

Recalibrating International Investment Arbitration: The Green Constitution as an Ecological Justice Defense

Merekalibrasi Arbitrase Investasi Internasional: Konstitusi Hijau sebagai Instrumen Pembelaan bagi Keadilan Ekologis

Sheilla Bintang Aerialisty

Faculty of Law, University of Indonesia, Indonesia

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Corresponding Author:

Sheilla Bintang Aerialisty

✉ aerialistys@gmail.com

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Abstract


Contemporary international investment law faces a structural legitimacy crisis due to the normative clash between foreign direct investment protection and global ecological sustainability imperatives. This research urgently addresses the regulatory chill phenomenon resulting from arbitration mechanisms that weaponize treaty protections against state climate mitigation policies. Employing doctrinal legal research, this study rigorously analyzes treaties, customary international law, and arbitral jurisprudence utilizing the Vienna Convention on the Law of Treaties. The findings demonstrate that domestic supreme law, conceptualized as the Green Constitution, serves as a proactive doctrinal defense. By establishing an implied incorporation clause, the Green Constitution redefines investors' legitimate expectations ab initio and fortifies state police powers. The research concludes that systemically integrating ecological constitutionalism into arbitration, mandated by Article 31(3)(c), recalibrates international economic law, effectively mitigating corporate lawfare and subordinating commercial expectations to the erga omnes obligations of global environmental justice within the modern foreign direct investment legal framework.

Abstrak

Hukum investasi internasional kontemporer menghadapi krisis legitimasi struktural akibat benturan normatif antara perlindungan penanaman modal asing dan imperatif keberlanjutan ekologis global. Penelitian ini secara mendesak mengatasi fenomena *regulatory chill* yang dihasilkan dari mekanisme arbitrase yang menggunakan perlindungan traktat sebagai senjata melawan kebijakan mitigasi iklim negara. Menggunakan penelitian hukum doktrinal, studi ini secara ketat menganalisis traktat, hukum kebiasaan internasional, dan yurisprudensi arbitrase dengan menggunakan Konvensi Wina tentang Hukum Perjanjian. Temuan mendemonstrasikan bahwa hukum tertinggi domestik, yang dikonseptualisasikan sebagai Konstitusi Hijau, berfungsi sebagai pembelaan doktriner proaktif. Dengan menetapkan klausul inkorporasi implisit, Konstitusi Hijau meredefinisi ekspektasi sah investor secara *ab initio* dan memperkuat hak prerogatif pengaturan negara. Penelitian ini menyimpulkan bahwa tindakan mengintegrasikan konstitusionalisme ekologis ke dalam arbitrase secara sistematis, yang diamanatkan oleh Pasal 31(3)(c), merekalibrasi hukum ekonomi internasional, secara efektif memitigasi *corporate lawfare* dan mensubordinasi ekspektasi komersial terhadap kewajiban hukum *erga omnes* keadilan lingkungan global di dalam kerangka penanaman modal asing modern.



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A. INTRODUCTION

1. Background

The architecture of contemporary international investment law is currently confronting structural legitimacy challenges due to the polarization between the obligation to protect foreign direct investment (FDI) and the absolute imperative to safeguard global environmental sustainability. Historically, instruments such as Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) which underwent massive proliferation during the 1990s were designed to depoliticize investment disputes and afford extensive protection to foreign capital against political risks in developing nations.¹

Nevertheless, the escalating climate crisis has catalyzed a fundamental reorientation of the contemporary global political economy. At a macro-institutional level, the Investor-State Dispute Settlement (ISDS) regime has evolved into a highly contested normative arena. Within these arbitral tribunals, domestic public policies particularly those enacted to mitigate climate change, drive the energy transition away from fossil fuels, and ensure ecological justice frequently collide with the private rights and commercial expectations of transnational corporations.² This normative clash manifests most acutely when the absolute property protections codified in legacy treaties are wielded as a mechanism to impose compensatory liability upon host states endeavoring to execute their decarbonization mandates.³

Consequently, this normative friction engenders a profound 'regulatory chill' a phenomenon wherein sovereign institutions hesitate to promulgate progressive environmental regulations for fear of incurring massive financial damages before international arbitral tribunals.⁴ The profundity of this systemic failure is laid bare in recent arbitral awards, revealing that environmental carve-outs embedded within investment treaties remain fundamentally inadequate as a robust jurisprudential shield for sovereign prerogative.

¹ Somo, "Investor Protection Blocking Climate Action," *Bilaterals*, 2026, <https://www.somo.nl/investor-protection-blocking-climate-action/>.

² The American Society Of International Law, "ASIL Task Force on Investor-State Dispute Settlement (ISDS) and Climate Change," *The American Society Of International Law*, 2026, <https://asil.org/topics/asil-task-force-investor-state-dispute-settlement-isds-and-climate-change/>.

³ Andreas Andrie Djatmiko, Roby Sanjaya, and Rizna Khoirul Hidayati, "Dampak Yuridis Anomali Penerapan 'Asas Lex Specialis Derogat Legi Generali' Dalam Ketentuan Hukum Pidana Indonesia," *Nomos : Jurnal Penelitian Ilmu Hukum* 3, no. 1 (January 2023): 13–23, <https://doi.org/10.56393/nomos.v2i8.929>.

⁴ BothENDS, "Investor Protection Blocking Climate Action," *BothENDS*, 2026, <https://www.bothends.org/en/Whats-new/Publicaties/Investor-protection-blocking-climate-action/>.

This dilemma is perhaps most starkly illustrated by the *Eco Oro Minerals Corp. v. Republic of Colombia* (ICSID Case No. ARB/16/41) decision—a proceeding in which *bona fide* ecosystem conservation measures paradoxically triggered state liability, driven by a tribunal interpretation that overwhelmingly favored investment protection over ecological mandates.⁵ A parallel dynamic unfolded in the *Rockhopper v. Italy* dispute, where a domestic moratorium on oil extraction—enacted expressly for ecological mitigation was adjudicated as an unlawful expropriation. Such a ruling starkly underscores the inherent structural asymmetries embedded within the contemporary ISDS regime.⁶

To rigorously substantiate the analysis regarding the dysfunction of this investment regime, a comprehensive mapping of the extant literature—the *state of the art*—serves as an indispensable prerequisite. Scholarly discourse over the past half-decade (2021–2026) has yielded a spectrum of critical inquiries into the persistent friction between investment protection imperatives and environmental sovereignty. Foremost among these, Arcuri et al. (2024) contend that the ISDS apparatus functions as a profound structural impediment to supply-side climate policies.⁷ By juxtaposing the *Rockhopper* and *Lone Pine* arbitrations, their analysis reveals how the ISDS regime facilitates the externalization of the energy transition's economic burdens—effectively shifting these massive costs from corporate entities onto sovereign public coffers.⁸

Second, adopting a doctrinal treaty-analysis perspective, Hailes (2026) meticulously dissects the jurisprudential anomaly embedded within the *Eco Oro* award. The scholarship underscores the phenomenon of “conversion risk”—a dynamic wherein explicitly textual climate carve-outs are effectively rendered nugatory by arbitral tribunals exercising broad interpretative discretion. This occurs most acutely when arbitrators elevate the Fair and Equitable Treatment (FET) standard in order to preserve

⁵ Roopa Mathews and Dilber Devitre, “New Generation Investment Treaties and Environmental Exceptions: A Case Study of Treaty Interpretation in *Eco Oro Minerals Corp. v. Colombia*,” *Wolters Kluwer*, 2022, <https://legalblogs.wolterskluwer.com/arbitration-blog/new-generation-investment-treaties-and-environmental-exceptions-a-case-study-of-treaty-interpretation-in-eco-oro-minerals-corp-v-colombia/>.

⁶ Sabin Center for Climate Change Law, “*Rockhopper v. Italy*,” *Sabin Center for Climate Change Law*, 2025, https://www.climatecasechart.com/document/rockhopper-v-italy_bfca.

⁷ Alessandra Arcuri, Kyla Tienhaara, and Lorenzo Pellegrini, “Investment Law v. Supply-Side Climate Policies: Insights from *Rockhopper v. Italy* and *Lone Pine v. Canada*,” *International Environmental Agreements: Politics, Law and Economics* 24, no. 1 (March 2024): 193–216, <https://doi.org/10.1007/s10784-023-09622-w>.

⁸ Toni Marzal, “Polluter Doesn’t Pay: The *Rockhopper v Italy* Award,” *Ejiltalk*, 2023, <https://www.ejiltalk.org/polluter-doesnt-pay-the-rockhopper-v-italy-award/>.

investors' legitimate expectations.⁹

Third, shifting the analytical focus to domestic governance, Supriyadi, Lutfi, and Bahagiati (2025) critically examine Indonesia's green investment legal framework. Their research elucidates how profound regulatory fragmentation—coupled with the tenuous institutional integration of Environmental, Social, and Governance (ESG) principles—leaves domestic public policy highly susceptible to the encroachment of global arbitral regimes.¹⁰

Fourth, Ostránský and Bonnitcha (2024) elevate the scholarly discourse to the realm of systemic architecture. They contend that investment treaties necessitate a fundamental reconceptualization to achieve congruence with the Paris Agreement objectives, expressly repudiating piecemeal procedural reforms.¹¹ Fifth, broadening the scholarly discourse through a decolonial lens, Bryan (2023) posits that contemporary ISDS practices frequently function as a modality of *corporate lawfare*. He contends that this apparatus is actively deployed to entrench corporate control over natural resources, systematically subverting environmental justice frameworks across the Third World.¹²

Derived from the aforementioned literature synthesis, a substantial research gap emerges. The prevailing discourse remains disproportionately fixated on modifying international treaty texts, drafting carve-out clauses, or merely repudiating the ISDS regime altogether. Consequently, a profound theoretical void exists regarding the extrapolation of the National Constitution as a substantive legal justification, one that can be seamlessly operationalized within a sovereign state's defense before arbitral tribunals. Under international legal doctrine, Article 27 of the Vienna Convention on the Law of Treaties (VCLT) categorically prohibits a state from invoking its domestic constitutional law as justification for its failure to perform a treaty.

Mindful of the structural constraints imposed by VCLT Article 27, this study does not construct the "Green Constitution" as a unilateral instrument of subjugation to nullify

⁹ Oliver Hailes, "Environmental Clauses in Investment Arbitration: Deep Roots, Green Shoots and Dead Wood," *ICSID Review* 40, no. 2 (January 13, 2026): 399–440, <https://doi.org/10.1093/icsidreview/siaf003>.

¹⁰ Aditya Prastian; Lutfi Supriyadi Mustafa; Bahagiati, Kurniasih, "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Maslahah," *Jurisdictie: Jurnal Hukum Dan Syariah*, no. Vol 16, No 2 (2025): *Jurisdictie* (2025): 417–57.

¹¹ Josef Ostránský and Jonathan Bonnitcha, "Rethinking Investment Treaties," International Institute for Sustainable Development, 2026, <https://www.iisd.org/system/files/2024-05/rethinking-investment-treaties-roadmap.pdf>.

¹² Bradley Bryan, "The Person and the Mirror: On the Colonial Force of Corporate Law," *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 38, no. 2 (August 2023): 139–57, <https://doi.org/10.1017/cls.2023.21>.

investment treaties. Rather, the Green Constitution is transplanted as an objective legal fact that inherently defines and circumscribes the formation of investors' legitimate expectations *a priori*—specifically, from the very inception of the investment commitment.

Diverging from preceding scholarship, this inquiry posits the Green Constitution—as explicitly codified in Article 33, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, alongside the precedent established by the 1991 Colombian Constitution—as a proactive doctrinal foundation to fortify the sovereign right to regulate. Through this conceptual lens, a state's adherence to constitutional environmental sustainability principles is not merely an internal administrative directive easily dismissed under the pretext of bifurcated legal regimes. Instead, it constitutes an absolute sovereign imperative that definitively delineates the boundaries of foreign corporate property rights.

This article aims to demonstrate that mainstreaming the Green Constitution doctrine within investment dispute settlement procedures serves as a valid liability-mitigation framework. This framework effectively redefines the ambit of investors' legitimate expectations, thereby minimizing the viability of Fair and Equitable Treatment (FET) violation claims and indirect expropriation arguments. The integration of ecological constitutional norms is indispensable to ensure that sovereign states are not held hostage by massive financial liabilities that degrade their capacity to realize net-zero emission mandates. As an argumentative conclusion, this research formulates a recalibration of the police powers doctrine anchored in the validity of the Green Constitution, purposefully designed to achieve a proportional equilibrium between the normative protection of investor rights and the fulfillment of ecological justice within the contemporary international economic law landscape.

2. Research Questions

Premised upon the identified normative collision between the international investment protection regime and sovereign environmental imperatives, this inquiry articulates two fundamental legal questions:

- a. How do investment arbitral tribunals construe the standard of review applicable to environmental carve-outs within the *ratio decidendi* of recent awards, and to what extent does this interpretive posture facilitate the exoneration of host-state liability concerning ecological safeguard measures?

- b. How can the doctrinal soundness of integrating domestic “Green Constitution” principles be established to redefine the contours of investors' legitimate expectations and recalibrate the *police powers* doctrine, while strictly preserving normative coherence with the structural constraints imposed by Article 27 of the Vienna Convention on the Law of Treaties (VCLT)?

3. Research Methods

Methodologically, this inquiry employs a doctrinal legal research framework to critically evaluate the normative nexus connecting international investment law, international environmental law, and domestic constitutional law.¹³ This methodology is operationalized via a tripartite analytical framework: (1) textual treaty and constitutional analysis, functioning to dissect Bilateral Investment Treaty (BIT) instruments alongside the normative architecture of host-state constitutions; (2) doctrinal evaluation, designed to trace the evolutionary trajectory of customary international law—particularly concerning the bounded expansion of the *police powers* doctrine and the overextension of legitimate expectations; and (3) jurisprudential analysis, deployed to critically evaluate the *ratio decidendi* embedded within recent investment arbitral awards.

The primary legal sources underpinning this inquiry encompass the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the 1991 Colombian Constitution, the ICSID Convention, the Energy Charter Treaty (ECT), various Free Trade Agreements (FTAs), and pertinent international arbitral awards—most notably *Eco Oro v. Colombia* and *Rockhopper v. Italy*. To fortify this doctrinal foundation, the analysis relies upon recent authoritative precedents, anchored by the 2025 International Court of Justice (ICJ) Advisory Opinion on the Obligations of States in respect of Climate Change.¹⁴ Complementing these primary documents, secondary legal sources were meticulously curated via a systematic literature review. This methodical approach functions to rigorously synthesize the *state of the art*, thereby ensuring a comprehensive mapping of the extant scholarly discourse.

Both primary and secondary legal sources are subjected to rigorous qualitative analysis. A deductive syllogistic approach is employed to construct normative coherence

¹³ Sanne Taekema and Wibren van der Burg, “Methods of Doctrinal Research,” in *Contextualising Legal Research* (Edward Elgar Publishing, 2024), 44–78, <https://doi.org/10.4337/9781035307395.00010>.

¹⁴ Hogan Lovells, “International Court of Justice Advisory Opinion on the Obligations of States in Respect of Climate Change: What It May Mean for Businesses,” Hogan Lovells, 2025, <https://www.hoganlovells.com/en/publications/international-court-of-justice-advisory-opinion-on-the-obligations-of-states-in-respect-of-climate>.

between domestic constitutional provisions and international treaty obligations. This logical framework serves to rigorously test the validity of expanding the *police powers* doctrine within the broader corpus of international law. Moreover, the interpretive methodology applied to investment treaties does not operate in isolation; rather, it is strictly tethered to the established canons of international legal interpretation. Specifically, this inquiry is governed by the textual, teleological, and systemic interpretive principles enshrined in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VCLT). Ultimately, this comprehensive analytical apparatus is deployed both descriptively and prescriptively to critically evaluate the objective demarcations between sovereign ecological regulatory jurisdiction and the safeguarding of investors' commercial rights.

B. DISCUSSION

1. The Anatomy of Normative Friction: The Paradox of Environmental Carve-Outs within Contemporary ISDS Jurisprudence

The international investment arbitration landscape of the current decade has emerged as the epicenter of an existential conflict between two legal regimes underpinned by fundamentally divergent philosophies. On the one hand, international investment law was originally conceived to provide near-absolute protection for commercial expectations in order to incentivize global capital flows; conversely, international environmental law functions as a vital mechanism to mitigate accelerating biospheric degradation and anthropogenic climate change.¹⁵ Far from being a mere theoretical abstraction, this normative tension materializes as a profound financial burden upon the state exchequer whenever environmental regulations collide with the protected commercial expectations of transnational corporations.¹⁶ In a concerted effort to reclaim sovereign prerogative, treaty-makers from diverse jurisdictions have increasingly pivoted toward incorporating environmental carve-outs and 'right to regulate' provisions within new-generation International Investment Agreements (IIAs). These mechanisms are envisioned to serve as a vital safety valve, purposefully calibrating the equilibrium between the mandate for capital protection and the urgency of ecological

¹⁵ Ostřanský and Bonnitcha, "Rethinking Investment Treaties."

¹⁶ BothENDS, "Investor Protection Blocking Climate Action."

imperatives.¹⁷

Nevertheless, a jurisprudential analysis of arbitral tribunal praxis reveals a persistent 'paradox of effectiveness' surrounding the textual insertion of such exception clauses. The award in *Eco Oro Minerals Corp. v. Republic of Colombia* (ICSID Case No. ARB/16/41) which advanced to the quantum phase in 2024 and subsequent annulment proceedings spanning 2025–2026 serves as a representative precedent for dissecting this anomaly. Chronologically, the genesis of the dispute lies in the Colombian government's regulatory measures delineating the Páramo Santurbán ecosystem, a critical wetland region indispensable to biodiversity conservation and the national hydrological cycle.¹⁸

The conservation policy, reinforced by the Colombian Constitutional Court's ruling, directly limits mining concessions owned by Canadian investors, Eco Oro. These conservation measures, reinforced by a ruling from the Colombian Constitutional Court, directly curtailed the mining concessions held by the Canadian investor, Eco Oro. Normatively, the Canada-Colombia Free Trade Agreement (FTA) incorporates Annex 811 a GATT style exception clause engineered to provide the host state with a legal justification to exercise its regulatory authority for ecological preservation without breaching its investment protection obligations.¹⁹

Rather than absolving the host state of liability as clearly intended by the treaty drafters the ICSID tribunal majority in *Eco Oro* adopted an intensely investor-centric interpretative approach.²⁰ At the outset, the tribunal acknowledged that the demarcation of the Páramo territory constituted a legitimate exercise of the state's police powers for environmental protection. Nevertheless, the majority ultimately held that the presence of the exception clause did not preclude the host state's obligations under the Fair and Equitable Treatment (FET) standard regarding the loss of the investment's utility.²¹

¹⁷ Taylor Wessing, "The ICJ Climate Opinion and ISDS: Mapping New Terrain for Investment Dispute Resolution," Taylor Wessing, 2025, <https://www.taylorwessing.com/en/insights-and-events/insights/2025/11/the-icj-climate-opinion-and-isds>.

¹⁸ Mathews and Devitre, "New Generation Investment Treaties and Environmental Exceptions: A Case Study of Treaty Interpretation in *Eco Oro Minerals Corp. v. Colombia*."

¹⁹ International Institute for Sustainable Development (IISD), "Eco Oro and the Twilight of Policy Exceptionalism," International Institute for Sustainable Development (IISD), 2021, <https://www.iisd.org/itn/2021/12/20/eco-oro-and-the-twilight-of-policy-exceptionalism/>.

²⁰ Robert Garden, "Eco Oro v Colombia: The Brave New World of Environmental Exceptions," *ICSID Review - Foreign Investment Law Journal* 38, no. 1 (March 2023): 17–24, <https://doi.org/10.1093/icsidreview/siac020>.

²¹ International Institute for Sustainable Development, "Implications of the Eco Oro Decision for Investment Treaty Negotiations and Reforms," International Institute for Sustainable Development, 2021, <https://www.iisd.org/events/implications-eco-oro-decision-investment-treaty-negotiations-and-reforms>.

Employing the Minimum Standard of Treatment (MST) under customary international law as its evaluative benchmark, the tribunal ruled that the bureaucratic inertia and inter-ministerial communication incoherence exhibited by Colombia in delineating the ecosystem's coordinates constituted a procedural breach of the principle of good faith. The tribunal construed this administrative failure as sufficient to frustrate the investor's legitimate expectations, notwithstanding the urgent environmental conservation imperatives underlying the policy's implementation.²²

The ratio decidendi of the Eco Oro award corroborates scholarly warnings that environmental exception clauses remain acutely susceptible to 'conversion risk' within arbitral proceedings. International arbitrators possess expansive interpretative discretion to dilute the substantive core of environmental exceptions by shifting the evaluative goalposts toward a meticulous dissection of the host state's internal administrative procedures. This finding underscores that orthodox reliance on textual treaty reform (such as the UNCITRAL Working Group III initiatives) suffers from inherent normative limitations in securing ecological justice. Ultimately, this jurisprudential praxis engenders a structural asymmetry: the investment regime demands near-perfect transparency and bureaucratic due diligence an evaluative threshold frequently incompatible with the volatile dynamics and urgency of climate crisis mitigation in developing nations.

This phenomenon of ecological subordination manifested further in the dispute of *Rockhopper v. Italy* (ICSID Case No. ARB/17/14), which culminated in a final damages award in August 2022. Responding to the precautionary principle to avert the degradation of coastal ecosystems in the Adriatic Sea, the Italian Parliament enacted a permanent prohibition on hydrocarbon extraction within a 12-nautical-mile radius of the coastline. Rockhopper Exploration, an energy corporation whose production permits were compromised, challenged Italy's proactive energy transition measure under the regime of the Energy Charter Treaty (ECT).²³

In dismissing Italy's defense anchored in the sovereign right to environmental protection, the tribunal advanced a line of reasoning that fundamentally marginalized climate mitigation imperatives. The majority characterized the drilling ban as an unlawful

²² Julian Arato, "The Institutions of Exceptions: Justification in Trade and Investment Treaties," *Michigan Journal of International Law*, April 2026, 41, <https://doi.org/10.36642/mjil.47.1.institutions>.

²³ Ajoo Kim, "2025 in Review: ISDS Reforms in Review," Kluwer Arbitration Blog, 2026, <https://legalblogs.wolterskluwer.com/arbitration-blog/2025-in-review-isds-reforms-in-review/>.

expropriation. The tribunal reasoned that because the project had previously secured clearance from an internal environmental committee, the concession rights had crystallized into vested rights. Consequently, the state was precluded from subsequently revoking these rights, regardless of any broader reorientation in national environmental policy. Furthermore, in its deliberations, the tribunal discredited the substantive weight of Italy’s energy transition policy by framing it as a byproduct of localized populist political pressure, rather than a measure underpinned by objective environmental preservation motives.²⁴

By dismissing the application of the state sovereignty doctrine and awarding large-scale financial compensation exceeding EUR 190 million—which accommodated calculations for anticipated lost profits (*lucrum cessans*) from unextracted oil reserves the tribunal established a precedent whereby the entire financial burden of environmental conservation policies is externalized from corporate entities onto the public sector. This precedent remains highly scrutinized, even though an *ad hoc* annulment committee subsequently vacated the award in June 2025 due to a procedural irregularity involving one of the arbitrators,²⁵ The 2026 resubmission of the dispute underscores the persistence of this structural threat.²⁶ The substantive interpretative construction in *Rockhopper* corroborates the thesis that contemporary ISDS jurisprudence persistently relegates ecological protection to a secondary variable, strictly subordinated to the stability of commercial expectations and the capital accumulation of fossil fuel investments.²⁷

Table 1. A Comparative Anatomy of Environmental Exception Jurisprudence

Analytical Dimensions	Eco Oro v. Colombia (ICSID ARB/16/41)	Rockhopper v. Italy (ICSID ARB/17/14)
The Object of State Action	Denial of permits resulting from the demarcation of the Páramo wetland ecosystem (hydrological and biodiversity conservation).	Prohibition of offshore hydrocarbon extraction within a 12-nautical-mile radius (coastal pollution mitigation).
Relevant Legal	The Canada-Colombia Free	<i>The Energy Charter Treaty</i>

²⁴ Rhys Carvosso, “The Precarity of the Police Powers Doctrine in Investment Arbitration: *Rockhopper v. Italy*,” *Journal of International Dispute Settlement* 15, no. 1 (April 2024): 172–89, <https://doi.org/10.1093/jnlids/idad026>.

²⁵ Sabin Center for Climate Change Law, “*Rockhopper v. Italy*.”

²⁶ International Institute for Sustainable Development, “New Tribunal Constituted for *Rockhopper v. Italy* Resubmission, with Meg Kinnear as Chair,” International Institute for Sustainable Development, 2026.

²⁷ Kyla Tienhaara, “Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement,” *Transnational Environmental Law* 7, no. 2 (July 22, 2018): 229–50, <https://doi.org/10.1017/S2047102517000309>.

Instruments	Trade Agreement (specifically (ECT) lacks specific incorporating a GATT-style environmental exceptions environmental exception within Annex 811).
Application of the Sovereign Immunity Exception	While the validity of the exception is acknowledged, it does not preclude liability for compensation arising from a breach of procedural standards under the Minimum Standard of Treatment (MST). The assertion of the state's police powers doctrine was effectively dismissed, thereby relegating environmental policy to a mere manifestation of political expediency rather than a legitimate exercise of sovereign regulatory authority.
Long-term Jurisprudential Implications	Jurisprudence demonstrates that environmental exception clauses are frequently eviscerated by the overly expansive interpretation of 'legitimate expectations' within the FET framework, effectively rendering their textual safeguards illusory. This reinforces the legal position that the energy transition away from fossil fuels, coupled with outright prohibitions on exploitation, may be characterized as unlawful expropriation.

2. The Asymmetrical Evolution of Investment Protection: The Inherent Constraints of Police Powers and the Expansive Interpretation of Legitimate Expectations

The normative foundations of host-state jurisdictional constraints in environmental disputes, as exemplified by *Eco Oro* and *Rockhopper*, systematically culminate in a failure to operationalize the police powers doctrine under customary international law. Conceptually and historically, the police powers doctrine posits that regulatory measures enacted by sovereign states—provided they are carried out in good faith, are non-discriminatory, and pursue public welfare objectives such as public health, national security, or environmental protection—cannot be classified as indirect expropriation. Consequently, the invocation of this doctrine normatively shields the state from liability for compensation for commercial losses incurred by foreign investors.²⁸

However, within the landscape of arbitral practice, the invocation of this doctrine is frequently marginalized when subjected to a restrictively interpreted proportionality test. International arbitral tribunals have gradually adopted an asymmetrical standard of review, wherein the reasonableness and proportionality of environmental regulations are predominantly assessed through the lens of the financial prejudice inflicted upon

²⁸ Carvosso, “The Precarity of the Police Powers Doctrine in Investment Arbitration: *Rockhopper v Italy*.”

corporate operations and stability.²⁹ International arbitral tribunals, empowered by broad interpretative discretion, frequently deconstruct the *bona fide* regulatory intent of policymakers. This dynamic is starkly evidenced in *Rockhopper*, where the tribunal discredited the Italian authorities' invocation of the precautionary principle. The tribunal posited that the ban on hydrocarbon extraction lacked a robust science-based foundation, characterizing it instead as a mere product of administrative political expediency rather than a legitimate regulatory measure.³⁰ The systemic failure of the *police powers* defense stems from the tendency of host states to rely exclusively on conventional public policy justifications—an approach rendered highly vulnerable to the doctrine of *legitimate expectations*, which has undergone an extraordinary degree of expansion in arbitral fora.

The doctrine of legitimate expectations, jurisprudentially recognized as a cornerstone of the Fair and Equitable Treatment (FET) standard, mandates that host states maintain a stable, transparent, predictable, and consistent legal framework from the moment an investor's capital commitment is realized.³¹ This logic of commercial stability encounters problematic structural friction in the Anthropocene era, where global ecological safety parameters necessitate a comprehensive and transformative regulatory reorientation. If ISDS evaluation standards dogmatically mandate a 'regulatory freeze' to ensure the continuity of carbon-intensive projects, nations in the Global South—bearing the dual burden of accelerating economic growth while meeting emission reduction targets—risk losing their adaptive regulatory capacity. In response to this doctrinal friction, contemporary academic discourse demands a re-conceptualization, asserting that guarantees of legal stability cannot be constructed as absolute immunity that negates the urgency of mitigating the ecosystem crisis.³²

Amidst this jurisprudential impasse, the International Court of Justice's (ICJ) Advisory Opinion on the Obligations of States in Respect of Climate Change, rendered on July 23, 2025, establishes a precedent that fundamentally transforms the international legal order. Through this unanimous opinion, the ICJ prescriptively affirms that all states bear binding, *erga omnes* legal obligations under international law to proactively

²⁹ Caterina Milo, "Environmental and Human Rights Justifications in Investment Arbitration: Probing the Limits of ISDS for the Adjudication of Climate-Related Disputes," *The Journal of World Investment & Trade* 26, no. 3 (2025): 512-56, <https://doi.org/https://doi.org/10.1163/22119000-12340365>.

³⁰ Carvosso, "The Precarity of the Police Powers Doctrine in Investment Arbitration: *Rockhopper v Italy*."

³¹ Ursula Kriebaum, Christoph Schreuer, and Rudolf Dolzer, *Principles of International Investment Law* (Oxford University Press, 2022), Hal, 145-149. <https://doi.org/10.1093/law/9780192857804.001.0001>.

³² Taylor Wessing, "The ICJ Climate Opinion and ISDS: Mapping New Terrain for Investment Dispute Resolution."

implement mitigation, preventive, and precautionary measures to safeguard the climate system against greenhouse gas-induced degradation.³³

The significance of the 2025 ICJ judicial declaration manifests tangibly through the mandate to operationalize the principle of 'systemic integration,' as authoritatively codified in Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties (VCLT). This fundamental provision obligates arbitrators to interpret investment protection clauses by accounting for all relevant rules of international law applicable between the parties—which, in the contemporary context, includes *erga omnes* obligations regarding the protection of the global climate system. As explicitly noted in the separate declaration of Judge Sarah Cleveland in the said opinion, the interpretation of international investment instruments must be harmonized with the state's compliance with climate protection imperatives. The declaration underscores that a state's failure to implement ecological mitigation may be characterized as an 'internationally wrongful act'.³⁴ The judicial reasoning articulated by the UN's principal judicial organ hierarchically recalibrates the global investment landscape, elevating the absolute imperative of ecosystem preservation to a superior normative hierarchy, thereby superseding the mere protection of private commercial expectations.³⁵

3. Extrapolating the 'Green Constitution' Concept as a Substantive Basis for Arbitral Defense

Transcending the analysis of textual reform dynamics within international legal instruments, this research advances a conceptual innovation by addressing ISDS jurisprudential anomalies through the empowerment of supreme constitutional principles: the operationalization of the 'Green Constitution.' The concept of the 'Green Constitution'—a progressive nomenclature that internalizes the values of intra-generational and inter-generational justice into the constitutional fabrics of various states—transcends the realm of mere non-justiciable, declarative provisions.³⁶

Within the normative prescription of the Republic of Indonesia, the foundation of the 'Green Constitution' is definitively anchored in the philosophical underpinnings of

³³ Hogan Lovells, "International Court of Justice Advisory Opinion on the Obligations of States in Respect of Climate Change: What It May Mean for Businesses."

³⁴ Taylor Wessing, "The ICJ Climate Opinion and ISDS: Mapping New Terrain for Investment Dispute Resolution."

³⁵ Hailes, "Environmental Clauses in Investment Arbitration: Deep Roots, Green Shoots and Dead Wood."

³⁶ I Gusti Ayu Ketut Rachmi Handayani, "Green Development Rights For Optimizing Urban Area And Coastal Areas In Indonesia (Consistency Of The State Of The Doctrine Of The Right To Control The State)," *Constitutional Review* 2, no. 1 (August 2016): 057, <https://doi.org/10.31078/consrev213>.

Article 33(4) of the 1945 Constitution of the Republic of Indonesia. This constitutional provision mandates that the national economy be conducted under the principles of economic democracy, guided by the tenets of communal cooperation, equitable efficiency, sustainability, and, crucially, an environmental perspective.³⁷ In a comparative and parallel vein, similar constitutional values are enshrined as fundamental principles within the 1991 Constitution of Colombia, widely recognized as the *Constitución Ecológica*. This Constitution explicitly asserts that the protection of ecological integrity possesses an 'essential core' (*núcleo esencial*), serving as an absolute prerequisite for the realization of fundamental rights—a doctrine consistently affirmed and enforced by the Constitutional Court of Colombia through landmark precedents such as rulings T-411/92 and T-361/17.³⁸ A paradigm transcending legal anthropocentrism is further integrated into the 2008 Constitution of Ecuador through the formal recognition of the 'Rights of Nature' (*Pachamama*). This framework confers legal personhood upon Nature, establishing that its right to exist, persist, maintain, and regenerate its vital cycles is a mandatory imperative that states are obligated to uphold.³⁹

Heretofore, the strategic elevation of these constitutional principles as a primary doctrinal instrument in ISDS litigation remains significantly under-theorized. This article introduces a paradigm shift in state defense strategies: transitioning from the classical reliance on fragile, external treaty-based exceptions—such as GATT Article XX-style carve-outs—to an argument grounded in the absolute supremacy of the host state's internal fundamental law.⁴⁰ The process of extrapolating the Green Constitution as an ontological foundation for the defense in investment arbitration is constructed through the operationalization of two primary analytical pillars:

³⁷ Jimly Asshiddiqie, *Green Constitution : Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta: Rajawali Pers, 2016). Hal, 32-35.

³⁸ Jus Mundi, "Eco Oro v. Colombia: Eco Oro Minerals Corp. v. Republic of Colombia, ICSID Case No. ARB/16/41," Jus Mundi, 2024, <https://jusmundi.com/en/document/decision/en-eco-oro-minerals-corp-v-republic-of-colombia-award-monday-15th-july-2024>.

³⁹ Piotr Szwedo, "Rebalancing International (Investment) Law," in *Cross-Border Pollution and Environmental Disputes in EU Law and Beyond* (London: Routledge, 2026), 252–65, <https://doi.org/10.4324/9781032634845-16>. Hal, 259.

⁴⁰ Supriyadi Mustafa; Bahagiati, Kurniasih, "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Maslahah."

a. Redefining the Demarcation Boundaries of Legitimate Expectations *Ab Initio*

As constructed within the parameters of international investment law, the legitimate expectations of foreign investment entities do not exist in a vacuum; rather, they are formulated and contextualized, anchored in the host state's normative framework prevailing at the inception of the investment.⁴¹ Where a host state's constitution mandates that the government prioritize 'environmentally sound' and 'sustainable' development (e.g., Article 33(4) of the 1945 Constitution of the Republic of Indonesia), deductive syllogistic logic dictates that foreign investors are *ab initio* legally put on notice that their commercial rights are subordinated to the imperatives of environmental integrity. This aligns with the jurisprudential consensus surrounding the investor's due diligence requirement, whereby expectations are deemed illegitimate if an investor fails to conduct a comprehensive assessment of the host state's primary legal framework—including its constitutional hierarchy—prior to effectuating their investment.⁴²

Any projection of profit expectations derived from commercial activities that compromise ecosystem equilibrium—such as mining operations in hydrologically sensitive zones or high-risk deep-sea hydrocarbon extraction—is inherently qualified as an unfounded and irrational expectation. Consequently, the invocation of Green Constitution obligations by the respondent state does not function as an *ex post facto* political pretext; rather, it constitutes the strict enforcement of fundamental legal parameters that have constrained the investment expectation regime since the inception of the contract.⁴³

b. Fortifying the Doctrine of Police Powers through Supreme Constitutional Authority

The structural vulnerability of the *police powers* defense stems from the propensity of international tribunals to characterize pro-environmental interventions by local

⁴¹ "Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador, ICSID Case No. ARB/04/19, Award" (2008).

⁴² Peter Muchlinski, "'Caveat Investor'? The Relevance of the Conduct of the Investor Under the Fair and Equitable Treatment Standard," *International and Comparative Law Quarterly* 55, no. 3 (July 17, 2006): 527–58, <https://doi.org/10.1093/iclq/lei104>.

⁴³ Gita Ranjani and Hendi Setiawan, "Green Constitution: Tinjauan Kemanfaatan Dan Pemulihan Lingkungan Hidup Melalui Reklamasi Dan Pascatambang," *Lex Renaissance* 9, no. 1 (September 2024): 108–33, <https://doi.org/10.20885/JLR.vol9.iss1.art6>.

sectoral or administrative authorities as discriminatory or bureaucratically incoherent.⁴⁴ By anchoring the legitimacy of such environmental restrictive policies in a supreme legal authority—namely, a 'Green Constitution'—the host state establishes a jurisprudential signal that the *right to regulate* in the interest of climate sustainability is not a product of sectoral legislative instability. Rather, it represents an absolute constitutional mandate that imperatively binds the state apparatus.⁴⁵ Anchoring climate defense arguments directly in the constitution is projected to satisfy the tribunal's proportionality test. The state can demonstrate that the temporary deprivation of corporate economic utility constitutes a rational and necessary instrument of harm minimization—a 'lesser evil'—when weighed against the alternative of allowing massive ecological degradation. Indeed, the failure to prevent environmental destruction logically constitutes a fundamental breach of the constitutional mandate.

The operationalization of arguments grounded in domestic supremacy directly addresses the 'conversion risk,' wherein the reform of ISDS treaty texts frequently fails to comprehensively accommodate the urgency of climate change.⁴⁶ By applying the principles of interpretation under Article 31(3)(c) of the 1969 VCLT, arbitral tribunals are mandatorily obligated to integrate climate protection norms possessing *erga omnes* status—as established by the 2025 ICJ Advisory Opinion—into their evaluation of investment protection. Within this framework, the domestic 'Green Constitution' serves as a manifestation of the state's normative compliance with global environmental human rights obligations. This convergence of constitutional principles and customary international law establishes a precise basis for liability exoneration, wherein the protection of commercial expectations loses its jurisprudential justification when invoked to undermine the sovereign authority to preserve the environment.

4. Theoretical Framework: The Significance of the 'Green Constitution' for Climate Defense in Investment Arbitration: Insights from the Global South and Indonesia

To bridge the gap between this doctrinal macro-level discourse and its practical application, it is essential to examine the investment climate dynamics across the Global

⁴⁴ Carvosso, "The Precarity of the Police Powers Doctrine in Investment Arbitration: Rockhopper v Italy."

⁴⁵ Simon Butt and Prayekti Murharjanti, "The Constitutional Right to a Healthy Environment in Indonesia," *Journal of Environmental Law* 33, no. 1 (April 23, 2021): 33–56, <https://doi.org/10.1093/jel/eqaa031>.

⁴⁶ Harsh Manohar, "New Treaties, Old Outcomes: Conversion Risk in ISDS," *Völkerrechtsblog*, 2026, <https://voelkerrechtsblog.org/new-treaties-old-outcomes/>.

South, using Indonesia as a representative case study. Within the framework of the Just Energy Transition Partnership (JETP), developing states face a structural dilemma: the imperative to attract Foreign Direct Investment (FDI) versus the obligation to adhere to international decarbonization commitments. Currently, FDI inflows dominate capital penetration in the strategic mineral downstreaming sector—such as nickel and cobalt—as well as in carbon-intensive energy infrastructure. While the state's success in mobilizing capital of such massive scale through FDI provides a short-term boost to foreign exchange reserves, it simultaneously creates a critical point of normative environmental friction.⁴⁷ The concentration of foreign capital in emission-intensive industries and the strategic minerals sector—including the projected early retirement of coal-fired power plants as 'stranded assets'—constitutes a potential catalyst for an escalation in new-generation ISDS disputes, should the conventional framework for investment protection remain un-recalibrated.

Should Indonesia and other developing states implement rigorous pollution control standards or unilaterally terminate the operations of 'stranded assets' in pursuit of global Net Zero Emission targets, it is highly foreseeable that concession-holding multinational corporations will initiate international arbitration, claiming economic losses under the umbrella of the Fair and Equitable Treatment (FET) standard.⁴⁸ In response to this critical scenario, a defense doctrine predicated on a 'Green Constitution' emerges as an indispensable jurisprudential mechanism. Rather than restricting the defense to claims of *force majeure* or narrow public security exceptions stemming from sectoral legislation (i.e., environmental statutory defenses), the host state is required to directly operationalize the mandates enshrined in Article 33(4) of the 1945 Constitution of the Republic of Indonesia.

The legal construction posits that every issued Foreign Direct Investment (FDI) permit is doctrinally subject to the *implied incorporation clause* of the 'environmentally sound development' principle enshrined in Article 33(4) of the 1945 Constitution of the Republic of Indonesia. Consequently, the justification for the protection of an investor's commercial expectations is rendered *void ab initio* where the accumulation of such profits

⁴⁷ Iriansyah Iriansyah and Yalid Yalid, "Normative Inconsistencies in Indonesian Investment Law: Implications for Legal Certainty and the Investment Climate," *Corporate Law & Governance Review* 8, no. 1 (January 22, 2026): 88, <https://doi.org/10.22495/clgrv8i1p7>.

⁴⁸ Kyla Tienhaara et al., "Investor-State Dispute Settlement: Obstructing a Just Energy Transition," *Climate Policy* 23, no. 9 (October 2023): 1197–1212, <https://doi.org/10.1080/14693062.2022.2153102>.

is realized through biospheric degradation that undermines constitutional supremacy.⁴⁹ Advancing this doctrine will mitigate the risks for developing states stemming from jurisprudential precedents that erode state sovereignty, while concurrently establishing a dispute resolution model that places ecological justice on an equal footing with global economic governance.

5. Academic Discourse and Global Significance: Reconstructing the Paradigm of International Investment Law

Through an analytical proposition concerning the operationalization of the Green Constitution, this thesis complements and modifies the existing discourse, particularly the projections advanced by Arcuri et al. (2024). While Arcuri's analysis accurately demonstrates that the ISDS system operates as a structural barrier to the implementation of supply-side climate mitigation policies, geopolitical realities compel developing states to continue operating within the contemporary investment treaty ecosystem. Consequently, the extrapolation of a 'Green Constitution' as a *jurisprudential shield* is not merely theoretical; rather, it serves as a pragmatic strategic instrument—an *interim measure*. This defense construct can be operationalized to neutralize compensation claims within arbitral forums, at least until a multilateral consensus is reached to reform the governance of fossil-fuel-oriented investment treaties globally.⁵⁰

This research also addresses the prevailing skepticism regarding the susceptibility of exception clauses in treaty amendments to being circumvented by the discretion of international arbitrators. By shifting the focus of the normative contestation forum from the mere textual interpretation of exceptions (akin to GATT-style treaty exception analysis) toward an affirmation of sovereign rights grounded in constitutional hierarchy (customary *police powers* functionally linked to the domestic supreme constitution), states can significantly constrain the scope of arbitral maneuverability.⁵¹ Should an investment arbitral tribunal disregard fundamental principles enshrined in the host state's supreme constitution, the resulting award would forfeit its normative legitimacy and become highly susceptible to being set aside during the annulment phase on the grounds of violating international *ordre public*.

⁴⁹ Jorge E. Viñuales, "Foreign Investment and the Environment in International Law: Current Trends," in *Research Handbook on Environment and Investment Law* (Edward Elgar Publishing, 2019), <https://doi.org/10.4337/9781784714635.00007>.

⁵⁰ Arcuri, Tienhaara, and Pellegrini, "Investment Law v. Supply-Side Climate Policies: Insights from *Rockhopper v. Italy* and *Lone Pine v. Canada*."

⁵¹ Hailes, "Environmental Clauses in Investment Arbitration: Deep Roots, Green Shoots and Dead Wood."

Furthermore, this analytical framework offers a doctrinal resolution to concerns regarding the functional ineffectiveness of regulatory instruments governing green investment financing in Indonesia.⁵² While the operational regulatory regime governing land and environmental permits remains marred by bureaucratic fragmentation and institutional inefficiency, the standards of equitable adjudication in international arbitration must not be distorted by these administrative limitations.⁵³ By operationalizing the ecological mandate of Article 33(4) of the 1945 Constitution of the Republic of Indonesia as a foundational macro-defense strategy, state authorities can cohesively articulate the legitimacy of their public purpose. This jurisprudential argument normalizes authoritative regulatory intervention, framing it not as a political attempt at unilateral contract termination, but purely as a manifestation of the state's supreme sovereign legal dictates, which inherently limit the scope of expectations regarding foreign investment capital mobility.

In the broader dimension of global governance, this approach eliminates the systemic threats posed by the ISDS mechanism, which is increasingly operationalized as a form of 'corporate lawfare' that perpetuates asymmetric resource extraction.⁵⁴ Should Global South nations—such as Colombia, Indonesia, and various sovereign entities across Africa—persistently confront the commercial dogmas of investment treaties with their indigenous-rights-oriented constitutional instruments while demanding environmental justice, a fundamental reversal of legal power dynamics will ensue. The strategic decision to elevate constitutional supremacy within the arena of transnational investment dispute settlement constitutes a concrete manifestation of the effort to decolonize the hierarchical architecture of global economic governance.

This integrative doctrinal approach serves to transform and rectify distortions within customary international economic law, aligning it with the imperatives of universal environmental justice. The adoption of these fundamental values ensures that Foreign Direct Investment (FDI) inflows—particularly those accelerating downstream programs for energy transition minerals, such as strategic nickel, lithium, and rare

⁵² Supriyadi Mustafa; Bahagiati, Kurniasih, "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Maslahah."

⁵³ Hartati et al., "Legal Politics of Forestry Licensing in the Perspective of Indonesian Laws and Regulations," *LITIGASI* 25, no. 2 (October 2024): 359–83, <https://doi.org/10.23969/litigasi.v25i2.19382>.

⁵⁴ Amina Yusuf, Rajeev Kumar, and Thabo Mokoena, "From Colonial Law to Corporate Lawfare: The Neocolonial Logics of Resource Extraction," *Interdisciplinary Studies in Society, Law, and Politics* 5, no. 1 (2026): 1–13, <https://doi.org/10.61838/kman.isslp.457>.

cobalt—do not exert destructive impacts on local communities. Foreign investors can no longer evade environmental preservation obligations by invoking obsolete contract stability clauses.⁵⁵ Conceptually and teleologically, this progressive judicial advocacy approach aligns with the systemic re-conceptualization of investment treaty governance proposed by Ostřanský and Bonnitcha (2024). Within the contemporary framework of international economic law, investment treaties must no longer operate as a shield to insulate corporate commercial expectations from proportional limitations. Instead, such treaties must transform into instruments subordinate to the realization of the Sustainable Development Goals (SDGs), anchored firmly in the protection of global biosphere integrity.

The internalization of the normative prescriptions of the 2025 ICJ Advisory Opinion affirms that climate protection is an *erga omnes* obligation, binding universally. By integrating the *police powers* defense with the doctrinal legitimacy of the 'Green Constitution,' sovereign entities possess a robust jurisprudential framework to dismantle the crisis of *regulatory chill*. Future investment arbitration jurisprudence must be transformed to ensure strict subordination to the hierarchy of climate protection norms. Transnational arbitral forums lack the doctrinal competence to undermine the proportionality of state actions taken to mitigate environmental crises. At its zenith, the curtailment of commercial investor rights for the sake of compliance with the constitutional mandate of ecosystem protection constitutes an exercise of absolute sovereignty—inseparable from the imperative to guarantee the sustainability of life-supporting systems in their entirety.

C. CONCLUSIONS

Contemporary investment arbitration jurisprudence, as illustrated by precedents such as *Eco Oro* and *Rockhopper*, demonstrates that treaty protection instruments are consistently utilized to subordinate a state's ecological sovereignty in favor of preserving the commercial expectations of transnational corporations. In response to this structural asymmetry, this study formulates a doctrinal resolution by extrapolating a 'Green Constitution'—such as Article 33(4) of the 1945 Constitution of the Republic of Indonesia—as a domestic legal supremacy that *ab initio* redefines and constrains the

⁵⁵ Gloria M Alvarez and Jorge E Viñuales, "International Investment Law in the Energy Transition," *ICSID Review - Foreign Investment Law Journal* 40, no. 2 (January 13, 2026): 211-15, <https://doi.org/10.1093/icsidreview/siaf017>.

scope of the foreign investor's 'legitimate expectations.' By operationalizing the principle of integrative interpretation under Article 31(3)(c) of the 1969 VCLT, this constitutionally-fortified doctrine of state *police powers* imperatively obligates transnational arbitrators to subordinate investment disputes to the superior normative hierarchy of *erga omnes* climate protection obligations. Ultimately, this recalibration of the jurisprudential paradigm effectively mitigates the risk of *regulatory chill* for Global South nations and ensures that the governance of international economic law transforms into an instrument bound by the absolute obligation to maintain the integrity of the global biosphere.

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