

## Aligning International Investment Law with Global Climate and Energy Goals: Termination of Treaties and Withdrawal of Advance Consent to Arbitration

Comments by the Columbia Center on Sustainable Investment on the OECD Secretariat Note  
*Methods to align investment treaty benefits for energy investment with the Paris Agreement and net zero*

September 21, 2024

*The Columbia Center on Sustainable Investment (CCSI)—a joint research center of Columbia Law School and the Columbia Climate School at Columbia University—explores elements of the international investment legal framework, including the impact of investment treaties, investor–State dispute settlement, and home and host government policies governing inward and outward investment, among many other issues.*

- 1 International law is [indispensable in promoting international cooperation and collective action](#) to facilitate and govern the domestic and international investment flows necessary to achieve climate-aligned [sustainable development](#), and in removing roadblocks for domestic measures aimed at fostering climate investment within or across borders.
- 2 However, as evidenced by longstanding research, investment protections and the investor–State dispute settlement (ISDS) mechanisms contained in investment treaties are an obstacle to achieving climate-aligned sustainable development. As discussed in [our March 2022 response to the OECD Public Consultation on Investment Treaties and Climate Change](#), carveouts for climate change–related measures or fossil fuel investments fail to address the regime’s deeper, structural flaws, and are therefore inadequate to align international investment law with global climate and energy goals, human rights, and sustainable development. Accordingly, CCSI does not support the approaches outlined in Annexes A and B of the OECD Secretariat’s note.
- 3 Alignment of international investment law with climate and energy goals requires a comprehensive overhaul of the investment treaty and ISDS regime, which begins with the termination of investment treaties and the withdrawal of advance consent to investor–State arbitration. A forthcoming CCSI report, expected to be published in October 2024, will [build on earlier CCSI research on termination of treaties and withdrawal of consent to ISDS](#) and offer [three practical approaches for governments to address their existing investment treaties with ISDS](#), in line with Annex C of the OECD Secretariat’s note. The policy options offered are:
  - 4 **A.** Terminating bilateral investment treaties (BITs), ideally with an agreement to neutralize sunset clauses.
  - 5 **B.** Amending free trade agreements (FTAs) to remove investment chapters, ideally with an agreement to neutralize sunset clauses, where applicable.
  - 6 **C.** Amending BITs and FTAs to remove the ISDS provisions or withdraw advance consent to ISDS.
- 7 The report will emphasize that these approaches can be implemented unilaterally, bilaterally, or multilaterally and should not be seen as anti-investment, anti-foreigner, or anti-international law. Rather, they reflect an effort by States to govern effectively and fairly, and ensure foreign (and domestic) investments achieve their goals without undermining economic cooperation and sustainable development objectives. The report will also include a draft multilateral agreement to implement these policy options.

## Selected References

- 8 Martin Dietrich Brauch, Elena Klonsky, Fanny Marie Everard, and Qiaozhi Guanglin, with Tyler Alviano, Justin Cuddihey, and Mary Wang. *An International Law Framework for Climate-Aligned Investment Governance*. CCSI Working Paper. New York: CCSI, 2024, <https://ccsi.columbia.edu/content/investment-governance-climate-energy>.
- 9 Ladan Mehranvar, with Jessica Hennings, Robin Marie Kelly, Lena Raxter and Ana Toimil. *How the International Investment Law Regime Undermines Access to Justice for Investment-Affected Stakeholders*. New York: CCSI, 2024, <https://ccsi.columbia.edu/content/access-justice>.
- 10 Daniel Rangel, Lori Wallach, Ladan Mehranvar, Alvaro Santos, and Mario Osorio. *Turning the Tide: How to Harness the Americas Partnership for Economic Prosperity to Deliver an ISDS-Free Americas*. New York: 2023, <https://ccsi.columbia.edu/content/termination-international-investment-agreements-and-withdrawal-consent-arbitrate>.
- 11 Ella Merrill, Martin Dietrich Brauch, and Lisa Sachs. *International Investment Governance and Achieving a Just Zero-Carbon Future*. CCSI Briefing Note. New York: CCSI, 2022, <https://ccsi.columbia.edu/content/investment-governance-climate-energy>.
- 12 CCSI. *Climate Action Needs Investment Governance, Not Investment Protection and Arbitration: Response by the Columbia Center on Sustainable Investment to the OECD Public Consultation on Investment Treaties and Climate Change*. New York: CCSI, 2022, <https://ccsi.columbia.edu/news/climate-action-needs-investment-governance-not-investment-protection-isds>.
- 13 CCSI. *Primer on International Investment Treaties and Investor-State Dispute Settlement*. New York: CCSI, 2021, <https://ccsi.columbia.edu/content/primer-international-investment-treaties-and-investor-state-dispute-settlement>.
- 14 Lisa Johnson, Lisa Sachs, and Nathan Lobel. *Aligning Investment Treaties with Sustainable Development*. New York: CCSI, 2019, <https://ccsi.columbia.edu/content/aligning-investment-treaties-sustainable-development>.
- 15 Lisa Sachs, Lise Johnson, and Ella Merrill. "Environmental Injustice: How treaties undermine human rights related to the environment," *La Revue des Juristes de Sciences-Po*, no. 18 (January 2020), <https://ccsi.columbia.edu/content/environmental-injustice-how-treaties-undermine-human-rights-related-environment>.
- 16 Jesse Coleman, Kaitlin Y. Cordes, and Lise Jonson. *Human Rights Law and the Investment Treaty Regime*. CCSI Working Paper. New York: CCSI, 2019, <https://ccsi.columbia.edu/content/human-rights-law-and-investment-treaty-regime>.
- 17 Lise Johnson, Lisa Sachs, Brooke Güven, and Jesse Coleman. *Clearing the Path: Withdrawal of Consent and Termination as Next Steps for Reforming International Investment Law*. New York: CCSI, 2018, <https://ccsi.columbia.edu/content/clearing-path-withdrawal-consent-and-termination-next-steps-reforming-international>.
- 18 Lise Johnson, Lisa Sachs, Brooke Güven, and Jesse Coleman. *Costs and Benefits of Investment Treaties: Practice Considerations for States*. New York: CCSI, 2018, <https://ccsi.columbia.edu/content/costs-and-benefits-investment-treaties-practical-considerations-states>.