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Research Handbook on Investment Law and Sustainable Development

By Marie-Claire Cordonier Segger, Ted Gleason, Sean Stephenson (eds)

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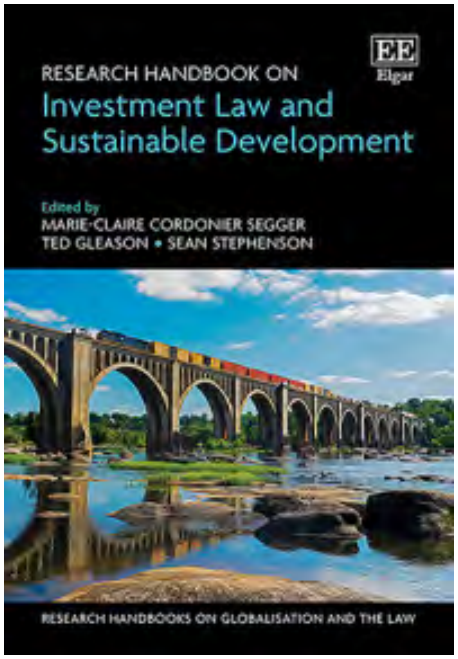

I. INTRODUCTION AND EPISTEMOLOGICAL FRAMING

The *Research Handbook on Investment Law and Sustainable Development*, edited by Marie-Claire Cordonier Segger, Ted Gleason, and Sean Stephenson, is a significant scholarly contribution that engages with the need to reconcile global economic expansion with ecological stewardship and social equity. Published in 2025, the volume addresses the legal and policy complexities arising from interconnected global crises, including biodiversity collapse and energy transition.

The Handbook balances breadth with analytical depth, addressing both conceptual underpinnings and detailed case-specific analyses. The Handbook is conceived as both diagnostic and prescriptive, seeking to equip practitioners, adjudicators, and policymakers with the 'tools to transform aspiration into action' (p. xvi). Supported by the Centre for International Sustainable Development Law (CISDL), the research emphasizes that investment law should not be seen as a static constraint but as a living instrument for driving progress. As James Bacchus, former Chair of the WTO Appellate Body, observes, the Handbook functions as a 'moral compass' (p. xvii) indispensable to constructing a legal architecture fit for the Anthropocene.

Analytically, the volume interrogates the links between International Investment Law (IIL) and the 17 UN Sustainable Development Goals (SDGs).. The discussion is notable for its

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specific focus, exemplified by Olawuyi and Oche's examination of SDG-specific investments for zero hunger, Baetens' analysis of public health, and Chi and Yan's investigation into the environmental footprint of the Belt and Road Initiative. These studies expose both tensions and synergies within IIL. While the system's fragmentation hinders the systemic integration of sustainability, the editors demonstrate that interpretative practice is evolving, with tribunals increasingly incorporating environmental protection, human rights, and poverty alleviation into their reasoning.

II. OVERVIEW OF THE STRUCTURE AND CONTENTS OF THE VOLUME

The Handbook is organized into five parts, each addressing a distinct dimension of the relationship between IIL and the SDGs. Over twenty chapters, the editors orchestrate a progression from foundational concepts to treaty innovation and institutional reform to forward-looking reflections on the future of sustainable investment governance.

Part I, 'Foundations', establishes the conceptual and historical parameters of the volume. The opening chapters trace investment law's evolution from a system primarily preoccupied with the protection of foreign capital to one increasingly required to engage with environmental stewardship, human rights, and the broader objectives of sustainable development. This part provides the epistemological framework for the Handbook by presenting sustainable development not as a peripheral policy aspiration but as an emerging interpretative and normative lens within international economic law.

Part II, 'Evolving investment protection regimes in light of sustainable development', the key doctrinal standards of IIL and their ongoing recalibration in response to issues of sustainability. Chapters in this part consider the definitions of 'investment' and 'investor', the impact assessment of investment agreements, and the ongoing evolution of standards such as Indirect Expropriation, Fair and Equitable Treatment (FET), and Full Protection and Security (FPS). Contributors examine how contemporary treaty practice and arbitral jurisprudence are increasingly embedding public interest considerations - especially environmental protection and social welfare - into the interpretation of these historically investor-protective norms.

Part III, 'Innovating investment treaty commitments for sustainable development', represents the normative core of the Handbook. Each chapter takes up one or more of the SDGs as a focus and considers how investment treaties can be drafted or reformed to actively promote sustainable development outcomes. This part demonstrates the increasing potential for International Investment Agreements (IIAs) to go beyond passive compatibility with the SDGs and become legal instruments that are explicitly designed to support them.

Part IV, 'Emerging priorities in sustainability and investment debates', shifts the focus from substantive treaty standards to procedural and institutional reform. This section of the Handbook addresses the sustainability

implications of the ongoing United Nations Commission on International Trade Law (UNCITRAL) Investor-State Dispute Settlement (ISDS) reform process, the increasing lawmaking influence of International Financial Institutions through their environmental and social frameworks, and the governance challenges associated with large-scale initiatives such as the Belt and Road. The chapters collectively underscore how sustainability concerns are shaping not only treaty text but also the institutions and procedures through which investment disputes are managed and investment flows are regulated.

Part V, 'Conclusions', synthesizes the Handbook's key findings and provides a vision for a more integrated and polycentric investment governance system. The concluding contributions argue that the future of international investment law lies in a more coherent, transparent, and sustainability-oriented regime - one in which states' right to regulate is strengthened, legacy treaties are modernized, and global institutions are adapted to support equitable and environmentally responsible development.

III. SCHOLARLY AND METHODOLOGICAL EVALUATION

The Handbook represents the current state of the art in this fast-evolving field. Its academic quality rests on three interrelated features that establish it as a coherent, authoritative reference.

First, the volume is interdisciplinary, bridging public international law, environmental law, and economic governance. The contributors are drawn from academia, legal practice, and policy circles, enriching the analysis with practical, case-based insights.

Second, the editors maintain editorial coherence. Even with the broad range of topics, the volume has thematic unity on account of the framing of the chapters around SDGs. This framing offers a thread without repeating itself and therefore links each contribution to the central research question: how IIL can be redesigned so as not to hinder but rather help achieve sustainable development.

Third, the methodological rigour of this volume is high. It includes comprehensive reference materials - including a Table of Treaties and Statutes and a detailed Table of Cases - that will be invaluable to researchers. References are current through 2024, ensuring the discussion addresses contemporary debates such as the modernization of the Energy Charter Treaty, ISDS reform, and the evolution of corporate ESG obligations.

IV. DOCTRINAL EVOLUTION: REDEFINING INVESTMENT AND REGULATORY SPACE

The Handbook's core analysis examines the nexus between IIL and Sustainable Development (SD), addressing both procedural and substantive aspects. It revisits the *Salini v. Morocco* test, particularly its 'contribution to the host State's development' criterion (alongside duration, risk, regularity of profit, and substantial commitment).

While ICSID tribunals often rejected this element for a more permissive 'Salini light' approach - citing difficulties in jurisdictional assessment - recent treaty practice shows a new trend. Contemporary IIAs increasingly require investments to contribute to the host State's sustainable development. Modern treaties also delimit covered assets more clearly, often excluding claims to money from ordinary commercial transactions. This trend is reinforced by the proliferation of national investment screening mechanisms, which allow host States to align capital inflows with national SDG priorities.

A core tension in IIL remains the application of substantive protections - notably Indirect Expropriation and FET, which can constrain SDG-oriented regulation. Claims of indirect expropriation (targeting non-discriminatory regulatory actions that deprive an investment of its economic value) have historically been treated inconsistently by tribunals. While the 'police powers' doctrine holds that bona fide public interest regulations are not expropriatory, early jurisprudence (particularly under NAFTA) was often criticized for favouring investor rights.

The *Philip Morris v. Uruguay* (2016) award was a key turning point. It affirmed that tobacco control measures were a legitimate exercise of police powers for public health (SDG 3) and rejected the expropriation claim, finding no substantial deprivation had occurred. This jurisprudence signals a greater deference to rational, evidence-based regulation.

Reflecting this, new-generation IIAs often include annexes defining the boundaries of indirect expropriation. These provisions typically affirm that non-discriminatory measures protecting public welfare (health, safety, environment) are not expropriatory '*except in rare circumstances*' where the measure is manifestly excessive. This language codifies a **'**mitigated**'** police powers doctrine.

Proportionality has also become more prominent in arbitral reasoning post-2016. As sustainable development requires balancing economic, social, and environmental factors, proportionality provides a necessary analytical framework. Tribunals often apply a three-part test: suitability, necessity (or least restrictive means), and proportionality stricto sensu. While its application in ISDS remains inconsistent, proportionality is frequently 'subsumed' under the FET standard to assess if a measure was arbitrary, disproportionate, or violated legitimate expectations. Consequently, the FET standard is often interpreted today as prohibiting 'manifest arbitrariness'.

V. SECTORAL TENSIONS AND INSTITUTIONAL REFORMS

The Handbook also examines sector-specific tensions, particularly within the clean energy sector (SDG 7). Numerous arbitral disputes - especially those filed against Spain under the Energy Charter Treaty (ECT) following the rollback of renewable energy incentives - illustrate how substantive protections have been used as a 'sword' by investors. Representing approximately 60 percent of all ECT-based claims, these cases highlight the friction between the ecological and

economic dimensions of sustainable development.

While States retain the sovereign right to regulate, tribunals have often held that precise legislative frameworks designed to induce investment can generate 'legitimate expectations'. Nonetheless, these decisions generally maintain that a mere diminution in asset value does not amount to indirect expropriation; investors must demonstrate substantial deprivation or the loss of all significant economic value.

The Handbook's examination of ongoing systemic reforms addresses justice, effective institutions, and good governance (SDG 16). The fragmented and costly nature of the IIL regime, compounded by the absence of binding precedent in ISDS, has produced inconsistent and unpredictable outcomes. Recognizing these challenges, UNCITRAL is pursuing reform initiatives.

Among the most significant proposals is the Advisory Centre on International Investment Law (ACIIL), designed to address knowledge and resource gaps by providing low-cost legal assistance, capacity building, and support for LDCs and developing States. The initiative has drawn support from States including Turkey, South Korea, Morocco, and the European Union, which view it as essential for strengthening their defensive posture in investment disputes. Concurrently, the European Union continues to advocate for a Multilateral Investment Court (MIC), with the Investment Court System (ICS) serving as a transitional model to ensure greater coherence, predictability, and legitimacy in investment adjudication.

VI. MODERNIZATION PATHWAYS AND INSTITUTIONAL LAWMAKING

The persistence of old-generation IIAs - which account for more than 90 percent of existing agreements and were negotiated when sustainability was not a central concern - poses a significant challenge. These legacy instruments form the legal basis for the majority of current ISDS disputes.

To address this, the UNCTAD 'IIA Reform Accelerator' proposes several modernization pathways, including treaty replacement, amendment, and joint interpretative statements. As subsequent agreements under VCLT Article 31(3)(a), joint interpretations offer a pragmatic and legally robust mechanism for aligning outdated treaty standards with contemporary sustainability goals and the SDGs.

The Handbook also examines the lawmaking influence of International Financial Institutions (IFIs), such as the World Bank and the Asian Infrastructure Investment Bank (AIIB), through their Environmental and Social Frameworks (ESFs). These frameworks operate as a *droit commun* of sustainability, embedding principles of integration, accountability, and public participation. Once incorporated into loan or grant agreements, the ESF requirements acquire binding legal force for borrowing States.

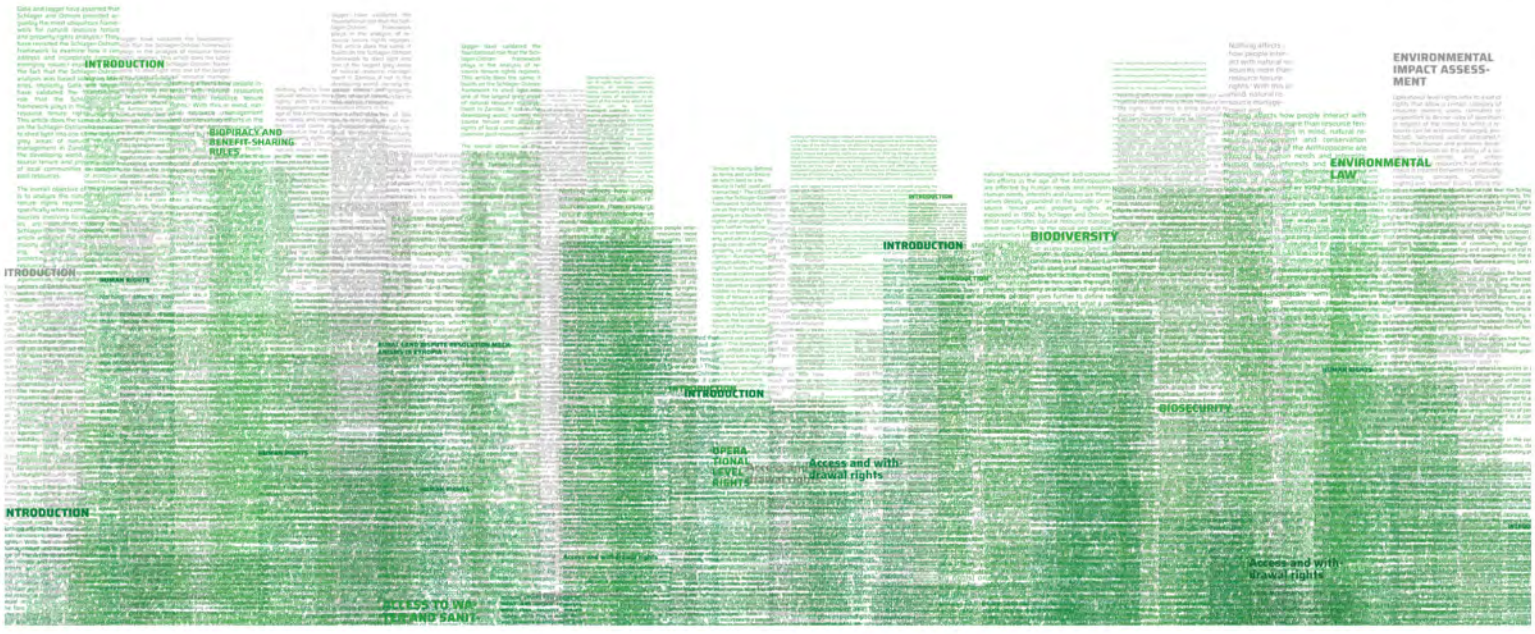
These frameworks typically require comprehensive Environmental and Social Assessments (ESAs), Resettlement Plans, compensation equivalent to full replacement value, and - critically - Free, Prior, and Informed

Consent (FPIC) through good-faith consultation with Indigenous peoples. The interpretative practice developed by the Independent Accountability Mechanisms (IAMs) of these IFIs, particularly in their compliance review and dispute resolution functions, further refines the emerging body of international sustainable development law.

VII. CONCLUSION

The Research Handbook on Investment Law and Sustainable Development is an authoritative guide to the evolving relationship between investment protection and global sustainable development and it can be recommended to all scholars, practitioners and policymakers seeking a comprehensive and forward-looking understanding of how international investment law is being reshaped by the SDGs. It documents doctrinal transformations, particularly regarding the definition of investment, the integration of proportionality within FET and expropriation analysis, and the ongoing procedural reforms at UNCITRAL.

While acknowledging that IIL fragmentation will likely persist, the editors remain optimistic, arguing that IIL has increasing potential to support, rather than frustrate, the achievement of the SDGs. They argue that a more coherent and predictable regime - achieved through treaty language that safeguards the right to regulate, modernizing legacy IIAs, and strengthening institutions like the ACIIL - is indispensable to achieving international economic objectives that respect 'ecological imperatives and human rights, for development that can last' (p. 517).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