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Paper 1

Title:

The Legalization of Corporate Social Responsibility Through International Investment/Trade Agreements: A Critical Assessment

Keywords

International investment regime; Bilateral investment treaties; Free trade agreements; International Investment Agreements; Investor-State Dispute Settlement;

I. Introduction

Corporate social responsibility (CSR) is hardening and is increasingly subjected to government intervention. Against the backdrop of increased corporate-related human rights abuses, the crisis in international investment law,[1] the emergence and uptake of the concept of 'business and human rights'[2] and the rise of public CSR regulation, my project seeks first and foremost to understand and map emerging approaches to the hardening or legalization of CSR and business and human rights (BHR) in regional and international legal instruments. The project seeks to critically analyze one recent approach to the legalization of CSR/BHR in international law – the insertion of CSR/BHR clauses in bilateral investment treaties (BITs) and free trade agreements (FTAs) – collectively international investment agreements (IIAs). With specific refence to IIAs, answers are sought to several questions. What types of legal innovation and legal experimentation are emerging in IIAs in response to the governance gaps created by globalization? Which states or

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[1] Emma Aisbett, Bernali Choudhury, Olivier de Schutter, Frank Garcia, James Harrison, Song Hong, Lise Johnson, Mouhamadou Kane, Santiago Peña, Matthew Porterfield, Susan Sell, Stephen E. Shay, and Louis T. Wells, Rethinking International Investment Governance: Principles for the 21st Century (2018).

[2] John Gerard Ruggie, Business and Human Rights: The Evolving International Agenda, 101 AM. J. INT'L L. 819, 820-22 (2007)

groupings of states are involved in these experimentations? What is the quality of emerging CSR/BHR clauses in IIAs and are they effective in bridging perceived governance gaps?

International investment law faces a legitimacy crisis.[3] The legitimacy crisis in international investment regime is fueled in part by four key developments: (i) the explosion of BITs in the last three decades as the preferred legal vehicle for protecting foreign investors and investment; (ii) perceived imbalances in BITs in the sense that BITs afford considerable protection to investors but do not impose corresponding obligation on foreign investors; (iii) the rise in the number of investor that are relying on BITs to initiate arbitral claims against host States;[4] and (iv) the increase in the number of high-profile and very controversial investment disputes that highlight the intersection of human rights and international investment regime. Recent investor-State dispute settlement (ISDS) cases have touched on issues such as environmental protection,[5] public health,[6] water rights,[7] social rights,[8] and the right of indigenous populations[9] (**Appendix A**). Not surprising, the relationship between international investment law and human rights is increasingly a matter of intense debate and scholarly inquiry.[10] These debates preceded the adoption of the UNGPs but have intensified in the past decade.

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[3] On the legitimacy crisis facing investment, see e.g. Julie A. Maupin, 'Public and Private in International Investment Law: An Integrated Systems Approach', 54 Virginia Journal of International Law 1 (2014) ; Jose Alvarez, 'Contemporary Foreign Investment Law: An 'Empire of Law' or the 'Law of Empire?', 60 Alberta Law Review 943 (2008–09); Stephan W. Schill, 'Enhancing International Investment Law's Legitimacy: Conceptual and Methodological Foundations of a New Public Law Approach', 57, 67 (2011), ('Public Law Challenge'); Susan Franck, 'The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decisions', 73 Fordham Law Review 1521 (2005); Stephan W. Schill, 'Enhancing International Investment Law's Legitimacy: Conceptual and Methodological Foundations of a New Public Law Approach', 57, 67 (2011), ('Public Law Challenge').

[4] Cutler, A.C., & Lark, D. (2020). The hidden costs of law in the governance of global supply chains: the turn to arbitration, *Review of International Political Economy*, 10.1080/09692290.2020.1821748

[5] *Pacific Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12; *Bilcon of Delaware Inc. v. Government of Canada*, UNCITRAL, PCA Case No. 2009-04

[6] *Philip Morris et al. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, UNCITRAL, PCA Case No. 2012-12

[7] Aguas del Tunari SA v. Republic of Bolivia, ICSID Case No. ARB/02/3; Suez, Sociedad General de Aguas de Barcelona, S.A.; Vivendi Universal, S.A. v. Argentine Republic, ICSID Case No. ARB/03/19

[8] Piero Foresti et. al v. The Republic of South Africa, ICSID Case No. ARB(AF)/07/01

[9] South American Silver Limited (Bermuda) v.The Plurinational State of Bolivia

[10] See Moshe Hirsch, 'Investment Tribunals and Human Rights: Divergent Paths', in Pierre-Marie Dupuy et al. (eds), *Human Rights in International Investment Law and Arbitration* (Oxford: Oxford University Press, 2009) [hereinafter 'Investment Tribunals']; Pierre-Marie Dupuy, 'Unification Rather than Fragmentation of International Law? The Case of International Investment Law and Human Rights Law', in Pierre-Marie Dupuy et al. (eds), *Human Rights in International Investment Law and Arbitration* (Oxford: Oxford University Press, 2009).,

One response to the legitimacy crisis in international investment law is a growing trend of incorporating CSR and BHR languages in IIAs. The last two decades have witnessed attempts by States – developed as well as developing – to regulate investors and manage foreign investment by including CSR-related provisions in their IIAs. The inclusion of CSR in IIAs has been gradual, measured, and very controversial. Concluded in 1994, the North American Free Trade Agreement (NAFTA) was the first FTA to explicitly include provisions on environment and labor. Signed in 2008, the Canada-Peru Free Trade Agreement was the first FTA to explicitly include a CSR provision. In the last decade, however, more and more States have taken steps to address the governance gaps in international investment regime and to introduce explicit and implicit references to CSR and BHR in their investment policy instruments. Today, references to CSR can be found in IIAs involving Canada,[11] India,[12] Turkey,[13] Brazil, Morocco,[14] and the EU[15] to mention a few.

The paper is in five sections. In Section I, I provide a background to the crisis in international investment law that triggered this recent turn to CSR legalization in IIAs. In Section II, I examine how different States, international organizations, and key stakeholders are responding to the crisis in international investment law. I will also examine the impetus for the present innovation in investment treaty negotiation and drafting.[16] In Section III, IIAs concluded since 2010 will be identified and analyzed with a specific focus on references to BHR and CSR provisions in these agreements. What types of CSR and BHR provisions are appearing in recent IIAs? Which states are driving this reform agenda and which states are resisting? Section IV assesses the quality of the CSR and BHR provisions that are now appearing in IIAs and FTAs in terms of their content, where they fit in the soft-hard law continuum,[17] and whether they are actually addressing perceived governance gaps that inspired them in the first place. The project will also assess the overall usefulness of CSR and BHR language in trade and investment agreements as a tool for addressing the regulatory vacuum orchestrated by economic globalization processes. In Section V, I try to make sense of the current global legal landscape for promoting and policing foreign investors and foreign investment drawing on theories of fragmentation,

[11] See e.g. Canada-Burkina Faso BIT (2015). See also Canada-Senegal BIT (2014).
[12] See e.g. India-Belarus BIT (2018).
[13] Uche Ewelukwa Ofodile, *Emerging Market Economies and International Investment Law: Turkey-Africa Bilateral Investment Treaties*, 53(3) VAND. J. OF TRANSNAT'L L. (2019).
[14] Uche Ewelukwa Ofodile, *The BIT Footprints of Emerging Market Economies in Africa: What Do They Portend for ISDS?*, KLUWER ARBITRATION BLOG, January 16 2020.
[15] European Union-Vietnam Investment Protection Agreement (2019).
[16] For example: OECD Guidelines for Multinational Enterprises, the ten principles of the United Nations Global Compact, the ISO 26000 Guidance Standard on Social Responsibility, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the United Nations Guiding Principles on Business and Human Rights.
[17] Kenneth W. Abbott and Duncan Snidal, Hard and Soft Law in International Governance, INTERNATIONAL ORGANIZATION, Vol. 54, No. 3, Legalization and World Politics (Summer, 2000), pp. 421-456.

polycentric governance, and regime complexes, as well as the third world approaches to international law.

II. Justification for Focusing on International Investment Agreements

There are four main justifications for my focus on IIAs as a pathway for addressing governance gaps in the international investment regime: (i) the prominent role of IIAs in the legal framework for foreign investment; (2) the rising number of IIAs; (iii) the relationship between IIAs and investment arbitration; and (iv) the relationship between investment arbitration and human rights.

A. IIAs as Customary International Law

IIAs form the foundation and backbone of international investment law today.[18] In the absence of a comprehensive multilateral investment treaty, a complex network of IIAs has developed over the past five decades beginning in 1959 when the first IIAs was concluded. IIAs will remain important in the foreseeable future and have become the *de facto* multilateral agreement on investment.[19] There is a growing consensus that the dense network of IIAs probably reflect customary international law.[20] Furthermore, States are still concluding IIAs and are relying on them to regulate foreign investment.[21] In 2021, countries concluded at least 21 IIAs, according to the United Nations Conference on Trade and Development (UNCTAD).

B. The Growing Number of IIAs

The universe of IIAs continues to grow. About 2901 BITs are in existence today of which 2342 are in force.[22] Furthermore, about 392 treaties with investment provisions are in force of which 321 are in force.[23] Megaregional IIAs are also emerging. Examples include the "Sustainable Investment Protocol" under the African Continental Free Trade Area, the Agreement in principle for the China-EU Comprehensive Agreement on Investment, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

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[18]United Nations Conference on Trade and Development, International Investment Agreement Navigator, https://investmentpolicyhub.unctad.org/IIA. Press Release, UNCTAD, *Bilateral Investment Treaties Quintupled During the 1990s*, U.N. Doc. TAD/INF/2877 (Dec. 15, 2000)

[19] *See* Efraim Chalamish, *The Future of Bilateral Investment Treaties: A De Facto Multilateral Agreement?*, 34 BROOK. J. INT'L L. 303, 305 (2009). See also, Stephen M. Schwebel, *The Overwhelming Merits of Bilateral Investment Agreements*, 32 SUFFOLK TRANSNAT'L L. REV. 263, 263 (2009).

[20] Bernard Kishoiyian, *The Utility of Bilateral Investment Treaties in the Formulation of Customary International Law*, 14 NW. J. INT'L L. & BUS. 327 (1994).

[21] Andrew T. Guzman, *Explaining the Popularity of Bilateral Investment Treaties*, *in* THE EFFECT OF TREATIES ON FOREIGN DIRECT INVESTMENT: BILATERAL INVESTMENT TREATIES, DOUBLE TAXATION TREATIES, AND INVESTMENT FLOWS 73 (2009).

[22] UNCTAD, Investment Policy Hub. https://investmentpolicy.unctad.org/international-investment-agreements

[23] Id.

C. Relationship Between IIAs and Investment Arbitration

Most IIAs provide for investor-State dispute settlement. ISDS allows an investor to bypass domestic dispute resolution processes and to bring claims over alleged breaches of investment obligations directly against a host State before an international tribunal. By allowing investors to bring claims directly against States, ISDS provisions essentially elevate private entities to the status of subjects of international law.

Foreign investors are increasingly relying on IIAs to challenge a wide range of host State actions and inactions that negatively affect their investments. As of January 1, 2020, the total number of publicly known ISDS claims had reached 1,023.[24] In 2020, the number of treaty-based ISDS cases reached over 1,000, according to UNCTAD. Most of the 55 publicly known ISDS cases initiated in 2019 were brought under IIAs signed in the 1990s or earlier. In the decisions of arbitral tribunals holding the State liable, the amounts awarded ranged from several millions to $8 billion.[25] According to the United Nations Conference on Trade and Development (UNCTAD),

- At least 55 publicly known cases were initiated in 2019;[26]
- Of the 55 known cases that were initiated in 2019, most (nearly 70 percent) were brought by developed-country investors;[27]
- To date, over 120 countries and one economic grouping are known to have been respondent to one or more ISDS cases;[28]
- The new ISDS cases in 2019 were initiated against 36 countries and one economic grouping (the EU) and a majority of the new cases were brought against developing countries and transition economies.

Developing countries and least developed countries (LDCs) are not immune to ISDS claims. Sierra Leone faced its first ISDS claim in 2019, the Republic of Benin (Benin) in 2017,[29] the Republic of Mauritius (Mauritius) in 2016,[30] the Republic of Sudan (Sudan) in 2014,[31] the

[24] Id.
[25] World Investment Report 2020, p. xii.
[26] UNCTAD, IIA Issues Note: International Investment Agreements, Issue 2 (July 2020).
[27] Id.
[28] Id.
[29] *Puma Energy Holdings SARL v. the Republic of Benin*, SCC Case No SCC EA 2017/092.
[30] *Thomas Gosling and others v. Republic of Mauritius*, ICSID Case No ARB/16/32.
[31] *Michael Dagher v. Republic of the Sudan*, ICSID Case No ARB/14/2.

Republic of Madagascar (Madagascar) in 2013,[32] and both the Republic of Equatorial Guinea (Equatorial Guinea) and the Republic of South Sudan (South Sudan) in 2012.[33]

D. ISDS and Human Rights

A growing number of ISDS cases address issues of considerable public interest such as the rights to water, public health, environmental protection, and corruption. In a March 7, 2019, letter to the UNCITRAL Working Group III on Investor-State Dispute Settlement, seven independent human rights experts appointed and mandated by the United Nations Human Rights Council expressed their concerns that IIAs and their ISDS mechanism "have often proved to be incompatible with international human rights law and the rule of law" and called attention to the risk that IIAs and ISDS pose to the regulatory space required by States to comply with their international human rights obligations as well as to achieve the SDGs. According to the said letter:

> The inherently asymmetric nature of the ISDS system, lack of investors' human rights obligations, exorbitant costs associated with the ISDS proceedings and extremely high amount of arbitral awards are some of the elements that lead to undue restrictions of States' fiscal space and undermine their ability to regulate economic activities and to realize economic, social, cultural and environmental rights. The ISDS system can also negatively impact affected communities' right to seek effective remedies against investors for project-related human rights abuses. In a number of cases, the ISDS mechanism, or a mere threat of using the ISDS mechanism, has caused regulatory chill and discouraged States from undertaking measures aimed at protection and promotion of human rights.[34]

E. The Impact on Vulnerable groups

In the last few years, the impact of trade and investment agreements on vulnerable groups has come under increased scrutiny. In a 2015 report to the U.N. General Assembly, the Special Rapporteur on the Rights of Indigenous Peoples warned that the protections that IIAs provide to foreign investors can have significant impacts on indigenous peoples' rights.[35] In a 2016 report, the Special Rapporteur warned that research "reveals an alarming number of cases in the mining, oil and gas, hydroelectric and agribusiness sectors whereby foreign investment projects have resulted in serious violations of indigenous peoples' land, self-governance and cultural rights."[36] As the Special Rapporteur explained:

> Typically, the host States involved employ economic development policies aimed at the exploitation of energy, mineral, land or other resources that are predominantly located in the territories of indigenous peoples. The government

[32] *Peter De Sutter, Kristof De Sutter, DS 2 S.A. and Polo Garments Majunga S.A.R.L. v. Republic of Madagascar*. See also, *Courts (Indian Ocean) Limited and Courts Madagascar S.A.R.L. v. Republic of Madagascar*, ICSID Case No ARB/13/34.
[33] *Grupo Francisco Hernando Contreras v. Republic of Equatorial Guinea*, ICSID Case No ARB(AF)/12/2. The case against South Sudan was registered on August 29, 2012. See *Sudapet Company Limited v. Republic of South Sudan*, ICSID Case No ARB/12/26.
[34] OL ARM 1/2019, 7 March 2019.
[35] A/70/301.
[36] A/HRC/33/42.

> agencies responsible for implementing those policies regard such lands and resources as available for unhindered exploitation and actively promote them as such abroad to generate capital inflows. Recognition of indigenous peoples' rights in the domestic legal framework is either non-existent, inadequate or not enforced. Where they exist, institutions mandated to uphold indigenous peoples' rights are politically weak, unaccountable or underfunded. Indigenous peoples lack access to remedies in home and host States and are forced to mobilize, leading to criminalization, violence and deaths. They experience profound human rights violations as a result of impacts on their lands, livelihoods, cultures, development options and governance structures, which, in some cases, threaten their very cultural and physical survival. Projects are stalled and there is a trend towards investor-State dispute settlements related to fair and equitable treatment, full protection and security and expropriation.[37]

III. Project's Added-Value

Literature focusing on the concept of CSR as a regulatory mode and on the inclusion of CSR language in trade and investment agreements is growing.[38] Unfortunately, most studies on the subject have focused on a limited number of treaties, primarily treaties concluded by key Western democracies. Perhaps, acting on the assumption that emerging market economies are illiberal and are not committed to international human rights and environmental norms, recent literature has ignored the treaty practice of countries like Brazil, China,[39] Turkey,[40] and South Africa.[41] By focusing exclusively on the treaty practice of Western democracies, many authors fail to capture important voices in the Global South and fail to reflect the growing dynamism in trade and investment treaty-making particularly as between developing countries.[42] This project fills the gap in existing literature by *inter alia*: (i) casting the net wider to include CSR regulations

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[37] Id.

[38] European Parliament. 2011. European Parliament resolution of 6 April 2011 on the future European investment policy (2010/2203(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0141+0+DOC+XML+V0//EN [20 Nov. 2020]. See also, European Parliament Resolution of 25 November 2010 on Corporate Social Responsibility in International Trade Agreements (2009/2201(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA2010-0446 [20 Nov. 2020].

[39] Uche Ewelukwa Ofodile, *China-Africa Bilateral Investment Treaties: A Critique*, 35(1) MICHIGAN JOURNAL OF INTERNATIONAL LAW 131 (2013). See also, Uche Ewelukwa Ofodile, *Trade, Empires and Subjects: China-Africa Trade: A New Fair Trade Arrangement or The Third Scramble For Africa?* 41(2) VANDERBILT JOURNAL OF TRANSNATIONAL LAW 505 (2008).

[40] Uche Ewelukwa Ofodile, *Emerging Market Economies and International Investment Law: Turkey-Africa Bilateral Investment Treaties*, 53(3) VANDERBILT JOURNAL OF TRANSNATIONAL LAW (2019).

[41] Uche Ewelukwa Ofodile, *South-South Trade and Investment: The Good, the Bad and the Ugly – African Perspectives*, 20(2) MINNESOTA JOURNAL OF INTERNATIONAL LAW 513-587 (2011).

[42] *The BIT Footprints of Emerging Market Economies in Africa: What Do They Portend for ISDS?*, KLUWER ARBITRATION BLOG, January 16 2020.

and trade and investment agreements involving emerging market economies; (ii) examining innovations in investment treaty making through the lens of the UN Guiding Principles on Business and Human Rights (UNGPs),[43] and theorizing on the limits of CSR legalization agenda.

IV. Research Methodology

The research approach includes literature review, case studies of recent IIAs, and interviews. A desktop research and examination of background literature, all relevant IIAs, and all recent model BITs is planned. To the extent possible, interviews with treaty negotiators and key policy makers will also be carried out.

Literature Reviews

I have read numerous articles on the crisis in international law in general and crisis in international investment regime in particular. Literature on fragmentation in international law, polycentric governance and regime complexes are also relevant and will be reviewed.

I plan to review IIAs concluded since 2010. For reasons of feasibility (such as availability of texts and resources), this project focuses on investment agreements that have been notified to the UNCTAD. Emphasis on geographical balance. Effort will be made to look at IIAs involving developed countries, emerging market economies, developing countries and least developed countries. The study will prioritize recent IIAs (2010 onwards).

The theoretical framework for my project is grounded in three disciplines – international law, international relations, and political economy. I employ literature on fragmentation in international law as well as political economy literature on polycentric governance. In addition, I also draw on international relation's literature on 'regime complexes.'[44] The concepts of fragmentation, polycentric governance, and regime complexes are all somewhat related to the extent that they each represent departures from monocentric governance structures and are different ways of conceptualizing decentralized governance at the global level. While some scholars characterize the architecture of global governance as *fragmented* , others characterize it as *polycentric*, and others as *complex* – but all agree that increasingly and for many issue areas, power and rules are not found in a single legal instrument or a single institution but is more

[43] *Trade, Empires and Subjects: China-Africa Trade: A New Fair Trade Arrangement or The Third Scramble For Africa?* 41(2) VANDERBILT JOURNAL OF TRANSNATIONAL LAW 505 (2008).
[44] For literature characterizing global governance as complex, see: Tyler Pratt, Deference and Hierarchy in International Regime Complexes, 72 INT. ORGAN. 561–590 (2018). ORSINI, AMANDINE, PHILIPPE LE PRESTRE, PETER M. HAAS, PHILIPP PATTBERG, MALTE BROSIG, OSCAR WIDERBERG, AND LAURA GOMEZ-MERA et al. 2019. "Forum: Complex Systems and International Governance." International Studies Review 70: 1–31; ORSINI, AMANDINE, JEAN-FRÉDÉRIC MORIN, AND ORAN YOUNG. 2013. "Regime Complexes: A Buzz, a Boom, or a Boost for Global Governance?" Global Governance 19 (1): 27–39

dispersed .[45] The paper uses polycentric governance theory to both explain the current responses to the business and human rights predicament and to call attention to the weaknesses in the evolving system.[46]

Case Studies

From a growing pool of recent IIAs and model BITs that reference CSR and BHR, the paper will select about twenty for a more intense scrutiny. All recent model BITs (model BITs published sinch 2010) will also the included in the case study. In the past decade model BITs have become very popular. Model BITs adopted in the past decade include the Draft Indian Model BIT (2015), the 2016 Czech Model BIT, the 2016 Azerbaijan Model BIT, the 2019 Netherlands Model BIT, the 2019 Morocco Model BIT. On May 13, 2021, Canada announced that it had finalized its 2021 Model Foreign Investment Promotion and Protection Agreement (FIPA).[47]

Expert Interviews

The project is be based primarily on desk analysis and case studies of recent IIAs and model BITs. However, to the extent possible interviews with key experts would also be relied on.

V. Conclusion

Economic globalization processes of the last century has created tensions in at least four fields of international law – international human rights law, international environmental law, international investment, and international trade law. The corporate accountability agenda will continue to evolve as will the responses of states and inter-governmental organizations. How to close the governance gaps created by globalization remains a fundamental challenge of our time. It is hoped that the project will contribute to the growing body of literature on global governance, corporate accountability, and the legalization of CSR, and will fuel ongoing debates about the mechanics and effectiveness of CSR legalization.

References

See José E. Alvarez, 'Why Are We "Re-Calibrating Our Investment Treaties"', 4 World Arbitration & Mediation Review 143 (2010).

[45] For literature on the concept of fragmentation, See: VAN ASSELT, HARRO. 2014. The Fragmentation of Global Climate Governance: Consequences and Management of Regime Interactions. Cheltenham, UK: Edward Elgar

[46] Elinor Ostrom, Beyond Markets and States: Polycentric Governance of Complex Economic Systems, 100 THE AMERICAN ECONOMIC REVIEW 641–672 (2010).

[47] https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/2021_model_fipa-2021_modele_apie.aspx?lang=eng

See *Investment Policy Framework for Sustainable Development* , UNCTAD (2013), available at http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20 (IIA)/IIA-IPFSD.aspx.

The Facts on Investor-State Dispute Settlement: Safeguarding the Public Interest and Protecting Investors, Office of the United States Trade Representative (March 2014), available at http://www.ustr.gov/about-us/press-office/blog/2014/March/Facts-Investor-State%20Dispute-Settlement-Safeguarding-Public-Interest-Protecting-Investors .

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J. Harrison, 'Human Rights Arguments in Amicus Curiae Submissions: Promoting Social Justice?' in *Human Rights in International Investment Law and Arbitration* (2009).

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WIR15. World Investment Report 2015: Reforming International Investment Governance. New York and Geneva: United Nations.

WIR17. World Investment Report 2017: Investment and the Digital Economy. New York and Geneva: United Nations.

WIR18. World Investment Report 2018: Investment and New Industrial Policies. New York and Geneva: United Nations.

WIR93. World Investment Report 1993: Transaction corporations and integrated international production. New York and Geneva. United Nations.

Appendix A

Human Rights	Cases
Environmental Protection	*Pacific Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12; *Bilcon of Delaware Inc. v. Government of Canada*, UNCITRAL, PCA Case No. 2009-04 *Técnicas Medioambientales Tecmed, S.A. v United Mexican States* (Case No. ARB(AF)/00/2)
Public Health	*Philip Morris et al. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, UNCITRAL, PCA Case No. 2012-12 *Philip Morris Asia Limited v The Commonwealth of Australia*, UNCITRAL, PCA Case No. 2012-12.
Water Rights	*Aguas del Tunari SA v. Republic of Bolivia*, ICSID Case No. ARB/02/3; *Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19 *Biwater Gauff (United Republic of Tanzania) Ltd. v United Republic of Tanzania* , ICSID Case No. ARB/05/22
Social Rights/ Social Reform	*Piero Foresti et. al v. The Republic of South Africa*, ICSID Case No. ARB(AF)/07/01
Indigenous Rights	*Case of the Bear Creek Mining Corporation v. Republic of Peru*. Case No. ARB/14/21. *Case of the Grand River Enterprises Six Nations, Ltd.; et al. v. United States of America*. *Burlington Resources Inc. v Ecuador/Kichwa Indigenous People of Sarayaku v Ecuador* (15 July 2016).

	Pac Rim Cayman LLC v. Republic of EI Salvador. Case No. ARB/09/12 *Glamis Gold, Ltd. v. United States of America* *Grand River Enterprises Six Nations, Ltd., Et Al. v. United States of America* *Bernhard Von Pezold and Others v. Zimbabwe* *Crystallex International Corporation v. Bolivarian Republic of Venezuela* *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador* *Álvarez y Marín Corporación and others v. Republic of Panama*