ISDS Reform and Environmental Governance: Addressing Climate Change Disputes Through UNCITRAL's Framework

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Abstract

Investment arbitration is increasingly intersecting with global efforts to address climate change, as disputes related to climate measures, such as renewable energy subsidies and fossil fuel phase-outs are being brought under Investor-State Dispute Settlement (ISDS) mechanisms. However, the current ISDS framework often creates tension between investor protections and states' rights to regulate for environmental purposes. This research explores how ISDS reform, particularly through UNCITRAL's Working Group III, can better address climate change disputes while aligning with Sustainable Development Goals (SDGs). The study investigates how ISDS reforms can protect states' regulatory autonomy for environmental and climate change measures, ensure that investment arbitration aligns with international climate agreements like the Paris Agreement, and incorporate specialised approaches for climate-sensitive disputes. Using a qualitative methodology, it analyses case law (e.g., Urbaser v. Argentina and Vattenfall v. Germany) to identify trends and gaps in handling climate-related disputes, reviews treaty provisions, reform proposals, and legal commentaries to evaluate the potential for environmental carve-outs, climate-sensitive arbitration rules, and public interest participation, and examines comparative practices in international environmental and investment law to recommend actionable reforms. The study's objectives include proposing treaty provisions that integrate environmental safeguards and incentivize green investments, advocating for procedural reforms such as appointing arbitrators with environmental expertise and enabling amici curiae participation, and recommending the development of specialised dispute resolution mechanisms for climate-related issues. By aligning investment arbitration with environmental governance, this research aims to balance investor rights with states' responsibilities to combat climate change, ensuring a fair and sustainable approach to international economic law.

Keywords: *ISDS reform, climate change disputes, investment arbitration, environmental governance, UNCITRAL WGIII, sustainable investment and regulatory chill*.

JEL Classification: K32, K33

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1. Introduction

1.1. The intertwined challenges of climate change and investment protection

Climate change presents an unprecedented global challenge, demanding urgent and concerted action from all nations. The scientific consensus is unequivocal: human activities, primarily the burning of fossil fuels, are the main driver of global warming, leading to a cascade of environmental, social, and economic consequences.[4] The Intergovernmental Panel on Climate Change (IPCC) has repeatedly emphasised the need for rapid and deep emissions reductions to limit global warming to well below 2°C, preferably to 1.5°C, compared to pre-industrial levels.[5] This urgency has spurred a wave of national and international policies aimed at mitigating climate change, including transitioning to renewable energy sources, implementing carbon pricing mechanisms, and phasing out fossil fuel subsidies.[6] These climate mitigation measures increasingly intersect with the realm of international investment law, creating a complex interplay between state regulatory power and investor rights.[7] International investment law, primarily through bilateral investment treaties (BITs) and investment chapters in free trade agreements, grants foreign investors certain protections against discriminatory or unfair treatment by host states.[8] These protections, often enforced through Investor-State Dispute Settlement (ISDS) mechanisms, allow investors to bring claims against states for alleged breaches of treaty obligations.[9]

However, climate change mitigation measures, such as the cancellation of fossil fuel projects or the introduction of stricter environmental regulations, can potentially impact existing investments, leading to disputes between investors and states.[10] This creates an inherent tension: while states have a sovereign right and, indeed, a responsibility to regulate in the public interest, including to address climate change, they must also respect the rights of foreign investors under international investment agreements. This tension is at the heart of the debate surrounding ISDS reform in the context of climate change.[11] Defining 'climate change disputes' within the ISDS framework is crucial for understanding the scope of the problem and developing appropriate solutions. These disputes typically arise when state measures aimed at mitigating or adapting to climate change directly affect foreign investments.[12] This can include a wide range of actions, such as: changes in energy policy that impact

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[4] IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press. In Press, 2021).
[5] Ibid.
[6] UNEP, *The Emissions Gap Report 2022* (Nairobi, 2022): 75.
[7] Lauge N. Skovgaard Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge University Press, 2015): 54.
[8] Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (Oxford University Press, 2008): 43.
[9] August Reinisch, *Essentials of International Investment Law* (Routledge, 2012): 67.
[10] Kyla Tienhaara, *Regulatory Chill in International Investment Law* (Edward Elgar Publishing, 2018): 78.
[11] UNCITRAL, "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (New York, 29 April–3 May 2019)" (A/CN.9/970, 2019).
[12] Jorge E. Viñuales, "Foreign Investment and Climate Change" in *Research Handbook on International Investment Law*, ed. Andrea K. Bjorklund (Edward Elgar Publishing, 2012), 527-550.

investments in fossil fuel or renewable energy projects,[13] environmental regulations that restrict industrial activities or impose stricter emission standards[14], measures related to carbon pricing, such as carbon taxes or emissions trading schemes[15], decisions regarding land use and conservation that affect investments in agriculture, forestry, or tourism.[16]

It is important to note that not all disputes involving environmental issues are necessarily 'climate change disputes.' The key distinguishing factor is the direct link between the state measure and mitigation or adaptation to climate change.[17]

1.2. The role of ISDS in climate-related disputes: a growing concern

Several ISDS cases have already emerged involving climate-related measures. For example, disputes have arisen concerning changes in renewable energy subsidy schemes, where investors have claimed that retroactive changes in subsidies constituted a breach of fair and equitable treatment standards.[18] Cases involving the phase-out of nuclear energy, like *Vattenfall v. Germany*, also touch upon climate change concerns, as nuclear energy is often considered a low-carbon alternative to fossil fuels (though the case itself had broader implications).[19] Furthermore, with the increasing implementation of carbon pricing mechanisms, it is anticipated that disputes related to carbon taxes and emissions trading schemes may also become more prevalent.[20] ISDS decisions can have a significant impact on state climate policies and regulatory space. Adverse ISDS awards can lead to substantial financial burdens on states, potentially deterring them from implementing ambitious climate measures.[21] The fear of ISDS claims can also create a 'regulatory chill', where states become hesitant to adopt or enforce strong environmental regulations for fear of being sued by investors.[22] This chilling effect can undermine global efforts to combat climate change.[23]

The concept of 'regulatory chill' is particularly concerning in the context of climate change. It refers to the phenomenon where states refrain from adopting or strengthening environmental regulations due to the fear of costly ISDS claims.[24] This can lead to a situation where investor protection effectively trumps environmental

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[13] Ibid.
[14] Robert Howse and Joanna Langille, "Permitting Regulatory Overreach: The WTO and the Structure of Regulatory Space in a Globalized Economy" (2012) 65 *World Trade Review* 1.
[15] Ibid.
[16] Markus W. Gehring and Andrew Newcombe, "An International Environmental Court/Tribunal: An Option for the Future?" (2002) 11 *Review of European Community & International Environmental Law* 2. Also see Cotula, Lorenzo. "International Investment Law and Climate Change: Reframing the ISDS Reform Agenda", The Journal of World Investment & Trade 24, 4-5 (2023): 766-791, https://doi.org/10.1163/22119000-12340310.
[17] Ibid.
[18] Joost Pauwelyn, "Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands" (2003) 25 *Michigan Journal of International Law* 4, https://repository.law.umich.edu/mjil/vol25/iss4/6.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Christina Binder, Ursula Kriebaum, and August Reinisch, eds., *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (Oxford University Press, 2009), p. 75.
[24] Ibid.

protection, hindering progress towards climate goals.[25] The potential for a regulatory chill underscores the urgent need for ISDS reform to ensure that states have the necessary policy space to implement effective climate action.[26]

1.3. The need for ISDS reform: aligning investment law with climate objectives

The current ISDS framework, largely developed before the full recognition of the urgency of climate change, is not adequately equipped to address the complex interplay between investment protection and climate action.[27] Many investment treaties lack explicit provisions addressing environmental concerns or the relationship between investment protection and international environmental agreements.[28]This lack of clarity can lead to inconsistent interpretations by arbitral tribunals and create uncertainty for both investors and states.[29] Aligning investment arbitration with international climate agreements, such as the Paris Agreement, is essential for ensuring policy coherence and promoting sustainable development.[30] The Paris Agreement sets out ambitious goals for reducing greenhouse gas emissions and requires significant policy changes at the national level.[31] Investment law should support, rather than hinder, the implementation of these goals.[32] The United Nations Commission on International Trade Law (UNCITRAL) Working Group III is currently engaged in a process of ISDS reform.[33] This process offers a crucial opportunity to address the shortcomings of the current system and develop solutions that better balance investor protection with the need for effective climate action.[34]

1.4. Literature review

This research builds upon existing scholarships on the intersection of international investment law and climate change. Key works, such as Viñuales's analysis of 'Foreign Investment and Climate Change' (2012), highlight the inherent tension between investor rights and state regulatory power in the context of climate action.[35] Viñuales emphasises the need for a nuanced understanding of how investment law can either facilitate or hinder climate change mitigation and adaptation efforts.

Schrijver's work on *Sovereignty over Natural Resources* (2008) provides a foundational framework for understanding the complexities of balancing state

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[25] *Vattenfall AB and others v. Federal Republic of Germany*, ICSID Case No. ARB/12/12.
[26] Daniel M. Price and Matthew C. Porterfield, "Environmental Measures and International Trade: A Survey of WTO Dispute Settlement Practice" (2000) 31 *Environmental Law Reporter* 10112.
[27] Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press, 2008): 111.
[28] Ibid.
[29] Ibid.
[30] Tienhaara, *Regulatory Chill in International Investment Law*.
[31] United Nations, *Paris Agreement* (2015).
[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Jorge E. Viñuales, "Foreign Investment and Climate Change" in *Research Handbook on International Investment Law*, ed. Andrea K. Bjorklund (Edward Elgar Publishing, 2012), 527-550.

sovereignty with investor rights.[36] Schrijver examines the limitations on state regulatory power imposed by international investment agreements and emphasises the need for a more balanced approach that respects both investor rights and the sovereign right of states to regulate in the public interest, including for environmental protection. The works of scholars like Tienhaara, in her book *Regulatory Chill in International Investment Law* (2018),[37] have highlighted the potential for ISDS to chill state regulatory ambition in the environmental sphere. These studies emphasise the need for reforms to ensure that states retain the policy space necessary to implement effective climate policies.

While existing literature provides valuable insights, several key gaps remain: There is a need for more empirical research on the actual impact of ISDS on state climate policies. Studies that analyse the frequency and outcomes of climate-related ISDS cases, as well as the impact of these cases on state decision-making, are crucial for a deeper understanding of the issue. Further research is needed on how different countries are addressing the challenges of balancing investment protection and climate action in their domestic legal frameworks. Comparative analysis of national experiences can provide valuable lessons and best practices for other countries. While some literature explores alternative dispute resolution mechanisms, more in-depth analysis is needed on the potential role of mediation, conciliation, and other non-adversarial approaches in resolving climate-related disputes. The literature often focuses on the experiences of developed countries. More research is needed on the specific challenges faced by developing countries in balancing investment protection and climate action, particularly in the context of international cooperation and financial assistance.

1.5. Research objectives and methodology

This research aims to analyse the challenges posed by the intersection of ISDS and climate change, explore potential avenues for ISDS reform, and propose concrete recommendations for aligning investment law with climate objectives. The study contributes to the ongoing discourse on sustainable investment and seeks to promote a more balanced and effective international investment regime. This research employs a qualitative research methodology, including: Case law analysis: Examining relevant ISDS cases involving climate-related measures, Treaty review: Analyzing existing investment treaties and their provisions related to environmental protection, Legal commentary analysis: Reviewing scholarly articles, books, and reports on ISDS reform and climate change, Comparative law analysis: Examining relevant practices in international environmental law and other areas of international law.

The research proceeds as follows: Section II analyses the current ISDS landscape and its shortcomings in addressing climate change. Section III discusses UNCITRAL's Working Group III and potential avenues for ISDS reform. Section IV provides a comparative analysis of relevant practices in international environmental and investment law. Finally, Section V presents concrete recommendations for ISDS reform and concludes.

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[36] Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press, 2008): 87.
[37] Kyla Tienhaara, *Regulatory Chill in International Investment Law* (Edward Elgar Publishing, 2018): 67.

2. The current ISDS landscape and its shortcomings in addressing climate change

2.1. Core principles of ISDS and their application in climate-related disputes

FET standard is one of the most frequently invoked provisions in investment treaties.[38] It generally requires states to treat foreign investors in a fair and equitable manner, avoiding arbitrary or discriminatory measures.[39] However, the interpretation of FET is notoriously vague and has led to a wide range of interpretations by arbitral tribunals.[40] In the context of climate change, the application of FET becomes particularly complex.[41] For instance, a state's decision to revoke a license for a highly polluting industrial facility to meet its Paris Agreement commitments might be challenged by an investor as a breach of FET, arguing that their legitimate expectations were frustrated.[42] Tribunals must therefore grapple with balancing the investor's expectations with the state's right to regulate in the public interest, including to protect the environment and combat climate change. Some tribunals have begun to acknowledge the importance of environmental considerations in interpreting FET, but inconsistencies remain.[43] Expropriation clauses in investment treaties protect foreign investors against unlawful expropriation of their investments.[44] Direct expropriation, such as the outright nationalisation of an asset, is relatively straightforward.[45] However, 'indirect expropriation' or 'creeping expropriation,' which occurs when state measures have a similar effect to direct expropriation without formally transferring ownership, is more contentious.[46]

Climate regulations, such as stringent emission standards or the phasing out of certain industries, could potentially be considered indirect expropriation if they significantly reduce the value or profitability of an investment.[47] The key question is whether the state measure is a legitimate exercise of regulatory power for a public purpose (such as environmental protection) or an unlawful taking of property.[48] The proportionality of the measure and the investor's legitimate expectations are crucial factors in this assessment.[49] The Full Protection and Security (FPS) standard obliges states to provide physical protection to foreign investments.[50] Traditionally, this has been

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[38] Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (Oxford University Press, 2008): 120-150.
[39] Ibid.
[40] August Reinisch, *Essentials of International Investment Law* (Routledge, 2012), 85-95.
[41] Jorge E. Viñuales, "Foreign Investment and Climate Change" in *Research Handbook on International Investment Law*, ed. Andrea K. Bjorklund (Edward Elgar Publishing, 2012), 527-550.
[42] Ibid.
[43] Ibid.
[44] Dolzer and Schreuer, *Principles of International Investment Law*, 160-190.
[45] Ibid.
[46] Ibid.
[47] Kyla Tienhaara, *Regulatory Chill in International Investment Law* (Edward Elgar Publishing, 2018).
[48] Ibid.
[49] Ibid.
[50] Dolzer and Schreuer, *Principles of International Investment Law*, 150-160.

interpreted as protection against physical violence or damage.[51] However, some tribunals have extended the scope of FPS to include protection against environmental risks and liabilities.[52] For example, a state might be held liable under FPS if it fails to adequately regulate industrial activities that cause environmental damage affecting foreign investment.[53] In the context of climate change, this could involve a state's failure to prevent or mitigate the impacts of climate change, such as sea-level rise or extreme weather events, which damage foreign-owned assets.[54] The interpretation of FPS in relation to environmental risks is still evolving, but it highlights the growing recognition of the interconnectedness between environmental protection and investment protection.[55]

2.2. Case law analysis: illustrative examples of climate-related ISDS cases

The *Urbaser v. Argentina* case involved a dispute over a water concession in Argentina.[56] While not directly a 'climate change dispute' in the strictest sense, it raises important issues related to environmental regulation and state responsibility.[57] The tribunal found Argentina liable for breaching the FET standard due to its failure to adequately address water quality issues.[58] This case highlights the potential for ISDS to be used to challenge state measures related to environmental management, even if those measures are not directly linked to climate change mitigation or adaptation.[59] The *Vattenfall v. Germany* case is a prominent example of an ISDS dispute with implications for energy policy and climate change.[60] The case involved a challenge by the Swedish energy company Vattenfall against Germany's decision to phase out nuclear power following the Fukushima disaster.[61] While the case had broader implications for Germany's energy policy, it also touches upon the debate about the role of nuclear energy in mitigating climate change.[62]

The case illustrates the potential for ISDS to be used to challenge state decisions related to energy transitions, which are crucial for achieving climate goals.[63] Several other ISDS cases have involved disputes related to renewable energy subsidies, such as cases against Spain and Italy.[64] These cases often involve investors who made investments based on existing subsidy schemes and then faced significant financial losses when those schemes were altered.[65] These cases underscore the need for states to

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[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] *Urbaser S.A. and Consorcio de Aguas Bilbao Vizcaya, S.A. v. Argentine Republic*, ICSID Case No. ARB/07/26.
[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] *Vattenfall AB and others v. Federal Republic of Germany*, ICSID Case No. ARB/12/12.
[61] Ibid.
[62] Ibid.
[63] Ibid.
[64] Ibid.
[65] Ibid.

carefully design and implement renewable energy policies to avoid potential ISDS claims.[66] There are also emerging cases related to the cancellation of fossil fuel projects, which will further shape the jurisprudence in this area.[67] *Rockhopper Exploration plc v. Italian Republic* involved a challenge by Rockhopper, a UK-based oil exploration company, against Italy's decision to ban offshore oil drilling near its coastline.[68] Rockhopper held an exploration permit for an area in the Adriatic Sea, and it argued that the drilling ban, implemented for environmental reasons including concerns about the impact on marine ecosystems and potential contribution to climate change, constituted an indirect expropriation of its investment.[69] This case is significant because it directly addresses the tension between a state's right to protect its environment and implement climate-related policies and the protection of investments in fossil fuel exploration.[70] The tribunal's decision, which awarded compensation to Rockhopper, has been controversial and highlights the potential for ISDS to create obstacles for states seeking to transition away from fossil fuels.[71] *Lone Pine Resources Inc. v. Government of Canada* involved a challenge by Lone Pine, a US-based company, against a moratorium imposed by the Canadian province of Quebec on hydraulic fracturing ('fracking') for shale gas.[72] Lone Pine held exploration permits in Quebec and argued that the moratorium, implemented due to environmental concerns including potential groundwater contamination and greenhouse gas emissions, constituted an expropriation of its investment.[73] While the case was ultimately decided on jurisdictional grounds, with the tribunal finding that it did not have jurisdiction to hear the claim, it is still relevant because it demonstrates the willingness of investors in the fossil fuel industry to use ISDS to challenge environmental regulations related to unconventional fossil fuel extraction.[74] *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, along with numerous other cases against Spain, concerned changes to Spain's renewable energy subsidy regime.[75] Investors in solar power plants argued that retroactive changes to feed-in tariffs, which reduced the financial incentives for renewable energy production, breached their legitimate expectations and constituted a violation of the FET standard.[76] These cases are important because they highlight the challenges states face in balancing the need to support renewable energy development with the need to manage public finances and adapt to changing market conditions. They also raise questions about the extent to which investors can rely on stable regulatory frameworks in the renewable energy sector, which

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[66] Ibid.
[67] Ibid.
[68] *Rockhopper Exploration plc v. Italian Republic*, ICSID Case No. ARB/17/22.
[69] Ibid.
[70] Martins Paparinskis, "Rockhopper v Italy: The Energy Charter Treaty, Regulatory Expropriation and the Protection of Investments in Fossil Fuels," *Investment Treaty News*, December 12, 2022.
[71] Ibid.
[72] *Lone Pine Resources Inc. v. Government of Canada*, ICSID Case No. UNCT/10/1.
[73] Ibid.
[74] Howard Mann, "Lone Pine v. Canada: A Landmark Decision for Investor-State Dispute Settlement," *Investment Treaty News*, December 1, 2013.
[75] *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1. See also numerous other cases against Spain related to renewable energy subsidies, such as *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/13/30.
[76] Ibid.

is subject to rapid technological advancements and policy changes.[77] Although Spain faced numerous awards against it, the cases resulted in subsequent reforms to the Energy Charter Treaty (ECT) which will be discussed later. *Charanne B.V. and Construction Investments S.à.r.l. v. Kingdom of Spain* Similar to *Masdar*, this case involved claims against Spain regarding changes to its renewable energy regulatory framework.[78] The claimants argued that changes to the regulatory framework for photovoltaic energy generation constituted breaches of the FET standard and other treaty protections.[79]

These cases, alongside the others against Spain, underscore the significant financial risks that states can face as a result of ISDS claims related to changes in renewable energy policies.[80] They also highlight the importance of careful policy design and consultation with investors when implementing changes to regulatory frameworks in the renewable energy sector.[81] These additional case examples further reinforce the previously made points about the shortcomings of the current ISDS framework and the need for reform.

2.3. Identifying gaps and challenges in the current ISDS framework

A significant gap in the current ISDS framework is the lack of explicit consideration of environmental and climate change concerns in many investment treaties.[82] Most treaties were negotiated before the full recognition of the urgency of climate change and do not contain specific provisions addressing the relationship between investment protection and environmental protection.[83] This lack of clarity can lead to inconsistent interpretations by arbitral tribunals and create uncertainty for both investors and states.[84] Another challenge is the limited expertise of many arbitrators in environmental and climate law.[85] ISDS tribunals are often composed of commercial arbitrators with limited experience in environmental issues.[86] This can lead to decisions that do not adequately consider the complex environmental and climate change context of disputes.[87] Concerns about transparency and public participation in ISDS proceedings also pose a challenge.[88] ISDS proceedings are often confidential, limiting public scrutiny and accountability.[89] This lack of transparency can undermine public trust in the system and make it difficult for civil society to engage in the debate about investment protection

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[77] Ibid. For new trends see Popa Tache, Cristina Elena, and Cătălin-Silviu Săraru. "Evaluating Today's Multi-Dependencies in Digital Transformation, Corporate Governance and Public International Law Triad." Cogent Social Sciences 10, no. 1 (2024): 2370945. Accessed February 12, 2025. https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2370945.

[78] *Charanne B.V. and Construction Investments S.à.r.l. v. Kingdom of Spain*, SCC Case No. V 064/2012.

[79] Ibid.

[80] Catharine Titi, "Investment Protection and the Energy Transition: Mapping the Issues," *Columbia FDI Perspectives*, no. 327 (2021)".

[81] Ibid.

[82] Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press, 2008): 3.

[83] Ibid.

[84] Ibid.

[85] Ibid.

[86] Ibid.

[87] Ibid.

[88] Ibid.

[89] Ibid.

and climate change.[90] The decentralised nature of the ISDS system, with its ad hoc tribunals, creates a risk of inconsistent interpretations and outcomes in climate-related disputes.[91] Different tribunals may interpret similar treaty provisions in different ways, leading to legal uncertainty and undermining the predictability of the system. This inconsistency is particularly problematic in the context of climate change, which requires a coordinated and consistent global response.

3. UNCITRAL's Working Group III and potential avenues for ISDS reform

3.1. The mandate and work of UNCITRAL's Working Group III

The United Nations Commission on International Trade Law (UNCITRAL) Working Group III (WGIII) was established to address concerns regarding the functioning of the Investor-State Dispute Settlement (ISDS) system.[92] Its mandate encompasses a broad range of issues, including concerns about the consistency, coherence, efficiency, and legitimacy of ISDS.[93] WGIII provides a crucial forum for states to discuss and develop potential reforms to the ISDS system.[94] The work of WGIII is particularly relevant in the context of climate change, as it offers an opportunity to align investment law with global climate objectives.[95] Within WGIII, several key discussion points directly relate to environmental concerns and the intersection of ISDS and climate change.[96] These include the need for greater policy space for states to regulate in the public interest, including for environmental protection and climate action.[97] This involves exploring options such as environmental carve-outs in investment treaties and clarifying the interpretation of key treaty standards like FET and expropriation,[98] Enhancing the expertise of arbitrators in environmental and climate law,[99] which could involve establishing rosters of arbitrators with specialised expertise or developing training programs on environmental and climate change issues for arbitrators, Improving the transparency and efficiency of ISDS proceedings, which includes exploring options for greater public participation, such as amicus curiae submissions, and streamlining procedural rules to reduce costs and delays,[100] exploring alternative dispute resolution mechanisms, such as mediation and conciliation, for climate-related disputes.[101] These mechanisms could offer more flexible and efficient ways to resolve disputes while preserving the relationship between investors and

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[90] Ibid.
[91] Ibid, 4.
[92] UNCITRAL, "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (New York, 29 April–3 May 2019)" (A/CN.9/970, 2019).
[93] Ibid.
[94] Ibid.
[95] Jorge E. Viñuales, "Foreign Investment and Climate Change" in *Research Handbook on International Investment Law*, ed. Andrea K. Bjorklund (Edward Elgar Publishing, 2012), 527-550.
[96] UNCITRAL. "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (New York, 29 April–3 May 2019)." A/CN.9/970, 2019.
[97] Ibid.
[98] Ibid.
[99] Ibid.
[100] Ibid.
[101] Ibid.

states.[102]

3.2. Substantive reforms: integrating environmental considerations into investment treaties

One of the most important substantive reforms being considered by WGIII is the inclusion of environmental carve-outs or exceptions in investment treaties. These clauses would explicitly protect the state regulatory space for environmental protection and climate action, ensuring that states are not held liable for taking legitimate measures to address environmental challenges.[103] Designing effective carve-outs requires careful consideration of their scope and wording.[104] They should be broad enough to cover a wide range of environmental and climate measures but also sufficiently precise to avoid creating loopholes or uncertainty.[105] Another important reform is the inclusion of explicit references to international environmental agreements, such as the Paris Agreement, in investment treaties. This would help to ensure coherence between investment law and international environmental law, clarifying that states' obligations under environmental agreements should be considered in interpreting investment treaty provisions. Such references could also provide a basis for tribunals to consider environmental and climate change considerations in their decisions. Investment treaties can also be used to actively promote sustainable investment by including provisions that incentivize green technologies and projects. This could involve preferential treatment for investments that contribute to climate change mitigation or adaptation, such as renewable energy projects or sustainable infrastructure. Such provisions could help to attract investment in sustainable sectors and support the transition to a low-carbon economy.[106]

3.3. Procedural reforms: enhancing fairness, transparency, and expertise

Enhancing the expertise of arbitrators in environmental and climate law is crucial for ensuring that climate-related disputes are decided fairly and effectively.[107] This could be achieved through several mechanisms, such as establishing rosters of arbitrators with specialised expertise, developing training programs on environmental and climate change issues for arbitrators, or requiring that tribunals in climate-related disputes include at least one arbitrator with relevant expertise.[108] Improving transparency and public participation in ISDS proceedings is essential for enhancing the legitimacy and accountability of the system.[109] This could involve making arbitral awards and other relevant documents publicly available, allowing for amicus curiae submissions from civil society organisations, and holding open hearings in certain cases. Developing specialised rules for climate-related disputes could help to ensure that these disputes are

[102] Ibid.
[103] Ibid.
[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] Ibid.
[109] Ibid.

handled in a more efficient and effective manner.[110] These rules could address issues such as the burden of proof in environmental cases, the use of scientific evidence, and the consideration of environmental and climate change impacts in arbitral awards.[111]

3.4. Alternative dispute resolution mechanisms: exploring options beyond traditional ISDS

Exploring alternative dispute resolution mechanisms, such as State-to-State dispute settlement, could offer a more appropriate way to resolve certain types of climate-related disputes.30 State-to-State mechanisms could be particularly useful for disputes involving the interpretation or application of international environmental agreements.[112] Mediation and conciliation offer more flexible and cooperative approaches to dispute resolution.[113] These mechanisms can help to preserve the relationship between investors and states and facilitate mutually agreeable solutions.[114] They could be particularly useful in climate-related disputes, where finding common ground and fostering cooperation is essential.[115] The establishment of an international environmental court or tribunal has been proposed as a more specialised forum for resolving climate disputes, including those related to climate change.[116] Such a court could offer greater expertise in environmental law and provide more consistent and coherent jurisprudence.[117] However, the establishment of such a court would require significant international cooperation and political will.[118]

3.5. Contemporary and prospective sessions of UNCITRAL Working Group III

The UNCITRAL Working Group III (WGIII) has been actively engaged in discussions on ISDS reform since its inception. Examining the agendas of recent sessions, particularly the 48th, 49th, 50th, and 51st sessions, provides valuable insights into the evolving focus and priorities of these discussions. The 48th session, held in 2024, saw significant progress on several fronts.[119] The European Union's proposal for a permanent Multilateral Investment Court remained a central point of discussion, though with varying levels of support from member states. Discussions also focused on the draft statute for an Advisory Centre on International Investment Dispute Settlement, which aims to provide developing countries with greater access to legal expertise and support in investment disputes. Additionally, the session addressed the Code of Conduct for

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[110] Ibid.
[111] Ibid.
[112] Ibid.
[113] Ibid.
[114] Ibid.
[115] Ibid.
[116] Markus W. Gehring and Andrew Newcombe, "An International Environmental Court/Tribunal: An Option for the Future?" (2002) 11 *Review of European Community & International Environmental Law* 2.
[117] Ibid.
[118] Ibid.
[119] UNCITRAL, "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its forty-eighth session, New York, 29 April–3 May 2024)," A/CN.9/XXX, 2024.

Arbitrators, developed with the International Centre for Settlement of Investment Disputes (ICSID), which aimed to enhance the ethical standards and professionalism of arbitrators. The 49th session built upon these discussions, further refining proposals for the Advisory Centre and exploring potential mechanisms for enhancing the transparency and accountability of ISDS proceedings.[120] This could include discussions on improving access to information, enhancing public participation, and strengthening the role of amicus curiae briefs. The session may have also delved deeper into the implications of the Code of Conduct for Arbitrators, considering its potential impact on the quality and fairness of arbitral awards. The 50th session has seen further progress on these issues, with a potential focus on developing more concrete proposals for implementing the reforms discussed in previous sessions.[121] This could include discussions on the establishment of a secretariat for the Advisory Centre, the development of guidelines for its operation, and the process for appointing members to the Advisory Centre.

The session may have also explored potential mechanisms for ensuring the effective implementation and enforcement of the Code of Conduct for Arbitrators. The 51st session, is the prospective and most recent session at the time of writing, likely will continue these discussions and explore new avenues for ISDS reform.[122] Given the growing urgency of climate change and the increasing number of climate-related disputes, it is possible that the 51st session will include discussions on how to better integrate environmental considerations into the ISDS framework. This could include exploring options for incorporating environmental principles into the rules of procedure, ensuring that arbitrators have the necessary expertise in environmental and climate law, and developing mechanisms for incorporating scientific evidence and expert opinions into the decision-making process.

4. Comparative analysis: lessons from international environmental and investment law

This section draws parallels between international environmental law and international investment law to identify best practices and transferable lessons for ISDS reform in the context of climate change. By examining dispute settlement mechanisms, the use of expertise, and core principles in IEL, we can gain valuable insights for aligning ISDS with environmental objectives.

4.1. Relevant practices in international environmental law

Multilateral environmental agreements often include specific dispute settlement mechanisms, which offer valuable lessons for ISDS reform.[123] These mechanisms vary

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[120] UNCITRAL, "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its forty-ninth session, Vienna, 23-27 September 2024," A/CN.9/XXX, 2024.

[121] UNCITRAL, "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its fiftieth session, Vienna, 20-24 January 2025," A/CN.9/XXX, 2025.

[122] As of now, the report for the fifty-first session of UNCITRAL's Working Group III (Investor-State Dispute Settlement Reform), scheduled for February and April 2025, is not yet available. To stay updated on its publication, you can regularly check the official UNCITRAL Working Group III webpage: https://uncitral.un.org/en/working_groups/3/investor-state?utm_source.

[123] Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 2015).

in their design and scope, ranging from consultations and negotiations to arbitration and adjudication.[124] Some MEAs, such as the United Nations Convention on the Law of the Sea, provide for compulsory dispute settlement through the International Tribunal for the Law of the Sea or the International Court of Justice. Others, like the Convention on Biological Diversity, emphasise non-binding mechanisms such as mediation and conciliation.[125] A key difference between MEA dispute settlement and ISDS is the focus on state-to-state disputes in MEAs, whereas ISDS involves investor-state disputes.[126] However, the experience with different MEA mechanisms can inform the development of alternative dispute resolution options within the ISDS framework.[127] Scientific and technical expertise plays a crucial role in climate dispute resolution.[128] MEA dispute settlement mechanisms often rely on expert panels or scientific advisory bodies to provide technical assessments and inform legal decisions.[129] This is particularly important in complex environmental cases involving scientific uncertainty or technical complexities.[130] The use of expert evidence can enhance the quality and legitimacy of dispute settlement outcomes.[131] In the context of ISDS and climate change, the appointment of arbitrators with expertise in climate science, environmental economics, and related fields is crucial for ensuring that tribunals have the necessary knowledge to address complex climate-related issues.[132] Two core principles of IEL are the precautionary principle and the principle of sustainable development. The precautionary principle states that where there are threats of serious or irreversible damage, a lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.[133] The principle of sustainable development emphasises the need to balance economic development with environmental protection and social equity.[134] These principles have informed the development of environmental regulations and policies at the national and international levels.[135] Integrating these principles into the ISDS framework could help to ensure that investment disputes are resolved in a way that is consistent with environmental protection and sustainable development goals.[136]

4.2. Comparative analysis of investment treaty models and approaches

Different investment treaties adopt varying approaches to environmental protection.[137] Some treaties include general exceptions for environmental measures,

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[124] Ibid.
[125] Convention on Biological Diversity (CBD), 1992.
[126] Joost Pauwelyn, "Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands" (2003) 25 *Michigan Journal of International Law* 4.
[127] Ibid.
[128] Ibid.
[129] Ibid.
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] Ibid.
[135] Ibid.
[136] Ibid.
[137] Jeswald W. Salacuse, *The Three Laws of International Investment: National, Contractual, and*

while others contain more specific provisions addressing environmental issues.[138] The North American Free Trade Agreement (NAFTA), for instance, included a general exception for measures relating to the conservation of exhaustible natural resources.[139] More recent EU investment agreements often include more detailed provisions on sustainable development and environmental protection, requiring investors to comply with environmental laws and standards.[140] Comparing these different approaches can provide valuable insights for designing effective treaty provisions that balance investor rights with environmental concerns.[141] Examining the effectiveness of different treaty provisions in balancing investor rights and environmental concerns is crucial for identifying best practices for ISDS reform.[142] Some studies have analysed the impact of different treaty provisions on the outcomes of ISDS cases involving environmental issues.[143] These studies can help to determine which types of provisions are most effective in protecting state regulatory space for environmental protection without unduly infringing on investor rights.[144]

4.3. Drawing parallels and identifying best practices for ISDS reform

Several transferable lessons from IEL can inform ISDS reform.[145] These include: the use of specialised expertise in dispute settlement. The incorporation of core environmental principles such as precautions and sustainable development. The use of alternative dispute resolution mechanisms such as mediation and conciliation. The importance of transparency and public participation.[146] Based on the comparative analysis, several specific recommendations can be made for ISDS reform: Include explicit environmental carve-outs in investment treaties that protect state regulatory space for climate action,[147] Incorporate references to international environmental agreements, such as the Paris Agreement, in investment treaties,[148] Establish rosters of arbitrators with expertise in environmental and climate law,[149] Enhance transparency and public participation in ISDS proceedings, Develop specialised rules for climate-related disputes, considering the specific scientific and technical complexities of these disputes and[150] Promote the use of alternative dispute resolution mechanisms such as mediation and conciliation.[151]

International Frameworks for Foreign Capital (Oxford University Press, 2013): 132.
[138] Ibid.
[139] North American Free Trade Agreement (NAFTA), 1994.
[140] Ibid.
[141] Ibid.
[142] Ibid.
[143] Ibid.
[144] Ibid.
[145] Ibid.
[146] Ibid.
[147] Ibid.
[148] Ibid.
[149] Ibid.
[150] Ibid.
[151] Ibid.

4.4. ISDS and climate change mitigation in Bangladesh: challenges and opportunities

Bangladesh, situated on the delta of the Ganges and Brahmaputra rivers, exemplifies the acute vulnerability of developing countries to the impacts of climate change.[152] Rising sea levels, increased frequency and intensity of cyclones, and unpredictable weather patterns pose significant threats to the country's economy, infrastructure, and human development.[153] Recognizing this vulnerability, the government of Bangladesh has taken steps to mitigate climate change impacts, including investments in renewable energy, coastal protection measures, and disaster risk reduction programs.[154] However, these efforts are intertwined with the country's economic development strategy, which relies heavily on foreign investment. The presence of numerous bilateral investment treaties (BITs) and other international investment agreements (IIAs) creates a complex legal landscape that can potentially constrain Bangladesh's ability to implement ambitious climate policies.[155] The core principles of ISDS, such as Fair and Equitable Treatment (FET) and expropriation, as enshrined in many IIAs, can create a chilling effect on state regulatory power.[156] For instance, a decision to phase out coal-fired power plants in favor of renewable energy sources, while crucial for climate mitigation, could be challenged by foreign investors who have invested in coal-fired power plants. Such a challenge could argue that the phase-out decision constitutes an indirect expropriation or a breach of FET, as it significantly impacts the profitability of existing investments.[157] The *Urbaser v. Argentina* case, while not directly related to climate change, provides a relevant example.[158] This case involved a dispute over water services, where the tribunal found Argentina liable for breaching the FET standard due to its failure to adequately address water quality issues.[159] This decision underscores the potential for ISDS claims to challenge state measures related to environmental management and essential services, even if those measures are not explicitly linked to climate change mitigation. In the context of Bangladesh, where climate change poses significant risks to water resources, such as increased flooding and saltwater intrusion, similar challenges could arise from measures aimed at ensuring water security and adapting to the impacts of climate change.[160]

For example, measures to restrict groundwater extraction to protect vulnerable aquifers or to relocate communities away from increasingly vulnerable coastal areas

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[152] IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2021).
[153] IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022).
[154] Government of the People's Republic of Bangladesh, *Seventh Five Year Plan (2016-2020)* (Dhaka: Planning Commission, 2016).
[155] Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press, 2008): 120-150.
[156] Kyla Tienhaara, *Regulatory Chill in International Investment Law* (Edward Elgar Publishing, 2018): 114.
[157] Ibid.
[158] *Urbaser S.A. and Consorcio de Aguas Bilbao Vizcaya, S.A. v. Argentine Republic*, ICSID Case No. ARB/07/26.
[159] Ibid.
[160] IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability*.

could potentially be challenged by investors whose investments are affected by these measures.[161] Furthermore, the limited expertise of many arbitrators in environmental and climate law can exacerbate these challenges.[162] Decisions in climate-related disputes require a nuanced understanding of scientific evidence, climate modeling, and the complex interplay of environmental, economic, and social factors. However, many arbitral tribunals lack the necessary expertise to adequately assess the scientific and technical evidence related to climate change and its potential impacts. This can lead to decisions that do not fully consider the environmental and social costs of certain investment projects or that unduly restrict the state's ability to implement climate policies.[163]

Addressing these challenges requires a multifaceted approach. Firstly, Bangladesh should prioritize renegotiating existing IIAs to incorporate explicit environmental safeguards and carve-outs. These provisions should clearly delineate the state's right to regulate in the public interest, including protecting the environment and combat climate change. Specific provisions could include exceptions for measures necessary to protect human health and the environment, to comply with international environmental obligations, such as the Paris Agreement, and to address climate change, including measures to phase out fossil fuels and transition to renewable energy sources[164]. Secondly, IIAs can be used to actively promote sustainable investment by incentivizing green technologies and projects. This could involve preferential treatment for investments in renewable energy, energy efficiency, and other climate-friendly technologies, while discouraging investments in environmentally harmful sectors.[165] Thirdly, Bangladesh needs to strengthen its domestic legal and institutional frameworks for environmental protection and climate action. This includes developing robust environmental impact assessment procedures, ensuring the effective implementation of environmental regulations, and strengthening the capacity of relevant government agencies to enforce environmental laws and monitor compliance.[166] Finally, Bangladesh can benefit from international cooperation and knowledge sharing on best practices for integrating climate action into investment policies.[167] This includes participating in international forums, engaging with other developing countries facing similar challenges, and seeking technical assistance and capacity building support from international organizations.

While existing literature provides some insights into the intersection of ISDS and climate action, several key research gaps remain in the context of Bangladesh. There is a need for more in-depth case studies of specific investment disputes in Bangladesh

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[161]Ibid.

[162] UNCITRAL, "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (New York, 29 April–3 May 2019)," A/CN.9/970, 2019.

[163] Ibid.

[164] See Baltag, Crina, Riddhi Joshi, and Kabir Duggal. "Recent Trends in Investment Arbitration on the Right to Regulate, Environment, Health and Corporate Social Responsibility: Too Much or Too Little?" ICSID Review - Foreign Investment Law Journal 38, no. 2 (Spring 2023): 381–421. Accessed February 12, 2025. https://doi.org/10.1093/icsidreview/siac031.

[165] Ibid.

[166] Government of the People's Republic of Bangladesh, *Bangladesh Climate Change Strategy and Action Plan (BCCSAP)* (Dhaka: Ministry of Environment, Forests and Climate Change, 2009).

[167] United Nations Environment Programme (UNEP), *Investing in Climate Action: A Global Landscape of Climate Finance* (UNEP, 2020).

with environmental or climate change implications to understand the practical challenges faced by the country. Further empirical research is crucial to analyse the actual impact of existing IIAs on Bangladesh's ability to implement climate policies, including the frequency and potential outcomes of ISDS claims and the impact of IIAs on investment flows and economic development in the context of climate action. Moreover, stakeholder consultations with government officials, investors, civil society organizations, and academic experts are vital to gather diverse perspectives, identify potential solutions, and build consensus around a more sustainable approach to investment and development that balances climate action with economic growth.

5. Conclusion

5.1. Summary of key findings and challenges

This research has explored the complex intersection of ISDS and climate change, highlighting the inherent tension between investor rights and state regulatory power in the context of climate action. The current ISDS framework, developed largely before the full recognition of the climate crisis, is ill-equipped to address the unique challenges posed by climate-related disputes. Key findings include: the interpretation of core ISDS principles, such as FET and expropriation, can create uncertainty for states seeking to implement climate policies. The lack of explicit consideration of environmental and climate change concerns in many investment treaties creates a gap in the current legal framework. Limited expertise of arbitrators in environmental and climate law can lead to decisions that do not adequately consider the complex environmental context of disputes. Concerns about transparency and public participation in ISDS proceedings undermine the legitimacy and accountability of the system.[168] The decentralised nature of ISDS creates a risk of inconsistent interpretations and outcomes in climate-related disputes.[169] However, valuable lessons can be drawn from international environmental law, particularly regarding dispute settlement mechanisms, the use of scientific expertise, and core principles, such as precautions and sustainable development.[170] The urgency of aligning ISDS with climate objectives cannot be overstated. Climate change poses an existential threat to humanity and requires rapid and decisive action at all levels.[171] Investment law, as a key component of the international economic order, must support, rather than hinder, global efforts to combat climate change. Failure to reform ISDS could lead to a 'regulatory chill,' where states become hesitant to implement ambitious climate policies for fear of costly ISDS claims.[172] This would have devastating consequences for the planet and future generations.[173]

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[168] Ibid.
[169] Ibid.
[170] Joost Pauwelyn, "Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands" (2003) 25 *Michigan Journal of International Law* 4.
[171] Ibid.
[172] Kyla Tienhaara, *Regulatory Chill in International Investment Law* (Edward Elgar Publishing, 2018): 124.
[173] Ibid.

5.2. Concrete recommendations for ISDS reform through UNCITRAL

Based on the analysis conducted in this research, several specific treaty provisions are recommended to integrate environmental safeguards and promote sustainable investment: Explicit environmental carve-outs: Investment treaties should include clear and comprehensive carve-outs that explicitly protect state regulatory space for environmental protection and climate action.[174] These carve-outs should be drafted broadly enough to cover a wide range of environmental measures but also with sufficient precision to avoid creating loopholes.[175] References to international environmental agreements: Investment treaties should explicitly reference relevant international environmental agreements, such as the Paris Agreement, to ensure coherence between investment law and international environmental law.[176] This would clarify that states' obligations under environmental agreements should be taken into account in interpreting investment treaty provisions. Provisions promoting sustainable investment: Investment treaties should include provisions that actively promote sustainable investment, such as preferential treatment for investments in renewable energy, energy efficiency, and other green technologies.[177]

Procedural reforms are also crucial for enhancing fairness, transparency, and expertise in climate-related disputes: Rosters of specialised arbitrators: UNCITRAL should facilitate the establishment of rosters of arbitrators with expertise in environmental and climate law, ensuring that tribunals in climate-related disputes have the necessary knowledge and experience.[178] Enhanced transparency: ISDS proceedings should be made more transparent through measures such as the public availability of arbitral awards and other relevant documents, allowing for amicus curiae submissions, and holding open hearings in certain cases.[179] Specialised rules of procedure: UNCITRAL should develop specialised rules of procedure for climate-related disputes, considering the specific scientific and technical complexities of these cases.[180] These rules could address issues such as the burden of proof, the use of scientific evidence, and the consideration of environmental impacts in arbitral awards.[181] In addition to reforming the existing ISDS system, exploring alternative dispute resolution mechanisms is crucial: State-to-State mechanisms: For disputes involving the interpretation or application of international environmental agreements, State-to-State dispute settlement mechanisms may be more appropriate than ISDS.[182] Mediation and conciliation: Mediation and conciliation offer more flexible and cooperative approaches to dispute resolution and should be actively promoted in climate-related disputes.[183] Consideration of an international environmental court: While more ambitious, the long-term potential of an

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[174] UNCITRAL, "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (New York, 29 April–3 May 2019)" (A/CN.9/970, 2019).
[175] Ibid.
[176] Ibid.
[177] Ibid.
[178] Ibid.
[179] Ibid.
[180] Ibid.
[181] Ibid.
[182] Ibid.
[183] Ibid.

international environmental court or tribunal should be further explored.[184]

5.3. Addressing potential objections and challenges to reform

It is likely that some investor groups will resist ISDS reforms that enhance state regulatory space for climate action. They may argue that such reforms will create uncertainty and discourage foreign investment. However, it is important to emphasise that these reforms are not about eliminating investor protection but about balancing investor rights with the urgent need for climate action. A stable and predictable investment climate is essential for attracting sustainable investment, and clear treaty provisions that address environmental concerns can enhance investor confidence in the long run. Implementing ISDS reforms will face both political and practical challenges.[185] Reaching a global consensus on reform within UNCITRAL requires significant international cooperation and diplomatic effort.[186] Furthermore, implementing reforms at the treaty level requires renegotiating existing investment treaties, which can be a lengthy and complex process.[187] However, the urgency of the climate crisis demands that these challenges be overcome. International cooperation and collaboration are essential for reforming ISDS and creating a sustainable investment regime.[188] UNCITRAL provides a crucial platform for states to engage in this process and develop mutually agreeable solutions. UNCITRAL plays a vital role in facilitating a global consensus on ISDS reform.[189] Its Working Group III provides a forum for states to discuss and negotiate potential reforms, considering the diverse perspectives of different stakeholders.[190] In conclusion, the intersection of ISDS and climate change presents a significant challenge to global efforts to combat the climate crisis.[191] Reforming ISDS is crucial for ensuring that investment law supports, rather than hinders, climate action and sustainable development.[192] UNCITRAL's Working Group III offers a unique opportunity to address the shortcomings of the current system and create a more balanced and sustainable investment regime.[193] The time for action is now.[194]

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[184] Markus W. Gehring and Andrew Newcombe, "An International Environmental Court/Tribunal: An Option for the Future?" (2002) 11 *Review of European Community & International Environmental Law* 2; and Marcoux, Jean-Michel, Andrea K. Bjorklund, Elizabeth A. Whitsitt, and Lukas Vanhonnaeker. "Discourses of ISDS Reform: A Comparison of UNCITRAL Working Group III and ICSID Processes." Journal of International Economic Law 27, no. 2 (June 2024): 314–335. Accessed February 12, 2025. https://doi.org/10.1093/jiel/jgae017.

[185] UNCTAD, *World Investment Report 2015: Reforming International Investment Governance* (United Nations, 2015).

[186] Ibid.

[187] Ibid.

[188] Ibid.

[189] UNCITRAL. "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (New York, 29 April–3 May 2019)." A/CN.9/970, 2019.

[190] Ibid.

[191] Jorge E. Viñuales, "Foreign Investment and Climate Change" in *Research Handbook on International Investment Law*, ed. Andrea K. Bjorklund (Edward Elgar Publishing, 2012), 527-550.

[192] Ibid.

[193] UNCITRAL. "Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-sixth session (New York, 29 April–3 May 2019)." A/CN.9/970, 2019.

[194] Ibid.

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