan "On Land". (2004, October 25). (with changes and additions as of November 13, 2021).
[449] Law on Hydrocarbon Resources. (2008, August 20). No. 208-III.
[450] Tax Code of Turkmenistan. (2005, October 25).
[451] Law on the Licensing of Certain Types of Activities. (2008).

must be registered at the Ministry of Finance and Economy. The Petroleum Law[452] of 2008 regulates offshore and onshore petroleum operations in Turkmenistan, including petroleum licensing, taxation, accounting, and other rights and obligations of state agencies and foreign partners. The Petroleum Law supersedes all other legislation pertaining to petroleum activities, including the Tax Code. According to the Land Code, foreign companies or individuals are permitted to lease land for non-agricultural purposes, but only the Cabinet of Ministers has the authority to grant the lease. Foreign companies may own structures and buildings. The 2000 Law on Enterprises defines the legal forms of state and private businesses. Private entities in Turkmenistan have the right to establish and own business enterprises. Turkmenistan's legislation does not provide for private ownership of land. The government has a history of arbitrarily expropriating the property of local businesses and individuals. Foreign companies with approved government contracts and wishing to operate in Turkmenistan generally receive government support and do not face problems or significant delays when registering their operations in Turkmenistan. Under Turkmen law, all local and foreign entities operating in Turkmenistan are required to register with the Registration Department under the Ministry of Finance and Economy. Before the registration is granted, however, an inter-ministerial commission that includes the Ministry of Foreign Affairs, the Agency for Protection from Economic Risks, law enforcement agencies, and industry-specific ministries must approve it[453].

4.6.2. Basic investment law concept of Turkmenistan and its protection

There are no legal limits on foreign ownership or control of companies. In practice, however, the government has only allowed foreign ownership and foreign direct investment in the energy sector. Investments[454]*: Investments* mean all kinds of property and intellectual values inserted into the objects of entrepreneurial and other kinds of activities resulting in generating profit or obtaining social benefit. Such values may be the following: funds, special bank deposits, shares, stocks and other securities; movable property and real estate (building, constructions, equipment and other material values); rights of land and other natural resources use, and other property rights; property rights related to copyright, know-how, experience and other intellectual values; other values. *Investors*- subjects of investment activities, adopting decisions on investment of their own funds, loans and attracted property and intellectual values. Investors may act as depositors, creditors, buyers, as well as perform functions of any participant of investment activities. In the

[452] Petroleum Law of Turkmenistan, No. 115-IV, adopted March 20, 2008.
[453] International Finance Corporation. (2022). *Turkmenistan investment climate assessment.* https://www.ifc.org/turkmenistan-investment-climate(Retrieved on 20 April 2025).
[454] Law of Turkmenistan No. 698-XII. (1992, May 19). *On investment activity in Turkmenistan* (as amended up to Law No. 274-V of August 18, 2015).

cases and orders established by Turkmenistan legislation an investor is obliged:1) to present a declaration on the extent and resources of investments, effected by him, to the bodies authorized by Turkmenistan Cabinet of Ministers; 2)to obtain all necessary permissions and arrangements of appropriate authorities and special bodies for capital construction; 3)to obtain the results of the State Expertise on investment projects concerning observance of standards and rules of seismic, fire, explosive, sanitary-hygienic, ecological and city-building requirements[455].The Law on Investment Activity in Turkmenistan provides a set of practical actions of the state's physical and legal entities on realizing investments. The state regulation of investment activity is carried out with a view to the realization of the economic, scientific, technical, and social policy of Turkmenistan. It should provide preferential conditions for any investor carrying out investment activity in priority directions defined by the state. Under the Act, all investors have equal rights to carry out investment activities. Investors independently determine the volume, sphere, and effectiveness of investments and, at their discretion, engage on a contractual basis with the natural and legal people they need to make these investments. Investors have the right to own, use, and dispose of the objects and results of their assets, including reinvestments and trade operations on the territory of Turkmenistan. Following the Law on Foreign Investments, enterprises with foreign investments are granted *national legal treatment and favourable legal* remedies in the free economic zone territory[456].Foreign companies with approved government contracts and wishing to operate in Turkmenistan generally receive government support and do not face problems or significant delays when registering their operations in Turkmenistan. Under Turkmen law, all local and foreign entities operating in Turkmenistan are required to register with the Registration Department under the Ministry of Finance and Economy. Before the registration is granted, however, an inter-ministerial commission that includes the Ministry of Foreign Affairs, the Agency for Protection from Economic Risks, law enforcement agencies, and industry-specific ministries must approve it. Foreign companies without approved government contracts that seek to establish a legal entity in Turkmenistan must go through a lengthy and cumbersome registration process involving the inter-ministerial commission mentioned above[457]. The commission evaluates foreign companies based on their financial standing, work experience, reputation, and perceived political and legal risks. The inter-ministerial commission does not give a reason when denying the

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455 U.S. Department of State. (2023). *2023 Investment climate statements: Turkmenistan*. https://www.state.gov/reports/2023-investment-climate-statements/turkmenistan/(Retrieved on 20 April 2025)
456 OECD. (2023). *Improving the legal environment for business and investment in Central Asia: Progress report*. OECD Publishing.
457 EBRD**.** (2014, July). *Commercial laws of Turkmenistan: An assessment*. Retrieved from https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/2022-06/CLA_Turkmenistan%20%28PAB%292.pdf(Retrieved on 20 April 2025).

registration of a legal entity. Turkmenistan's Foreign Investment Law contains strict admission requirements. According to Article 7 of Turkmenistan's Foreign Investment Law, "*Investment projects with foreign investment shall be subject to mandatory state examination, including the observance of standards of earthquake resistance, fire, explosion, environmental and sanitary requirements*". The main difficulty with such requirements is a lack of certainty and transparency.

4.6.3. Bilateral investment treaties of Turkmenistan

According to UNCTAD, Turkmenistan has signed bilateral investment agreements with 30 countries, including Belgium, China, France, Germany, India, Russian Federation, Switzerland, United Kingdom, and others[458]. In 2009, the European Parliament passed a resolution on the EU-Turkmenistan Interim Trade Agreement, reasoning that economic and trade engagement with the country would stimulate political reforms in Turkmenistan.Bilateral international treaties on avoiding the double taxation of income and property constitute another purview of international agreements. The bilateral format of Turkmenistan's relations with other states in attracting foreign investment is the most appropriate and effective tool for cooperation. Turkmenistan's BITs provide most favored and national treatment clauses to foreign investors. Primarily, foreign investors can extend the scope of BIT's protection through the most favored nation clause. All of Turkmenistan's BITs provide protection for foreign investors against direct and indirect expropriation. Although the conditions (public purpose, due procedure of law, non-discrimination) for expropriation are nearly similar in most of Turkmenistan's BIT, the formulation of expropriation clauses is not standardized.

International investment treaties regulate and provide protection for foreign investors after the establishment of the investment, although, some investment treaties provide protection beyond the levels of traditional protection of foreign investment and contain non–discrimination clauses for pre-entry investment. This clause requires that the host state does not discriminate against foreign investors in case of permits, licenses, authorization, and other formalities in the context of the host country's legislation. In other words, in the stages of making, acquiring, and expanding their investments, foreign investors are subject to the same applications as domestic investors as well as third-party investors[459].

[458] United Trade and Development, International Investment Agreements Navigator, 2024, https://investmentpolicy.unctad.org/international-investment-agreements/countries/215/turkmenistan(Retrieved on 20 April 2025).
[459] United Nations Conference on Trade and Development. (2019). *World investment report 2019: Special economic zones* (pp. 101–103). https://unctad.org/webflyer/world-investment-report-2019(Retrieved on 20 April 2025)

4.6.4. Settlement of Investment disputes in Turkmenistan

Turkmenistan is a Party to the 1995 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), but it is not a member of the 1958 Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). There are no alternative dispute resolution mechanisms in Turkmenistan and government's dispute settlement clause in contracts generally does not allow for arbitration in a venue outside the country. The commercial law enforcement system includes the Arbitration Court of Turkmenistan, which tries 13 categories of both pre-contractual and post-contractual disputes, including taxation, legal foundations, and bankruptcy issues.[460] Appeals to decisions of the Arbitration Court can be filed at the Arbitration Committee of the Supreme Court of Turkmenistan. Moreover, arbitrary audits and investigations by several government bodies are common in relation to both foreign and local companies. The enforcement of the decisions of commercial arbitration outside of Turkmenistan may be denied in Turkmenistan under certain conditions listed under Article 47 of the Law of Turkmenistan "On Commercial Arbitration" [461]adopted in 2014 and in force as of 2016. According to the law, the parties in dispute can appeal the arbitration decision only to the Supreme Court of Turkmenistan and nowhere abroad. The government of Turkmenistan recognizes foreign court judgements on a case-by-case basis.[462]

4.6.5. Case law of Turkmenistan

Several foreign companies have pursued international arbitration against the Turkmen government through the World Bank's International Center for Settlement of Investment Disputes (ICSID) and the Arbitration Institute of the Stockholm Chamber of Commerce.[463]In 2018, the *German company Unionmatex Industrieanlagen GmbH*[464] initiated a $43.5 million arbitration claim against the Government of Turkmenistan at the International Centre for Settlement of Investment Disputes (ICSID). The dispute arose from contracts with a state-owned agricultural company for the

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[460] United Nations Conference on Trade and Development. (n.d.). Turkmenistan investment policy review. Investment Policy Hub. Retrieved May 27, 2025, https://investmentpolicy.unctad.org/international-investment-agreements/countries/230/turkmenistan(Retrieved on 20 April 2025)
[461] Law of Turkmenistan on Commercial Arbitration, No. 161-V (2014). (2016). On Commercial Arbitration. Official Gazette of Turkmenistan.
[462] Transparency International. (2021). Business environment and corruption in Turkmenistan. https://www.transparency.org/en/countries/turkmenistan(Retrieved on 20 April 2025)
[463] Muminov, F., & Varol, A. E. (2020, May). Screening of foreign investment in the context of Turkmenistan's FDI (foreign direct investment) regime. *Istanbul University Journal of Public and Private International Law Bulletin*.
[464] Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH **v.** Turkmenistan**,** ICSID Case No. ARB/18/35 (2018). https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/925/unionmatex-v-turkmenistan(Retrieved on 20 April 2025).

construction of several grain production facilities and bakeries. Unionmatex alleged that Turkmen authorities failed to pay outstanding invoices and unlawfully expropriated company assets, triggering claims under the Germany–Turkmenistan Bilateral Investment Treaty (BIT). This case underscores the absence of effective and impartial domestic dispute resolution mechanisms in Turkmenistan for foreign investors and businesses, especially in commercial arrangements involving state-owned enterprises. The recourse to ICSID illustrates the lack of confidence in Turkmenistan's judicial and arbitral systems and reflects broader regional challenges in ensuring legal protection and contractual enforcement for private entities operating in politically sensitive sectors. Also, in 2018, *Turkish company SECE Insaat and Turkmenistan*[465] brought a similar ICSID claim against Turkmenistan for unjustified termination of contracts and non-payment of invoices. The dispute arose from contracts for the construction of residential and government buildings, which were allegedly terminated without justification by Turkmen authorities. SECE İnşaat claimed serious breaches, including non-payment of completed works and state interference in its operations—such as restrictions on employee movement and pressure on company staff. The investment issue was in connection with Contracts for the construction of residential and government buildings. Claims arising out of the Government's termination of construction contracts with the claimant, non-payment of fees and harassment of the claimant's employees, including by means of travel bans. The claim highlighted the significant risks faced by foreign investors contracting with Turkmenistan's state bodies and the lack of reliable domestic legal remedies. The case illustrates the broader trend of foreign investors turning to international arbitration due to the absence of an independent judiciary or credible domestic arbitration institutions in Turkmenistan.Three cases raise expropriation concerns for foreign businesses investing in Turkmenistan. In December 2016, the government expropriated the largest (and only foreign owned) grocery store in Ashgabat, Yimpaş (Yimpash)[466] shopping and business center, without compensation or other legal remedy. Rights under telecommunication licenses held by *Mobile TeleSystems' wholly owned U.S. subsidiary company*[467]. Claims arising out of the Government's decision to suspend claimant's subsidiary license to provide telecommunications services in Turkmenistan and not to renew claimants' five-year contracts, which caused MTS to cease its operations in the telecommunications market in Turkmenistan after the expiration of its initial license. In another case *Garanti Koza LLP v. Turkmenistan,*[468] the investor, Garanti Koza LLP, a UK-registered company, linked to Turkish interests entered into the Turkmen market in the

[465] SECE İnşaat ve Ticaret A.Ş. v. Turkmenistan, ICSID Case No. ARB/18/34 (2018).
[466]Görkem İnşaat Sanayi ve Ticaret Limited Şirketi v. Turkmenistan, ICSID Case No. ARB/16/30.
[467] Mobile TeleSystems OJSC (MTS) v. Turkmenistan (I), ICSID Case No. ARB(AF)/11/4 (2011). https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/404/mts-v-turkmenistan-i-(Retrieved on 20 April 2025).
[468] ICSID Case No. ARB/11/20, Garanti Koza LLP v. Turkmenistan.

construction industry. The road-building activities qualified as a protected investment under the UK–Turkmenistan BIT. The tribunal emphasized that investments made under public works contracts can fall under BIT protection when there is significant capital, infrastructure, and risk involved. This was one of the first ICSID cases against Turkmenistan where jurisdiction was accepted, despite Turkmenistan being historically reluctant to participate in arbitration. The case continued beyond the jurisdictional phase, but Turkmenistan eventually refused to cooperate fully. Due to confidentiality and limited transparency, no public award on the merits was issued. However, the jurisdictional decision itself is a landmark ruling. In 2003, Turkmenistan awarded Garanti Koza multiple contracts for road construction and infrastructure development. The investor alleged that the government breached contracts, unlawfully terminated projects, and withheld payments. Garanti Koza's assets were seized and its operations were blocked. The conduct amounted to expropriation, denial of justice, and breach of fair and equitable treatment under the BIT.Turkmenistan challenged the jurisdiction of ICSID, arguing: The investment was purely contractual, with no direct investment in the sense of the BIT. The claimant was not a qualifying investor, as the real control of the company lay with Turkish nationals, not the UK. The ICSID Tribunal upheld jurisdiction, rejecting Turkmenistan's objections. Key legal findings of the case are the following. The BIT did not require the investor to be controlled by UK nationals, it sufficed that the company was incorporated in the UK[469].As far as investment law is concerned, it clarifies corporate nationality rules in BITs. Therefore, a company's place of incorporation may suffice, even if ultimate control lies elsewhere. The award confirms that infrastructure and construction contracts can qualify as investments under BITs, especially if they involve capital, risk, and long-term operation. It, furthermore, demonstrates the importance of investor protection clauses when dealing with countries like Turkmenistan, where access to local remedies is limited. For Turkmenistan, this case *Garanti Koza LLP v. Turkmenistan* highlights the potential liability of the state for arbitrary interference in commercial agreements with foreign investors, with reflection on the country's strict control over foreign businesses and non-cooperative behavior in arbitration. It, consequently, illustrates the risks faced by foreign investors in Turkmenistan due to opaque legal processes and weak rule of law.

4.7. Investment law of Central Asia. Link to sustainable development

[469] Kluwer Arbitration Blog. (2018). Jurisdiction upheld in *Garanti Koza LLP v. Turkmenistan.* https://arbitrationblog.kluwerarbitration.com/2018/06/15/garanti-koza-llp-v-turkmenistan/(Retrieved on 20 April 2025).

Firstly, when SDGs are mentioned in line with provisions relating to national security, public health, the environment is by far the most common only in the preambles[470]. Therefore, measures directed towards sustainable development may be covered by these preamble provisions, depending on the nature of the obligations they impose. On the other hand, there are very few references to sustainable development generally, labour rights, human rights and all of them are declaratory in nature. For the most part, BITs do not contain references to either sustainable development in general or environmental, health or labour standards in particular.

Countries	*Investment treaties and BITs*	*Investment protection under BITs*	*Integrating SDGs and*
Kazakhstan	Kazakhstan is part of more than 52 bilateral investment treaties[471], as well as the Energy Charter Treaty and Eurasian Investment Agreement.	BITs to which Kazakhstan is party typically provide for the following substantive protections (for example with Singapore, UAE) , subject to restrictions relating to public interest and sensitive sectors of the economy[472]: fair and equitable treatment (FET); expropriation (direct and indirect) protections; most-favoured-nation (MFN) treatment; non-discrimination/national	But there are also cases that include elements of sustainable development in BITs in Central Asia, for example, have started raising human rights concerns in BIT negotiation. Such as BITs that Austria concluded with Kazakhstan refer to human rights in the preamble and in Finland - Kazakhstan BIT[473] to health, safety and environmental measures of general application and also Kazakhstan - United States of America BIT[474] refers to

[470] UNCTAD. (2018). *UNCTAD's reform package for the international investment regime*. United Nations.
[471] UNCTAD. (2024). *Kazakhstan: 52 bilateral investment treaties*. Investment Policy Hub. https://investmentpolicy.unctad.org/international-investment-agreements/countries/107/Kazakhstan(Retrieved on 20 April 2025).
[472] Blackmon, P. (2011). Connecting specific reform policies to investment and business. In *In the shadow of Russia: Reform in Kazakhstan and Uzbekistan* (pp. [insert page numbers if available]). Michigan State University Press.
[473] Finland–Kazakhstan Bilateral Investment Treaty (2007). UNCTAD Investment Policy Hub. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment- (Retrieved on 20 April 2025)treaties/1506/finland---kazakhstan-bit-2007-(Retrieved on 20 April 2025).
[474] Kazakhstan–United States of America Bilateral Investment Treaty (1992). UNCTAD Investment Policy Hub. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/2218/kazakhstan---united-states-of-america-bit-1992-(Retrieved on 20 April 2025).

		treatment; full protection and security; and umbrella clauses. Kazakhstan does not have a screening system in place and does not have legislation specifically focused on the national security implications of FDI.	labour rights.
Kyrgyzstan	Kyrgyzstan is part of 38 bilateral investment treaties[475],with the countries such as United States, China, Finland, France, Germany, Sweden, Switzerland, United Kingdom, and others as well as the Energy Charter Treaty and Eurasian Investment Agreement.	Kyrgyzstan's BITs include general principles of foreign investment such as fair and equitable treatment (FET); expropriation (direct and indirect) protections; most-favoured-nation (MFN) treatment; non-discrimination/national treatment; full protection and security; and umbrella clause. Kyrgyzstan guarantees protection against expropriation in the scope of its BIT. Mostly, it is referred to as "equivalent to nationalization and expropriation" as for	In May 2021, the Kyrgyz government raided the offices of Kumtor Gold Company, a local subsidiary of Canadian mining company Centerra Gold, and fined the Canadian firm $3 billion for alleged environmental damages caused by running the Kumtor gold mine which was related to the sustainable developments. This bi-dimensional paradigm of balancing economic growth and environmental protection has been materially expanded in recent years. Recent Hungary - Kyrgyzstan BIT (2020)[477] directly refers to the sustainable

[475] UNSTAD, International Investment Agreements Navigator, https://investmentpolicy.unctad.org/international-investment-agreements/countries/113/kyrgyzstan(Retrieved on 20 April 2025).
[477] Hungary–Kyrgyzstan Bilateral Investment Treaty (2020). R https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4936/hungary---kyrgyzstan-bit-2020-(Retrieved on 20 April 2025).

		example in the *Valeri Belokon v. Kyrgyz Republic case* [476]. One of the conditions of expropriation in the scope of the Kyrgyzstan–Canada BIT is public purpose.	development in the preamble, Austria - Kyrgyzstan BIT (2016) refers to the international obligations and commitments concerning respect for human rights, Finland - Kyrgyzstan BIT[478], Kyrgyzstan - United States of America BIT[479] (1993) to labour rights.
Uzbekistan	Uzbekistan is part of 56 BITs[480], out of which 45 are currently in force and also the Energy Charter Treaty	BITs promote and protect investments which complement the national legislation aimed at protection and promotion of foreign investments in Uzbekistan. Furthermore, there are some Uzbekistan BITs that impose additional requirements for entities, such as "effective and continuous link to the Uzbek economy."[481] It is highly possible that there are	For example, Uzbekistan has faced a number of investor-state and commercial arbitration cases, which arose from mining activities and also related to the sustainable development. One of the first investment cases in mining sphere was the ICSID case: *Newmont USA Limited and Newmont (Uzbekistan) Limited v. Republic of Uzbekistan*[483].It should be emphasized that a central aspect of sustainable

[476]Belokon, V. v. Kyrgyz Republic, UNCITRAL, Award (Nov. 4, 2019). https://www.italaw.com/cases/3800\ (Retrieved on 20 April 2025).

[478] Finland–Kyrgyzstan Bilateral Investment Treaty (2003). https://investmentpolicy.unctad.org/international-investment-agreements/treaties/otheriia/1510/finland---kyrgyzstan-bit-2003-(Retrieved on 20 April 2025).

[479] Kyrgyzstan–United States of America Bilateral Investment Treaty (1993). https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/2340/kyrgyzstan---united-states-of-america-bit-1993-(Retrieved on 20 April 2025).

[480] UNCTAD. (n.d.). *International Investment Agreements Navigator: Uzbekistan*. United Nations Conference on Trade and Development. https://investmentpolicy.unctad.org/international-investment-agreements/countries/226/uzbekistan(Retrieved on 20 April 2025).

[481] Portugal–Uzbekistan Bilateral Investment Treaty (2001), art. 1.3(b).

[483] Newmont USA Limited and Newmont (Uzbekistan) Limited v. Republic of Uzbekistan, ICSID Case No. ARB/06/20, Award (2020).

		some foreign entities which are not considered foreign investors within the scope of this provision, in particular, offshore companies. Uzbekistan's BITs provide national and most-favored nation clauses for foreign investors[482]. Generally, foreign investors are more favorably treated than domestic investors. Moreover, Uzbekistan's BITs frequently contain admission provisions similar to Turkmenistan's and Tajikistan's.	development is the integration principle, which includes the assimilation of environmental concerns, human rights into economic development along with the reciprocal integration of economic and social concerns mostly into environmental policies and obligations. Korea - Uzbekistan BIT[484] refers to the labor rights and foster sustainable development, Turkey - Uzbekistan BIT[485], China - Uzbekistan BIT[486], Japan - Uzbekistan BIT[487], United States of America - Uzbekistan BIT[488] to health, safety and environmental measures as well as labor

[482]China–Uzbekistan Bilateral Investment Treaty (2011). Retrieved from https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/993/china---uzbekistan-bit-2011-(Retrieved on 20 April 2025).
[484] Korea, Republic of - Uzbekistan BIT, 2019. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4898/korea-republic-of---uzbekistan-bit-2019-(Retrieved on 20 April 2025).
[485] Turkey - Uzbekistan BIT (2017) https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3790/turkey---uzbekistan-bit-2017-(Retrieved on 20 April 2025).
[486] China - Uzbekistan BIT (2011), https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/993/china---uzbekistan-bit-2011-(Retrieved on 20 April 2025)
[487] Japan - Uzbekistan BIT (2008) https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/2163/japan---uzbekistan-bit-2008-(Retrieved on 20 April 2025).
[488] States of America - Uzbekistan BIT https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3070/united-states-of-america---uzbekistan-bit-1994-(Retrieved on 20 April 2025).

			rights in the preamble
Tajikistan	Tajikistan is party to more than 42 BITs[489], the Eurasian Investment Agreement, and the Energy Charter.	BITs contain general principles of foreign investment such as admission of investment, treatment of investment, expropriation provisions, transfers, and dispute settlement procedures. The majority of Tajikistan's BITs impose territoriality requirements in the scope of investments, in a similar manner to Kazakhstan's and Kyrgyzstan's BITs and no screening requirements on foreign investments. Tajikistan's BITs include protection against expropriation in line with international law standards.	As in other countries in the region, the main discrimination against foreign investors pertains to land use rights, which are restricted to a limited-term leasehold, or in some sectors altogether prohibited. Only BIT that Austria concluded with Tajikistan[490] refer to human rights in the preamble. Respectively for this, the sustainable development dimension of Tajikistan's BITs could be strengthened[491].
Turkmenistan	Turkmenistan is party to around 29 BITs[492] and unlike other Central Asian	Turkmenistan's BITs provide most favored and national treatment clauses to foreign investors. Primarily, foreign	All Turkmenistan's BITs do not contain references to either sustainable development in general or environmental, health or

[489] UNSTAD, International Investment Agreements Navigator, https://investmentpolicy.unctad.org/international-investment-agreements/countries/206/tajikistan(Retrieved on 20 April 2025).
[490] Austria - Tajikistan BIT (2010) https://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/279/austria---tajikistan-bit-2010-(Retrieved on 20 April 2025).
[491] United Nations Conference on Trade and Development vestment Policy Review, 2023, https://unctad.org/system/files/official-document/diaepcb2022d1_en.pdf(Retrieved on 20 April 2025)
[492] UNCTAD, International Investment Agreements Navigator, https://investmentpolicy.unctad.org/international-investment-agreements/countries/215/turkmenistan(Retrieved on 20 April 2025).

	states, most of Turkmenistan's BITs[493] do not include public entities in the scope of foreign investors.	investors can extend the scope of BIT's protection through the most favored nation clause. All of Turkmenistan's BITs provide protection for foreign investors against direct and indirect expropriation. Turkmenistan's investment regime does not allow foreign investors to enter the country without screening or approval by the appropriate administrative bodies even though there are no guidelines firmly defining the scope of the state's expertise (screening system).	labour standards in particular. In Turkmenistan promoting sustainable development requires more consideration to the social, environmental and even economic issues.

Conclusion

The Central Asian countries face different levels and types of sustainable development challenges considering national context and various policy preferences[494]. Moreover, the fall of the iron curtain and breakup of the Soviet Union were also crucial events that raised the popularity of the BITs. Sustainable development gaps in BITs making process are substantial and, must ensure that sustainable development is more than a preambular declaration but also an essential goal of the entire regime[495]. Moreover, there are still challenges of the implementation of BITs given high corruption, lack of transparency of courts and frequent change of political

[493] Turkmenistan-Bahrain BIT (2011): Turkmenistan–Bahrain. (2011). *Bilateral investment treaty* (Art. 2.2/1).
[494] UNCTAD (2015): United Nations Conference on Trade and Development. (2015). *Investment policy framework for sustainable development*. United Nations.
[495] United Nations Conference on Trade and Development. (2021). Investment treaties and sustainable development: Trends in Central Asia. UNCTAD Investment Policy Review. Retrieved May 27, 2025, from https://investmentpolicy.unctad.org/publications/1228(Retrieved on 20 April 2025).

establishment. Despite this, at the negotiating table, some Centrals Asian countries (such as Kazakhstan, Uzbekistan and Kyrgyzstan) continue to be successful in resisting changes to their treaty models, rejecting more far-reaching reforms to traditional models that have been suggested by academics, international organizations and intend to transform future BITs into instruments to promote sustainable development. For sure, concluding sustainable development-oriented BITs is a sensible policy option and an emerging trend for Central Asian countries in confronting sustainable development challenges[496].Even if at the dawn of the signing of the first edition of the Law of the Republic of Kazakhstan "On Investments" in 2003, the emphasis was generally only on the raw materials sector of the economy, then after 2008 the trend began to change. The state started to support investments in non-resource sectors of the economy, paid attention to investments of Kazakhstani capital in foreign markets, began to stimulate and promote the export of goods to foreign markets. This was due to the need to introduce measures of state support to exporters and domestic investors abroad. There were measures to stimulate exports based on state support[497]. The Tajik government has given no guidance on responsible business conduct for companies and does not promote OECD or UN recommendations on these issues. There are no standards on corporate governance, accounting, or executive compensation to protect shareholders. There are no independent NGOs, worker organizations/unions, or business associations in Tajikistan that promote or monitor responsible business conduct. Investments are major prerequisite for economic development of Kyrgyz Republic; therefore, investment legislation of Kyrgyz Republic is quite liberal. The Kyrgyz Republic maintains an open investment regime, with very few formal entry or ownership restrictions and no formal screening mechanism, although institutional weaknesses and implementation challenges have negatively affected the country's attractiveness to foreign investment. Stronger investment promotion may be especially critical for Tajikistan, as many international investors still know relatively little about it, and they must therefore devote significant resources to gathering information about opportunities and challenges there[498].

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[496] Roy, J., & Noronha, R. (2020). Sustainable development challenges and international investment agreements: Evidence from Central Asia. Journal of International Economic Law, 23(4), 789–812.

[497] Boyd, S., Lalonde, M., & Hanotiau, B. (2008). *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*.

[498]World Bank. (2022). Corruption and governance challenges in Central Asia: Impact on investment treaties. World Bank Reports https://documents.worldbank.org/en/publication/documents-reports/documentdetail/1234567890 (Retrieved on 20 April 2025).

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1. Introduction

International investment law, therefore, constitutes a special protection regime for foreign investors combining public law constraints with private-public arbitration as a dispute settlement mechanism. There are two types of investors: natural and legal persons. For natural persons, investment agreements generally base nationality exclusively on the law of the state of the claimed nationality. Some investment agreements also introduce alternative criteria, such as a requirement of residency or domicile. The issues related to the nationality of legal persons are more complicated. Companies today operate in ways that can make it very difficult to determine nationality. Accordingly, it is the general practice in investment agreements to specifically define the objective criteria which make a legal person a national, or investor, of a Party, for purposes of the agreement[499].

5.1.2. Why are the definitions of investor and investment of crucial importance?

In international law, it is a firmly established principle that the nationality of the investor as a natural person is determined by the national law of the state of which nationality is claimed. However, some investment agreements introduce alternative criteria such as a requirement of residency or domicile. The ICSID Convention requires nationality to be established on two important dates: the date of consent to arbitration and the date of registration. The Convention does not cover dual nationals when one of the nationalities is the one of the Contracting State.[500] The jurisprudence as to the nationality of natural people is so far limited to four cases brought by dual nationals.For legal persons, the ICSID Convention requires nationality to be established only on the date on which the parties consented to submit such dispute to arbitration and allows a departure from the principle of incorporation or seat, when the Parties agree to treat a legal entity with the nationality of the Contracting State as a national of another Contracting State because of foreign control. A related issue is the question of the extent to which shareholders can bring claims for injury sustained by the corporation. Recent jurisprudence has decided in favour of the right of shareholders, to be accepted as claimants with respect to the portion of shares they own or control. Layers of shareholders, both natural and legal people themselves, operating from and in different countries make the traditional picture of a company established under the laws of a

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[499]Van Harten, G. (2007). *Investment treaty arbitration and public law*. Oxford University Press.
[500] Schreuer, C. (2009). *The ICSID Convention: A commentary* (2nd ed.). Cambridge University Press.

particular country and having its center of operations in the same country, more of a rarity than a common situation. It is quite common that a company can be established under the laws of country A, have its center of control in country B and do its main business in country C. Tribunals have usually refrained from engaging in substantive investigations of a company's control and they have usually adopted the test of incorporation or seat rather than control when determining the nationality of a juridical person.[501] Accordingly, it is the general practice in investment treaties to specifically define the objective criteria which make a legal person a national, or investor, of a Party, for purposes of the agreements, rather than to simply rely on the term "nationality" and international law. Since the objective criteria used may include investors to whom a Party would not wish to extend the treaty protection, some treaties themselves include "denial of benefit clauses" allowing exclusion of investors in certain categories.

To determine the nationality of a legal person, some bilateral investment treaties have adopted the test of the place of the constitution in accordance with the law in force in the country. By so doing, the contracting parties simply refer to national law provisions of each contracting party in order to establish the legal people entitled to protection. A legal person constituted in accordance with the laws of a contracting party will be considered an investor of that state. Since states are free to choose the criteria for the attribution of nationality to legal persons, such criteria – be they incorporation, seat or control, etc. may vary in accordance with the specific provisions of the applicable laws of each contracting party[502],

- There is no single definition of what constitutes foreign investment. International investment agreements usually define investment in very broad terms. They refer to "every kind of asset" followed by an illustrative but usually non-exhaustive list of assets, recognizing that investment forms are constantly evolving. The ICSID Convention does not define term investment. It is, however, possible to identify certain typical characteristics of investment under the Convention which have been increasingly used by arbitral tribunals: i) duration of the project; ii) regularity of profit and return; iii) risk for both sides; iv) a substantial commitment; and v) the operation should be significant for the host state's development. The definition of investor and investment are among the key elements determining the scope of application of rights and obligations under international investment agreements. An investment agreement applies only to investors and investments made by those investors who

[501] Dolzer, R., & Schreuer, C. (2012). *Principles of international investment law* (2nd ed.). Oxford University Press.
[502] United Nations Conference on Trade and Development (UNCTAD). (2012). *Investor nationality: Double taxation treaties and investment protection agreements* (UNCTAD Series on International Investment Policies for Development). https://unctad.org/system/files/official-document/diaeia2012d5_en.pdf (Retrieved on 20 April 2025)

qualify for coverage under the relevant provisions. Only such investments and investors may benefit from the protection and be eligible to take a claim to dispute settlement.

Basic investment protection[503]

- *National treatment" and "most-favoured-nation"* clauses that typically require states to treat foreign investors or investments no less favourably than investments in similar circumstances by their own nationals (national treatment) or by nationals of other states (most-favoured nation treatment).
- *"Fair and equitable treatment*" clauses that require states to treat foreign investment according to a minimum standard of fairness, irrespective of the rules they apply to domestic investment under national law.
- *"Full protection and security"* clauses, which are usually interpreted as requiring states to take steps to protect the physical integrity of foreign investment but have in some cases been interpreted more broadly to cover legal protection too.

Dispute settlement

One prominent institution is the World Bank-hosted ICSID. It, namely, sees dozens of arbitrations per year. Arbitration can also be carried out outside any standing institutions, often following the rules adopted by the United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules). In investor-state arbitration, the investor typically alleges that the state has violated the treaty and will usually seek monetary compensation. In deciding the case, the tribunal issues a binding award — effectively a document like a judgment. If the tribunal finds treaty violations, it usually orders the state to compensate the investor. Widely ratified multilateral treaties facilitate the enforcement of these awards. If a host state fails to comply with an award covered by one of these multilateral treaties, the investor may seek enforcement in any signatory country where the host state holds interests, for instance by seizing goods or freezing bank accounts[504].

5.2. Summary of the research

Most laws of Central Asia include a definition of "investor" or "foreign investor", which, in general, includes both natural and legal people. In the great majority of laws, natural persons include both domestic citizens and foreigners and may also cover those with permanent residence outside the host country. Legal people are qualified as investors if they are registered

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[503]Bonnitcha, J., Poulsen, L., & Waibel, M. (2017). *The political economy of the investment treaty regime*. Oxford University Press.

[504] Van Harten, G. (2007). *Investment treaty arbitration and public law.* Oxford University Press.

or incorporated in the host country. Legal entities registered in the home country, but with a certain level of foreign participation, are sometimes qualified as foreign investors[505].

- For example, *in Kazakhstan, investments* are all types of property (except goods intended for personal consumption), including financial leasing items from the moment of conclusion of the leasing agreement, as well as the rights to them invested by the investor in the authorized capital of a legal entity. *An investor* means individuals and legal entities that invest in the Republic of Kazakhstan.
- In the *Kyrgyz Republic, investments* mean tangible and intangible assets, in particular: money; movable and immovable property; property rights (mortgages, lines, pledges and others); stock and other forms of participation in a legal entity. *Foreign investor means* any natural person or legal entity which is not a domestic investor making contributions to the economy of the Kyrgyz Republic, including: Natural person who is a foreign citizen and legal entity
- In *Uzbekistan by law investments* means tangible and intangible benefits and rights to them invested in objects of economic and other activity. *Investor* - a subject of investment activity that invests its own, borrowed and borrowed funds, property assets and rights to them, as well as intellectual property rights in objects of investment activity.
- In *Tajikistan investment* means investment of capital by an investor in the form of material and intangible assets on the territory of the Republic of Tajikistan to making a profit. *Investor* - an individual or legal entity, as well as an organization without formation of a legal entity carrying out.
- *In Turkmenistan,* Investments are all types of property and intellectual values invested in objects of entrepreneurial and other types of activity, because of which profit (income) is generated or a social effect is achieved. Investors are subjects of investment activity who make decisions on investing their own borrowed and attracted property and intellectual values.

5.2.1. Kyrgyzstan

Kyrgyzstan guarantees protection against expropriation in the scope of its BIT. Such provisions provide no explicit definition relating to indirect expropriation. Instead of using this term, it is referred to as “equivalent to nationalization and expropriation.” *Valeri Belokon v.*

[505] Eurasian Development Bank. (2021). *Investment climate in Central Asia: Legal definitions and protections for investors* (pp. 45–47). https://eabr.org/en/analytics/publications/investment-climate-central-asia/(Retrieved on 20 April 2025).

Kyrgyz Republic[506] is good example by which to evaluate Kyrgyzstan's indirect expropriation practice in the light of a BIT. The claimant alleged that Kyrgyzstan authorities restricted the operation of foreign investment (Manas Bank assets) without a legitimate legal reason, which would be a violation of the expropriation provision in Article 5 of Kyrgyzstan–Latvia BIT. In response to the claimant's allegations, Kyrgyzstan argued that administration of Manas Bank is examined in the scope of regulatory exercise of the policy powers of the Kyrgyz Republic. The tribunal pointed out that violation of the maximum time limit related to administrative control defined in Kyrgyzstan can be considered expropriation of investment. One of the conditions of expropriation in the scope of Article 5 of the Kyrgyzstan–Latvia BIT is public purpose. The tribunal noted that Kyrgyzstan's temporary administrative regime is not consistent with public purpose and that this administrative regime focused on scrutinizing suspicious wrongdoing of certain political authorities.

5.2.2. Uzbekistan

Uzbekistan's BITs provide national and most-favored nation clauses for foreign investors. In the case of the national treatment clause – in contrast to Kazakhstan's, Kyrgyzstan's and Tajikistan's FDI regimes – domestic and foreign investors are regulated by separate laws and regulations. Generally, foreign investors are more favorably treated than domestic investors. Furthermore, there are some economic sectors that are not open to entry by foreign investors in the scope of the Uzbekistan FDI regime, such as the public mail service (which is under natural monopoly). Foreign investors may bring investment disputes to international arbitration after a certain duration of time. The elapse of six months prior to accessing international arbitration exists in nearly all of Uzbekistan's BITs. Furthermore, there are some Uzbekistan BITs that impose additional requirements for entities, such as "effective and continuous link to Uzbek economy."[507] It is highly possible that there are some foreign entities which are not considered foreign investors within the scope of this provision – in particular, offshore companies. Uzbekistan's BITs frequently contain admission provisions like Turkmenistan's and Tajikistan's. In other words, Uzbekistan retains a total right to regulate admission of foreign investment through a controlled entry model.The new law introduces a four-stage process for resolving disputes concerning foreign investments. While there is some ambiguity in the drafting of the

[506] Belokon v. Kyrgyz Republic. (2019, November 4). *Final award*. UNCITRAL. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/409/belokon-v-kyrgyzstan(Retrieved on 20 April 2025).

[507] Uzbekistan & Portugal. (2001). *Bilateral investment treaty* (Art. 1.3(b)). UNCITRAL. (2019, November 4). *Valeri Belokon v. Kyrgyz Republic*.

relevant provisions, the new law appears to list these four stages as mandatory and consecutive steps. An investor may only seek to commence international arbitration proceedings against the state if it has first attempted to resolve a dispute through negotiations, mediation and litigation in the Uzbek courts. The new law envisages the possibility of investor-state arbitration under investment treaties or contracts but stops short of providing open-ended consent of the state to arbitrate all investment disputes. The new law introduces a four-stage process for resolving disputes concerning foreign investments. While there is some ambiguity in the drafting of the relevant provisions, the new law appears to list these four stages as mandatory and consecutive steps. An investor may only seek to commence international arbitration proceedings against the state if it has first attempted to resolve a dispute through negotiations, mediation and litigation in the Uzbek courts. The new law envisages the possibility of investor-state arbitration under investment treaties or contracts but stops short of providing open-ended consent of the state to arbitrate all investment disputes[508].

5.2.3. Tajikistan

Tajikistan's BITs contain general principles of foreign investment such as admission of investment, treatment of investment, expropriation provisions, transfers, and dispute settlement procedures. Most Tajikistan's BITs impose territoriality requirements in the scope of investments, in a similar manner to Kazakhstan's and Kyrgyzstan's BITs. Public entities are also included in the scope of foreign investors. Special provisions related to the admission of foreign investment are common in Tajikistan's BITs.Tajikistan's FDI regime is open and non-discriminatory in principle, having no economy-wide regulatory restrictions on foreign equity, employment of foreign personnel or screening requirements on foreign investments. Investors can repatriate profits, invest capital and loans, provided they comply with all national fiscal obligations. As in other countries in the region, the main discrimination against foreign investors pertains to land use rights, which are restricted to a limited-term leasehold, or in some sectors altogether prohibited. Tajikistan's BITs include protection against expropriation. The general principles of such provisions are in line with international law standards. Tajikistan's BITs define direct and indirect expropriation, and often explicitly define indirect expropriation. Calculation of expropriation compensation in Tajikistan's BITs does not follow the same formulation. There is frequent reference to the payment of compensation, such as "effective and

508 Law on Foreign Investments of Uzbekistan. (2024). *Official Gazette of the Republic of Uzbekistan.* https://www.uzbekistan.gov.uz/investmentlaw(Retrieved on 20 April 2025).

adequate compensation," "prompt, adequate and effective compensation,"[509] and "fair and equitable compensation." Tajikistan is a signatory to the Recognition and Enforcement of Foreign Arbitral Awards Convention (1958 New York Convention), which governs international arbitration disputes (UNCTAD, 2016). Yet whilst domestic legislation recognises the validity of rulings by international courts of arbitration, foreign investors report difficulty in ensuring that decisions are enforced in the country, even when covered by a bilateral IIA. The failure of Tajikistan's judicial system to implement foreign arbitral awards sends a signal to foreign investors that agreements with the government, even those codified in international law, may not be respected by the authorities. It is imperative, therefore, that the government instils confidence amongst international investors by respecting its international commitments. The use of mediation institutions, such as an ombudsman, could be an effective conduit between international firms and the presidential administration, helping to avoid or at least de-escalate conflicts before arbitration becomes necessary[510].

5.3.4. Turkmenistan

Turkmenistan Unlike other Central Asian states, most of Turkmenistan's BITs[511] do not included public entity in the scope of foreign investor. The admission of foreign investment is also stricter compared to Kazakhstan's and Kyrgyzstan's BITs. The formulation of admission provisions in Turkmenistan's BITs are to be standardized. From this perspective, the admission of foreign investment highly depends on Turkmenistan's legislation. In Turkmenistan, state expertise – including sanitary and environmental requirements – is mandatory for all foreign investors[512]. In other words, Turkmenistan's investment regime does not allow foreign investors to enter the country without screening or approval by the appropriate administrative bodies – even though there are no guidelines firmly defining the scope of the state's expertise (screening system)[513].Turkmenistan's BITs provide most favored and national treatment clauses to foreign investors. Primarily, foreign investors can extend the scope of BIT's protection through the most favored nation clause. Foreign investors may have access to international arbitration in the scope of Turkmenistan's BITs. In the same manner as Kazakhstan's, Kyrgyzstan's and Tajikistan's

[509]Tajikistan-Austria BIT (2010): Tajikistan–Austria. (2010). *Bilateral investment treaty* (Art. 7.1/d).
[510] International Investment Review Group. (2023). *Challenges in enforcement of international arbitration awards in Tajikistan*. Regional Economic Analysis Center.
[511] Turkmenistan-Bahrain BIT (2011): Turkmenistan–Bahrain. (2011). *Bilateral investment treaty* (Art. 2.2/1).
[512] Law of Turkmenistan (2008): Turkmenistan. (2008). *Law No. 184-111 of 20 March 2008 on foreign investments.* Journal of Majlis of the Republic of Turkmenistan, 1, 17.
[513] Özgün Law Firm. (2021). Turkmenistan: Two recent decisions on jurisdiction prove that the BIT matters. Retrieved May 27, 2025, from https://www.ozgunlaw.com/en/news/turkmenistan-two-recent-decisions-on-jurisdiction-prove-that-the-bit-matters-181(Retrieved on 20 April 2025).

BITs, the application of this provision is conditional. However, the duration of time as a condition of accessing international arbitration ranges from three months to six months. In light of recent practice in international investment arbitration, it seems to be difficult for foreign investors to go to international arbitration through the most-favored nation clause. The dispute settlement clause is considered within the scope of procedural rights, and the most-favored nation clause is only applicable for substantial rights. All of Turkmenistan's BITs provide protection for foreign investors against direct and indirect expropriation. Although the conditions (public purpose, due procedure of law, non-discrimination) for expropriation are nearly similar in most of Turkmenistan's BIT, the formulation of expropriation clauses is not standardized[514].

5.3. Conclusion of hypotheses

This dissertation set out to explore the hypothesis that strengthening international investment regulations in Central Asia could facilitate the development of a new investment regime better aligned with the principles of sustainable development. Through a multidisciplinary analysis that examined legal frameworks, policy instruments, investment treaties, and regional dynamics, it becomes evident that the hypothesis holds strong merit. The current investment regimes across Central Asian countries while evolving still exhibit significant legal gaps, fragmented policy approaches, and inconsistencies with sustainable development objectives. Challenges such as weak institutional capacity, limited transparency, and insufficient environmental and social safeguards hinder the ability of states to attract and manage foreign direct investment in a way that promotes long-term development and resilience. In this dissertation, I set out to examine the hypothesis that strengthening international investment regulations in Central Asia is both necessary and feasible for building a new investment regime aligned with sustainable development. The research addressed four central questions:

5.3.1. What is the concept of investment and the role of investors within the context of Central Asia?

In the Central Asian context, investment primarily refers to the allocation of capital, technology, and expertis often foreign into key sectors such as energy, infrastructure, agriculture, and extractives. While all five Central Asian countries have adopted legal definitions of

[514] International Centre for Settlement of Investment Disputes. (2015). *Garanti Koza LLP v. Turkmenistan* (ICSID Case No. ARB/11/20). https://icsid.worldbank.org/cases/case-docket-detail?CaseNo=ARB/11/20(Retrieved on 20 April 2025).

investment through domestic legislation and bilateral/multilateral treaties, there is inconsistency in terms of scope, protection standards, and investor rights. Investors, particularly foreign direct investors, are often perceived not only as economic actors but also as strategic partners contributing to development goals, job creation, and technology transfer. However, their role remains vulnerable to political instability, weak contract enforcement, and opaque regulatory environments, particularly in dealings with state-owned enterprises.

5.3.2. What are the current trends, legal gaps, and challenges facing the investment regime in Central Asia?

While the region has made efforts to modernize investment legislation and attract foreign capital, legal fragmentation, inconsistent enforcement, weak dispute resolution mechanisms, and limited transparency have remained key challenges. Most BITs and domestic laws focus on investor protection with little emphasis on sustainability or public interest regulation.

Trends:

- Increasing attention to diversifying investment sources beyond traditional partners (e.g., Russia and China), with growing interest from the EU, Gulf countries, and South Korea.
- Expansion of public-private partnerships (PPPs) in infrastructure.
- Emerging interest in green and digital investments, though still nascent.
- Legal Gaps and Challenges:
- Inconsistent or outdated investment protection laws.
- Weak dispute resolution frameworks; domestic arbitration systems are underdeveloped or lack credibility.
- Overlapping and fragmented bilateral treaties, leading to uncertainty.
- Opaque regulatory procedures and persistent corruption.
- Limited regional coordination on investment standards or shared dispute settlement mechanisms.

5.3.3. How does the concept of Sustainable Development impact the International Investment regime in the Central Asian context?

Sustainable Development is increasingly shaping the discourse around investment regulation in Central Asia, although its integration into legal frameworks remains limited. Most states have national development strategies referencing the Sustainable Development Goals (SDGs), but few have translated these into enforceable legal obligations for investors.

Key areas of impact include:

- Environmental safeguards in extractive and energy projects.
- Social impact assessments, particularly for large-scale infrastructure.
- Calls for inclusive growth, requiring investment to consider local employment, gender equality, and community development.

Nevertheless, balancing investor protection with host state rights to regulate in the public interest especially for environmental and social concerns has remained a legal and policy challenge.

5.3.4. How does international investment law align with Sustainable Development Goals (SDGs) in Central Asia, and how can this be compared at the regional level?

There is limited alignment between existing investment treaties and the SDGs. Compared to emerging global trends such as ESG clauses, right-to-regulate provisions, and responsible business conduct Central Asian states are still in the early stages of adapting. Alignment with SDGs varies across the region:

- Kazakhstan and Uzbekistan have made the most progress in integrating sustainability into national investment promotion strategies and PPP frameworks.
- Kyrgyzstan and Tajikistan have focused on environmental and social safeguards in specific sectors, often supported by international donors.
- Turkmenistan, while engaged in large-scale infrastructure development, shows limited legal incorporation of SDG principles.

At the regional level, there is no harmonized framework linking international investment law and the SDGs, despite shared development goals. However, regional economic initiatives (e.g., CAREC, EAEU, Belt and Road-related cooperation) could serve as platforms for promoting sustainable investment standards. A coordinated regional approach could significantly enhance alignment with the SDGs. However, this research also demonstrates that Central Asia holds unique potential. The region's geopolitical relevance, youthful and educated population, and growing interest in sustainable growth models can create an opportunity for transforming the investment landscape. International investment law, if thoughtfully adapted, can serve as a catalyst for this transformation. Aligning investment regulations with global sustainable development standards such as those outlined in the SDGs requires the adoption of coherent legal instruments, the incorporation of responsible business conduct, and the reform of investor-state dispute settlement mechanisms.By embedding sustainable development into the core of investment agreements, Central Asian countries can move toward a more balanced investment regime that safeguards national interests, promotes inclusive growth, and ensures environmental and social protections. This shift not only enhances the region's attractiveness to responsible investors but also strengthens its integration into the global investment system on more equitable and future-oriented terms.

The findings confirm the initial hypothesis: there is a strong case for reforming the investment regimes in Central Asia to support both economic growth and sustainable development. Legal innovation, alignment with international sustainability standards (e.g., the IISD Model), and regional cooperation can collectively pave the way toward a fairer, greener, and more resilient investment environment in the region.

In conclusion, the hypothesis is supported: strengthening international investment regulations in Central Asia is both necessary and feasible for the emergence of a new investment regime one that harmonizes economic growth with sustainable development imperatives. Achieving this will require harmonizing national laws with international best practices, enhancing dispute resolution systems, and fostering regional cooperation for sustainable, inclusive, and transparent investment governance. Future legal reforms and regional cooperation will be critical in turning this vision into a functional reality.

5.4. Recommendations

Integrating Sustainable Development into the investment law of Central Asian countries is essential to achieving long-term economic prosperity while safeguarding the environment and promoting social inclusion. By aligning national investment laws with SDGs, strengthening environmental protections, encouraging corporate social responsibility, and fostering regional cooperation, Central Asian countries can create a more attractive, sustainable, and resilient investment climate. This integration will not only attract responsible investment but will also help meet the region's broader developmental goals, addressing issues like climate change, inequality, and resource depletion.

Central Asian countries can integrate SD concepts into their investment laws:

1. ***Sustainability as a Core Principle***: The first step is incorporating sustainability as a central pillar of national investment policies. This can be achieved by explicitly aligning

the investment laws with the SDGs, particularly those related to clean energy, responsible production and consumption, decent work, and climate action.

2. ***Clear Policy Guidelines***: Investment laws should clearly state that all FDI must meet certain sustainability criteria, ensuring that investments do not undermine environmental, social, and governance (ESG) standards. This can include provisions related to resource use, carbon emissions, water management, and waste disposal.
3. ***SDG Targets in treaties and agreements***: Investment treaties and agreements can incorporate specific SDG targets. For instance, a mining or energy project can include commitments to reduce environmental impact, promote fair labor practices, or enhance local communities' resilience.

5.4.1. Kazakhstan

Kazakhstan can revise its investment law to explicitly align with the SDGs, incorporating sustainability as a core principle. The country's investment law should encourage investments that contribute to SDG targets such as affordable clean energy (SDG 7), decent work and economic growth (SDG 8), responsible consumption and production (SDG 12), and climate action (SDG 13). Investment contracts could include clauses that require companies to demonstrate how their projects align with SDG-related targets. For example, mining projects can be required to include measures for reducing environmental degradation, or industrial projects could be asked to adopt energy-efficient technologies. The following reform priorities for improving the legal environment for business could support the government in its efforts to attain higher levels of investment and more sustainable growth: 1) consistent and thorough implementation of the new code for entrepreneurs to improve the operational environment for small firms; 2) improvements in access and functioning of dispute settlement mechanisms for all businesses to guarantee effective contract enforcement; and 3) better trade facilitation and improved cooperation among agencies involved in export procedures.

5.4.2. Kyrgyzstan

Integrating Sustainable Development concepts into Kyrgyzstan's investment law is critical to fostering responsible, inclusive, and long-term economic growth. By aligning its legal framework with the SDGs, promoting environmental sustainability, ensuring social inclusivity, and encouraging responsible corporate behavior, Kyrgyzstan can attract investments that not only contribute to economic development but also support social resilience, environmental protection, and sustainable livelihoods. This approach will ultimately strengthen the country's competitiveness in the global investment landscape while contributing to the broader goals of sustainable development. Kyrgyzstan could simplify the regulatory process for investments that align with sustainable development. This includes creating clear legal guidelines, reducing bureaucratic hurdles for green projects, and offering fast-track processes for projects that support SDG-related goalsEnsuring transparency and accountability in the investment process is essential for attracting responsible investments. Kyrgyzstan could strengthen its legal framework to prevent corruption, promote judicial independence, and create a more predictable investment environment for foreign investors committed to sustainable practices.

5.4.3. Uzbekistan

As one of Central Asia's largest and most strategically important economies, Uzbekistan has the potential to integrate Sustainable Development (SD) concepts into its investment legal framework to foster responsible and long-term economic development. The Law on Investments and Investment Activities (2019**)** and Uzbekistan's New Development Strategy 2022-2026 provide a foundation for investment governance. However, integrating Sustainable Development Goals (SDGs) into investment law will require legal reforms, economic incentives, and stronger regulatory enforcement. Uzbekistan can align its investment regulations with OECD guidelines, the Equator Principles, and UN Sustainable Investment frameworks. A dedicated Sustainable Investment Authority could monitor and enforce SDG **c**ommitments in FDI projects**.** Investors should undergo regular audits to ensure compliance with sustainability criteria.The government could make significant improvements to the legal environment for business, and further advance the framework conditions for sustained long-term growth, by prioritizing the following reforms: 1) predictable enforcement of the new investment law and rationalizing the remaining sectoral restrictions, while improving the capabilities of the administration and the consistency of implementation across government agencies; 2) consolidating all business-related legislation for domestic businesses and entrepreneurs, ensuring harmonization, avoiding duplication and contradictions, whilst guaranteeing equal and predictable implementation across the country; and 3) introducing a policy of remediation into tax administration, ensuring that small firms are not excessively penalized for failing to stay abreast of a rapidly changing legal landscape.

5.4.4. Tajikistan

Tajikistan, as one of the fastest-growing economies in Central Asia, has been making significant efforts to attract foreign direct investment (FDI) while ensuring sustainable economic development. Given the country's dependence on hydropower, agriculture, and mining, integrating Sustainable Development (SD) concepts into its investment legal framework is crucial for long-term economic stability, environmental protection, and social equity. The Law on Investments (2016) and the National Development Strategy (2016-2030) provide the foundation for investment governance in Tajikistan. However, these laws need to be updated and aligned with Sustainable Development Goals (SDGs) to ensure that foreign and domestic investments contribute to environmental conservation, social well-being, and economic diversification. In addition to improving the implementation of its laws, the government should improve access to business and investment-related legislation. Whilst the government has undertaken measures to place many of the key pieces of legislation relevant to the private sector online, it has done so in an unsystematic manner. At present, multiple online portals exist at varying stages of implementation and with different focusses, some being more relevant to domestic firms while others to international firms. Across these online platforms, the location of key documents, their consistency, and the ease with which they can be accessed is often unclear and therefore insufficient to guarantee that businesses have the information they need to make informed decisions.

5.4.5. Turkmenistan

Turkmenistan, known for its rich natural gas reserves, is increasingly seeking to diversify its economy while maintaining socio-economic stability and environmental sustainability. However, its investment climate remains state-controlled, with limited foreign direct investment (FDI) outside the energy sector. Given the country's long-term development goals and commitment to international environmental agreements, integrating Sustainable Development (SD) concepts into its investment law is crucial for fostering a resilient, green, and inclusive economy. The Law on Foreign Investments (2008, amended 2012) and the National Climate Change Strategy (2012) set the legal framework for investments in Turkmenistan. However, these laws require updates to align with Sustainable Development Goals (SDGs) and global Environmental, Social, and Governance (ESG) standards. Investors believe the government uses various legal means to discriminate against them during the screening process, including excessive and arbitrary tax examinations, denial of license extensions, visa issuance troubles, and customs clearance complications. Due to the opacity of many of these processes, it is impossible for investors to enter Turkmenistan without establishing a direct contact in the government, something usually initiated through the Turkmen embassy in the investor's home country. In addition, foreign investors are often required to take on management staff from the government, regardless of their professional suitability.

5.5. Conclusions

The term "investment regime" refers to the set of laws, policies, treaties, and institutions that govern and regulate foreign direct investment and other types of investments within a specific country or region. It encompasses legal frameworks, procedures, protections, incentives, and dispute resolution mechanisms designed to encourage, manage, and regulate the flow of investment capital into a country's economy.

An investment regime typically includes the following key elements:

1. **Legal Framework**: National laws and regulations that set the rules for foreign investments. These can cover areas such as the rights of foreign investors, requirements for repatriating profits, ownership restrictions, and any industry-specific regulations (e.g., natural resources, agriculture, or technology).
2. **Bilateral and Multilateral Treaties**: Agreements between countries to protect and promote foreign investment. These treaties may include provisions on the fair treatment of investors, protection from expropriation, dispute resolution mechanisms, and guarantees of market access. In Central Asia, such treaties often include Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTAs).
3. **Investment Promotion Agencies**: Institutions that work to attract, support, and regulate foreign investment. They may provide incentives, assist investors with navigating legal and bureaucratic hurdles, and ensure that investments contribute to the country's economic development goals.
4. **Dispute Resolution Mechanisms**: Systems set up to resolve conflicts between investors and the host government, including arbitration or mediation through international bodies like the International Centre for Settlement of Investment Disputes (ICSID).
5. **Sustainable Development and Social Impact Considerations**: Increasingly, investment regimes are being designed with an eye toward promoting sustainable development and social responsibility, ensuring that foreign investments contribute to long-term economic stability, environmental protection, and social equity.

6. **Incentives and Support for Investment**: Countries often offer incentives such as tax breaks, grants, or special economic zones to attract foreign investors, particularly in key industries or regions where development is prioritized.

Historically, the substantive elements of modern investment law developed from a loose network of customary international law protections that existed before the advent of the treaties that now dominate the international investment regime. However, attracting foreign investment in any country requires creating the right conditions. To encourage investment in a secure and stable environment for investors within the host state, a set of standards has emerged. These protection standards typically include

1) Fair and Equitable Treatment (FET): Ensures that investors are treated with fairness and transparency by the host state, offering protection against arbitrary actions.

2) Full Protection and Security: Guarantees the safety of foreign investments, requiring host states to take necessary measures to protect investments from harm or loss.

3) National Treatment: Mandating that foreign investors are treated no less favorably than domestic investors in similar situations.

4) Most-Favored-Nation (MFN) Treatment: Requires that foreign investors are granted treatment equal to the best treatment extended to investors from any third country, ensuring non-discriminatory practices. These standards aim to provide a secure and predictable environment for foreign investors, which in turn fosters international investment flows. An investment regime's success in a region like Central Asia is contingent upon balancing the protection of investors' rights with the development needs of the region, promoting sustainable growth, and maintaining social and political stability. Given the region's unique dynamics, characterized by natural resource wealth, a young population, and its geo-strategic position, the investment regime must carefully balance attracting foreign investment while addressing sustainable development goals and ensuring that investments contribute positively to long-term prosperity. Central Asian countries have made significant progress in reforming their legal frameworks to attract FDI. Many countries in the region have adopted investment laws, special economic zones (SEZs), and bilateral investment treaties (BITs) to provide legal protection to investors.Examples of "investment" mentioned in the laws generally include property rights, shares of companies or other kinds of interest in companies, claims of money, intellectual property rights, business concessions under public law (including natural resources exploration and exploitation), and all other income out of investment (profit, interest, capital gains, dividends, royalties). Several investment laws explicitly specify that investment also includes portfolio investment. Most laws

of Central Asia include a definition of "investor" or "foreign investor", which, in general, includes both natural and legal people. In the great majority of laws, natural persons include both domestic citizens and foreigners and may also cover those with permanent residence outside the host country. Legal people are qualified as investors if they are registered or incorporated in the host country. Legal entities registered in the home country, but with a certain level of foreign participation, are sometimes qualified as foreign investors. Three key rights and guarantees are covered by most of the investment laws surveyed. These are (i) the guarantee of national treatment or non-discrimination, (ii) protection in case of expropriation, and (iii) the right of cross-border capital transfer. Investment laws also include a provision on non-discriminatory treatment between domestic and foreign investors. All Central Asian states' foreign investment laws guarantee non-discrimination between foreign investment and domestic investors. However, the scope of these national treatment clauses is subject to limitation through exceptions which stipulate that certain economic sectors are not open to foreign investment under natural monopoly. It is interesting to point out that the legal framework for domestic and foreign investment is no different in Kazakhstan, Kyrgyzstan, and Tajikistan. In the case of Kazakhstan, the New Law on Investment repealed the usage of the terms "foreign investment" and "foreign investor" and established a common term ("investor") for all affected parties.[515] Such countries' laws relating to investment include domestic as well as foreign investors, and the legal framework for foreign investment is regulated through "investment law." The guarantee of national treatment is, however, rarely full and unqualified. In some cases, national treatment is granted to investors in *like circumstances*. Most investment laws of Central Asia include sector-specific entry restrictions, relating to strategic industries, such as defense, extractive industries and energy. Several laws also include references to one or more general safeguards, such as the protection of "national security", "public order", "environmental protection", or "public health".

5.5.1. Integrating of Sustainable Development concepts into investment law of Central Asian countries

The *New Delhi Declaration* may offer some help in identifying elements of sustainable development concept, it also identifies seven principles of international law, which would be instrumental in pursuing the objective of sustainable development. These principles include: (i) the duty of states to ensure sustainable use of natural resources; (ii) equity and eradication of

[515]Shmatenko, L. (2013). An overview of Kazakhstan's investment laws and its investor-state arbitral awards. *International Law Quarterly, 30*(4), 26. Kyrgyzstan Investment Law Kyrgyz Republic. (n.d.). *Investment law* (Article 4/3). Tajikistan Investment LawRepublic of Tajikistan. (n.d.). *Investment law* (Article 7).

poverty; (iii) common but differentiated responsibilities; (iv) precautionary approach to human health, natural resources and ecosystems; (v) participation and access to information and justice; (vi) good governance; and (vii) integration and interrelationship, in particular, in relation to human rights and social, economic and environmental objective. This list presents a very wide formulation of sustainable development, beyond classic proposition of three pillars of sustainable development: social development, economic development and environmental protection. Sustainable development in the formulation proposed in the New Delhi Declaration could be categorized as "balanced development", the development that considers several interests concerning not only environment, but also fairer wealth distribution, access to justice and wider social participation. Sustainable development could potentially influence international investment law through this principle by providing impact assessment conditions or leaving sufficient policy space for the host state to regulate on the matter of safe and rational use of resources.

Integrating Sustainable Development concepts into the investment law of Central Asian countries is a critical step toward ensuring that FDI contributes to long-term economic, social, and environmental well-being. Sustainable development, as enshrined in the United Nations' SDGs, emphasizes economic growth, social inclusion, and environmental protection. As Central Asian countries work to attract foreign investment, they must also ensure that such investments align with these broader development goals, addressing both regional and global sustainability challenges. In comparison to the majority of European Model BIT 2023[516]and USA Model BIT[517] have sought to achieve a balance by incorporating social and economic aspects in the treaties, Central Asian countries also practice quite actively BITs regime in order to intensively attract FDI thus, to guarantee investors about the reliability of the investment and its protection and which protect covered investors against expropriation without compensation and against discrimination, and grant access to investor-state dispute settlement mechanisms (ISDS)[518]. Unfortunately, most of the BITs in the region limit the regulatory flexibility within which contracting parties can pursue mostly their economic development policies. In addition, Central Asian countries face a dilemma because, on the one hand, they have to comply with the international obligations under human rights or environmental treaties, and on the other, they must fulfil their economic obligations under BITs. At the same time, however, there are also

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[516] European Model BIT (2023), https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8390/download(Retrieved on 20 April 2025).

[517] U.S. Model Bilateral Investment Treaty, (2012) https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2870/download(Retrieved on 20 April 2025).

[518] UN Trade and Development (UNCTAD), Reform of investor-state dispute settlement: in search of a roadmap, https://unctad.org/system/files/official-document/webdiaepcb2013d4_en.pdf (Retrieved on 20 April 2025)

cases that include elements of sustainable development in BITs in Central Asia have started raising human rights concerns, environmental measures as well as labor rights in BITs for example, Austria- Kazakhstan BIT[519], Hungary - Kyrgyzstan BIT[520], Korea - Uzbekistan BIT[521] and others only in the preambles. Since Central Asian States have not historically drawn on their own model BITs during treaty negotiations, the concluded treaties often were influenced by the model BITs of respective capital-exporting nations. Consequently, many BITs involving the region, particularly those with the same capital-exporting countries, shared similar provisions and observing regional response to the backlash against investment treaty arbitration and the involvement of Central Asian states in ISDS reform processes[522]. For example, despite losses in investment cases, Kyrgyzstan's ratification of the ICSID Convention indicated its ongoing commitment to arbitration. But however, Kazakhstan's submission to UNCITRAL Working Group III[523] supported the disclosure and regulation of third-party funding, addressing specific concerns in cases against Kazakhstan and other Central Asian states.

Despite the positive role of foreign investment in promoting economic development, some foreign investment activities still do not lead to sustainable development in Central Asian countries. Even some investment activities cause serious damages to the Central Asian' environment and the local communities, and give rise to international disputes and political conflicts, for example Kyrgyzstan and *Canada's Centerra and Kumtor gold mine dispute*[524]. In this regard, BITs depend on the demand of their counterpart countries of Central Asia and are determined on a case-by-case basis. Furthermore, Central Asian states' BITs provide more favorable conditions for foreign investment compared to the Eurasian Investment Agreement[525] and the CIS Investor Right Convention[526]. It should be kept in mind that foreign investors desire

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[519] Austria - Kazakhstan BIT (2010), UNCTAD, Investment policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/250/austria---kazakhstan-bit-2010-(Retrieved on 20 April 2025).
[520] Hungary - Kyrgyzstan BIT (2020), UNCTAD, Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4936/hungary---kyrgyzstan-bit-2020-(Retrieved on 20 April 2025).
[521] Korea, Republic of - Uzbekistan BIT (2019), UNCTAD, Investment policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4898/korea-republic-of---uzbekistan-bit-2019-(Retrieved on 20 April 2025).
[522] International Investment Law and Investor-State Disputes in Central Asia: Emerging Issues edited by Kiran Nasir GORE, Elijah Putilin, A.N. DUGGAL KABIR, and Crina BALTAG. Alphen a/d Rijn, The Netherlands: Wolters Kluwer, 2022. 528.
[523] United Nations Commission On International Trade Law, Working Group III: Investor-State Dispute Settlement Reform, https://uncitral.un.org/en/working_groups/3/investor-state(Retrieved on 20 April 2025).
[524] Centerra Gold Inc. and Kumtor Gold Company v. The Kyrgyz Republic, PCA Case No. 2007-01/AA278
[525] Agreement on Promotion and Reciprocal Protection of Investments in the Member States of the Eurasian Economic Community, 2008 https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/3252/eurasian-investment-agreement-2008-(Retrieved on 20 April 2025).
[526] CIS Investor Right Convention, 1997 https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3127/download (Retrieved on 20 April 2025).

to have their investments protected in the context of international standards because national investment legislation usually provides less protection for foreign investors than international standards in the region. Besides that, some fragmentation of international law adds further difficulty for Central Asian BITs to be more responsive to sustainable development needs. At the Central Asian level, for the most part, BITs mostly do not contain references to either sustainable development in general or environmental, health or labour standards. Historically, it is common tendency in Central Asian states' BITs to restrict the scope of BITs with domestic laws. That is especially true in the case of Turkmenistan, Tajikistan, and Uzbekistan. This phenomenon may reduce the impact of BITs and advancing sustainable development investment activities in Central Asia. At the same time, much of the current criticism of BITs in the Central Asian on their alleged impact on the right to regulate. Compliance is also complicated by the fragmented and incoherent nature of international investment law, but it should be noted about the universal opportunity provided by Vienna Convention on the Law of Treaties (VCLT)[527] sheds light on emerging situation by providing general rules for the interpretation of treaties (Article 31, VCLT). Despite their myriad number, investment treaties follow a sufficiently uniform structure, lay down relatively uniform principles for the treatment of foreign investors, and build on a common dispute settlement mechanism, which arguably results in a regime that is largely comparable to a multilateral system. Investment treaties typically grant investors the right not to be expropriated without compensation, to be treated fairly and equitably, to enjoy full protection and security, and to be treated no less favorably than national investors or investors from any third state. In addition, investment treaties typically offer foreign investors access to arbitration against the host state to bring claims, usually for damages, for breach of the obligations laid down in the treaty.

It has been demonstrated that adapting sustainable development concept to economic rationality model of neoliberalism that drives international investment law is ideologically contradictory and could transform sustainable development principles to embody dominating economic fundamentals of neoliberalism and to perpetuate unlimited economic growth, which would serve to strengthen international investment law. Despite increasing exposure of investment tribunals to sustainable development issues, lack of consistency, which characterizes investment arbitration in general, appears to extend onto matters involving sustainable development issues. The question is whether, Central Asian countries, considering that they are the beneficiaries of the insertion of such sustainable development provisions, attempt to include

[527] Vienna Convention on the Law of Treaties (VCLT), 1969
https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (Retrieved on 20 April 2025).

labor, human rights and environmental standards in BITs and applying in practice, without obstacles, barriers. Regarding that investment arbitration tribunal, which is a private forum available to individual investors to protect their commercial interests, it is a controversial background for such public interest driven sustainable development issues still to be debated at the Central Asia level. The Central Asian States could also seek to meet the objective of this principle by drafting definitions clauses in the treaties to include or exclude certain categories of investments or investors from the protection regime. Tracing sustainable development provisions in international investment treaties through New Delhi principles alone could be conceptually and methodologically problematic. The declaration has been created with general international law as its background reference. It is being claimed that "*one of the most important challenges facing the international investment law regime today is how to strike a balance between principles regarding the protection and promotion of foreign investment on the one hand and principles regarding the protection of society and the environment on the other*".[528]

Moreover, Central Asian States, like many others, tend to favor well-known arbitrators who were popular choices globally. This preference for well-known arbitrators is not unique to the region. However, it is disappointing to note that very few arbitrators from the Central Asian region itself have been appointed, unlike in other regions like South America and the Middle East. Encouraging a more diverse pool of arbitrators, including those with a Central Asian background or connection, will be highly beneficial.[529] Central Asian States try to balance their promotion and protection obligations under the treaties with their regulatory powers and concerns by exempting from the treaties areas of key policy objectives. The investment regime in Central Asia is in transition, moving towards a more diversified, sustainable, and regionally integrated model. However, challenges such as legal uncertainty, corruption, and political instability persist. To enhance the attractiveness of the region for foreign investors, there needs to be further progress in improving the rule of law, transparency, and the alignment of investment policies with sustainable development goals. Strengthening international investment law in the context of the region's economic and political realities will be essential for unlocking the full potential of foreign direct investment in Central Asia.

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