THE INVESTMENT TREATY ARBITRATION REVIEW

Seventh Edition

Editor
Barton Legum

THE LAWREVIEWS

THE INVESTMENT TREATY ARBITRATION REVIEW

SEVENTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in May 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Barton Legum

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS
Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Isabelle Gray

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Caroline Fewkes

SUBEDITOR
Morven Dean

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-80449-077-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

3 VERULAM BUILDINGS

ACCURACY

AFRICA LAW PRACTICE NG & COMPANY (ALP NG & CO)

AKERMAN LLP

ANDERSON MŌRI & TOMOTSUNE

ANWALTSBÜRO WIEBECKE

ARBITRATION CHAMBERS

BAE, KIM AND LEE LLC

BAKER MCKENZIE

BERKELEY RESEARCH GROUP, LLC

BRACEWELL LLP

BRATSCHI LTD

BREDIN PRAT

BURFORD CAPITAL

CHARLES RIVER ASSOCIATES

CMS HASCHE SIGLE, HONG KONG LLP

COMPASS LEXECON

CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRÍQUEZ, SC

EKPT LAW

ENYO LAW LLP

GLOBAL LAW OFFICE

HERBERT SMITH FREEHILLS LLP

HONLET LEGUM ARBITRATION

HUI ZHONG LAW FIRM

INDEPENDENT ECONOMICS & FINANCE LLP

JENNER & BLOCK LLP

KIM & CHANG

KING & SPALDING

MILBANK LLP

NERA ECONOMIC CONSULTING

NISHIMURA & ASAHI

OSBORNE PARTNERS

PETER & KIM LTD

RAJAH & TANN SINGAPORE LLP

REED SMITH LLP

SHARDUL AMARCHAND MANGALDAS & CO

SIDLEY AUSTIN LLP

STEPHENSON HARWOOD LLP

THE BRATTLE GROUP

VASIL KISIL & PARTNERS

WHITE & CASE LLP

WONGPARTNERSHIP LLP

YOON & YANG LLC

YULCHON LLC

ZHONG LUN LAW FIRM

CONTENTS

Appendices

PREFACE

This year's edition of *The Investment Treaty Arbitration Review* boasts a number of new chapters. The result is greater coverage and a resource that is even more useful to practitioners.

As before, this new edition provides an up-to-date panorama of the field. This is no small feat given the constant flow of new awards, decisions and other developments in the field of investment treaty arbitration.

Many useful treatises on investment treaty arbitration have been written. The relentless rate of change in the field rapidly leaves them out of date.

In this environment of constant change, *The Investment Treaty Arbitration Review* fulfils an essential function. Updated every year, it provides a current perspective on a quickly evolving topic. Organised by topic rather than by jurisdiction, it allows readers to access rapidly not only the most recent developments on a given subject, but also the debate that led to those developments and the context behind them.

This seventh edition represents an important achievement in the field of investment treaty arbitration. I thank the contributors for their fine work in developing the content for this volume.

Barton Legum
Honlet Legum Arbitration
Paris
May 2022

Part VII

Multilateral Treaties

Chapter 39

INVESTOR-STATE ARBITRATION AND THE 'NEXT GENERATION' OF INVESTMENT TREATIES

Olasupo Shasore SAN, Orji A Uka and Oluyori Ehimony[1]

I INTRODUCTION

Investor-state arbitration has grown over the years to become one of the most dynamic and controversial features of international investment law. Across the world, most states have entered into at least one international investment agreement (IIA) to promote and protect investments within their territories. From its humble beginnings, when the first bilateral investment treaty (BIT) was executed between West Germany and Pakistan in 1959,[2] to the present day, which is now characterised by a multi-layered and multifaceted IIA regime featuring more than 3,300 known IIAs,[3] investor-state arbitration has come a long way.

In line with one of the core objectives of IIAs, which is the promotion and protection of foreign investments, a mechanism was designed for the direct invocation of arbitration claims by investors against host states.[4] That mechanism is investor-state dispute settlement (ISDS) and the most widely used ISDS mechanism is investor-state arbitration[5]. In recent times, however, the ISDS system has attracted increasing backlash and has become the subject of debate by both the investment community and the general public, with some advocating that it be scrapped altogether.[6] The widespread sentiment among policymakers and states is that the adoption of investor-state arbitration as an ISDS mechanism has not succeeded in fostering a balance between promoting and facilitating investments or investor protection on the one hand, and ensuring responsible investment, safeguarding the right to regulate, or protecting the public interests of the host state on the other hand. The latest decisions from ISDS tribunals appear to provide statistical support for this sentiment.

A report published by the United Nations Commission on Trade and Development (UNCTAD) reveals that by the end of 2019, about 61 per cent of ISDS tribunal merit-based

1 Olasupo Shasore SAN is a partner and Orji A Uka and Oluyori Ehimony are senior associates at Africa Law Practice NG & Company (ALP NG & Co).

2 Treaty for the Promotion and Protection of Investments (with Protocol and exchange of notes), Germany and Pakistan (25 Nov. 1959), 457 UNTS 24 (entered into force 28 Nov. 1962), available at https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280132bef (last accessed 21 Mar. 2022).

3 https://investmentpolicy.unctad.org/international-investment-agreements (last accessed 21 Mar. 2022).

4 C McLachlan, et al, *International Investment Arbitration: Substantive Principles* (2nd edn, 2017, Oxford University Press), p. 44.

5 As of 31 December 2020, there had been more than 1,100 known investor-state arbitration cases. UNCTAD, Investment Dispute Settlement Navigator, available at https://investmentpolicy.unctad.org/investment-dispute-settlement (last accessed 21 Mar. 2022).

6 As discussed below, the European Union constitutes probably the biggest threat to the ISDS system as we now know it.

decisions were rendered in favour of investors.[7] This has undoubtedly come at great financial and reputational cost to host states, especially developing countries, with the amounts awarded by some tribunals sometimes running into billions of dollars. The majority of these decisions were issued on the application and interpretation of the class of IIAs now commonly referred to as 'old-generation' IIAs.[8]

Old-generation BITs:

a provided investors with a right to compensation for a wide range of regulatory conduct based on very vague treaty language;

b obliged host states to compensate investors for direct or indirect expropriation;

c entitled investors to free repatriation of their profits and other capital out of host states;

d entitled the investors to bring a claim for damage occasioned by war, insurrection or other armed conflict;

e obliged the host states to treat the investors in the same way as they did nationals of the host state (national treatment) or investors of other third countries (most-favoured nation treatment); and

f almost always included the vague provision mandating host states to provide investors with fair and equitable treatment (FET).[9]

From the host states' standpoint, these old-generation IIAs have ultimately proved inadequate to the extent that they paid scant regard to factors such as environmental or sustainable development principles, the need for the protection of health and safety, labour rights, etc. This perceived imbalance, coupled with the steadily increasing number of ISDS cases, which have seen tribunals broadly interpreting and applying the IIA provisions, sometimes in an unjustifiably inconsistent manner, has led states to introduce new provisions that aim to address the problems noted in previous IIAs.

This chapter analyses the current framework regulating investor-state arbitration. It begins with a consideration of the areas of key stakeholders' concerns with the ISDS regime by highlighting selected ISDS decisions around topical areas in need of reform. Next, the chapter undertakes an overview of selected BIT programmes. Thereafter, it highlights recent reform measures aimed at enhancing confidence in the stability of the investment environment. These reforms range from procedural matters such as exhaustion of local dispute resolution framework as a prerequisite to investor-state arbitration to substantive matters such as the host state's rights to legislate freely around FET requirements, etc., subject, of course, to public international law standards. The chapter concludes with policy recommendations for policymakers for future IIAs.

7 UNCTAD, IIA Issues Note, January 2021 – Review of ISDS Decisions in 2019: Selected IIA Reform Issues, available at https://investmentpolicy.unctad.org/publications/1241/review-of-isds-decisions-in-2019-selected-iia-reform-issues (last accessed 21 Mar. 2022).

8 UNCTAD defines old-generation treaties as those concluded between 1959 and 2011, prior to the launch of its Investment Policy Framework for Sustainable Development in 2012 (World Investment Report 2012). See 'UNCTAD's IIA Reform Accelerator – a new tool to facilitate investment treaty reform', available at https://investmentpolicy.unctad.org/news/hub/1662/20201112-unctad-s-iia-reform-accelerator---a-new-tool-to-facilitate-investment-treaty-reform (last accessed 21 Mar. 2022).

9 Lauge N Skovgaard Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge University Press, 2017).

II WORKING OF INVESTOR-STATE ARBITRATION

Unlike its predecessor, which required the intervention of the home state of the foreign investor before a claim could be brought against a host state, the modern ISDS mechanism does not require such intervention as most IIAs, especially BITs, contain provisions that allow the investors direct right to commence investor-state arbitration against a host state. Similarly, there is no requirement for a prior contractual relationship between the investor and the host state before such a claim can be brought.[10] This has been suggestively described as 'arbitration without privity'.[11] All that is required is a unilateral standing offer to arbitrate, on the part of the host state, typically contained in an investment treaty or a national investment legislation and the commencement of a claim by an investor constitutes an acceptance of such an offer, provided that the claim meets the jurisdiction and admissibility criteria set by the ICSID Convention[12] and the relevant investment treaty. A claim that satisfies the twin criteria is then determined by a tribunal of private practitioners whose decision is binding on the states, with a recourse to challenge the decision on limited grounds.

III INCONSISTENCY AND INCOHERENCE IN ISDS DECISIONS

As the UNCITRAL Working Group III captures in its 2018 Notes, there have been widespread concerns regarding the consistency, coherence, predictability and correctness of decisions made by ISDS arbitral tribunals.[13] The inconsistent findings have manifested themselves in three broad scenarios:

a Tribunals have reached different conclusions about the same standards in the same investment treaty or about the same procedural issues, including where the facts were similar, or with such differences that are not sufficient to justify a different outcome.

b ISDS tribunals under different investment treaties have reached different conclusions about disputes involving the same measure, related parties and similar treaty standards or applicable legal rules.

c Arbitral tribunals organised under the same or different investment treaties have dealt with disputes involving unrelated parties, but similar facts and have reached opposite interpretations of the applicable legal rules.[14]

10 In *Interocean Oil Development Company & Interocean Oil Exploration Company v. Federal Republic of Nigeria*, ICSID Case No. ARB/13/20, Award 6 October 2020, the tribunal overruled the objection of Nigeria and held that Section 26(3) of the Nigerian Investment Protection Commission Act constitutes a standing offer to arbitrate under the ICSID Rules.

11 J Paulsson, 'Arbitration without Privity' in *ICSID Review: Foreign Investment Law Journal*, Vol. 10 No. 2 (1995).

12 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

13 United Nations Commission on International Trade Law (UNCITRAL), Working Group III: Investor-State Dispute Settlement Reform, 36th session 29 October–2 November 2018, Vienna – 'Possible reform of ISDS – Consistency and related matters', available at https://uncitral.un.org/en/working_groups/3/investor-state. See also UNCTAD, IIA Issues Note 'Reform of Investor-State Dispute Settlement: in Search of a Roadmap' (No.2, June 2013), available at https://investmentpolicy.unctad.org/publications/62/iia-issues-note-reform-of-investor-state-dispute-settlement-in-search-of-a-roadmap (web pages last accessed 21 Mar. 2022).

14 id.

A prominent illustration of inconsistency in ISDS decisions can be found in the often-cited *Lauder v. Czech Republic* and *CME Czech Republic BV v. Czech Republic* decisions.[15] In these two cases, US entrepreneur Ron Lauder brought a claim under the US–Czech Republic BIT 1991 against the Czech Republic alleging that his investment in the Czech television channel, TV Nova, had been expropriated. The investment was exercised through a Dutch investment company, CME Czech Republic BV (CME), over which he had control. CME brought its own claim under the Dutch–Czech Republic BIT 1991. The tribunals comprised different arbitrators in each case. However, because the allegations against the Czech Republic were substantially the same, the evidence presented to the two tribunals were also substantially the same. In the end, the two tribunals delivered their awards within 10 days of each other but arrived at completely opposite outcomes – a dismissal of the claims in one case and an award of damages in the other. A similar example can be found in the *SGS* cases.[16]

These areas of inconsistency include questions such as the jurisdiction and admissibility of claims, including the interpretations of the outer limits of subject-matter jurisdiction under Article 25(1) of the ICSID Convention, whether the contribution to the host state's economic development is part of the criteria to be considered in the definition of an investment,[17] whether portfolio investments are protected[18] and whether the effective control of a claimant over a relevant entity must be merely legal or also factual for the purposes of determining a claimant's right to bring an investment claim.[19]

15 *Lauder v. Czech Republic*, ad hoc UNCITRAL Arbitration Rules, Final Award, 3 September 2001 and *CME Czech Republic B.V. v. Czech Republic*, ad hoc UNCITRAL Arbitration Rules, Partial Award, 13 September 2001.

16 *Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction, 6 August 2003; *Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004; and *Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Award (10 Feb. 2012).

17 See *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction (31 Jul. 2001); *Malaysian Historical Salvors, SDN, BHD v. The Government of Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction (17 May 2007); and *Société Générale de Surveillance S.A. v. The Republic of Paraguay* (op. cit. note 16, above); *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award (31 Oct. 2012).

18 *Fedax N.V. v. The Republic of Venezuela*, ICSID Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction (11 Jul. 1997); *Abaclat and Others v. The Republic of Argentina*, ICSID Case No. ARB/07/5 (formerly *Giovanna Beccara and others v. The Argentine Republic*), Decision on Jurisdiction and Admissibility (4 Aug. 2011); *Ambiente Ufficio S.p.A. and others v. The Republic of Argentina*, ICSID Case No. ARB/08/9 (formerly *Giordano Alpi and others v. Argentine Republic*), Decision on Jurisdiction and Admissibility (8 Feb. 2013); *Giovanni Alemanni and Others v. The Republic of Argentina*, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility (17 Nov. 2014); and *Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award (9 Apr. 2015).

19 *Banro American Resources, Inc. & Société Aurifère du Kivu et du Maniema S.A.R.L. v. Democratic Republic of the Congo*, ICSID Case No. ARB/98/7, Award (1 Sep. 2000); *Caratube International Oil Company LLP and Hourani v. Republic of Kazakhstan*, ICSID Case No. ARB/13/13, Award (27 Sep. 2017), paras. 611–615; *TSA Spectrum de Argentina, S.A. v. The Republic of Argentina*, ICSID Case No. ARB/05/5, Award (19 Dec. 2008), at paras. 134–62 and *Consortium Groupement LESI—DIPENTA v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/03/8, Award (10 Jan. 2005).

Other major areas of divergence in decisions are in respect of the interpretation of cooling-off periods before the commencement of investor-state arbitrations;[20] the exhaustion of local remedies;[21] the correct interpretation of the FET standard;[22] the application of the customary international law doctrine of necessity and treaty-based defence of essential security;[23] the umbrella clauses;[24] and the most-favoured nation treatment provisions.[25]

IV ISDS REFORMS

Understandably, this lack of consistency and coherence, as well as other concerns such as the complexity of ISDS decisions, the length of time involved, the costly procedures, the partiality of arbitrators, the absence of an appellate process comparable to the World Trade Organization, the unsatisfactory nature of the review committee process, etc., has provided ammunition for critics of the ISDS mechanism and led to serious concerns on the part of states that these inconsistencies negatively affect the credibility, reliability, effectiveness and predictability of the ISDS regime. The perceived limits to the jurisdiction of international tribunals to hear state counterclaims and the perception that the institution of investment

20 *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Decision on Jurisdiction (6 Jun. 2016); *Guaracachi America, Inc. and Rurelec PLC v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award (31 Jan. 2014); *Bayindir Instaat Turizm Ticaret Ve Sanayi AS v. Pakistan* (Decision on Jurisdiction) ICSID Case No. ARB/03/29 (2005); *Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction (15 Dec. 2010) and *Almasryia for Operating & Maintaining Touristic Construction Co. L.L.C. v. State of Kuwait*, ICSID Case No. ARB/18/2 Award on the Respondent's Application Under Rule 41(5) of the ICSID Arbitration Rules (1 Nov. 2019).

21 See *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003; *Helnan International Hotels A/S v. Arab Republic of Egypt*, ICSID Case No. ARB/05/19, Award (3 Jul. 2008) subsequently annulled by the ad hoc Committee dated 14 June 2010.

22 *S. D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award (13 Nov. 2000), at paras. 262–63; *Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL, Award on the Merits of Phase 2 (10 Apr. 2001), at para. 111.

23 *CMS Gas Transmission Company v. The Republic of Argentina*, ICSID Case No. ARB/01/8, Decision of the ad hoc Committee on the Application for Annulment of the Argentine Republic (25 Sep. 2007), para. 150; *Sempra Energy International v. The Republic of Argentina*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic's Application for Annulment of the Award (29 Jun. 2010), paras. 186–207; and *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3 (also known as *Enron Creditors Recovery Corp. and Ponderosa Assets, L.P. v. The Republic of Argentina*), Decision on the Application for Annulment of the Argentine Republic (30 Jul. 2010), para. 406 et seq.

24 *SGS v. Pakistan* (op. cit. note 16, above); *Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. The Republic of Paraguay*, ICSID Case No. ARB/07/9, Decision of the Tribunal on Objections to Jurisdiction (29 May 2009); and *EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Republic of Argentina*, ICSID Case No. ARB/03/23, Award (11 Jun. 2012).

25 *Emilio Agustin Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 Jan. 2000); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction (8 Feb. 2005); *Gas Natural SDG, S.A. v. The Republic of Argentina*, Decision of the Tribunal on Preliminary Questions on Jurisdiction (17 Jun. 2005); *RosInvestCo UK Ltd. v. The Russian Federation*, SCC Case No. V079/2005, Award on Jurisdiction, October 2007; *Impregilo S.p.A. v. The Republic of Argentina*, ICSID Case No. ARB/07/17, Award (21 Jun. 2011; and *ICS Inspection and Control Services Limited (United Kingdom) v. The Republic of Argentina*, UNCITRAL, PCA Case No. 2010-9, Award on Jurisdiction (10 Feb. 2012).

arbitration is limited to a one-sided presentation of claims, rather than a mutual airing and balancing of claims by both parties, have also led to broader criticism of the ISDS system.[26] The concerns have crystallised in the launch of the most comprehensive reform of the ISDS mechanism.

V REFORM OF THE ISDS MECHANISM

i Multilateral reform endeavours

Since 2017, the United Nations Commission on International Trade Law (UNCITRAL) has been at the forefront of multilateral efforts to reform the ISDS system to promote a fair and inclusive system to resolve investment-related disputes. At its 50th session in July 2017, UNCITRAL issued a mandate to the Working Group III to (1) identify and consider concerns regarding ISDS, (2) consider whether reform is desirable and, if so, (3) develop any relevant solutions to be recommended to the Commission. The reform discussions were divided into three phases.

During Phase I of the reforms, countries built consensus on the need for reform, identified reform areas and approaches, reviewed their IIA networks, developed new model treaties and started to negotiate new, more modern IIAs.[27] Thereafter, UNCTAD proposed 10 policy options for Phase II of IIA reform as follows: jointly interpreting treaty provisions; amending treaty provisions; replacing 'outdated' treaties; consolidating the IIA network; managing relationships between coexisting treaties; referencing global standards; engaging multilaterally; abandoning unratified old treaties; terminating existing old treaties; and withdrawing from multilateral treaties.[28] The multilateral reform discussions are currently at Phase III of recommending UNCITRAL reform measures.[29]

ii The European Union

The commitment of the European Union to the replacement of the ISDS regime emerged following objections by European non-governmental organisations and other pressure groups during the negotiation of the Transatlantic Trade and Investment Partnership (TTIP) with the United States.

In a Concept Paper, issued in May 2015, the European Commission proposed that Europe 'should pursue the creation of one permanent court' that would apply to multiple agreements and between different trading partners and with a view ultimately to multilateralise the court either as a self-standing international body or by embedding it into an existing

26 J E Kalicki, 'Counterclaims by States in Investment Arbitration', International Institute for Sustainable Development, *Investment Treaty News*, available at https://www.iisd.org/itn/en/2013/01/14/counterclaims-by-states-in-investment-arbitration-2/ (last accessed 21 Mar. 2022).

27 UNCTAD, IIA Issues Note, 'Phase 2 of IIA Reform: Modernizing the Existing Stock of Old-Generation Treaties' (Issue 2, Jun. 2017), available at https://investmentpolicy.unctad.org/publications/173/iia-issues-note-phase-2-of-iia-reform (last accessed 21 Mar. 2022).

28 id.

29 Three documents have been issued by the UNCITRAL Secretariat that summarise the proposals and give reform directions: (1) Code of Conduct of Adjudicators; (2) Appellate mechanism and enforcement; and (3) Selection and appointment of ISDS tribunal members. These documents were discussed at the most recent session of the Working Group III, which took place in Vienna, 8 to 12 February 2021.

multilateral organisation.[30] Later that year, the European Parliament, during the negotiations for the TTIP, instructed the European Commission to pursue the replacement of investor-state arbitration by a new system in which disputes would be decided in a transparent manner by publicly appointed, independent professional judges in public hearings and that includes an appellate mechanism.[31] By November 2015, a formal proposal for an investment court system had been prepared and presented to the United States.[32]

In 2016–2017, the European Commission began negotiations for a convention to establish a Multilateral Investment Court (MIC) on behalf of the European Union and its Member States. The EU proposal has since been modified with the MIC momentarily replaced with a proposed Investment Court System (ICS), with judges appointed by the two parties to a free trade agreement and public oversight.[33] The European Commission has already started to include this bilateral ICS provision in recently negotiated IIAs, including those with Canada, Mexico, Singapore and Vietnam;[34] the agreements also include provisions anticipating the transition from the bilateral ICS to a permanent MIC. The European Court of Justice (ECJ) has also issued an Opinion confirming that the ICS mechanism set up by the Canada–EU Comprehensive Economic and Trade Agreement is compatible with EU primary law.[35] On 6 March 2018, the ECJ stated in *Slowakische Republik v. Achmea BV* that the dispute resolution clause contained in Article 8 of the Netherlands–Slovakia BIT 1991 is not compatible with EU law.[36] Following this decision, a majority of EU Member States signed an agreement on 5 May 2020 to terminate all BITs concluded between them.[37] Instructively, although the *Achmea* decision concerned only the Netherlands–Slovakia BIT

30 See European Commission Concept Paper, 'Investment in TTIP and beyond – the path for reform: Enhancing the right to regulate and moving from current ad hoc arbitration towards an Investment Court' (5 May 2015), at 11–12, available at http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF (last accessed 21 Mar. 2022).

31 www.europarl.europa.eu/legislative-train/theme-reasonable-and-balanced-trade-agreement-with-the-united-states/file-ttip-investment-court-system-for-ttip (last accessed 21 Mar. 2022).

32 See the European Union's proposal for Investment Protection and Resolution of Investment Disputes (12 Nov. 2015) (EU TTIP Proposal), at http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153955.pdf (last accessed 21 Mar. 2022).

33 Cecilia Malmström, 'Proposing an Investment Court System', European Commission, The Commissioners Blog (16 Sep. 2015), at https://www.europa-nu.nl/id/vjxdm6kcngzo/nieuws/blog_proposing_an_investment_court?ctx=vhyzn0ozwmz1&v=1&start_tab1=10&tab=0. See also European Commission press release, 'Commission proposes new Investment Court System for TTIP and other EU trade and investment negotiations', Brussels (16 Sep. 2015), http://europa.eu/rapid/press-release_IP-15-5651_en.htm (web pages last accessed 31 Mar. 2022).

34 The EU–Canada Comprehensive Economic and Trade Agreement, the EU–Vietnam free trade agreement (FTA) and the EU–Singapore FTA.

35 http://curia.europa.eu/juris/document/document.jsf?docid=213502&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=929830.

36 *Slowakische Republik v. Achmea BV,* Case C-284/16; *Slovak Republic v. Achmea* EU:C:2018:158, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CA0284 (last accessed 31 Mar. 2022).

37 'Declaration of the Representatives of the Governments of the Member States of 15 January 2019 on the Legal Consequences of the Judgment of the Court of Justice in *Achmea* and on Investment Protection in the European Union', available at https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190117-bilateral-investment-treaties_en.pdf (last accessed 21 Mar. 2022).

1991, the ECJ – in *Republic de Moldavie v. Komstroy*[38] on 2 September 2021 – extended the *Achmea* findings to the ISDS provisions of the Energy Charter Treaty (ECT). Considering the fundamental importance of the ECT to the investor-state regime, it would be interesting to see how future ISDS tribunals will react to the *Komstroy* ruling.

iii US–Mexico–Canada Trade Agreement

The Agreement between the United States of America, the United Mexican States and Canada (USMCA) signed at the G20 summit in Buenos Aires, Argentina,[39] which came into force on 1 July 2020, replaced the North American Free Trade Agreement (NAFTA).

From an ISDS perspective, the USMCA makes substantial changes to the ISDS mechanism under NAFTA. Indeed, Chapter 14 of the USMCA, which replaces Chapter 11 of NAFTA, represents a radical change to the North American ISDS landscape.[40] The most significant development of the USMCA entering into force for the ISDS mechanism is that Canada has withdrawn entirely from ISDS under the USMCA. Chapter 14 of the USMCA provides that Canada's consent to ISDS for legacy investment claims expires three years after NAFTA's termination. New ISDS claims under Chapter 14 are restricted to claims by US and Mexican investors against an 'Annex Party'; that is, the parties to Annex 14-D, being only the United States and Mexico. Annex 14-D further restricts the types of claims that may be submitted to ISDS. For instance, claims for direct expropriation may be submitted to ISDS but claims for indirect expropriation may not. Chapter 14 of the USMCA also contains important changes as compared to Chapter 11 of NAFTA and significantly restricts the protections offered to US and Mexican investors going forward.[41]

With the wave of reforms sweeping through the international investment firmament, with developed countries (which, incidentally, have been the biggest recipients of the regime) firmly at the centre, it becomes pertinent to examine the place of developing countries that have largely been at the receiving end of adverse and often huge ISDS decisions.

38 *Republic de Moldavie v. Komstroy*, C-741/19, retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=245528&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6553899 (last accessed 21 Mar. 2022).

39 'Trump signs USMCA, revamping North American trade rules', *The Washington Post* (29 Jan. 2020), available at https://www.washingtonpost.com/business/2020/01/29/trump-usmca/ (last accessed 21 Mar. 2022).

40 Martin J Valasek, et al., 'Major changes for investor-state dispute settlement in new United States-Mexico-Canada Agreement' (October 2018), available at https://www.nortonrosefulbright.com/en/knowledge/publications/91d41adf/major-changes-for-investor-state-dispute-settlement-in-new-united-states-mexico-canada-agreement (last accessed 21 Mar. 2022).

41 id.

VI DEVELOPING COUNTRIES AND ISDS

Before 2020, there had been only three known ISDS cases against Nigeria. The first two of those cases[42] were ultimately settled with terms that were not made public. The third case[43] was heard on the merits and was subsequently decided in Nigeria's favour. Nigeria has not been on the receiving end of any known adverse ISDS decision.[44] Other developing countries do not share Nigeria's fortune.

In 2012, South Africa announced that it was terminating BITs with Belgium and Luxembourg and that they further intended to denounce treaties with other European countries.[45] This decision came after South Africa became the subject of huge ISDS claims but, nevertheless, was not made lightly.

Following the end of the apartheid policy and the election of the new African National Congress government, a massive programme was launched to attract needed foreign capital inflow. Not surprisingly, this included the execution of BITs and other IIAs. As recounted by Poulssen,[46] the first investment treaty claim against South Africa was brought by a Swiss farmer whose farm had been looted and destroyed during disturbances that followed a land-claims process by blacks and other historically disadvantaged South Africans seeking restitution for lands compulsorily acquired during apartheid. The process was part of South Africa's constitutionally based Black Economic Empowerment, which mandated the redistribution efforts to mend the vast economic equalities that apartheid occasioned. However, South Africa was found to have breached its obligation under the Swiss–South Africa BIT 1997 to provide full protection and security to Swiss investors and Swiss-owned investments within its territory. Notably, the tribunal awarded the sum of US$1 million to the investor.

It was the *Foresti v. South Africa* claim[47] that brought to the forefront the implications of the BITs into which South Africa had entered. Here, the investors claimed the sum of US$350 million in compensation against South Africa for enacting the Mineral and Petroleum Resources Development Act to regulate the country's mining industry, which the claimants argued breached several undertakings in the Italy–South Africa BIT, including the FET standard and the National Treatment provisions. Ultimately, the claimants withdrew their claim in 2010 and South Africa was awarded the sum of €400,000 in fees and costs but not after the South African mining regulators had made extensive concessions to the claimants and after South Africa had spent almost US$8 million in legal fees and costs.

42 *Guadalupe Gas Products Corporation v. Nigeria* (ICSID Case No. ARB/78/1) and *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/07/18).

43 *Interocean Oil Development Company & Interocean Oil Exploration Company v. Federal Republic of Nigeria*, ICSID Case No. ARB/13/20, Award (6 Oct. 2020). Since this award was published, there have, however, been two new ICSID claims against Nigeria in *Eni International B.V., Eni Oil Holdings B.V. and Nigerian Agip Exploration Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/20/41) and *Shell Petroleum N.V. and The Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/21/7) registered in 2020 and 2021, respectively.

44 There is, however, the now infamous decision in *P&ID Ltd v. Nigeria*, the enforcement of which Nigeria is making spirited efforts to resist. This is, however, an international commercial arbitration and not an investment treaty claim.

45 'South Africa begins withdrawing from EU-member BITs', IISD, *Investment Treaty News*, available at https://www.iisd.org/itn/en/2012/10/30/news-in-brief-9/ (last accessed 21 Mar. 2022).

46 Poulsen (op. cit. note 9, above), pp. 162–91.

47 *Piero Foresti, Laura de Carli and others v. Republic of South Africa* (ICSID Case No. ARB(AF)/07/1).

Apart from South Africa, a host of other African countries have been hit by ISDS claims, from the first ICSID claim against an Africa state in 1972[48] to the most recent, brought by a subsidiary of Canada's First Quantum Minerals against Mauritania, which was registered on 4 March 2021.[49]

In an October 2019 report,[50] the authors reveal that by the end of August 2019, African states had been hit by a total of 106 known investment treaty arbitration claims, representing 11 per cent of all known investor-state disputes worldwide. The report further highlights that so far, 28 African countries have been sued by investors at international arbitration tribunals, with just three countries – Egypt, Libya and Algeria – accounting for 51 per cent of the total number of claims against African states. In terms of numbers, the total claims against African states since 1993 add up to US$55.5 billion, with investors in 36 claims demanding at least US$100 million, and on 10 occasions US$1 billion or more. Algeria and Egypt have each received claims for US$15 billion.

A further reading of the report reveals that African states have been ordered (by ISDS tribunals) or agreed (as a result of a settlement) to pay investors US$4.6 billion to date, with the amounts paid in one-third of the cases remaining unknown but likely to be higher. The highest amount ever paid by an African country as a result of a single investor claim was the US$2 billion paid by Egypt to Unión Fenosa. To put these figures in perspective, compensation paid by African states is equivalent to almost three times the gross domestic product of The Gambia, or twice that of the Central African Republic in 2018.

Other developing countries in Latin America, especially Argentina and Venezuela, have also been at the receiving end of massive ISDS decisions that contributed to a near collapse of their economies. These countries have also reacted differently. Bolivia, Ecuador and Venezuela, for instance, withdrew from the ICSID Convention (in 2007, 2010 and 2012, respectively). In 2008, Ecuador terminated its BITs with several countries and, in 2010, Ecuador's Constitutional Court declared the arbitration provisions of six of its BITs to be inconsistent with the country's constitution.[51]

If the old-generation BITs had proved a spectacular success in terms of attractive investments to host states, it would have been easy to overlook all these and advocate for the execution of more BITs, but as Poulsen strenuously argued with eye-opening country-specific evidence, most developing countries had entered into these BITs in less than rational ways and had largely assumed, with little empirical basis, the economic benefits of entering into these BITs while grossly underestimating the legal costs of the claims arising from treaty breaches.[52]

48 *Holiday Inns S.A. and others v. Morocco* (ICSID Case No. ARB/72/1).

49 *Mauritanian Copper Mines S.A. v. Islamic Republic of Mauritania* (ICSID Case No. ARB/21/9).

50 B Muller and C Olivet, 'Impacts of investment arbitration against African states: ISDS in Numbers', Transnational Institute (8 Oct. 2019), available at https://www.tni.org/en/isdsafrica (last accessed 21 Mar. 2022).

51 Armand de Mestral, 'The Impact of Investor-state Arbitration on Developing Countries', Centre for International Governance Innovation (22 Nov. 2017), available at https://www.cigionline.org/articles/impact-investor-state-arbitration-developing-countries (last accessed 21 Mar. 2022).

52 Poulsen (op. cit. note 9, above). For a more detailed exposition of the experiences of Africa states at international arbitration, see A A Asouzu, *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (Cambridge University Press, 2001).

VII MOVE TOWARDS NEXT-GENERATION INVESTMENT TREATIES

The ISDS decisions rendered on the basis of the old-generation IIAs and the widespread concerns with the ISDS mechanism have fostered reforms and a move towards new-generation IIAs. Unlike the old-generation treaties characterised as short, bare, imprecise and inconsistent, the next-generation investment treaties have, in line with UNCTAD's Road Map for IIA Reform,[53] put in place safeguards to preserve a state's right to regulate, ensure responsible investment and enhance systemic consistency in dispute resolution. The frontiers of next-generation investment treaties are now being extended to include the rights of host states to regulate on matters such as sustainable development, human rights public health, public policy, public safety and the environment.[54] Further, these treaties aim to explore the possibility of protecting regulatory space by highlighting new treaty formulations, including introducing clarifications of treaty language; joint interpretive statements; general exceptions; specific exceptions; and the right to reservations by host states. Thankfully, African and other developing countries have not been completely left out.

In the same way that African countries contributed significantly to the establishment of the old order, they are beginning to modify some of the traditional models of BITs while also introducing a new generation of BITs that aim to find a better balance between the interests of the state and those of the investors.[55] Indicative examples are considered below.

i South Africa

Following the negative publicity generated by the *Foresti v. South Africa* claim, South Africa started a thorough review of its BITs that culminated in the decision to refrain from signing new IIAs with investor-state arbitration clauses, a renegotiation of existing BITs and the termination of some of its BITs, especially with EU countries, as well as the passage of the Promotion and Protection of Investment Act in 2015.

With the decision of South Africa to terminate its BITs with EU countries, it also took steps to implement subsequent treaties that addressed the shortcomings of old-generation investment treaties and engage in a more region- and continent-driven approach. To this end, a South African Development Community Model Bilateral Investment Treaty (SA Model BIT) was created with the specific goal of developing a comprehensive approach from which Southern African Development Community Member States can choose to use all or some of the model provisions as a basis for developing their own specific model investment treaty or as a guide through any given investment treaty negotiation.[56]

53 UNCTAD, Investment Policy Framework for Sustainable Development (2015), available at https://investmentpolicy.unctad.org/investment-policy-framework (last accessed 21 Mar. 2022).

54 Vera Korzun, 'The Right to Regulate in Investor-State Arbitration: Slicing and Dicing Regulatory Carve-Outs' in *Vanderbilt Journal of Transnational Law*, Vol. 50, No. 2, 2017, pp. 355–414, Fordham Law Legal Studies Research Paper No. 2950939, available at SSRN, https://ssrn.com/abstract=2950939 (last accessed 21 Mar. 2022).

55 Benoit Le Bars, 'The Evolution of Investment Arbitration in Africa', *Global Arbitration Review* (11 May 2018), available at https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2018/article/the-evolution-of-investment-arbitration-in-africa (last accessed 21 Mar. 2022).

56 SADC Model Bilateral Investment Treaty Template, available at www.iisd.org/itn/wp-content/uploads/2012/10/SADC-Model-BIT-Template-Final.pdf (last accessed 21 Mar. 2022).

Although the SA Model BIT maintains some of the common features of IIAs, such as expropriation and FET standard, it also adds some clauses that seek to remedy the deficiencies of the former system, such as, among others:

a requiring investors or their investments to comply with environmental and social assessment screening criteria and prior to the establishment of their investment;

b making investors and investments subject to civil actions for liability in the judicial process of their home state for acts, decisions or omissions made in the home state in relation to investment where these acts, decisions or omissions lead to significant damage, injury and loss of life in the host state;

c reserving the right of a state party to grant preferential treatment in accordance with domestic legislation to any qualifying enterprise, to achieve national or sub-national regional development goals; and

d proposing comprehensive reforms to the ISDS mechanism.

ii Nigeria

Two of Nigeria's more recent BITs have been widely acclaimed as innovative in various respects. The first is the Canada–Nigeria BIT (2014). It is clear from a reading of the provisions that the main aim is to strike a better balance between the interests of the state and those of the investors. The preamble of the BIT reveals that the promotion of sustainable development goals is at the core of the treaty objectives. Article 15(1) of the BIT also contains an explicit condition that states should not compromise health, safety or environmental standards to attract foreign investments.

A more innovative example is the Morocco–Nigeria BIT (2016),[57] which also attempts to strike a balance between investor protection and the interests of the host state. Under this BIT, each contracting party reserves the right to adopt, maintain or enforce any measure to ensure that investment activity in its territory is undertaken in a manner that is sensitive to environmental and social concerns.[58] The BIT also specifically imposes environmental obligations on investors and provides for the recognition and enforcement of high levels of labour and human rights protection appropriate to each contracting party's economic and social situation.

Investors also have clear and unambiguous anti-corruption obligations imposed on them. Under Article 17 of the BIT, a breach of the anti-corruption provisions of the treaty is deemed to constitute a breach of the domestic law of the host state concerning the establishment and operation of an investment. Very importantly too, each host state reserves the right to take regulatory or other measures to ensure that development in its territory is consistent with the goals and principles of sustainable development, and with other legitimate social and economic policy objectives.

Last, the Morocco–Nigeria BIT contains mandatory provisions on the exhaustion of local remedies. Article 26 provides that, before resorting to arbitration, any dispute is to be assessed through consultations and negotiations by the Joint Committee, which comprises representatives appointed by both contracting parties. A submission to the Joint Committee of a dispute concerning a specific question of interest to an investor can only be initiated by

57 The Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria (Morocco–Nigeria BIT) signed on 3 December 2016.

58 ibid., Articles 13, 14 and 15.

a contracting party. If the dispute cannot be resolved within six months, the investor may only resort to international arbitration mechanisms after the exhaustion of local remedies or the domestic courts of the host state. In addition to these next-generation BITs, an evolution of investment arbitration is also evident from a study of recently reformed African regional agreements.

iii COMESA

The Common Market for Eastern and Southern Africa (COMESA) adopted the reformed Investment Agreement for the COMESA Common Investment Area in 2007, with a view to attracting investment from within and outside the region. Although the agreement has not yet come into force, its full operation would provide an investor with a suite of options to bring an investment dispute either before the court of the host state or the COMESA Court of Justice, or to pursue arbitration under ICSID or UNCITRAL arbitration rules.

iv OHADA region

The Organisation for the Harmonisation of Business Law in Africa (OHADA) is a regional organisation comprised of 17 African, and predominantly French-speaking, states. The revised OHADA Uniform Act on Arbitration (the Arbitration Act), the revised Rules on Arbitration of the Joint Court of Justice and Arbitration (the Rules), and the new Uniform Act on Mediation all entered into force on 15 March 2018. Article 3 of the Arbitration Act and Articles 2.1 and 5.1(b) of the Rules expressly allow foreign investors to commence arbitration against an OHADA Member State on the basis of any instrument concerning the protection of investments, which include BITs and national investment legislation. To give effect to this, Article 2 of the Arbitration Act confirms the ability of public entities to consent to arbitration.

v The Pan-African Investment Code

The Pan-African Investment Code (PAIC)[59] emerged as a response to the pro-investor protection prevalent in old-generation treaties, such as the regulatory chill, which deterred host states from taking measures aimed at promoting human rights and the protection of the environment, for fear of potential enforcement actions before ISDS tribunals for breach of investment agreements that are likely to result in the payment of very high compensations after equally costly proceedings. Being a continent-wide investment instrument, the PAIC is designed to meet the particular needs of African states, with a focus on sustainable development. The PAIC encourages the investor and the Member States in a dispute to explore the use of consultation and negotiations before proceeding with litigation or arbitration.[60] Consultations may include the use of non-binding third-party mediation or other mechanisms.[61] The instrument also requires the exhaustion of local remedies if

59 The PAIC was conceived as a 'binding' instrument to replace existing BITs; however, states opted to make it a non-binding 'guiding instrument'.

60 Draft-Pan African Investment Code, Article 41.

61 ibid., Article 41(1).

consultations fail.[62] The PAIC is markedly different from other similar instruments in this regard. This approach is mindful of the high cost of arbitration and the uncertainties of the ISDS mechanism.

VIII CONCLUSION

The AfCFTA Investment Protocol: The Way Forward

On 30 May 2019, the Agreement establishing the African Continental Free Trade Area (AfCFTA) entered into force.[63] Before the covid-19 pandemic hit, a draft legal text of the AfCFTA Investment Protocol was scheduled to be submitted to the January 2021 Session of the Assembly as part of Phase II negotiations of the AfCFTA Agreement.[64] Although this deadline was missed for understandable reasons, it is hoped that the start of trading under the AfCFTA at the beginning of 2021 will speed up this process. Although it is not yet clear what will be contained in the draft legal text of the AfCFTA Investment Protocol, commentators expect it to be modelled on the PAIC, or at the very least to incorporate part of the key features of the PAIC.[65]

As investor-state arbitration continues its growth as one of the most dynamic and controversial features of international investment law, developing countries must learn lessons from the decisions of arbitral tribunals on old-generation treaties – the template and model provided by the new generation treaties. In addition to making clear and concise provisions on the scope of investments, the scope of breaches that can be submitted to international arbitration, pre-arbitration requirements, transparency requirements, limitation periods and the relationship between domestic proceedings and international arbitration, the investment protocol may expand the ISDS procedures by the inclusion of an early dismissal mechanism to terminate unfounded claims and ensure the inclusion of the states' rights to counterclaim.

Further, to enable ISDS tribunals to reduce the incidents of inconsistencies in their interpretation of treaty provisions, they must be encouraged to pay more regard to decisions that have attained *jurisprudence constante*. Finally, countries such as Nigeria must adopt model form BITs that they use as a starting point in their negotiations of BITs and ensure that there is a deliberate policy behind their BIT programmes. It is no longer rational for a country to wait for an adverse investment arbitration decision before undertaking a reform of its IIA policy.

62 ibid., Article 42(1)[c].

63 African Union, Agreement establishing the African Continental Free Trade Area (adopted 21 Mar. 2018), available at https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area (last accessed 21 Mar. 2022).

64 Arnaud Oulepo, 'AfCFTA, the Future Investment Protocol, and the Phasing-Out of Intra-African BITs', Kluwer Arbitration Blog (7 Feb. 2021), available at http://arbitrationblog.kluwerarbitration.com/2021/02/07/afcfta-the-future-investment-protocol-and-the-phasing-out-of-intra-african-bits/ (last accessed 21 Mar. 2022).

65 id.

Appendix 1

ABOUT THE AUTHORS

OLASUPO SHASORE SAN

Africa Law Practice NG & Company (ALP NG & Co)

Olasupo Shasore leads the commercial litigation and dispute resolution practice group. He is often referred to as a 'seasoned arbitrator and strategic litigator' with 30 years of experience acting for sovereign, sub-national and private international parties in international commercial and investment arbitration, litigation and other advisory capacities. He has significant deep experience in investor-state arbitration and is the leading African counsel in ICSID experience and investment-related disputes.

ORJI A UKA

Africa Law Practice NG & Company (ALP NG & Co)

Orji Uka is a commercial dispute resolution practitioner. He has garnered several years' experience advising clients on diverse areas of Nigerian law and has regularly appeared before trial and appellate courts as well as arbitral tribunals in high-profile commercial and general civil disputes covering a broad range of causes. Orji has also published extensively in the fields of international investment law and private international law.

OLUYORI EHIMONY

Africa Law Practice NG & Company (ALP NG & Co)

Oluyori (Yori) Ehimony has gained considerable commercial dispute resolution experience in both trial and appellate courts over the years, having advised and represented both Nigerian and expatriate clients on knotty commercial disputes and arbitration proceedings. He is interested in creating a solution to the pressing questions around the right of states to regulate under international trade and investment law.

AFRICA LAW PRACTICE NG & COMPANY (ALP NG & CO)

15 Military Street
Onikan
Lagos
Nigeria
Tel: +234 1 700 2570
oshasore@alp.company
ouka@alp.company
takeju@alp.company
www.alp.company
yehimony@alp.company

ISBN 978-1-80449-077-8