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In the course of that Committee’s work it had become evident that the growing arbitral case law was contributing to an increasingly elaborate body of international investment law. The proponents of the Study Group thus considered it timely to suggest the establishment of a study group to investigate whether the time was ripe for an attempt to formulate and summarize the main rules relating to investment law in a ‘codification’-type instrument. Their initial proposal made it very clear that the Study Group’s mandate should not extend to an attempt to partially or exhaustively codify rules of investment law. Rather, the focus of the Group’s work should be on the assessment of the ripeness of such an undertaking. Thus, the Study Group’s mandate concentrates on the elaboration of a ‘feasibility study’.


At these meetings crucial decisions concerning the work and working methods of the Group were taken. In addition to the periodic reports due for ILA Conferences, the Group decided that it would work towards the publication of a book containing the contributions of the Group’s members. The Group focused on identifying the main issues surrounding a potential ‘codification’ of investment law and investigating whether and in what form investment law may be ‘codified’. The contributions in this book, which contains the major output of the Study Group’s work, could lead to a recommendation that the ILA pursue the elaboration of an international soft law instrument on international investment.

The ILA has a long-standing tradition of formulating ‘Rules’, ‘Recommended Practices’, ‘Draft Articles’ and the like in an attempt to contribute to the codification and development of various fields of international law.

In the field of investment law, such a soft law instrument could provide a contemporary view of the state of the emerging and in several areas already settled jurisprudence of international investment law. Indeed, a significant contribution would be to identify those areas in which one can identify a jurisprudence constante. It could thereby serve tribunals, parties and counsel in helping to identify the current state of investment arbitral jurisprudence and scholarship (in the sense of Article 38 of the ICJ Statute). By objectively describing the current state of international investment law it could facilitate the identification of customary international law. Such an instrument could also assist governments in the negotiation and renegotiation of existing bilateral investment treaties.