

Investment Law and the Right to Regulate Public Health and Environmental Protection

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Abstract: This article explores the tension between investment law protections and a state's right to regulate public health and environmental protection. International investment agreements (IIAs) provide strong protections for foreign investors, often limiting host states' regulatory freedoms. This dynamic can create challenges when states seek to implement policies for public welfare that may impact foreign investments. The study examines case law, such as *Philip Morris v. Uruguay* and *Vattenfall v. Germany*, to highlight conflicts between investor rights and regulatory measures. Through a review of recent treaties, including the Comprehensive Economic and Trade Agreement (CETA) and the United States–Mexico–Canada Agreement (USMCA), the article identifies emerging mechanisms like explicit right-to-regulate clauses, carve-outs, and interpretive guidelines designed to balance investment protection with the public interest. The results indicate that some protections are provided by new treaty provisions, but interpretive flexibility and a lack of automaticity in procedural aspects of arbitration can create as-yet unresolved challenges. It recommends that investment law reforms go further and focus on placing the public interest at the heart of investment law, establishing an architecture supportive of sustainable development, and enabling states to respond to pressing health and environmental problems without running the risk of investor claims.

Keywords: Arbitration, Bilateral Investment Treaties, Environmental Governance, Expropriation, Public Policy, Regulatory Autonomy, Sustainable Development

Introduction

International investment law seeks to provide security to foreign investors by providing stability and predictability through treaty protection. This includes protections, such as fair and equitable treatment, protection against expropriation, and national treatment that promote cross-border investment flows to the tune of trillions each year—stimulating economic growth and enhancing international cooperation. As states have become more concerned with public welfare objectives related to health protection, environmental protection, and the like, friction has resulted between domestic regulatory goals and international investment protections found in economic agreements. The study examines the interplay between investment protections and states' rights to regulate and finds that balancing both ends is crucial (Liao, 2018).

While the regulations in question relate to public welfare, namely health and environmental protection, the goal of this study is to argue how IIAs influence state's ability to regulate so. Well-publicised disputes – notably *Philip Morris v. Uruguay* and *Vattenfall v. Germany* – illustrate the problems that can arise when a foreign investor challenges state measures for public health or environmental protection purposes. These cases reinforce the primary focus of this study: How can states preserve their regulatory space for public welfare without breaching their international obligations under investment treaties?

This research examines the recent changes in treaty language and new mechanisms that emerged in managing these regulatory conflicts. Such changes feature the inclusion of right-to-regulate clauses, interpretive guidelines, and restructuring dispute resolution mechanisms, including through investment court

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systems as contained in the CETA and USMCA. Based on qualitative analysis, the paper analyzes how well these new mechanisms reconcile investment protection and state regulatory autonomy (Schrijver, [2020](#)).

The study is guided by two main hypotheses. Second, the recent reforms to treaties have improved states' ability to regulate in pursuit of public welfare without violating investment obligations. Second, notwithstanding these reforms, difficulties in interpretation and enforcement still prevent a proper balance. The study would, therefore, seek to answer the key question: How far are IIAs actually allowing states to regulate in fields of public health and environmental protection without a breach of investor rights? Which mechanisms that protect states' regulatory rights within modern treaties are effective, and which ones are ineffective?

This research uses a doctrinal analysis of chosen treaties and arbitral decisions; it is drawn within the provisions in, inter alia, CETA, USMCA, and some case law. Such a method allows for an in-depth analysis of the language of treaties and how tribunals interpret treaties to find out through what this balancing act between investor protection versus state regulatory rights is guaranteed. The article proceeds as follows: It starts with the historical background of international investment protections as well as the emergence of regulatory disputes within IIAs. The next section is a case law analysis – looking for trends in tribunal outcomes. The following section then explores some of the latest iterations of treaty reforms and scrutinizes whether they can ensure a state has sufficient regulatory space to act in the public interest. Discussion on how to develop future treaties and how policy can be adjusted. In closing, the article considers the factors that may contribute to a more equitable and sustainable investment law architecture in line with world health and environmental goals. This analysis adds to the contemporary conversations around reconciling the interactions between international investment law and equally pressing priorities for public health and environmental protection.

Literature Review

The literature on the balance between investment law and a state's regulatory right for public health and environmental protection is well-documented, addressing the inherent tension between investor protection and state sovereignty. Foundational theories by Dolzer and Schreuer ([2012](#)) lay a framework for understanding core investor protections, such as fair and equitable treatment and expropriation, underscoring the significance of stability for foreign investors in host states. However, Dolzer and Schreuer ([2012](#)) also acknowledge that these protections can restrict state sovereignty, particularly in areas that require urgent regulatory measures like public health and environmental standards.

Scholars such as Van Harten ([2007](#)) and Tienhaara ([2011](#)) critique investor-state dispute settlement (ISDS) mechanisms for disproportionately favoring investors, thereby limiting states' regulatory flexibility. Van Harten ([2007](#)) argues that ISDS permits investors to bypass domestic courts, directly challenging state regulations. Tienhaara ([2011](#)) further explores this issue, suggesting that ISDS mechanisms may lead to a "regulatory chill," where states hesitate to implement necessary public policies out of fear of costly arbitration. Her research includes case studies from industries like tobacco and energy, illustrating how ISDS has often constrained states' ability to regulate effectively in favor of environmental and public health goals.

Recent scholarships have shifted to evaluating new-generation treaties that incorporate regulatory safeguards. Johnson and Sachs ([2017](#)) highlight the inclusion of right-to-regulate clauses in treaties such as the CETA and the USMCA. These clauses explicitly recognize the state's regulatory rights in areas like health and environmental protection, marking an attempt to mitigate ISDS's regulatory risks. However, Johnson and Sachs ([2017](#)) caution that these clauses often lack the specific language to fully prevent investor challenges, leaving significant discretion to ISDS tribunals.

Schill and Krajewski ([2019](#)) analyze the interpretive flexibility within ISDS, where tribunals have significant latitude in assessing whether state regulatory actions constitute indirect expropriation or unfair treatment. They suggest that although right-to-regulate clauses represent progress, tribunal discretion can lead to unpredictable outcomes, potentially undermining states' regulatory autonomy. This interpretive uncertainty remains a critical issue even with modern treaty reforms.

Other scholars, such as Mann and Peterson (2020), advocate for structural reforms within ISDS to better support public welfare objectives. They argue for a permanent investment court system, similar to CETA's Investment Court System (ICS), which aims to replace ad hoc arbitration with a permanent tribunal, enhancing transparency and consistency. Mann and Peterson (2020) believe that such reforms could reduce the unpredictability of ISDS decisions, thus encouraging states to regulate more confidently in the public interest.

Environmental scholars, such as Howse and Kim (2021), emphasize the need for IIAs to go beyond procedural changes and include substantive commitments aligned with international environmental standards. Howse (2021) suggests that IIAs should mandate that investors respect host state environmental laws, promoting responsible investment practices that align with sustainability. This perspective advocates for IIAs to play a proactive role in promoting environmental protection rather than solely focusing on investor protection. As shown in the literature, the recent investment law framework continues to raise questions as to whether the approach (or lack thereof, depending on your perspective) of balancing investor protection and state regulatory autonomy has been successful. Although reforms like right-to-regulate clauses, the Investment Court System, and improved ISDS transparency indicate positive progress towards a balance between state sovereignty and investor protection, critics underscore that these reforms do not go far enough in achieving genuine regulatory space. Realigning investment law with public health and environmental goals will thus require additional procedural and substantive reforms. Contributing to these debates, this study reviews new treaties and suggests more steps toward ensuring that investment law balances economic objectives with development and public interests.

Conceptual and Theoretical Framework

The balance between international investment protections and a state's right to regulate, especially with respect to public health and environmental protection, is the conceptual and theoretical framework of this study. Both programs at the framework, and certainly both defenses, could run in many aspects of each investor protection (fair and equitable treatment, protection against expropriation, national treatment) on one side—and the state's authority to adopt policies that promote the public good. An important concept in this framework is called regulatory chill, the idea that these investor-state dispute settlement (ISDS) systems cause the most harm through their threat to governments worried about costly arbitration and litigation if they pursue needed regulation. More recently, some treaty reforms have introduced or proposed right-to-regulate clauses and/or made structural changes (such as the ICS) to provide additional protection for state regulatory autonomy while constraining the interpretive discretion of ISDS tribunals. These mechanisms aim to reduce uncertainty in ISDS results, which can tend to affect both the behavior of States and investors. This study examines whether the provisions in modern treaties can achieve a balance between protecting investor rights and giving states minimal tools with which to protect public welfare by investigating those provisions and the interpretative practices surrounding them.

Research Methodology

This research explores the influence of IIAs on a state's regulatory freedom to safeguard public health and conserve the environment by means of doctrinal legal methodology. This method is generally a qualitative analysis of the legal texts and case law that enables one to closely investigate treaty language, particular provisions like right-to-regulate clauses, and ISDS mechanics. This research targets contemporary treaties with an eye to the distinction in treaty design that affects regulatory freedom, particularly the CETA and the USMCA as cases compared to earlier age IIAs. In conjunction with the above, the study examines relevant ISDS cases dealing with public health and environmental measures to illustrate common tribunal interpretations and outcomes, providing insight into broader trends in decision-making (for example, patterns of alignment or divergence from domestic court adjudication). Using qualitative analysis, the research seeks to evaluate the extent to which modern treaty reforms preserve states' right to regulate but, nevertheless, climate investor confidence, generating important insights into the relationship between investment law and public interest objectives.

Historical Background of Investment Law and Regulatory Authority

Investment law and regulatory jurisdiction have a historical background that traces back to the early 20th century, evolving in response to the increasing importance of foreign investment within a rapidly marketizing global economy. International investment law had its origins in the BITs of the 1950s and 1960s, which were designed to protect foreign investors against expropriation and unfair treatment by host states. And Treaties provided the foundation for things like fair and equitable treatment, national treatment, and expropriation from states; & a basis on which to then create disputes between investors (Wu et al., 2020).

With rising foreign investment came increasing frictions between states and investors, as states, to protect the public interest, wanted to enact laws that might affect investor interests. In the late 20th century, however, in developing countries, this tension started to come to the forefront because many of these countries

were seeking to assert their sovereignty and regulatory rights with respect to foreign investments occurring in areas that are key for public health and the environment. The establishment of the International Centre for Settlement of Investment Disputes (ICSID) in 1966 prescribed arbitration against host states by foreign investors that alleged breaches of investment treaties enshrined investor protection increasingly (Dolzer et al., [2022](#)).

The 1990s and 2000s witnessed a marked rise in investment treaties, as well as investor-state disputes, many of which sought to undermine state regulations designed to improve public health, standards for the environment, and human rights. The most relevant examples were *Metalclad v. Mexico* and *Vattenfall v. Germany*, which showed how investors could obtain awards for what they see as protectionist regulations that negatively affect their investment. This led to a backlash against the ISDS system, with opponents contending that it imposed a chilling effect on states' regulatory power and undermined governments' capacity for protecting their citizens from harm (Hansmann et al., [2017](#)).

These challenges have led the 21st century to a new phase of reform of investment treaties, which has seemed to try at least – in some cases – to remediate imbalances between protection for investors and rights that States should have over domestic regulation. To assuage fears of regulatory chill, contemporary treaties such as the CETA and the USMCA include clauses that expressly affirm the right to regulate in the public interest. A historical glimpse reflects the changing nature of investment law and the continuing challenge in balancing the protection of investors against regulatory needs to promote public health, environment, or sustainability, suggesting a pathway (the state power?) for building an international investing community (Arner et al., [2015](#)).

The Right to Regulate: Public Health and Environmental Concerns

The concept of the right to regulate refers to states' ability to enact laws and policies that are intended to protect public health and the environment, one which has become increasingly relevant in the arena of international investment law. The challenge faced by countries in dealing with the many major public health threats, including pandemics, tobacco control, and food safety — as well as environmental problems like climate change and pollution — puts a premium on having strong regulations. But, the growth of foreign investment has created challenges, especially when protections for investors run counter to state regulatory authority (Shelton, [2017](#)).

In public health, the right to regulate justifies government efforts to protect their populations from harmful drugs and behavior. There might be regulation of tobacco advertisement by the state, health warnings on packages of various commodities, and prohibition from selling unhealthy food items in the process for good health, which remains a due obligation by the states. While necessary for providing public good, such regulatory actions could be seen by foreign investors as impacting the value of their investments and thus claim under investment treaties. The ISDS's existence can create a regulatory chill, causing regulators to shy away from essential health regulations for fear of facing arbitrary compensation-based claims (Eckelman et al., [2016](#)).

Environmental regulation is important in the same way that industrial policy was — as grounds for sustainable growth under the protection of authorities to conserve nature. Environmental protection laws governed by state and federal governments are an appropriate and valid use of power — regulating industries, promoting renewable energy, or reducing pollution. Yet many investment treaties include strong protection of investor rights, which creates a great deal of friction when, say, a government imposes environmental regulations that restrict the ability of investors to invest freely. For example, situations where companies have disputed stringent environmental standards have exposed the tensions between environmental conservation and investor protection (Clark et al., [2019](#)).

To acknowledge these tensions, a way to affirm the right to regulate in the public interest has been attempted through some recent treaty reforms. Contemporary agreements more commonly feature specific provisions recognizing the right of a state to adopt legislation for health and environmental protection, effectively diminishing the potential for investor litigation. The reforms are intended to address the imbalance, ensuring that states can meet their responsibilities to protect their citizens while maintaining a secure environment for foreign investment. The Right to Regulate Public Health and Environmental Protection Matters is ultimately a call to ensure that the objectives of international investment law are balanced with the aim of serving public goods. With the rising challenges around the globe, states must keep their regulatory responsibilities to formulate successful health and environmental policies as well as generate foreign investment in line with sustainable development and public interest (Chorus et al., [2021](#)).

Public Health Regulations and Investment Law

Public health regulations are indispensable for protecting the health of the population but are also highly challenging due to their complex and potentially conflictual relationship with investment law. States face challenges posed by bilateral investment treaties (BITs) that protect foreign investors, as BITs are being increasingly used to challenge state policies designed to control diseases and promote health or those intended to ensure the safety of food and pharmaceuticals.

One of the key issues here, already touched upon but perhaps best illustrated in Daniel's case, is the idea of regulatory chill — hesitancy on the part of governments to take public health measures that are needed for fear that it will set off an investment tribunal. Regulations that target tobacco regulation — like graphic warning labels on packaging and bans on advertising — could give rise to investor-state disputes if foreign investors view these regulations as harmful to their investments. Similarly, also even though Food Regulation stipulates the safety of food products or pharmaceuticals can be challenged as well through this, with investors claiming that these effects constitute an infringement of their rights under IIAs, especially concerning Fair and Equitable Treatment or indirect expropriation and Equitable treatment under international law (Masters et al., [2017](#)).

This classical investment law is a regime that is intensely investor-oriented and has the characteristics of what we now understand to be a regulatory chill in view of its strict provisions protecting investors and investments, impacting the States' ability to regulate in ways that affect their profit margins. Indeed, some high-stakes examples of notably successful investor challenges to health regulation have been made even more tense. For instance, in *Philip Morris v. Australia*, a multinational company took the country to court after the adoption of plain packaging for cigarettes because this kind of regulation was seen as an infringement on the protection that investments and IPs are entitled to that value under international law. It raises important questions about the ability of investment law to restrain states from performing their regulatory role in the public interest (Gostin et al., [2019](#)).

All of these challenges have fed into a renewed appeal for the balancing of investor protection against the right of states to regulate public health. More recently, treaty reforms have attempted to add caveats that set out the state's right to regulate for public health purposes in order to minimize the potential of investor-state disputes. Rethinking how these competing interests should be mapped, excluding health protective measures from being considered PUBH-type clauses (Cleverley et al., [2023](#)).

In addition, adding rules related to flexibility mechanisms in these agreements can better enable governments to implement regulations for public health purposes. Such mechanisms may provide for exemptions in certain areas — such as healthcare or pharmaceuticals if they are in the public interest. These reforms signal a move away from the view of investment law as purely a seat at the regulatory table, shining light rather on the importance of public health (Grossman, [2017](#)).

In this way, public health regulation and investment law are inseparable, offering states neither a clear route to either fully realize or avoid the burden of both systems. Although protections for investors are a key factor in attracting foreign investment, governments also have the ability to maintain the right to regulate and protect the health and well-being of their people. These interests need to be balanced against one another to create a regulatory climate that facilitates public health objectives without discouraging the development of a business-friendly investment environment. The interaction of public health with investment law, particularly considering the evolving global health challenges, will remain an important topic among policymakers as well as legal scholars.

Environmental Protection and Investment Law

With the rising concerns around environmental issues at a global scale, the link between environmental protection and investment law is becoming especially pertinent. Many states are now also under increasing pressure to adopt tougher environmental regulations to address the climate crisis, minimize air and water pollution, and protect land and natural resources. But these reforms collide, much of the time directly, with IIAs, which put forward principles in favor of foreign investment rights and protections. Overlapping international agreements produces a situation that obligates states to protect the environment while, at the same time, incentivizing foreign investment (Neumayer, [2017](#)).

A key issue in this space is regulatory chill, which refers to the reluctance of governments to implement tough environmental standards because of the threat of lawsuits from investors. Because of that, foreign

investors potentially challenge those types of laws as a violation of their rights under IIAs followed by Investor-state dispute settlement (ISDS). For instance, in the case of state law to limit industrial emissions to preserve air quality or natural resource extraction for biodiversity conservation purposes. It may even dissuade states from acting to protect the environment when previous cases show tribunals have ruled for investors in disputes against environmental regulation (Zhang et al., [2019](#)).

Traditionally, investment law has focused on the protection of investments (fair and equitable treatment, national treatment, and non-expropriation). Such protections can sometimes get in the way of a state needing to carry out key environmental programs. In specific examples of this, foreign investors have appealed against environmental protection regulations arguing that they negatively affected the investors' interests in cases such as *Vattenfall v. Germany*. Such situations exemplify the essential conflict between environmental protection and investment-oriented legal regimes designed to safeguard foreign investors (Quirico, [2023](#)).

This conflict and the desire to mitigate it has translated into an ever-broader movement of reform in investment treaties to enable environmental protection appropriately. On the state-to-state dispute settlement side, more recent trade agreements – for example, the CETA and the USMCA – have started to include exceptions that clarify that governments have a right to regulate in the public interest and protect their environment. The RPs often contain clear provisions that regulatory interventions aimed at fulfilling the environmental objective cannot be treated as expropriation or discriminatory. They accomplish this by narrowly defining what kinds of regulations fall under the purview of regulatory authority, thereby aiming to prevent ISDS claims from environmental regulations (Liu et al., [2021](#)).

Moreover, several contemporary treaties also contain sustainability chapters that define parameters for responsible investments, align environmental standards, and create avenues for collaboration on the environmental front. These provisions constitute a profound shift in the perception of at least some aspects of investment law being inherently opposed to the objectives for sustainable development and should be regarded as needing support within environmental initiatives. The debate on environmental protection versus investment law is multifaceted and ongoing. For states seeking to adopt strong environmental regulation amidst the looming threat of climate change and other ecological crises, this can create a conflict between those interests and investor protections embedded in international treaties. Although the recent treaty reforms are a positive step in reconciling these at-times clashing interests, they seem to be limited to ensuring that states continue to have sufficient latitude when it comes to environmental protection and foreign investment regulation. The long-term goal is to harmonize the stewardship of the environment with investment law so that sustainable development can be achieved while securing life on the planet for future generations to come.

Mechanisms to Balance Investment Protection with the Right to Regulate

International law is slowly developing in such a way that the balance between investment protection and host state regulation is also struck at this level while taking into account the wide gap between investors' actual practices. You can mention this change in some developing investment treaties, which include explicit provisions for the state to regulate for public purposes. Some important ways in which the balance is addressed include:

Explicit Right to Regulate Clauses

Recent treaties like the Canada-EU CETA and the USMCA add an explicit right-to-regulate clause, reaffirming a state's right to pursue regulation in important areas of public interest, such as health, environment, and labor. These provisions are intended to ensure that government regulatory actions undertaken in pursuance of a public welfare objective should not be confused by arbitral tribunals with violations of investment protections, thus reducing the risk of ISDS from bona fide regulation. Because of this, they seek to reinforce the concept of regulatory sovereignty so that foreign investment — which is a necessity for many states — does not legalistically outweigh societal and environmental concerns (thus requiring states to adopt policies in line with investor preference or face lawsuits) (Khan et al., [2023](#)).

Carve-Outs and Exceptions

Increasingly, investment treaties also include carve-outs and exceptions that protect state regulatory authority in particular policy areas from the risk of investor claims. The Trans-Pacific Partnership (TPP), for example, presently contains exceptions limiting investor claims based on specific public health measures, recognizing the right of states to put the welfare of their residents over and above those of investors. These carve-outs improve

legal certainty for states that seek to introduce public-interest regulations, like responding to health crises or protecting the environment, by specifying clear lines inside of which states can operate without fear of ISDS. Negotiators aim to achieve a balance between attracting foreign investment and giving governments the room they need to implement potentially necessary policies that might be unpopular with an investor by embedding these exceptions in investment agreements (Khan, [2023](#)).

Revised Standards for Expropriation and Fair and Equitable Treatment

To avoid the tribunal from interceding in what would normally be considered a legitimate regulatory expropriation or unfair treatment and then sinking the investor into an abyss of expensive disputes, modern investment agreements now usually come with some spade work clarification as to what constitutes indirect expropriation, right? These agreements promote clarity that ordinary regulatory measures — including those undertaken to protect public health or the environment — are not seen as violations of investor rights. By narrowing the definition, the diminishment of ISDS significantly arises from regulatory measures that are fundamental for the public good, thereby strengthening the legitimacy of state regulation without discriminatory impact caused by investor claims. These steps indicate an evolution toward a more equitable consideration of both investor rights and the regulatory autonomy of states (Khan & Ximei, [2022](#)).

Interpretive Guidelines and Procedural Safeguards

Multiple contemporary investment treaties contain interpretative directions intended to nudge tribunals toward regulatory measures and national sovereignty/public interest concerns. The guidelines state that tribunals should carefully examine whether or not the stated regulatory aim of a given much needed state measure is legitimate, pushing them to defer to government authority when determining some rationale for why any given regulation aimed at health, safety and/or environment falls within its province. Alongside these reforms, procedural amendments have been made to further transparency in arbitral proceedings and ensure enhanced public access to and oversight of the dispute resolution process. These reforms allow stakeholders the chance to engage with and have a say in proceedings, including civil society and affected communities, helping to better ensure that tribunal decisions reflect wider societal interests. Collectively, these interpretive guidelines and procedural safeguards present a major development for investment law by indicating a desire for a balanced approach to the regulation of foreign direct investments that respects investor rights as well as states liberty to regulate in the interest of public welfare (Amjad et al., [2022](#)).

Challenges and Criticisms of the Evolving Framework

The developing investment supervisory system and, in particular, the investor assurance self-control alongside the right of states to facilitate public health and protection of ecological systems does have its conflicts, especially considering that such foundational principles are additionally substantially criticized. The most significant concern, however, is the enduring ambiguity over the interpretation of fundamental provisions in treaties, even with interpretative guidelines and clear right-to-regulate clauses having been incorporated. In fact, critics contend that the vagueness of key terms like "fair and equitable treatment" or even a more precise formulation such as "indirect expropriation" still is sufficiently flexible to allow arbitrators divergently interpret these words in a manner that undermines regulatory power and leads to ISDS even when state action in both an indirect expropriation policy or otherwise amounts to legitimate regulation by establishing a legally binding standard for other states (Amjad et al., [2022](#)).

In addition, procedural safeguards have been viewed as ineffective. Although reforms intended to enhance transparency and public participation are a step in the right direction, critics argue that these reforms do not go far enough in including affected communities' voices in arbitral proceedings. Furthermore, these ISDS mechanisms continue to operate in relative opacity, restricting the ability of public interest to shape the results. If the standard is deviated from, this can create a perception of investor bias as it would lack transparency, further undermining public trust in the system (Khan et al., [2020](#)).

The assertion that ownership rights are the correct remedy is also a political and economic concern, which points to another problem with international investment law. Critics have argued that the process of making treaties tends to benefit wealthier countries and multinational corporations while harming developing nations. And these are the terms, under pressure by foreign capital: an inordinate deregulation of their market, which ultimately devastates public welfare and our Earth system (Khan et al., [2020](#)).

There are also fears that the present structure simply cannot meet the much-needed solutions for immediate collective global problems, such as climate change. That fear has grown louder as states try to protect the environment, communities, and cultures in ways that go beyond what historic investment agreements allow. Critics say the potential new framework likely still would hold back states from adopting the strong regulatory moves needed to address climate change and other threats unless it embraces climate and public environmental goals in more concrete ways. Although the risk-adjusted investment law framework is cementing its way into making strides toward balancing investor protections with state regulatory authority, there are still important challenges and criticisms that must be acknowledged. The potential for varied interpretations, skepticism about the effectiveness of procedural safeguards already in existence, imbalance of negotiating power around the treaty table, and the inability of the system as a whole to grapple with issues of global sustainability suggest that further reform and debate is needed in within international investment law (Khan et al., [2020](#)).

Conclusion

In short, the intersections of investment law and public health and environmental protection deserve greater attention from scholars, policymakers, and practitioners alike. The sequence of investment treaties explicitly incorporating right-to-regulate language, along with accompanying interpretative statements and procedural assurances, further demonstrates an increasing recognition that state sovereignty and public interest concerns are permanent principles of international law. However, a lot still needs to be done (including clarity over key definitions, inadequate participatory mechanisms, and unjust treaty negotiations impacting the interests of the Global South population). No less important is to note these dynamics because their performance not only takes part of states but also impacts populations and the environment itself. For policymakers, what these findings are telling us is that investment treaties should be framed in such a way as to impose more rights on foreign investors while making sure governments do not lose the right to protect their citizens and natural resources. Finally, future research should seek to find innovative pathways for the integration of sustainable development goals in investment law and assess the effects of existing reforms on regulatory behaviors over time.

In addition, learning case examples from governments that have managed to address these challenges will guide the steps needed to develop strategic reforms. Then, mobilizing across disciplines of environmental science, public health, and economics will be important toward a less siloed vision of the effects of investment law, including all dimensions relevant to the sustainability transformation. An enabling legal framework that promotes foreign investment is necessary, but it must also protect individuals and social and public health in the process of sustainable development. Ultimately, investment law—and the reforms that are still urgently needed to turn it into a tool out of profit protection and towards social utility—will need to be reconciled in a wider conversation. What is needed instead, as global challenges increasingly reach a crisis level—most notably (but not only) with climate change and public health emergencies—is the development of investment laws that enable regulatory frameworks to strengthen communities and enable a world in which life can proliferate.

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