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IMPROVING THE MECHANISMS FOR ENSURING THE RIGHTS AND OBLIGATIONS OF INVESTORS IN PUBLIC INTERNATIONAL LAW

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Rahmonov Jaloliddin

Lecturer At Tashkent State University Of Law International Law And Human Rights Department, Uzbekistan

ABSTRACT

International investment law plays a crucial role in facilitating cross-border investment flows and promoting economic development. However, the current mechanisms for ensuring the rights and obligations of investors in public international law face a number of challenges, including fragmentation of the legal landscape, limitations of investor-state dispute settlement (ISDS) mechanisms, and the tension between protecting investor rights and safeguarding states' regulatory space.

This article proposes a series of reforms to improve the mechanisms for ensuring the rights and obligations of investors in public international law. These reforms include harmonization and consolidation of investment treaties, modernization of ISDS mechanisms, clarification of investor obligations, and promotion of sustainable investment practices.

KEYWORDS

International investment law, Investor rights, Investor obligations, Investor-state dispute settlement (ISDS), Sustainable investment, International public law.

INTRODUCTION

In an era of interconnected economies and rapid globalization, international investment has become a powerful engine of economic growth and development. From sprawling infrastructure projects to cutting-edge technological ventures, foreign capital flows unlock opportunities and fuel progress across

borders. Yet, this potent engine requires a well-oiled legal framework to operate smoothly, one that strikes a delicate balance between protecting the rights of investors and safeguarding the regulatory space of states.

However, the existing legal landscape for international investment presents a fragmented and often challenging picture. A complex web of bilateral investment treaties (BITs), multilateral agreements, and customary international law governs investor-state relations, leading to inconsistencies and uncertainties. While these agreements aim to provide investors with a secure environment by guaranteeing fair treatment, non-discrimination, and compensation for expropriation, the mechanisms for ensuring these rights remain imperfect.

Investor-state dispute settlement (ISDS) mechanisms, the primary channel for resolving conflicts between investors and governments, face increasing scrutiny. Concerns regarding high costs, lengthy proceedings, and a perceived lack of transparency cast a shadow over their legitimacy and effectiveness. Moreover, the tension between protecting investor rights and ensuring states' right to regulate in the public interest, for instance on environmental or social welfare grounds, creates a perpetual tug-of-war.

In this context, it becomes undeniable: the current frameworks for ensuring the rights and obligations of investors in public international law are in need of improvement. A new chapter is required, one that fosters balanced protection for both investors and states, promotes responsible investment practices, and navigates the emerging challenges posed by technological advancements, climate change, and a growing call for social justice. This article delves into these challenges and proposes potential mechanisms for reform, paving the way for a more sustainable and equitable future of international investment.

The journey through international investment law resembles navigating a vast labyrinth. Instead of solid walls, the labyrinth's barriers are constructed from a complex jumble of legal instruments: bilateral

investment treaties (BITs) numbering in the thousands, overlapping multilateral agreements, and the still-evolving principles of customary international law. This intricate tapestry offers both promise and peril, for while it provides a multitude of potential pathways for investor protection, it also breeds inconsistencies and uncertainties.

Imagine an investor navigating this convoluted landscape, seeking secure footing across diverse jurisdictions. One step in a BIT-bound territory might guarantee full expropriation protection, while the next, governed by a different agreement, might leave them exposed. This patchwork fabric creates ambiguities and contradictory interpretations, frustrating both investors seeking predictability and states aiming for policy coherence.

Beyond the tangled legal thicket, the mechanisms for resolving disputes add another layer of complexity. Investor-state dispute settlement (ISDS) tribunals, once hailed as efficient protectors of investor rights, now face mounting criticism. Costs can soar into the millions, proceedings can stretch for years, and concerns about transparency and legitimacy linger. In the shadows of opaque decision-making and potential conflicts of interest, the very notion of impartial justice can appear shrouded in doubt.

Adding further fuel to the fire is the perennial tug-of-war between investor rights and state regulatory space. While treaties zealously guard against unfair treatment and expropriation, they often fail to adequately address the legitimate needs of states to regulate in the public interest. Environmental protection, ensuring social welfare, and pursuing development policies are all crucial tasks for governments, but they can potentially clash with investor expectations of unfettered profit-making. This balancing act, where legitimate investor concerns

jostle with equally essential state prerogatives, remains a constant source of friction within the international investment regime.

Finally, the labyrinth grows ever more intricate with the emergence of new challenges. Technological advancements blur the lines between physical and digital investments, demanding legal frameworks that adapt to the speed and fluidity of the interconnected world. Climate change throws up complex questions about investor liability and risk allocation in the face of environmental disasters. And the growing chorus for responsible investment practices calls for integrating social and environmental concerns into the very fabric of investor rights and obligations.

The labyrinth of international investment law beckons for renovation. To overcome the present challenges, a proactive approach is necessary, one that focuses on building bridges of coherence and sustainability rather than erecting walls of inconsistency and uncertainty.

Firstly, harmonization and consolidation of the legal landscape must become a top priority. The multitude of overlapping BITs and agreements breeds confusion and fosters inconsistency. Efforts towards harmonizing core provisions, streamlining dispute settlement procedures, and consolidating redundant treaties into standardized frameworks would bring much-needed coherence and predictability to the system. Imagine traversing the labyrinth with a clear map, instead of stumbling through a chaotic maze of pathways.

Secondly, the realm of investor-state dispute settlement demands modernization. While ISDS tribunals have served a valuable role in the past, their limitations can no longer be ignored. Establishing a permanent international investment tribunal, staffed by judges with diverse expertise and subject to strict

transparency measures, would enhance legitimacy and public confidence. Additionally, incorporating public policy considerations into dispute settlement procedures would allow tribunals to balance investor rights with the legitimate regulatory needs of states in areas like environmental protection and social welfare. Imagine a fair and transparent judicial system, accessible to all, rather than a shrouded chamber fueled by exorbitant costs and opaqueness.

Thirdly, clarifying investor obligations alongside their rights is crucial. While investment agreements diligently list protections for investors, they often remain silent on responsible investment practices. Integrating provisions demanding adherence to environmental, social, and governance (ESG) principles, respect for human rights, and responsible labor practices would hold investors accountable for their actions and promote sustainable development. Imagine investors not just seeking profit, but acting as responsible stewards of the environment and society they operate in.

Finally, promoting sustainable investment practices should be woven into the very fabric of the system. Encouraging agreements that incentivize investments in renewable energy, green infrastructure, and social development projects would align economic growth with environmental and social responsibility. Additionally, integrating ESG considerations into dispute settlement mechanisms would ensure that tribunals hold investors accountable for the detrimental consequences of their actions. Imagine a landscape where investment leads not just to financial gain, but also to a healthier planet and a more equitable society.

The journey through the labyrinth of international investment law reaches its zenith. We stand at a crossroads, gazing upon a landscape rife with

challenges yet brimming with potential. On one path lies the familiar maze, its tangled pathways marked by inconsistencies, uncertainties, and the ever-widening gap between investor interests and public priorities. On the other lies a brighter vista, a landscape illuminated by the guiding principles of coherence, balance, and sustainability.

The urgency of choosing the latter path cannot be overstated. The existing mechanisms for ensuring investor rights and obligations, while having served their purpose, are in dire need of reform. The fragmentation of legal frameworks, the limitations of dispute settlement systems, and the lack of clarity around investor obligations pose serious threats to predictability, legitimacy, and ultimately, the responsible growth of international investment.

To navigate this crucial junction, a concerted effort from all stakeholders is imperative. Governments must lead the charge by championing harmonization and consolidation of investment agreements, fostering a more coherent and predictable legal environment. The establishment of a multilateral forum for discussing and implementing reforms, along with the revision of existing BITs to incorporate clear provisions on responsible investment practices, would be significant steps in the right direction.

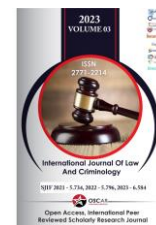
Investors, as key players in this evolving landscape, must embrace their dual role as economic drivers and responsible stewards. Integrating ESG principles into their investment strategies, prioritizing environmentally-friendly projects, and adhering to strict human rights and labor standards will not only mitigate potential risks but also unlock new opportunities for sustainable growth. The rise of impact investing, with its focus on generating positive social and environmental alongside financial returns, exemplifies this paradigm shift.

International organizations, meanwhile, possess the knowledge and convening power to facilitate dialogue and catalyze reform. Initiatives like the UNCTAD Investment Policy Framework for Sustainable Development offer valuable guidance for aligning investment with broader development goals. Moreover, promoting transparency and accountability through mechanisms like the UN Working Group on Business and Human Rights can bolster public confidence in the integrity of the investment system.

As we step into the future of international investment law, the potential for a more balanced and sustainable world beckons. Imagine a landscape where investor rights are protected alongside the environment, where economic growth fuels social progress, and where responsible investment practices become the norm, not the exception. This vision is not mere utopia, but a reachable reality if we collectively commit to building bridges of coherence, embracing transparency and accountability, and prioritizing shared prosperity over short-term gain.

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