
Index

- AANZFTA *see* ASEAN (Association of South East Asian Nations), FTA with Australia and New Zealand (AANZFTA)
- ACIFTA *see* Australia-Chile FTA (ACIFTA)
- Additional Facility rules of ICSID 111–12, 215, 219, 540
see also ICSID (International Centre for Settlement of Investment Disputes), jurisdiction
- adjustment clauses of investor-state contracts
see investor-state contracts, stabilization clauses
- Africa 6
- African Economic Community 352–3
- Arab Investment and Export Credit Guarantee Corporation (Dhamaan) 316–17
see also political risk insurance and investment guarantees
- Cotonou Agreement between EU and African, Caribbean and Pacific Group of States 2000 353–4
- EPAs between EU and African states 354
EU-ECOWAS EPA 356–7
see also economic partnership agreements (EPAs)
- FDI governance reforms 152
by African Union *see* African Union
by EAC *see* EAC (East African Community)
by ECOWAS *see* ECOWAS (Economic Community of West African States)
limitations of 164–5
national reforms 359–60
by SADC *see* SADC (Southern African Development Community)
Tripartite Free Trade Area initiative (COMESA, EAC and SADC) 163–4
- FDI inflows
claimed benefits of 337–9
history of 341–6
IIAs, relationship with 339, 361
incentives for 340
strategies for attracting 338
- FDI outflows 339
- IIAs 360–61
current number of 345
early BITs with African states 340, 343–4, 346–7
FDI inflows, relationship with 339, 361
history of 341–2, 343–6
'right to regulate' protections 347, 350, 352, 355, 358
substantive standards of BITs 346–52
see also international investment agreements (IIAs)
- ISDS
development objective of IIAs, relevance to 361, 362
ICSID membership 360
institutions 75, 122, 123, 125
scepticism towards 95–6, 107
see also developing countries; *under* individual African states
- African Union 352
- African Continental Free Trade Area initiative 163, 355–6
- PAIC *see* Pan-African Investment Code (African Union)
see also Africa
- Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS) 402
see also WTO (World Trade Organization)
- Agreement on Trade-Related Investment Measures 1994 (TRIMs) 44
see also WTO (World Trade Organization)
- ALBA (Bolivarian Alternative for the People of the Americas) free trade area 115, 117, 502
see also Latin America
- Algeria, investment law reforms 359
see also Africa
- Alvarez, José E. 108
- amicus curiae* participation in ISDS 546–7, 585, 615
- Anghie, Antony 343
- Annan, Kofi 336
- ANZCERTA *see* Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)

- applicable law rules for ISDS *see*
investor-state dispute settlement (ISDS),
applicable law
- Arab Investment and Export Credit Guarantee
Corporation (Dhama) 316–17
see also political risk insurance and
investment guarantees
- arbitration
ISDS *see* investor-state dispute settlement
(ISDS)
state-to-state disputes under IIAs 231–2,
423–4
- arbitrators' conflicts of interest
('double-hatting') 157, 162, 167, 222–3
see also investor-state dispute settlement
(ISDS)
- Argentina
BITs
with Italy 657–8
with US 666–7
economic crisis 647
ISDS cases *see* Argentina, ISDS
state measures taken in response 648,
650–51
see also financial crises
investment law reforms 501
ISDS 665
Abaclat v Argentina 570–71, 657–8, 660
Alemanni v Argentina 657, 658
Ambiente Ufficio S.p.A. v Argentina 215,
657–8, 660
Azurix v Argentina 584, 641
capital transfer restrictions, validity of
664–5
CMS Gas Transmission Co. v Argentina
285, 667, 670, 671
compensation for losses clauses,
application of 188
Continental Casualty Co. v Argentina
500, 643–4, 664–5, 668, 671, 679
defences based on non-precluded
measures clauses 665–8
economic crisis cases, overview 651–4
Enron Corp and Ponderosa Assets, L.P. v
Argentina 334, 667, 675
expropriation claims 661
FET violation claims 662–3
see also fair and equitable treatment
(FET) protections of IIAs
human rights counterclaims 584–5, 641,
666
see also Urbaser S.A. v Argentina
human rights/necessity defences 642–3,
643–4, 645, 668–72, 678–9
jurisdiction (whether sovereign bonds
'investments') 656–8
LG&E Energy Corp. v Argentina 500,
643, 664, 671, 679
public-private participation contracts as
basis 512
Sempra Energy International v Argentina
642–3, 667, 675
Suez v Argentina 137, 584, 641
Total S.A. v Argentina 182, 662, 663, 679
Urbaser S.A. v Argentina *see Urbaser*
S.A. v Argentina
see also Latin America
- Articles on State Responsibility (International
Law Commission) 448, 642
Article 23 on *force majeure* 672–6
Article 25 on necessity 668–72
Article 27 on consequences of invoking a
circumstance precluding wrongfulness
677
- ASEAN (Association of South East Asian
Nations)
Comprehensive Investment Agreement 2012
174, 367, 373, 374
FDI inflows 363–4
FTA negotiations with EU 380, 382, 383
FTA with Australia and New Zealand
(AANZFTA)
expropriation protections 403, 405, 406,
407, 408
see also expropriation protections of
IIAs, Australian and New Zealand
IIAs
FET protections 400
see also fair and equitable treatment
(FET) protections of IIAs
general exceptions 414, 415
ISDS under 419, 420–21, 423, 425, 427,
433
non-conforming measures 411
see also Asia
- Asia 6, 363, 387–9
ASEAN *see* ASEAN (Association of South
East Asian Nations)
Belt and Road regional development
initiative, China 387–8
IIAs
FET clauses 367
see also fair and equitable treatment
(FET) protections of IIAs
reform initiatives 371–6

- state-owned entities and sovereign wealth funds, provisions on 368–9
- umbrella clauses 368
- see also* international investment agreements (IIAs)
- ISDS
 - FET and judicial conduct, lessons offered 365–7
 - see also* fair and equitable treatment (FET) protections of IIAs
 - institutions 75, 122, 123, 125
 - ISDS reforms, implications for Asia 378–83
 - judicial rulings with likely persuasive authority 370–71
 - number of claims against Asian states 364–5
 - restrictions in IIAs 372–3
- Lima Declaration on Free Trade Area of the Asia-Pacific 2016 388
- Regional Comprehensive Economic Partnership (RCEP) agreement (under negotiation) 268, 388
- see also* developing countries; *under* individual Asian states
- Asian-African Legal Consultative Organization 122, 125
- Association of South East Asian Nations *see* ASEAN (Association of South East Asian Nations)
- AUSFTA *see* Australia-US FTA (AUSFTA)
- Australasia *see* Australia; New Zealand
- Australia 6–7
 - ANZCERTA *see* Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)
- BITs
 - with China 397–8, 399, 422
 - with Egypt 401
 - with Indonesia 418–19
 - with Mexico 395, 399, 402
 - with Sri Lanka 399, 402
 - with Turkey 395, 399, 402
 - with Vietnam 394
- EPA with Japan 395
 - expropriation protections 403, 408
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
 - free capital transfers under 187
 - general exceptions 414, 415
 - ISDS under 421
 - non-conforming measures 411
 - services trade under 251
- FTAs
 - with ASEAN and New Zealand *see* ASEAN (Association of South East Asian Nations), FTA with Australia and New Zealand (AANZFTA)
 - with Chile *see* Australia-Chile FTA (ACIFTA)
 - with China *see* China-Australia FTA (ChAFTA)
 - with Malaysia 395, 405, 408, 411, 414, 415, 421
 - with Singapore *see* Singapore-Australia FTA (SAFTA)
 - with South Korea *see* Korea-Australia FTA (KAFTA)
 - with Thailand *see* Thailand-Australia FTA (TAFTA)
 - with US *see* Australia-US FTA (AUSFTA)
- IIA framework 391–2, 432
 - expropriation protections *see* expropriation protections of IIAs, Australian and New Zealand IIAs
 - FET protections 397–401
 - see also* fair and equitable treatment (FET) protections of IIAs
 - general exceptions 413–17
 - ISDS provisions *see* Australia, ISDS
 - MFN obligations 394–7
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
 - non-conforming measures clauses 410–13
 - reform proposals 432–3
 - see also* international investment agreements (IIAs)
- ISDS 391
 - approach compared with New Zealand 419–22
 - consent to ISDS in IIAs 417–19
 - reform initiatives 422–32
 - reform proposals 433
 - scepticism towards 421
 - tobacco plain packaging policies, disputes concerning 257, 390–91, 421, 429
 - see also* tobacco plain packaging policies
- TPP
 - Australian opposition towards 390
 - Australian side agreements to 153, 419–20

- see also* Trans-Pacific Partnership Agreement 2016 (TPP)
- Australia-Chile FTA (ACIFTA) 395
 - expropriation protections 403, 408
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
 - general exceptions 415, 416
 - ISDS under 420–21, 423, 425, 428, 430
- Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) 400, 408
- Investment Protocol 393
 - expropriation protections 403, 404
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
 - general exceptions 414, 415, 416
 - ISDS provisions excluded 419, 422, 433
 - MFN obligations 396–7
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
- Australia-US FTA (AUSFTA)
 - expropriation protections 402, 404, 405, 407–8
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
- FET protections 398–9
 - see also* fair and equitable treatment (FET) protections of IIAs
 - general exceptions 415, 416
 - ISDS under 420
 - MFN obligations 395, 397
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
- authoritarian regimes, FDI to 146
- awards from ISDS *see* investor-state dispute settlement (ISDS), awards
- Bahamas 75
 - proposed BIT with Canada, impasse over ISDS clause and possible solution 120–21
 - see also* Caribbean region
- balancing clauses of investor-state contracts
 - see* investor-state contracts, stabilization clauses
- Bangladesh, *Saipem S.p.A. v Bangladesh* 197, 681
 - see also* Asia
- Barbados 75
 - see also* Caribbean region
- Belize, *British Caribbean Bank Ltd (Turks & Caicos) v Belize* (UNCITRAL) 258–61, 267
 - see also* Latin America; services trade and FDI, dispute settlement
- Belt and Road regional development initiative, China 387–8
 - see also* Asia; China
- Benin, BIT with Canada 350–52
 - see also* Africa
- bilateral investment treaties (BITs)
 - as credible commitments 21–2, 24
 - see also* political economy analysis of BITs
 - definition 96–7
 - developing countries, concluded with *see* developing countries, BITs concluded with
 - emergence of 16, 96, 343–4
 - ISDS clauses *see* investor-state dispute settlement (ISDS), ISDS clauses in IIAs
 - model BITs 161–3
 - Brazil, Cooperation and Facilitation Investment Agreement 161, 514–15, 568–9, 576
 - Canadian model *see* Canada, model BIT development-inspired models, scope for 121–2
 - Ecuador, CAITISA Alternative Model of Investment Treaty 519–20
 - environmental responsibility measures 163, 598
 - see also* environmental protection and FDI
 - Indian model 372, 376–7, 574, 632, 633–4
 - investments defined in 208–9, 210
 - see also* ‘investment’ concept
 - PAIC *see* Pan-African Investment Code (African Union)
 - SADC model 74, 75, 121–2, 164, 358, 576, 631, 633
 - see also* SADC (Southern African Development Community)
 - US model *see* United States, model BIT
 - number signed/ratified since 1959 2, 16, 17, 194, 341
 - number terminated between January 2016 and April 2017 34
 - political economy analysis of *see* political economy analysis of BITs

- political risk insurance as functional substitute for 33
 - see also* political risk insurance and investment guarantees
- reform, need for 34–5
 - see also* international investment agreements (IIAs), reform initiatives
- scope of protection *see* international investment agreements (IIA), scope of protection
- state-to-state disputes under 231–2
- substantive provisions *see* international investment agreements (IIAs), substantive provisions
- treaties with investment provisions compared with 153–4
 - see also* economic partnership agreements (EPAs); free trade agreements (FTAs)
- treaty-based dispute settlement *see* investor-state dispute settlement (ISDS)
- trend away from 152–3
- TWAIL regime bias critique of BITs system 107–9
 - see also* Third World approaches to international law (TWAIL)
- ‘weak’ and ‘strong’ BITs distinguished 24
 - see also* international investment agreements (IIAs)
- BITs *see* bilateral investment treaties (BITs)
- Bolivarian Alternative for the People of the Americas (ALBA) free trade area 115, 117, 502
 - see also* Latin America
- Bolivia
 - BITs, termination of 508
 - Calvo clause in Bolivian Constitution 81
- ISDS
 - ICSID, withdrawal from 74, 115, 502–3
 - national ISDS regime 510–11
 - pending ICSID claim against 504
 - Permanent Court of Arbitration claims brought against 506
- natural resource sovereignty measures 509–10
 - see also* Latin America
- bonds, sovereign *see* sovereign bonds
- Brazil
 - BITs
 - Cooperation and Facilitation Investment Agreements model 161, 514–15, 568–9, 576
 - reasons for entering into 27
 - ICSID Convention, failure to ratify 95
 - see also* Latin America
- Brexit, FDI implications
 - Asia, possible future UK trade deals with 384
 - FET protections, Brexit as potential breach of 169
 - see also* fair and equitable treatment (FET) protections of IIAs
 - UK membership of EU IIAs post-Brexit 168–9
 - see also* United Kingdom
- British Virgin Islands International Arbitration Centre (BVI IAC) 75–6, 123, 125
 - see also* Caribbean region
- Bulgaria, *Plama Consortium Ltd v Bulgaria* 636
 - see also* Central and Eastern Europe (CEE)
- Burkina Faso, FTA with Canada 603
 - see also* Africa
- Calvo Doctrine *see* diplomatic protection, Calvo Doctrine
- Cameroon
 - BIT with UK 348
 - BIT with US 349
 - see also* Africa
- Canada
 - FDI impact of NAFTA 556–7
 - history of FDI and international investment law in
 - pre-1980s 524–6
 - FTA with US, negotiations for 532–4
 - NAFTA, background to entry into 535–7
 - post-NAFTA 548–50, 560
- IIAs
 - BIT with Benin 350–52
 - BIT with Hong Kong, example of MFN clause 177
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
 - BIT with Mongolia 176–7, 184
 - CETA *see* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
 - FTA with Burkina Faso 603
 - model BIT *see* Canada, model BIT
 - NAFTA renegotiation, Canadian objectives 557
 - number of 538
 - post-NAFTA conclusion of 549

- proposed BIT with Bahamas, impasse over ISDS clause and possible solution 120–21
- see also* international investment agreements (IIAs)
- ISDS
 - under NAFTA *see* North American Free Trade Agreement (NAFTA), ISDS under
 - non-NAFTA experience 547
 - transparency of 546
 - with US abolished 232, 559
- model BIT 548, 550, 598
 - amicus curiae* participation 546–7
 - expropriation protection clause 543–4, 577
 - FET/minimum standard of treatment clause 184, 542
 - general exceptions 601
 - performance requirements 189–90
 - transparency of ISDS 546
- see also* North American Free Trade Agreement (NAFTA)
- capital transfers under IIAs 187–8, 664–5
 - see also* international investment agreements (IIAs)
- Caribbean region
 - CARIFORUM, EU IIAs with 453, 588, 593
 - Cotonou Agreement between EU and African, Caribbean and Pacific Group of States 2000 353–4
 - FDI inflows, data on 339
 - Free Trade of the Americas Agreement proposal 539
 - investment prospects in 494
 - ISDS institutions 75–6, 121, 123, 125
 - US-Dominican Republic-Central American FTA 539, 553–4
 - see also* developing countries; *under* individual Caribbean states
- carve-outs from scope of IIAs *see* exceptions and carve-outs from scope of IIAs
- Central and Eastern Europe (CEE) 7, 457–9, 491–3
 - Energy Charter Treaty, participation in 474
 - see also* Energy Charter Treaty
 - EU investment law reforms, implications for CEE Member States 480–81, 488–91, 493
 - see also* EU (European Union)
 - expropriations in 300, 462–3
 - history of FDI and international investment law in
 - early industrialization era 459–60
 - planned economy era 460–64
 - market liberalization era 1, 2, 16, 457, 464–7, 470–73, 492
 - human rights and rule of law commitments 466–7
 - see also* human rights and FDI
- IIAs
 - BITs with Western EU Member States 34, 459
 - impact on FDI 24, 25
 - neoliberal ideology influencing 470–73, 474–5
 - number of 474
 - substantive provisions 473–6
 - whether appropriate to states' needs 476–8
 - see also* international investment agreements (IIAs)
- ISDS 492
 - Dan Cake (Portugal) S.A. v Hungary* 487–8
 - intra-EU BITs, disputes based on 203–4, 488–91
 - ISDS clauses of IIAs 476
 - media regulation cases with inconsistent outcomes 484–5
 - number and types of cases 481–3
 - privatization policies, disputes concerning 475, 485–7
 - pro-investor bias of 491
 - see also* transition economies; *under* individual CEE states
- CETA *see* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
- ChAFTA *see* China-Australia FTA (ChAFTA)
- Chile
 - BIT with South Korea 372–3
 - FTA with Australia *see* Australia-Chile FTA (ACIFTA)
 - see also* Latin America
- China
 - Belt and Road regional development initiative 387–8
 - BITs
 - with Australia 397–8, 399, 422
 - impact on FDI in 24
 - see also* political economy analysis of BITs

- with New Zealand 393, 395, 398, 401–2, 417–18
- with Switzerland 265
- China – Certain Measures Affecting Electronic Payment Services* (WTO) 264–7
- see also* services trade and FDI, dispute settlement
- China International Economic and Trade Arbitration Commission (CIETAC) 75
- FDI inflow 364
- FTAs
 - with Australia *see* China-Australia FTA (ChAFTA)
 - with New Zealand *see* China-New Zealand FTA
 - with South Korea 188
- Hong Kong *see* Hong Kong
- poverty reduction linked to FDI 133
- see also* sustainable development and FDI
- Trilateral Investment Agreement with South Korea and Japan 368
- see also* Asia
- China-Australia FTA (ChAFTA) 397
 - general exceptions 415
 - ISDS under 421–2, 423, 426–7, 428, 432, 433
 - non-conforming measures 411–12
 - state-state dispute settlement 423
- China-New Zealand FTA 393, 396
 - expropriation protections 403, 404, 406, 407, 408
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
- FET protections 400
 - see also* fair and equitable treatment (FET) protections of IIAs
 - general exceptions clause 414, 415–16
 - ISDS under 422, 424, 427
 - non-conforming measures clause 412
 - services trade exception 252–3
 - see also* services trade and FDI
- choice of law rules for ISDS *see* investor-state dispute settlement (ISDS), applicable law
- climate change mitigation/adaptation, FDI contribution to 126–7, 138–42, 607, 608–9
- see also* environmental protection and FDI; sustainable development and FDI
- Colombia, law restricting access to ISDS 512–13
- see also* Latin America
- COMESA (Common Market for Eastern and Southern Africa)
 - Investment Agreement 574, 591, 630–31, 633
 - Tripartite Free Trade Area initiative (with EAC and SADC) 163–4
 - see also* Africa
- Common Market for Eastern and Southern Africa *see* COMESA (Common Market for Eastern and Southern Africa)
- comparative law studies on FDI 64–5
- see also* international investment law
- compensation available in ISDS *see* damages and remedies available in ISDS
- compensation for losses clauses of IIAs 188
- see also* international investment agreements (IIAs), substantive provisions
- Comprehensive and Progressive Trans-Pacific Agreement 2018 373, 549
- see also* Trans-Pacific Partnership Agreement 2016 (TPP)
- Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA) 45, 234, 436
 - appellate mechanism 549
 - environmental protection, labour and sustainable development measures 550, 589, 591, 594
 - exceptions and carve-outs 191, 579
 - national security based restrictions 369–70
 - sovereign debt restrictions 682
 - see also* exceptions and carve-outs from scope of IIAs
 - expropriation protection clause 179–80, 181, 454, 601–2
 - see also* expropriation protections of IIAs
- FDI liberalization chapter 453
- FET protection 549–50, 574–5, 611
- see also* fair and equitable treatment (FET) protections of IIAs
- full protection and security clause 187
- indigenous and socially marginalized peoples' protections 579
- investment court system proposal *see* EU (European Union), investment court system proposal
- Joint Interpretative Instrument 374, 375
- mediation mechanism 375

- MFN clause 178
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
- 'natural person' definition 174
- performance requirements prohibited 189
- 'right to regulate' protections 190–91, 550, 601
- services trade provisions 246, 250
 - see also* services trade and FDI
- sustainability impact assessment of 587–8
- 'tax veto' 616
- treaty shopping controls 175
 - see also* free trade agreements (FTAs)
- confidentiality of ISDS *see* investor-state dispute settlement (ISDS), confidentiality *versus* transparency
- conflicts of interest, arbitrators ('double-hatting') 157, 162, 167, 222–3
 - see also* investor-state dispute settlement (ISDS)
- consent to ISDS *see* investor-state dispute settlement (ISDS), consent to
- Continental Free Trade Area initiative (African Union) 163, 355–6
 - see also* Africa
- contracts for investment *see* investor-state contracts
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 *see* New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966 *see* ICSID Convention (Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966)
- Convention on Transparency in Treaty-based Investor-State Arbitration 2014 (Mauritius Convention) 169–70
- corporate social responsibility
 - human rights obligations derived from 625
 - IIA provisions on 350, 352, 361, 520, 591, 603–5
 - international guidelines on 48, 121, 145, 603, 605, 623, 630
 - see also* environmental protection and FDI; human rights and FDI; multinational enterprises (MNEs); sustainable development and FDI
- Correa, Rafael 107, 108, 113, 116, 507
- corruption or fraud as basis for rejecting ISDS claims 143, 144, 146, 163, 290–91, 585–6
 - see also* investor-state dispute settlement (ISDS)
- Costa Rica, trade policy factors most salient to investors 33
 - see also* Latin America
- costs awards 227
 - see also* investor-state dispute settlement (ISDS)
- Cotonou Agreement between EU and African, Caribbean and Pacific Group of States 2000 353–4
- counterclaims in ISDS
 - admissibility 223–4, 624, 629, 633, 666
 - environmental counterclaims 582, 602, 604–5
 - EU investment court proposal, whether counterclaims admissible 615–16
 - human rights counterclaims 633–4, 666
 - see also* investor-state dispute settlement (ISDS)
- Crawford, James 291
- credible commitments, BITS as 21–2, 24
 - see also* political economy analysis of BITS
- Critical Legal Studies 58
 - see also* international investment law, theoretical approaches
- Cyprus, sovereign debt crisis 647
 - ISDS cases, overview 654–5
 - state measures taken in response 648
 - see also* financial crises
- Czech Republic
 - BITS, number of 474
 - encouragement of FDI 470
 - ISDS
 - media regulation cases with inconsistent outcomes 484–5
 - Saluka Investments B.V. v Czech Republic* 180, 624, 629
 - Velvet Revolution 465, 484
 - see also* Central and Eastern Europe (CEE)
- damages and remedies available in ISDS
 - 226–7, 266
 - financial crises cases, defences successfully invoked 676–8
 - see also* financial crises, ISDS
- Hull formula ('prompt, adequate and effective' compensation standard) 181–2, 527–8, 613

- see also* investor-state dispute settlement (ISDS), awards
- decolonization as driver of FDI 13, 16, 75, 77, 85–6, 118, 341–5, 467
see also developing countries
- democracies, why preferred sites of FDI 15
see also expropriation risk assessment by investors
- denial of benefits clauses in IIAs 159, 175, 573, 591
see also international investment agreements (IIAs), scope of protection; ‘investor’ concept
- derogations from IIAs 190–91
see also international investment agreements (IIAs), scope of protection
- developing countries
BITs concluded with 16, 17, 97–8
development-inspired model BITs, scope for 75, 121–2
impact on FDI inflows 20–22, 23, 24, 25
reasons for entering *see* political economy analysis of BITs, why governments consent to BITs
- development objective of IIAs addressed in ISDS
call for 361, 362, 570–72
Salini test 210, 215, 571–2, 656, 657
- Doha Development Round of WTO negotiations, investment matters excluded from 44
see also WTO (World Trade Organization)
- FDI inflows to 11
BITs, impact of 20–22, 23, 24, 25
factors affecting 1, 12
law reforms facilitating 98–9
patterns of 133
positive and negative impacts of 76, 123–4, 127–30, 336–9
sustainable development impacts *see* sustainable development and FDI
- as FDI sources 16, 17, 127–8, 336–7, 339
- ISDS institutions 75–6, 121, 122–3
- ISDS scepticism 3–4, 93
African states 95–6, 107
see also Africa, ISDS
Latin American states 74–5, 94–5, 106–7, 112, 497–8
see also Latin America, ISDS
- need for more constructive approaches 75–7, 117–21, 125
- TWAIL regime bias critique *see* Third World approaches to international law (TWAIL), regime bias critique of FDI law
- multilateral investment court proposal, support for 34
- post-colonial efforts to protect economic sovereignty
decolonization as driver of FDI 13, 16, 75, 77, 85–6, 118, 341–5, 467
‘Grand Bargain’ motivation to conclude IIAs (economic development in exchange for sovereignty constraints) 458, 467–9, 492
in Latin American *see* Latin America, post-colonial efforts to protect economic sovereignty
natural resources sovereignty *see* permanent sovereignty over natural resources principle
NIEO initiative *see* New International Economic Order (NIEO) initiative
- transition economies *see* transition economies
see also Africa; Asia; Caribbean region; Latin America
- Dhaman (Arab Investment and Export Credit Guarantee Corporation) 316–17
see also political risk insurance and investment guarantees
- diplomatic protection 79, 276, 495–6
Barcelona Traction rule (no ‘diplomatic protection’ right of shareholders) 201–2, 462, 669
- Calvo Doctrine 74, 80–82, 195, 343, 495–6, 527
Calvo clauses in investor-state contracts 81, 195
see also investor-state contracts
Calvo clauses in Latin American state constitutions 81, 535
- Drago Doctrine 82–3, 495
- gunboat diplomacy, pre-World War I 79–80, 276, 300, 495
- US attitudes towards 82, 83, 84, 528
see also international relations; Latin America, post-colonial efforts to protect economic sovereignty
- discrimination protections of IIAs *see* most favoured nation (MFN) treatment

- provisions of IIAs; national treatment
- provisions of IIAs
- dispute settlement
 - ISDS *see* investor-state dispute settlement (ISDS)
 - state-to-state disputes under IIAs 231–2, 423
 - WTO system *see* WTO (World Trade Organization), dispute settlement system
- Doha Development Round of WTO
 - negotiations, investment matters excluded from 44
 - see also* WTO (World Trade Organization)
- Dolzer, Rudolf 57, 314, 321
- domestic law *see* municipal law
- Dominican Republic 75
 - US-Dominican Republic-Central American FTA 539, 553–4
 - see also* Caribbean region
- ‘double-hatting’ (arbitrators’ conflicts of interest) 157, 162, 167, 222–3
 - see also* investor-state dispute settlement (ISDS)
- Drago Doctrine 82–3
 - see also* diplomatic protection
- dual nationals, ISDS claim eligibility 206, 216
 - see also* ‘investor’ concept, nationality
- EAC (East African Community)
 - EAC Common Market 358
 - Tripartite Free Trade Area initiative (with COMESA and SADC) 163–4
 - see also* Africa
- East African Community *see* EAC (East African Community)
- Eastern Europe *see* Central and Eastern Europe (CEE)
- Economic Community of West African States
 - see* ECOWAS (Economic Community of West African States)
- economic crises *see* financial crises
- economic development agreements *see* investor-state contracts
- economic equilibrium clauses of investor-state contracts *see* investor-state contracts, stabilization clauses
- economic partnership agreements (EPAs) 4
 - Australia-Japan EPA, free capital transfer guarantee 187
 - compared with BITs 153–4
 - see also* bilateral investment treaties (BITs)
 - between EU and African states 354, 356–7
 - see also* international investment agreements (IIAs)
- ECOWAS (Economic Community of West African States)
 - benefits of FDI, views on 337
 - Community Rules on Investment 357–8, 362
 - EPA with EU 356–7
 - FDI governance reforms 164
 - see also* Africa
- Ecuador
 - BITs
 - CAITISA Alternative Model of Investment Treaty 519–20
 - scepticism towards 74, 108–9, 121
 - termination of 507–8, 511–12, 518–19
 - investment law reform proposals, CAITISA working group 518–20
- ISDS
 - environmental counterclaims raised in disputes 582
 - ICSID withdrawal 502–3, 506–7
 - law promoting mediation 515
 - laws restricting access to 511–12, 515
 - Occidental Petroleum Corp and Occidental Exploration and Production Co. v Ecuador* (ICSID) 106–7, 116, 117
 - Permanent Court of Arbitration claims brought against 505
 - scepticism towards 106–7, 113, 115–16, 117
 - natural resource sovereignty measures 510
 - see also* Latin America
- EFTA-Singapore FTA 253
- Egypt
 - BITs
 - with Australia 401
 - with Sweden 348–9
 - investment law reforms 359
- ISDS
 - Cairo Regional Centre for International Commercial Arbitration 110, 125
 - scepticism towards 96, 107
 - see also* Africa
- Energy Charter Treaty 476
- CEE state participation in 474
 - see also* Central and Eastern Europe (CEE)

- energy transition disputes under 582–3, 608, 611–12
- ISDS clause (Article 26) 198, 199, 212, 638–9
- mediation under 375–6
- tax carve-out 617
- umbrella clause (Article 10(1)) 287
- energy supply sustainability *see* sustainable development and FDI, energy supply sustainability (SDG 7)
- environmental protection and FDI 8, 617–18
 - climate change mitigation/adaptation 126–7, 138–42, 607, 608–9
 - environmental impacts of FDI 129
 - FDI policies as source of uncertainty for environmental protection 609–14
 - FDI policies to promote environmental protection 141–2, 147, 607–9
- IIAs for environmental protection
 - CETA, environmental protection measures 550
 - see also* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
 - corporate social responsibility provisions 350, 352, 361, 520, 591, 603–5
 - environmental clauses 590, 599–603
 - expropriation protections 601–2, 613
 - see also* expropriation protections of IIAs
 - FET protections 611–12
 - see also* fair and equitable treatment (FET) protections of IIAs
 - general exceptions 601, 616–17
 - see also* exceptions and carve-outs from scope of IIAs
 - host states' environmental responsibilities 608
 - model BITs, environmental protection measures 163, 598
 - NAFTA, environmental protection measures 536–7, 602
 - see also* North American Free Trade Agreement (NAFTA)
 - non-discrimination standards 602–3
 - see also* most-favoured nation (MFN) treatment provisions of IIAs; national treatment provisions of IIAs
 - objectives of environmentally-based IIA reforms 599
 - performance requirements 143–5, 189–90, 577–8, 591, 606–7
 - 'right to regulate' protections 601, 614
 - 'upholding level of protection' clauses of IIAs 592, 600
- ISDS, environmental protection issues 580–82, 596–8, 614–17
 - Allard v Barbados* 608
 - Bilcon v Canada* 582, 610–11
 - energy transition cases 582–3, 608, 611–12
 - environmental counterclaims 582, 602, 604–5
 - environmental veto or carve-out proposals 616–17
 - Ethyl Corp v Canada* 596, 609
 - Metalclad v Mexico* 182, 596–7, 609
 - Methanex Corp v United States* 546, 552, 581, 597, 610, 615
- multilateral environmental agreements, states' duties under 581, 600
- Performance Standards on Social and Environmental Sustainability (International Finance Corporation) 605, 606
- UN Principles for Responsible Investment in Agriculture and Food Systems 49, 605
 - see also* sustainable development and FDI
- EU (European Union) 7, 434–7, 456
 - Brexit, FDI implications *see* Brexit, FDI implications
 - CEE Member States *see* Central and Eastern Europe (CEE)
 - Cotonou Agreement between EU and African, Caribbean and Pacific Group of States 2000 353–4
 - EPAs between EU and African states 354
 - EU-ECOWAS EPA 356–7
 - see also* economic partnership agreements (EPAs)
- EU IIAs
 - with CARIFORUM 453, 588, 593
 - see also* Caribbean region
 - CETA *see* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
 - EU-Mexico FTA 552, 559
 - EU-Singapore FTA *see* EU-Singapore FTA
 - EU-South Korea FTA 588–9
 - EU-Vietnam FTA 234, 235, 250, 375, 378, 380, 454
 - expropriation protections 179–80, 181, 454, 479–80, 577

- see also* expropriation protections of IIAs
- FET protections 185–6, 454, 479–80, 549–50, 574–5
 - see also* fair and equitable treatment (FET) protections of IIAs
- non-discrimination standards 453, 480
 - see also* most-favoured nation (MFN) treatment provisions of IIAs; national treatment provisions of IIAs
- ongoing negotiations for 380, 382, 387
- performance requirements prohibited 189
- policy objectives of 451–2
- ‘right to regulate’ protections 190, 453, 454, 479, 550, 601
- sustainable development chapters 588–9
- Transatlantic Trade and Investment Partnership (TTIP) negotiations with US 555
- Eurozone sovereign debt crisis *see* Cyprus, sovereign debt crisis; Greece, sovereign debt crisis
- FDI made EU exclusive competence area by Lisbon Treaty 2007 34, 166, 434
 - aims of reform 153, 479
- CEE Member States, implications for 480–81, 488–91, 493
 - see also* Central and Eastern Europe (CEE)
- exceptions defined in Opinion 2/15 (*EU-Singapore Free Trade Agreement, Re* (ECJ)) 167, 379–80, 382, 436, 438–41, 442–3
- investment guarantees, implications for 317–18
 - see also* political risk insurance and investment guarantees
- ISDS implications *see* EU (European Union), ISDS
- Member State role in IIA negotiations, implications of 443
- new extra-EU BITs, implications for 446
- non-direct investments, EU competence over 440–41
- pre-existing BITs, implications for 168, 203–4, 434–5, 444–7, 488–91
- scope of EU’s FDI competence, controversies concerning 435–6, 437–42
- transport services excluded 438
- investment court system proposal 5, 167, 232, 431, 455, 480, 615
- Appellate Tribunal 236, 381
 - background to (concerns about ISDS) 233, 497–8
 - see also* investor-state dispute settlement (ISDS), key concerns
 - composition 235, 381–2
 - conflicts of interest safeguards 235–6
 - counterclaims, whether admissible 615–16
 - enforceability of decisions, drawbacks of system 236–8
 - EU law compatibility, forthcoming ECJ ruling on 491
 - jurisdiction 234–5
 - prospects of introduction 382–3
 - referral of disputes under arbitral institutions’ rules 236
- investment-related provisions of EU law 44
- ISDS 435
 - EU competence over ISDS 441–2
 - international responsibility and EU law issues respecting EU’s participation in 447–51
 - intra-EU BITs, disputes based on 203–4, 488–91
 - Member States’ duty to cooperate with EU institutions in 446
 - Regulation 912/2014 on managing financial responsibility linked to ISDS tribunals established by international agreements 435–6, 447, 450–51
- EU-Singapore FTA 234, 374
 - confirmed as mixed agreement in Opinion 2/15 (*EU-Singapore Free Trade Agreement, Re* (ECJ)) 167, 379–80, 382, 436, 438–41, 442–3
- expropriation protections 454
 - see also* expropriation protections of IIAs
- FET protections 454
 - see also* fair and equitable treatment (FET) protections of IIAs
- mediation mechanism 375
- prohibited subsidies 141
- exceptions and carve-outs from scope of IIAs 159, 175, 190–91
 - under CETA *see* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA), exceptions and carve-outs
 - general and national security exceptions 369–70, 374, 413–17
 - environmental protection 601, 616–17

- services trade agreements 261, 263
see also services trade and FDI
 tax vetoes and carve-outs 159, 191, 161–17
- illegality exclusions 210–12, 634–8
 for indigenous and socially marginalized peoples 412, 519–20, 537, 579
- non-conforming measures clauses, Australian and New Zealand IIAs 410–13
- non-precluded measures clauses 665–8
 ‘right to regulate’ protections *see* ‘right to regulate’ protections of IIAs
- for sustainable development promotion 578–9
see also sustainable development and FDI
- tobacco control carve-outs 428–9, 430
see also tobacco plain packaging policies
- see also* international investment agreements (IIAs), scope of protection
- expropriation protections of IIAs
 Australian and New Zealand IIAs 401–2, 404, 433
 identifying expropriations, relevant factors 405–7
 land and intellectual property rights 402–3
 property rights 404–5
 regulatory actions for public welfare objectives 407–9, 430
 subsidies 409–10
- British Caribbean Bank Ltd (Turks & Caicos) v Belize* 258–61, 267
- climate change measures vulnerable to challenge under 139
- compensation for losses clauses (war clauses) 188
- compensation obligation 295, 676–8
see also damages and remedies available in ISDS
- for environmental protection 601–2, 613
see also environmental protection and FDI
- examples
 Canadian model BIT 543–4, 577
 CETA 179–80, 181, 454, 601–2
see also Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
 EU IIAs 179–80, 181, 454, 479–80, 577
 NAFTA 182, 543–4, 602
see also North American Free Trade Agreement (NAFTA)
 US model BIT 179, 182, 543–4, 576
- financial crises, state measures as alleged expropriation 661–2
see also financial crises, ISDS
 ‘fine-tuning’ reforms to 160
- Hull formula (‘prompt, adequate and effective’ compensation standard) 181–2, 527–8, 613
- indirect expropriation
 definitions included in IIAs 373, 576–7
 distinguished from direct expropriation 179–80
 distinguished from regulatory measures 180–81
 police powers doctrine 180–81, 576–7, 597, 614
 sole effect doctrine 180
- in investment chapters 247–8
see also investment chapters of IIAs
- investor-state contracts as property 288–9
see also investor-state contracts
- for sustainable development promotion 576–7
see also sustainable development and FDI
see also international investment agreements (IIAs), substantive provisions
- expropriation risk assessment by investors 13–15
see also political economy analysis of BITs
- fair and equitable treatment (FET) protections of IIAs
 Australian and New Zealand IIAs 397–401
 Brexit as potential breach of 169
see also Brexit, FDI implications
- climate change measures vulnerable to challenge under 139
- differentiated standards, recognition of 162
- disputes alleging breach of, increasing number of 193
- environmental protection application 611–12
see also environmental protection and FDI
- examples 184
 ASEAN Comprehensive Investment Agreement 2012 367
 AUSFTA 398–9
see also Australia-US FTA (AUSFTA)

- Australia-Singapore FTA 400–401
- CETA 549–50, 574–5, 611
 - see also* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
- EU IIAs 185–6, 454, 479–80, 549–50, 574–5
- NAFTA 184, 365–6, 541–2
 - see also* North American Free Trade Agreement (NAFTA)
- financial crises, state measures as alleged
 - FET violations 662–3
 - see also* financial crises, ISDS
 - ‘fine-tuning’ reforms to 160, 575
 - full protection and security provisions, relationship with FET 186–7, 663
 - ISDS tribunal interpretations of FET standard 182–5, 365–7
 - legitimate expectations of investors *see* legitimate expectations of investors
 - minimum standard of treatment (customary international law), relationship with 184, 185–6, 247
 - stabilization clauses distinguished from 612
 - for sustainable development promotion 573–6
 - see also* sustainable development and FDI
 - see also* international investment agreements (IIAs), substantive provisions
- FDI *see* foreign direct investment (FDI)
- financial crises 9, 646–7
 - Argentina *see* Argentina, economic crisis
 - global financial crisis (2007–2008) 1, 151
 - Cyprus, sovereign debt crisis following
 - see* Cyprus, sovereign debt crisis
 - Greece, sovereign debt crisis following
 - see* Greece, sovereign debt crisis
 - international investment law reform proposals respecting 681–4
- ISDS 665
 - capital transfer restrictions, validity of 664–5
 - contractual claims 664
 - defences successfully invoked, legal consequences 676–8
 - force majeure* defences 672–6
 - human rights counterclaims 584–5, 641, 666
 - see also* *Urbaser S.A. v Argentina*
 - human rights/necessity defences 642–3, 643–4, 645, 668–72, 674, 676–9
 - jurisdiction (whether sovereign bonds ‘investments’) 655–60
 - see also* ‘investment’ concept
 - non-precluded measures clauses, defences based on 665–8
 - prohibition proposal 682
 - public international law approach, proposals for 679–81
 - state measures as alleged discrimination 663–4
 - see also* most-favoured nation (MFN) treatment provisions of IIAs; national treatment provisions of IIAs
 - state measures as alleged expropriation 661–2
 - see also* expropriation protections of IIAs
 - state measures as alleged FET violation 662–3
 - see also* fair and equitable treatment (FET) protections of IIAs
- Latin American sovereign debt crisis, 1980s 98, 496
- Mexico, 1980s 529
- sovereign debt restructuring, soft law instruments 48–9, 683
- state measures taken in response 647–8
 - ISDS respecting *see* financial crises, ISDS
 - sovereign debt crises, specific measures 649–51
- Venezuela, sovereign debt default military crisis 1901–1903 79–80, 82, 646
- financial instruments, whether ‘investments’ 655–60
 - see also* financial crises; ‘investment’ concept
- force majeure* defences in ISDS 672–6
 - see also* financial crises, ISDS
- foreign direct investment (FDI)
 - benefits to host and home states 127–8
 - debate on whether BITs attract FDI *see* political economy analysis of BITs, whether BITs attract FDI
 - definition and characteristics 11–12, 127, 437
 - ‘investment’ concept *see* ‘investment’ concept
 - ‘investor’ concept *see* ‘investor’ concept
 - to developing countries *see* developing countries

- environmental protection goals *see*
 environmental protection and FDI
 FDI law *see* international investment law
 growth since 1990s, policies influencing 1
 human rights goals *see* human rights and
 FDI
 ISDS *see* investor-state dispute settlement
 (ISDS)
 negative impacts in host and home states
 128–9
 sustainable development goals *see*
 sustainable development and FDI
 forum shopping, reforms to address 158–9,
 175, 423–4, 572–3
see also international investment
 agreements (IIAs), reform initiatives;
 investor-state dispute settlement
 (ISDS), reform initiatives
- France
*Channel Tunnel Group v France and
 United Kingdom* 627–8
 model BIT 634–5
- Franck, Susan D. 111
- fraud or corruption as basis for rejecting
 ISDS claims 143, 144, 146, 163,
 290–91, 585–6
see also investor-state dispute settlement
 (ISDS)
- free capital transfer guarantees of IIAs 187–8,
 664–5
see also international investment
 agreements (IIAs), substantive
 provisions
- free trade agreements (FTAs) 4
 AANZFTA *see* ASEAN (Association of
 South East Asian Nations), FTA with
 Australia and New Zealand
 (AANZFTA)
 ACIFTA *see* Australia-Chile FTA
 (ACIFTA)
 ANZCERTA *see* Australia-New Zealand
 Closer Economic Relations Trade
 Agreement (ANZCERTA)
 ASEAN Comprehensive Investment
 Agreement 2012 174, 367, 373, 374
 AUSFTA *see* Australia-US FTA (AUSFTA)
 CETA *see* Comprehensive Economic and
 Trade Agreement between EU and
 Canada 2016 (CETA)
 ChAFTA *see* China-Australia FTA
 (ChAFTA)
 China-New Zealand FTA *see* China-New
 Zealand FTA
- compared with BITs 153–4
see also bilateral investment treaties
 (BITs)
- EU-Singapore FTA *see* EU-Singapore FTA
 general and national security exceptions
 369–70, 374
- investment chapters *see* investment chapters
 of IIAs
- KAFTA *see* Korea-Australia FTA (KAFTA)
- NAFTA *see* North American Free Trade
 Agreement (NAFTA)
- New Zealand-South Korea FTA *see* New
 Zealand-South Korea FTA
- regional organizations, entry into 152
- SAFTA *see* Singapore-Australia FTA
 (SAFTA)
- services trade disciplines *see* services trade
 and FDI
- substantive provisions *see* international
 investment agreements (IIAs),
 substantive provisions
- TAFTA *see* Thailand-Australia FTA
 (TAFTA)
- TPP *see* Trans-Pacific Partnership
 Agreement 2016 (TPP)
- trend in favour of 152–3
see also international investment
 agreements (IIAs)
- free trade areas
 African Continental Free Trade Area
 initiative (African Union) 163, 355–6
 African Tripartite Free Trade Area initiative
 (COMESA, EAC and SADC) 163–4
 ALBA (Bolivarian Alternative for the
 People of the Americas) free trade area
 115, 117, 502
- friendship, commerce and navigation treaties
 341–2, 346–7, 496, 530
see also international investment
 agreements (IIAs)
- full protection and security provisions of IIAs
 186–7, 663
see also fair and equitable treatment (FET)
 protections of IIAs; international
 investment agreements (IIAs),
 substantive provisions
- G20
 Guiding Principles for Global Investment
 Policymaking 171
 sustainable development promotion 565
see also sustainable development and
 FDI

- Gallagher, Kevin P. 147
- GATS *see* services trade and FDI, General Agreement on Trade in Services (GATS)
- General Agreement on Tariffs and Trade 1994 (GATT), Article XX general exceptions *see* exceptions and carve-outs from scope of IIAs, general and national security exceptions
- General Agreement on Trade in Services (GATS) *see* services trade and FDI, General Agreement on Trade in Services (GATS)
- general exceptions to scope of IIAs *see* exceptions and carve-outs from scope of IIAs, general and national security exceptions
- Germany, BIT with Liberia 347–8
- Ghana
Biloune v Ghana 628
 Ghana Investment Promotion Centre Act 2013 359–60
Hamester v Ghana 636, 637–8
 strategies to attract FDI 338
see also Africa
- Global Compact (UN) 48, 605, 623
- global financial crisis (2007–2008) 1, 151
see also financial crises
- Gorbachev, Mikhail 464
- Greece, sovereign debt crisis 647
 BIT with Slovakia 659
- ISDS
 jurisdiction (whether sovereign bonds ‘investments’) 658–60
 overview of cases 654–5
Poštová banka AS v Greece 209, 655, 658–60
 state measures taken in response 651
see also financial crises
- ‘greenization’ of IIAs *see* environmental protection and FDI, IIAs for environmental protection
- guarantees, investment *see* political risk insurance and investment guarantees
- Guiding Principles on Business and Human Rights (UN) 48, 605, 623–4
see also human rights and FDI, investors’ human rights obligations
- Guzman, Andrew T. 26
- Haberler Report (*Trends in International Trade. A Report by a Panel of Experts*, 1958) 85
- Henkin, Louis 626
- Higgins, Rosalyn 295
- Hong Kong
 BITs
 with Canada, example of MFN clause 177
see also most-favoured nation (MFN) treatment provisions of IIAs
 with New Zealand 392, 395, 398, 401–2, 414, 418
 electronic payment services restrictions (*China – Certain Measures Affecting Electronic Payment Services* (WTO)) 264–7
see also services trade and FDI, dispute settlement
- ISDS
 Hong Kong International Arbitration Centre (HKIAC) 75, 125
 mediation 376
 third-party funding for international arbitration 384–5
see also China
- host state law *see* municipal law
- host state operational measures in IIAs 189–90
see also international investment agreements (IIAs), substantive provisions
- Hull formula (‘prompt, adequate and effective’ compensation standard) 181–2, 527–8, 613
see also damages and remedies available in ISDS; expropriation protections of IIAs
- human rights and FDI 8–9, 644–5
 CEE, human rights and rule of law commitments 466–7
see also Central and Eastern Europe (CEE)
- host states’ human rights obligations
 human rights counterclaims in ISDS 633–4, 666
 human rights/necessity defence in ISDS 642–3, 642–4, 643–4, 645, 668–72, 674, 676–9
versus investors’ treaty rights 183–4, 639–42
 scope of IIAs linked to 145–8
- IIAs for human rights promotion
 FET standard of EU IIAs, human rights-based formulation 185–6
see also fair and equitable treatment (FET) protections of IIAs

- human rights clauses 590, 619, 630–34
human rights performance requirements 143–5
indigenous and socially marginalized peoples, IIA exceptions and carve-outs for 412, 519–20, 537, 579
see also exceptions and carve-outs from scope of IIAs
labour rights protections 536–7, 550, 590–91
‘legality’ clauses, human rights application 634–8
scope linked to host state’s human rights performance 145–8
‘upholding level of protection’ clauses of IIAs 592
see also international investment agreements (IIAs)
- investors’ human rights 619, 620, 624–5
potential to restrict 145
- investors’ human rights obligations analysed in *Urbaser S.A. v Argentina* 605, 624–7, 638
see also *Urbaser S.A. v Argentina* Guiding Principles on Business and Human Rights (UN) 48, 605, 623–4
human rights clauses in IIAs 590, 619, 630–34
PAIC on 164, 604, 631–2, 632–3
see also Pan-African Investment Code (African Union)
- recognition by UN human rights agencies 621–3
UN’s work to develop binding instrument on 2, 622
see also corporate social responsibility
- ISDS 2, 583–5, 679–80
as applicable law matter 620, 629, 638–44, 645
human rights clauses in IIAs, enforceability 632–3
human rights counterclaims 633–4, 666
human rights/necessity defences 642–3, 643–4, 645, 668–72, 674, 676–9
indigenous and socially marginalized peoples’ rights 628
‘legality’ clauses in IIAs, enforceability 636–8
tribunals’ jurisdiction on human rights matters, decisions on 627–9
Urbaser S.A. v Argentina *see* *Urbaser S.A. v Argentina*
- Hungary
investment law
early industrialization era 459–60, 465
reforms 478
- ISDS
ADC Affiliate Ltd and ADC & ADMC Management Ltd v Hungary 486–7
Dan Cake (Portugal) S.A. v Hungary 487–8
see also Central and Eastern Europe (CEE)
- ICSID (International Centre for Settlement of Investment Disputes) 5, 110–11, 215
African state members 360
applicable law 213, 217, 218, 638
contractual claims 280–85
see also investor-state contracts, ISDS for contractual claims
- awards
annulment 228, 229–30
appeal or judicial review unavailable 217, 225, 230
confidentiality of 30, 224
see also investor-state dispute settlement (ISDS), confidentiality *versus* transparency
definition 225
EU investment court decisions as 236, 237–8
see also EU (European Union), investment court system proposal
interpreting stabilization clauses 296–7
recognition and enforcement 217–18, 225–6, 230–31
see also investor-state dispute settlement (ISDS), awards
- data on ICSID claims 18, 19, 255–6
EU investment court, disputes referable under ICSID rules 236
see also EU (European Union), investment court system proposal
- frustration of proceedings, measures to prevent 216–17
- ICSID clauses, enforcement 27
ICSID Convention *see* ICSID Convention (Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966)
- jurisdiction 115–16, 201, 204, 206, 349, 417, 627
Additional Facility rules 111–12, 215, 219, 540

- 'investment' concept, objective and subjective approaches to determining 209–10, 214–15
 - see also* 'investment' concept
 - Salini* test 210, 215, 571–2, 656, 657
 - Secretary-General's screening power 216
 - see also* investor-state dispute settlement (ISDS), jurisdiction
- Latin American states' relationship with ICSID proceedings against Latin American states 113–14, 498–501
 - participation in regime 97–8
 - pending claims against Venezuela and Bolivia 503–5
 - scepticism towards 95, 112, 497–8
 - scope to refer disputes to Caribbean institutions 123, 125
 - termination of BITs as anti-ICSID weapon 507–9
 - 'Tokyo No' rejection of ICSID Convention (1964) 95, 496, 529
 - withdrawals from 74–5, 98, 99, 113, 114, 115–17, 376, 502–7
 - see also* Latin America, ISDS
 - municipal law role in 43
 - procedural rules *see* investor-state dispute settlement (ISDS), procedural rules reform initiatives 378–9, 383
 - TWAIL regime bias critique of 111–18
 - see also* Third World approaches to international law (TWAIL)
 - see also* investor-state dispute settlement (ISDS)
- ICSID Convention (Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966) 47, 110, 193, 214
 - Article 25: jurisdiction 115–16, 201, 204, 206, 349, 417, 627
 - Article 42: applicable law 213, 217, 218, 280, 283, 285, 638
 - Article 52: annulment of awards 229–30
 - background to 531
 - ISDS clauses in IIAs, inspiration for 198–9
 - see also* ICSID (International Centre for Settlement of Investment Disputes)
- IIAs *see* international investment agreements (IIAs)
- India
 - BITs
 - interpretative statements on 375
 - model BIT 372, 376–7, 574, 632, 633–4
 - FDI inflow 364
- ISDS
 - claims brought against 364–5, 366, 372
 - scepticism towards 34
 - see also* Asia
 - indigenous and socially marginalized peoples IIA exceptions and carve-outs for 412, 519–20, 537, 579
 - see also* exceptions and carve-outs from scope of IIAs
 - rights protected in ISDS 628
- indirect expropriation *see* expropriation
 - protections of IIAs, indirect expropriation
- Indonesia
 - BITs
 - with Australia 418–19
 - with Netherlands, termination of 376
 - with Singapore, termination of 377
 - ISDS, scepticism towards 34
 - see also* Asia
- infrastructure sustainability, FDI contribution to 134–8, 577–8
 - see also* sustainable development and FDI
- insolvency of states *see* financial crises
- insurance, political risk *see* political risk insurance
- International Bar Association
 - Investor-State Mediation Rules 2012 376
 - rules and guidelines on FDI regulation 47–8
 - Rules on the Taking of Evidence in International Arbitration 379
- International Centre for Settlement of Investment Disputes *see* ICSID (International Centre for Settlement of Investment Disputes)
- International Chamber of Commerce 110, 219
 - see also* investor-state dispute settlement (ISDS)
- international investment agreements (IIAs) 4
 - in Africa *see* Africa, IIAs
 - in Asia *see* Asia, IIAs
 - in Australia *see* Australia, IIA framework
 - in CEE *see* Central and Eastern Europe (CEE), IIAs
 - EU IIAs *see* EU (European Union), EU IIAs
 - frames and framing
 - private international law frame 60–61
 - public international law frame 60
 - history of IIA regime 150–51, 341–4
 - investment chapters *see* investment chapters of IIAs

- ISDS clauses *see* investor-state dispute settlement (ISDS), ISDS clauses in IIAs
- key concerns 155
- broad and vague substantive provisions 155–6
 - fragmentary and multilayered IIA system 171–2
 - ISDS concerns *see* investor-state dispute settlement (ISDS), key concerns
- as most significant source of FDI law 2
- in New Zealand *see* New Zealand, IIA framework
- obsolescing bargains, perceived need for IIAs to protect against 135–6
- reform initiatives 191–2
- in Africa *see* Africa, FDI governance reforms
 - in Asia 371–6
 - drafting innovations 162–3
 - environmental protection *see* environmental protection and FDI, IIAs for environmental protection
 - in the EU 166–9
 - human rights promotion *see* human rights and FDI, IIAs for human rights promotion
 - ISDS reforms *see* investor-state dispute settlement (ISDS), reform initiatives
 - in Latin America 165–6
 - mediation, promotion of 375–6
 - model BITs *see* bilateral investment treaties (BITs), model BITs
 - multilateral investment policy initiatives 16, 151, 169–71
 - to scope of IIAs 158–9
 - see also* international investment agreements (IIAs), scope of protection
 - to substantive provisions 159–60, 575
 - sustainable development promotion *see* sustainable development and FDI, IIAs for sustainable development promotion
 - treaty shopping, reforms to address 158–9, 175, 423–4, 572–3
 - UNCTAD ‘roadmap’ on IIA reform 158 *see also* UNCTAD (UN Conference on Trade and Development)
- scope of protection
- exceptions and carve-outs *see* exceptions and carve-outs from scope of IIAs
 - ‘investment’ concept *see* ‘investment’ concept
 - ‘investor’ concept *see* ‘investor’ concept
 - linked to host state’s good governance performance 145–8
 - non-precluded measures clauses 665–8
 - performance requirements 143–5, 189–90, 577–8, 591, 606–7
 - reform initiatives 158–9
 - shareholders’ ISDS claims 201–2
- services trade agreements *see* services trade and FDI
- substantive provisions
- compensation for losses clauses (war clauses) 188
 - denial of benefits clauses 159, 175, 573, 591
 - expropriation protections *see* expropriation protections of IIAs
 - FET protections *see* fair and equitable treatment (FET) protections of IIAs
 - free capital transfer guarantees 187–8, 664–5
 - full protection and security provisions 186–7
 - host state operational measures 189–90
 - ISDS clauses *see* investor-state dispute settlement (ISDS), ISDS clauses in IIAs
 - non-discrimination standards *see* most-favoured nation (MFN) treatment provisions of IIAs; national treatment provisions of IIAs
 - performance requirements 143–5, 189–90, 577–8
 - ‘right to regulate’ protections *see* ‘right to regulate’ protections of IIAs
 - survival after IIA termination 203–4, 377
 - umbrella clauses 159, 212–13, 287–8, 368, 664
 - ‘upholding level of protection’ clauses 592, 600
- trends
- design and investment policymaking 151–5
 - growth and proliferation 1, 151
- types
- BITs *see* bilateral investment treaties (BITs)
 - EPAs *see* economic partnership agreements (EPAs)
 - friendship, commerce and navigation treaties 341–2, 346–7, 496, 530

- FTAs *see* free trade agreements (FTAs)
- mega-regional trade agreements *see*
 - mega-regional trade agreements
- PTAs *see* preferential trade agreements (PTAs)
- Trade and Investment Framework Agreements (US) 555
- international investment arbitration
 - ISDS *see* investor-state dispute settlement (ISDS)
 - state-to-state disputes under IIAs 231–2, 423–4
- international investment law 3, 39–41
 - characteristics 1, 40
 - development since 1970s 1–2
 - ISDS *see* investor-state dispute settlement (ISDS)
 - methodologies
 - black letter legal analysis 62–4
 - comparative law 64–5
 - empirical legal studies 68–9
 - law and economics approaches 66–7
 - law and history approaches 67–8
 - law and politics approaches 67
 - law and society approaches 65–6
 - principles 46
 - research questions 49–50
 - legal and non-legal research questions distinguished 50–52
 - on *lex ferenda* (law as it should be) 55–7
 - on *lex lata* (law as it stands) 52–5, 63
 - micro- and macro-legal questions distinguished 52
 - sociological questions 51
 - suggestions for further research 71, 142–3
 - see also* political economy analysis of BITs, future research agenda
 - sources *see* international investment agreements (IIAs); investor-state contracts
 - terminology 40–41
 - theoretical approaches 57–8
 - Critical Legal Studies 58
 - frames and framing 59–62
 - public law approaches 61–2
 - suggested alternatives 71
 - TWAIL 3, 58
 - see also* Third World approaches to international law (TWAIL)
 - as transnational legal order 41–2
 - challenges posed 70
 - domestic law 42–3
 - international law 43–7, 60
 - see also* WTO (World Trade Organization)
 - soft law instruments 47–9, 683
- international law
 - international investment law *see* international investment law
 - international relations *see* international relations
 - investor-state contracts, application to *see* investor-state contracts, international law application to
 - ISDS in financial crisis cases, proposals for a public international law approach 679–81
 - see also* financial crises, ISDS
 - ISDS, public international law frame 60
 - see also* investor-state dispute settlement (ISDS)
 - law of treaties *see* Vienna Convention on the Law of Treaties 1969
 - multilateral environmental agreements, states' duties under 581, 600
 - see also* environmental protection and FDI
 - state responsibility *see* Articles on State Responsibility (International Law Commission)
- International Monetary Fund 45–6, 87, 342, 489, 646, 682–3
- international relations 19, 67
 - diplomatic protection *see* diplomatic protection
 - political economy analysis of BITs *see* political economy analysis of BITs
 - TWAIL *see* Third World approaches to international law (TWAIL)
 - see also* international law
 - internationalization theory 277–9
 - see also* investor-state contracts, ISDS for contractual claims
- interstate disputes
 - under BITs 231–2
 - WTO dispute settlement *see* WTO (World Trade Organization), dispute settlement system
- investment chapters of IIAs 246–7
 - EU negotiated, characteristics of 166
 - expropriation protections 247–8
 - see also* expropriation protections of IIAs
 - ISDS provisions 248, 251–2
 - see also* investor-state dispute settlement (ISDS)

- minimum standard of treatment 247
see also minimum standard of treatment
- NAFTA (Chapter 11) 537, 540
 renegotiation of, objectives of Canada, Mexico and US 557–9, 560–61
see also North American Free Trade Agreement (NAFTA)
- services trade agreements, types of
 relationship with 248–54
see also services trade and FDI
- sustainable development
 sustainability impact assessment of
 investment chapters 147–8, 587–8, 593
 sustainable development provisions 588–94
see also sustainable development and FDI
see also international investment agreements (IIAs)
- ‘investment’ concept 173–4, 208–9
- ICSID tribunals, objective and subjective approaches to determining 209–10, 214–15
see also ICSID (International Centre for Settlement of Investment Disputes), jurisdiction
- illegality exclusions 210–12, 634–8
- link with development objective of IIAs, call for 361, 362, 570–72
see also sustainable development and FDI
- model BIT definitions 208–9, 210
- Salini* test (identification of investments for ICSID proceedings) 210, 215, 571–2, 656, 657
- sovereign bonds, whether ‘investments’ 655–60
see also financial crises, ISDS
- sovereign debt, proposal to exclude from ‘investment’ definition 682
see also financial crises
- three approaches to defining 570–71
see also international investment agreements (IIAs), scope of protection; investor-state dispute settlement (ISDS)
- investment contracts *see* investor-state contracts
- investment court proposals
 EU court system *see* EU (European Union), investment court system proposal
 multilateral court 5, 34, 170, 238–40
see also investor-state dispute settlement (ISDS)
- investment guarantees *see* political risk insurance and investment guarantees
- ‘investor’ concept 572
- denial of benefits clauses restricting 159, 175, 573, 591
- nationality
 criteria, juridical persons 174–5, 206–7, 573
 criteria, natural persons 174
 dual/multiple nationality 206, 216
 effective nationality principle, role of 205–6
 ISDS tribunal’s role to determine 205
 requirements *ratione temporis* 207–8
 shareholders’ ISDS claims 201–2
 state-owned entities/sovereign wealth funds as 368–70, 374
 treaty shopping, reforms to address 158–9, 175, 423–4, 572–3
see also international investment agreements (IIAs), scope of protection; investor-state dispute settlement (ISDS)
- investor-state contracts 2, 5, 298
 Calvo clauses 81, 195
 characteristics 271–3
 domestic law governing 42–3
 grounds invalidating 289–92
 international law application to 273–4
 legitimate expectations doctrine 182–4, 185–6, 281–2, 286, 287–8
 municipal law, interaction with 273–4, 280–85, 286, 290–91, 298
 peremptory norms 289–92
 via ISDS *see* investor-state contracts, ISDS for contractual claims
- ISDS for contractual claims 212–13, 274–7
 applicable law 280–85
Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v Pakistan 261–3, 267
see also services trade and FDI, dispute settlement
- financial crisis cases 664
see also financial crises, ISDS
- internationalization theory 277–9
 interpreting stabilization clauses 296–7
- political risk insurance and investment guarantees *see* political risk insurance and investment guarantees
- as property 288–9
see also expropriation protections of IIAs

- sovereign bonds
 - collective action clauses (CACs) in 650–51, 654, 683
 - whether ‘investments’ 655–60
 - see also* financial crises, ISDS; ‘investment’ concept
- stabilization clauses 292–3
 - FET protections distinguished from 612
 - see also* fair and equitable treatment (FET) protections of IIAs
 - interpretation of 295–7
 - main forms of 293–4
 - validity and legal effects 294–5
- investor-state dispute settlement (ISDS) 2, 4–5, 18–19, 22, 24, 27–37, 44, 47, 50–51, 61, 65–7, 136–40, 143–6, 155, 157, 160–63, 166–7, 173, 193–40, 248, 364, 375, 381, 384, 390, 417–32, 435, 458, 494–522, 614–17, 634
- amicus curiae* participation 546–7, 585, 615
- applicable law 213, 217, 218, 638–9
 - contractual claims 280–85
 - see also* investor-state contracts, ISDS for contractual claims
 - human rights claims as applicable law matter 620, 629, 638–44
 - see also* human rights and FDI, ISDS
- awards
 - costs 227
 - damages and remedies *see* damages and remedies available in ISDS
 - enforcement, judicial challenges 371
 - EU investment court decisions as 236, 238
 - see also* EU (European Union), investment court system proposal
 - ICSID awards *see* ICSID (International Centre for Settlement of Investment Disputes), awards
 - non-ICSID awards, grounds for setting aside 229
 - precedential effect of 228–9, 680–81
 - recognition and enforcement, ICSID and non-ICSID awards distinguished 217–18, 219–20, 225–6, 230–31
- confidentiality *versus* transparency 224–5, 232
 - Australian and New Zealand IIAs, ISDS transparency reforms 425–7
- confidential ICSID awards, factors affecting 30
- ISDS under NAFTA 544–6
 - see also* North American Free Trade Agreement (NAFTA), ISDS under Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration 2014 169–70, 225, 239
 - UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 169, 224–5, 379
- consent to
 - Australian and New Zealand IIAs 417–19
 - conditional consent 221
 - investors’ acceptance of ISDS clause offers 203–4
 - ISDS clauses in IIAs as source of consent 199–201
 - treaty claims *versus* contractual claims 212–13
 - see also* investor-state dispute settlement (ISDS), jurisdiction
- contractual claims *see* investor-state contracts, ISDS for contractual claims
- corruption or fraud as basis for rejecting claims 143, 144, 146, 163, 290–91, 585–6
- counterclaims *see* counterclaims in ISDS
- defences in financial crisis cases *see* financial crises, ISDS
- effects on FDI inflows 29–30, 35
- environmental protection issues *see* environmental protection and FDI, ISDS, environmental protection issues
- EU involvement in *see* EU (European Union), ISDS
- evolution, need for research on 35–7
- financial crisis cases *see* financial crises, ISDS
- frames and framing
 - private international law frame 60–61
 - public international law frame 60
 - public law frame 61–2
- history of 194–9, 276–8, 342–3
 - see also* diplomatic protection
- human rights protection via *see* human rights and FDI, ISDS
- industry variations in recourse to 36, 37
- institutions
 - in Africa 75, 122, 123, 125
 - in Asia 75, 122, 123, 125
 - in Caribbean region 75–6, 121, 123, 125
 - ICSID *see* ICSID (International Centre for Settlement of Investment Disputes)

- International Chamber of Commerce 110, 219
- London Court of International Arbitration 219
- Permanent Court of Arbitration 43, 219
- Stockholm Chamber of Commerce 110, 219
- UNASUR (Union of South American Nations) Centre for the Settlement of Investment Disputes 166, 516–18
- UNCITRAL *see* UNCITRAL (UN Commission on International Trade Law)
- ISDS clauses in IIAs 199–201
 - examples 199
 - friendly settlement clauses 221–2
 - inspired by ICSID Convention 198–9
 - see also* ICSID Convention (Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966)
 - in investment chapters 248, 251–2
 - see also* investment chapters of IIAs
 - as source of consent to ISDS 199–201
 - survival of IIA's termination 203–4
 - see also* international investment agreements (IIAs)
- ISDS risk, effect on government decisions to enter into BITs 28
 - see also* political economy analysis of BITs
- jurisdiction
 - exceptions and carve-outs from scope of IIAs *see* exceptions and carve-outs from scope of IIAs
 - ICSID claims *see* ICSID (International Centre for Settlement of Investment Disputes), jurisdiction
 - 'investment' concept *see* 'investment' concept
 - 'investor' concept *see* 'investor' concept
 - shareholders' ISDS claims 201–2
 - see also* investor-state dispute settlement (ISDS), consent to
- key concerns
 - arbitrators' conflicts of interest ('double-hatting') 157, 162, 167, 222–3
 - inconsistent decisions 156, 228–9, 233–4, 484–5, 680–81
 - lack of effective appeal or review mechanisms 112–13, 156, 234
 - lack of transparency *see* investor-state dispute settlement (ISDS), confidentiality *versus* transparency of Latin American states 497–8
 - see also* Latin America, ISDS
 - model BITs, measures to address 162–3
 - pro-investor bias 233, 491, 597
 - 'regulatory chill' effect 29–31, 37, 616, 665
 - see also* 'right to regulate' protections of IIAs
 - Western bias 106–7, 109, 111–18, 157
- MFN treatment of ISDS provisions, concerns about 159–60, 178–9
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
- municipal law role in 43
- necessity defence 642–3, 643–4, 645, 668–72, 674, 676–9
 - see also* financial crises, ISDS; human rights and FDI, ISDS
- obsolescing bargain theory case for 136
- parallel ISDS and WTO disputes 256–7
 - see also* WTO (World Trade Organization), dispute settlement system
- as political risk management mechanism 18
- procedural rules
 - arbitrator selection procedure 222–3
 - counterclaims, admissibility of 223–4, 624, 629, 633, 666
 - see also* counterclaims in ISDS
 - ICSID proceedings, anti-frustration measures 216–17
 - procedural prerequisites 221–2
- public-private partnerships, claims by investors in 137–8
- reform initiatives
 - in Australia and New Zealand 422–32
 - EU investment court system proposal *see* EU (European Union), investment court system proposal
 - exceptions and carve-outs *see* exceptions and carve-outs from scope of IIAs
 - frivolous claims, measures against 378, 553
 - ICSID reforms 378–9, 383
 - see also* ICSID (International Centre for Settlement of Investment Disputes)
 - to ISDS scope and procedures 160–61
 - in Latin America 166, 513–21

- mediation, IIA provisions promoting 375–6
- multilateral investment court proposal 5, 34, 170, 238–40
- public international law approach, proposals for 679–81
- sustainable development promotion *see* sustainable development and FDI, ISDS for sustainable development promotion
- treaty shopping, reforms to address 158–9, 175, 423–4, 572–3
- scepticism towards
 - African states 95–6, 107
 - Australia 421
 - Latin American states 74–5, 94–5, 106–7, 112–13, 115–16, 117, 497–8
 - see also* ICSID (International Centre for Settlement of Investment Disputes), Latin American states
 - TWAIL regime bias critique 106–7, 109, 111–18, 157
 - see also* Third World approaches to international law (TWAIL), regime bias critique of FDI law
 - United States 232
- services trade disputes *see* services trade and FDI, dispute settlement
- shareholders' claims 201–2
- third-party funding developments 384–5
- tobacco plain packaging policies, disputes concerning 257, 390–91, 421, 429
 - see also* tobacco plain packaging policies
- Investor-State Mediation Rules 2012 (International Bar Association) 376
- Iran
 - Anglo-Iranian Oil Co. nationalization 88, 197
 - BIT with Slovakia 162, 604
 - expropriations 463
 - Iran-US Claims Tribunal 209, 238
 - Sapphire International Petroleum Ltd v National Iranian Oil Co.* 278–9
 - see also* Asia
- ISDS *see* investor-state dispute settlement (ISDS)
- Italy, BIT with Argentina 657–8
- Jamaica, Mona International Centre Arbitration and Mediation (MICAM) 75–6, 123, 125
 - see also* Caribbean region
- Japan
 - EPAs
 - with Australia *see* Australia, EPA with Japan
 - with Malaysia 252
 - with Philippines 254
 - with Singapore 254
 - FTA with Switzerland 251
 - multilateral investment court proposal, opposition to 238
 - Trilateral Investment Agreement with China and South Korea 368
 - see also* Asia
- Jessup, Philip 42
- jurisdiction of ISDS tribunals *see* investor-state dispute settlement (ISDS), jurisdiction
- Kantor, Mark 334
- Kazakhstan, BIT with Uzbekistan 635
 - see also* Asia
- Kenya, investment law 360
 - see also* Africa
- Keohane, Robert O. 19
- Korea *see* South Korea
- Korea-Australia FTA (KAFTA) 395
 - expropriation protections 403, 405, 408, 409
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
 - general exceptions 415
 - ISDS under 421, 423, 425–6, 426–7, 428, 430, 432
 - state-state dispute settlement 423
- labour rights protections of IIAs 536–7, 550, 590–91
 - local content requirements 124, 137, 577, 578
 - see also* human rights and FDI; sustainable development and FDI
- Latin America 7–8, 521–2
 - ALBA (Bolivarian Alternative for the People of the Americas) free trade area 115, 117, 502
- BITs
 - ISDS clauses 509
 - scepticism towards 74, 108–9, 121
 - termination of 507–9
 - expropriations in 300
 - FDI governance reforms

- 1980s-90s 496–7
 regional economic integration 165–6, 514
 Southern Observatory on Investment and Transnational Corporations 520–21
 FDI inflows before World War I 13
 Free Trade of the Americas Agreement
 proposal 539
 investment prospects in 494
 ISDS
 ICSID relations *see* ICSID (International Centre for Settlement of Investment Disputes), Latin American states' relationship with
 ISDS clauses in BITs 509
 ISDS in Caribbean institutions, scope to use 123, 125
 national laws restricting access to 510–13, 515
 reform initiatives 166, 513–21
 scepticism towards 74–5, 94–5, 106–7, 112–13, 115–16, 117, 497–8
 UNASUR (Union of South American Nations) Centre for the Settlement of Investment Disputes 166, 516–18
 MERCOSUR 165, 514
 Pacific Alliance 165–6
 post-colonial efforts to protect economic sovereignty
 diplomatic protection *see* diplomatic protection
 national economic control (NEC) model 77, 78–80, 84, 86
 natural resource sovereignty measures 14, 509–10
 sovereign debt crisis, 1980s 98, 496
 see also financial crises
 US-Dominican Republic-Central American FTA 539, 553–4
 see also developing countries; *under* individual Latin American states
 Lauder, Ronald 470, 484
 law of FDI *see* international investment law
 legal scholarship *see* international investment law
 legitimate expectations of investors 182–4, 575
 under EU IIAs 185–6
 versus host states' human rights obligations 183–4, 639–42
 see also human rights and FDI
 protected by general international law 281–2, 286, 288, 679
 SAFTA's FET protections, reference to 400–401
 see also Singapore-Australia FTA (SAFTA)
 see also fair and equitable treatment (FET) protections of IIAs
 Liberia
 BIT with Germany 347–8
 Friendship and Commerce Treaty with Switzerland 346–7
 see also Africa
 Libya
 arbitration clauses, vacillation on the validity of 96, 97
 oil arbitration cases, 1970s 277
 Texaco Overseas Petroleum Co. and California Asiatic Oil Co. v Libya 93
 see also Africa
 loan contracts distinguished from investor-state contracts 272–3
 see also investor-state contracts
 local content requirements of IIAs 124, 137, 577, 578
 see also sustainable development and FDI
 London Court of International Arbitration 219
 see also investor-state dispute settlement (ISDS)
 Malaysia
 EPA with Japan 252
 FTAs
 with Australia 395, 405, 408, 411, 414, 415, 421
 with New Zealand 403, 408, 411, 415–16, 422, 424
 see also Asia
 Malmström, Cecilia 381, 383
 market access provisions of services trade agreements 245
 of GATS 245, 260
 see also services trade and FDI
 Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration 2014 169–70, 225, 239
 Mauritius, investment law reforms 359, 360
 see also Africa
 mediation
 IIA provisions promoting 375–6
 promoted in Ecuador 515
 see also investor-state dispute settlement (ISDS)
 mega-regional trade agreements 45, 53, 479

- CETA *see* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
- TPP *see* Trans-Pacific Partnership Agreement 2016 (TPP)
- Transatlantic Trade and Investment Partnership (TTIP) negotiations, EU-US 555
see also international investment agreements (IIAs)
- MERCOSUR 165, 514
see also Latin America
- methodologies of international investment law
see international investment law, methodologies
- Mexico
BITs
with Australia 395, 399, 402
model BIT 542, 544, 546
number of 538–9, 551
Calvo clause in Mexican Constitution 1950 81, 535
civil law system 523–4
FDI impact of NAFTA 556–7
FTA with EU 552, 559
history of FDI and international investment law in pre-1980s 526–9
NAFTA, background to entry into 534–7
post-NAFTA 550–52, 560
- ISDS
ICSID Convention ratification 552
under NAFTA *see* North American Free Trade Agreement (NAFTA), ISDS under
non-NAFTA experience 547, 551
permitted under Pemex Act 2014 513
with US restricted 232, 559
NAFTA renegotiation, Mexican objectives 557–8
OECD accession 539
see also Latin America; North American Free Trade Agreement (NAFTA)
- minimum standard of treatment
FET relationship with 184, 185–6, 247
see also fair and equitable treatment (FET) protections of IIAs
in investment chapters 247
see also investment chapters of IIAs
- model BITs *see* bilateral investment treaties (BITs), model BITs
- Model Law on International Commercial Arbitration (UNCITRAL) 96
see also UNCITRAL (UN Commission on International Trade Law)
- Model of International Agreement on Investment for Sustainable Development (International Institute for Sustainable Development) 513
see also sustainable development and FDI
- Mongolia, BIT with Canada 176–7, 184
see also Asia
- Morocco
BIT with Nigeria 588
investment law reforms 359
see also Africa
- most-favoured nation (MFN) treatment
provisions of IIAs
Australian and New Zealand IIAs 394–7
for environmental protection 602–3
see also environmental protection and FDI, IIAs for environmental protection
- in EU IIAs 453, 480
- examples
AUSFTA 395
see also Australia-US FTA (AUSFTA)
Australia-New Zealand Investment Protocol 396–7
Australia-Vietnam BIT 394
Canada-Hong Kong BIT 177
- financial crises, state measures as alleged breach 663–4
see also financial crises, ISDS
- key concerns 177
application to ISDS provisions of other IIAs 159–60, 178–9
overly broad interpretation of ‘treatment’ 178
- MFN as general international law right 624–5
- omitted from some model BITs 162, 177
- purpose 177
- services trade agreements 244–5
see also services trade and FDI of GATS 262–3
see also international investment agreements (IIAs), substantive provisions; national treatment provisions of IIAs
- Multilateral Agreement on Investment proposal (OECD) 16, 151, 539, 596, 630
- multilateral environmental agreements, states’ duties under 581, 600
see also environmental protection and FDI

- multilateral investment court proposal 5, 34, 170, 238–40
see also investor-state dispute settlement (ISDS)
- Multilateral Investment Guarantee Agency (MIGA) 45, 305, 311, 316, 318–20, 333, 567
- exclusions from coverage against expropriation 322–3
 from the covered effects 327–8
 from the covered measures 323–7
 limits on compensation for expropriation 328–9
 to scope of compensation 329–31
 to valuation of loss 331–2
see also political risk insurance and investment guarantees; World Bank
- multinational enterprises (MNEs)
 corporate social responsibility *see* corporate social responsibility
 expropriation risk assessment 13–15
see also political economy analysis of BITs
- firm-based perspectives on BITs, need for research on 31–3, 35–7, 38
see also political economy analysis of BITs
- human rights obligations
see human rights and FDI, investors' human rights obligations
- nationality criteria 174–5, 206–7, 573
see also 'investor' concept, nationality
- OECD Guidelines for Multinational Enterprises 2011 48, 603, 605, 606, 623, 630
- performance requirements 143–5, 189–90, 577–8, 591, 606–7
- shareholders' ISDS claims 201–2
see also investor-state dispute settlement (ISDS)
- municipal law
 influence on FDI 42–3
see also international investment law
- investor-state contracts, application to 273–4, 280–85, 286, 290–91, 298
see also investor-state contracts, international law application to
- Mutua, Makau W. 101
- NAFTA *see* North American Free Trade Agreement (NAFTA)
- national security exceptions to scope of IIAs
see exceptions and carve-outs from scope of IIAs, general and national security exceptions
- national treatment provisions of IIAs
 for environmental protection 602–3
see also environmental protection and FDI, IIAs for environmental protection
- in EU IIAs 453
- example (Canada-Mongolia BIT) 176–7
- financial crises, state measures as alleged breach 663–4
see also financial crises, ISDS
- purpose 176
- services trade agreements 244–5
see also services trade and FDI of GATS 245, 260, 262–3
see also international investment agreements (IIAs), substantive provisions; most-favoured nation (MFN) treatment provisions of IIAs
- nationality of investors *see* 'investor' concept, nationality
- nationalization as expropriation (*British Caribbean Bank Ltd (Turks & Caicos) v Belize* (UNCITRAL)) 258–61, 267
see also expropriation protections of IIA
- natural resources sovereignty, developing countries *see* permanent sovereignty over natural resources principle
- necessity defence in ISDS 642–3, 643–4, 645, 668–72, 674, 676–9
see also financial crises, ISDS; human rights and FDI, ISDS
- neoliberal economics
 basis of developing countries' scepticism towards FDI law 73–5
 FDI growth influenced by 1, 2
 in CEE 470–72, 474–5
see also Central and Eastern Europe (CEE)
- TWAIL critique of 103–4
see also Third World approaches to international law (TWAIL)
- Washington Consensus 470–71, 496
- Netherlands, termination of BITs
 with Indonesia 376
 with Venezuela 508–9
- Neumayer, Eric 20, 23
- new institutional economics 13–14
- New International Economic Order (NIEO)
 initiative 13, 72, 77, 78, 124–5, 151
 background to 84–6

- NIEO Charter (Charter of Economic Rights and Duties of States) 89–91, 93, 345
- NIEO Declaration 1974 87–9, 345
- reasons for failure of 91–3
- see also* developing countries, post-colonial efforts to protect economic sovereignty
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 47, 220, 230
- enforcement of EU investment court decisions under 238
- see also* EU (European Union), investment court system proposal
- Latin American state ratifications 94
- see also* investor-state dispute settlement (ISDS), awards
- New Zealand 6–7
- ANZCERTA *see* Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)
- BITs 432
- with China 392, 395, 398, 401–2, 417–18
- with Hong Kong 392, 395, 398, 401–2, 414, 418
- Economic Cooperation Agreement with the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (ANZTEC) 396, 403, 406, 408, 411, 415–16, 424, 425
- FTAs
- with ASEAN and Australia *see* ASEAN (Association of South East Asian Nations), FTA with Australia and New Zealand (AANZFTA)
- with China *see* China-New Zealand FTA
- with Malaysia 403, 408, 411, 415–16, 422, 424
- with Singapore 393, 422
- with South Korea *see* New Zealand-South Korea FTA
- with Thailand 393, 404, 422, 425
- IIA framework 392–3
- expropriation protections *see* expropriation protections of IIAs, Australian and New Zealand IIAs
- FET protections 397–8, 400
- see also* fair and equitable treatment (FET) protections of IIAs
- general exceptions 414–17
- ISDS provisions *see* New Zealand, ISDS
- MFN obligations 394–7
- see also* most-favoured nation (MFN) treatment provisions of IIAs
- non-conforming measures clauses 411, 412
- see also* international investment agreements (IIAs)
- ISDS
- approach compared with Australia 419–22
- consent to ISDS in IIAs 417–19
- reform initiatives 422–32
- TPP
- New Zealand opposition towards 391
- New Zealand side agreements to 153, 419–20
- see also* Trans-Pacific Partnership Agreement 2016 (TPP)
- New Zealand-South Korea FTA
- expropriation protections 403, 406, 408, 409
- see also* expropriation protections of IIAs, Australian and New Zealand IIAs
- general exceptions 415–16
- ISDS under 422, 424, 425, 427, 433
- non-conforming measures 411
- Nicaragua, withdrawal from ICSID 115, 116
- see also* Latin America
- Nigeria
- BITs
- with Morocco 588
- with Singapore 373
- ISDS legislation 360
- Lagos Court of Arbitration 75, 122, 123, 125
- oil and gas contracts, local employment obligations 124
- see also* Africa
- non-discrimination standards of IIAs *see* most favoured nation (MFN) treatment provisions of IIAs; national treatment provisions of IIAs
- non-pecuniary remedies, whether available in ISDS 226–7
- see also* damages and remedies available in ISDS
- non-precluded measures clauses of IIAs 665–8

- see also* international investment agreements (IIAs), substantive provisions
- North American Free Trade Agreement (NAFTA) 8
- environmental protection, labour and sustainable development measures 536–7, 600, 602
- expropriation protection clause 182, 543–4, 602
- see also* expropriation protections of IIAs
- FDI impact in Canada, Mexico and US 556–7
- FET/minimum standard of treatment clause 184, 365–6, 541–2
- see also* fair and equitable treatment (FET) protections of IIAs
- influence on IIAs and ISDS 538–41, 547, 549–50, 561
- investment chapter (Chapter 11) 537, 540
- renegotiation of, objectives of Canada, Mexico and US 557–9, 560–61
- ISDS under 540–41
- abolished or restricted 232, 559
- amicus curiae* participation 546–7
- applicable law 638
- Bilcon v Canada* 582, 610–11
- Chemtura Corp v Canada* 581–2
- confidentiality *versus* transparency 544–6
- Eli Lilly v Canada* 366
- Ethyl Corp v Canada* 596, 609
- Glamis Gold Ltd v United States* 184
- Loewen Group, Inc v United States* 365–6, 552–3
- Metalclad v Mexico* 182, 596–7, 609
- Methanex Corp v United States* 546, 552, 581, 597, 610, 615
- Mexican taxes on high fructose corn syrup, dispute with US 140, 256–7, 551
- Pope & Talbot v Canada* 184
- scope of ISDS clause (Article 1116) 212
- Tecnicas Medioambientales (Tecmed) S.A. v Mexico* 113, 581
- TransCanada v United States* 140
- US-Canada softwood lumber subsidy dispute 256, 257
- Joint Interpretative Note 375
- negotiations to conclude 534–8
- performance requirements prohibited 189
- services trade provisions 244, 246
- see also* services trade and FDI
- US Mexico Canada Agreement 2018, forthcoming replacement by 232, 559–60, 561
- see also* free trade agreements (FTAs)
- Obama, Barack 554
- ‘observance of undertakings’ (umbrella) clauses of IIAs 159, 212–13, 287–8, 368, 664
- see also* international investment agreements (IIAs), substantive provisions
- obsolescing bargain theory 135–6, 307–8
- Oceania *see* Australia; New Zealand
- odious contracts and debts doctrines 291–2
- see also* investor-state contracts
- OECD (Organisation for Economic Co-operation and Development) 466
- balance of host states’ and investors’ rights, discussions on 374
- Convention on the Protection of Foreign Property 1967 (Draft) 17, 342, 531
- Guidelines for Multinational Enterprises 2011 48, 603, 605, 606, 623, 630
- investment-related provisions of OECD law 44–5
- Multilateral Agreement on Investment proposal 16, 151, 539, 596, 630
- sustainable development promotion 565
- see also* sustainable development and FDI
- Organisation for Economic Co-operation and Development *see* OECD (Organisation for Economic Co-operation and Development)
- Overseas Private Investment Corporation (OPIC) (US) 144–5
- see also* political risk insurance and investment guarantees
- PAIC *see* Pan-African Investment Code (African Union)
- Pakistan, *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v Pakistan* 261–3, 267
- see also* Asia; services trade and FDI, dispute settlement
- Pan-African Investment Code (African Union) 163, 354–5, 571, 576
- counterclaims under, admissibility 633
- see also* counterclaims in ISDS
- ‘investment’ concept linked to development objectives 362

- investors' social responsibility and human rights obligations 164, 604, 631–2, 632–3
 - see also* human rights and FDI
- ISDS clause 634
 - see also* Africa
- Paris Agreement on Climate Change 2016 127, 138
- PCA *see* Permanent Court of Arbitration (PCA)
- performance requirements under IIAs 143–5, 189–90, 577–8, 591, 606–7
 - prohibitions of 189
 - US model BIT 189–90
 - see also* international investment agreements (IIAs), substantive provisions
- Performance Standards on Social and Environmental Sustainability (International Finance Corporation) 605, 606
 - see also* environmental protection and FDI; sustainable development and FDI
- Permanent Court of Arbitration (PCA) 43, 219
 - claims brought against Ecuador, Venezuela and Bolivia 505–6
 - see also* investor-state dispute settlement (ISDS)
- permanent sovereignty over natural resources principle 89, 291, 295
 - UN General Assembly Resolution A/1803 (1962) on 151, 345
 - see also* developing countries
- Philippines, EPA with Japan 254
 - see also* Asia
- plurilateral trade agreements *see*
 - mega-regional trade agreements
- Poland, disputes concerning privatization policies 485–7
 - see also* Central and Eastern Europe (CEE)
- police powers doctrine 180–81, 576–7, 597, 614
 - see also* expropriation protections of IIAs, indirect expropriation
- political economy analysis of BITs 3, 12–13
 - expropriation risk assessment 13–15
 - future research agenda 31
 - BIT formation and effect relationship 33–5
 - firm-based perspectives 31–3, 35–7, 38
 - ISDS evolution 35–7
 - ISDS as political risk management system 18
 - whether BITs attract FDI 18, 19, 37, 51, 339, 361
 - BITs as costly signals of host state's commitment 19–21
 - BITs as credible commitments 21–2, 24
 - conditional effects 22–6
 - firm-based perspectives, need for research on 31–3
 - whether BITs overly constrain host state policy autonomy 29–31, 37
 - why governments consent to BITs 26, 28–9, 37, 51
 - agent-level explanations 28, 34
 - domestic political explanations 27–8, 34
 - systems-level explanations 26–7
 - see also* bilateral investment treaties (BITs)
 - political risk insurance and investment guarantees 5–6, 32, 141–2, 299–303
 - agencies and underwriters 311–13
 - MIGA *see* Multilateral Investment Guarantee Agency (MIGA)
 - national agencies 313–16
 - private political risk insurers 321–2
 - regional agencies 316–18
 - US Overseas Private Investment Corporation (OPIC) 144–5, 302, 313, 314, 334
 - benefits offered by 304–6
 - BITs as functional substitute for 33, 301–2
 - future research agenda 333–4
 - key concerns 306–7
 - political risk
 - challenges of underwriting 307–11
 - definition and examples 299–301
 - scope of coverage 322–3
 - see also* Multilateral Investment Guarantee Agency (MIGA), exclusions from coverage
 - sustainable development promotion 567–8, 595
 - see also* sustainable development and FDI
 - see also* investor-state contracts
- post-colonial efforts to protect economic sovereignty *see* developing countries, post-colonial efforts to protect economic sovereignty

- poverty reduction, FDI's contribution to
132–4, 338
see also sustainable development and FDI
- preferential trade agreements (PTAs) 17
dispute settlement under 18
investment chapters *see* investment chapters
of IIAs
see also international investment
agreements (IIAs)
- Principles for Responsible Investment in
Agriculture and Food Systems (UN) 49,
605
- Principles on Promoting Responsible
Sovereign Lending and Borrowing
(UNCTAD) 48–9, 683
- public infrastructure sustainability, FDI
contribution to 134–8, 577–8
see also sustainable development and FDI
- public international law *see* international
law
- public-private partnerships (PPPs) 136–7
ISDS claims by investors 137–8
as natural resource sovereignty measures,
Latin American states 509–10
- public procurement contracts distinguished
from investor-state contracts 272
see also investor-state contracts
- quantitative restrictions provisions of services
trade agreements 245
of GATS 245, 260
see also services trade and FDI
- rebalancing clauses of investor-state contracts
see investor-state contracts, stabilization
clauses
- reform initiatives
to IIAs *see* international investment
agreements (IIAs), reform initiatives
to ISDS *see* investor-state dispute
settlement (ISDS), reform initiatives
- regional trade agreements *see* free trade
agreements (FTAs); mega-regional trade
agreements
- regulatory measures distinguished from
indirect expropriation 180–81
see also expropriation protections of IIAs
- Reinisch, August 237
- remedies available in ISDS *see* damages and
remedies available in ISDS
- renewable energy investments 142
energy transition ISDS cases 582–3, 608,
611–12
see also climate change
mitigation/adaptation, FDI contribution
to
- research agendas
political economy analysis of BITs *see*
political economy analysis of BITS,
future research agenda
on political risk insurance and investment
guarantees 333–4
see also political risk insurance and
investment guarantees
research questions of international
investment law *see* international
investment law, research questions
on sustainable development and FDI 142–3,
595
see also sustainable development and
FDI
- 'right to regulate' protections of IIAs 34, 35,
52, 158, 171, 190, 607
- African BITs 347, 350, 352, 355, 358
- CEE BITS, protections excluded 475
see also Central and Eastern Europe
(CEE)
- CETA 190, 550, 601
see also Comprehensive Economic and
Trade Agreement between EU and
Canada 2016 (CETA)
- EU IIAs 190, 453, 454, 479, 550
sustainable development promotion via 563,
566, 576, 601, 614
see also sustainable development and
FDI, IIAs for sustainable
development promotion
see also international investment
agreements (IIAs), substantive
provisions
- Romania
EDF (Services) Ltd v Romania 183
Micula v Romania (I) 488–9
Rompertrol Group N.V. v Romania 629
Spyridon Roussalis v Romania 180
see also Central and Eastern Europe
(CEE)
- Rose-Ackerman, Susan 22, 23
- SADC (Southern African Development
Community)

- model BIT 74, 75, 121–2, 164, 358, 576, 631, 633
see also bilateral investment treaties (BITs), model BITs
- Protocol on Finance and Investment 164, 591, 630
- Tripartite Free Trade Area initiative (with COMESA and EAC) 163–4
see also Africa
- SAFTA *see* Singapore-Australia FTA (SAFTA)
- Salacuse, Jeswald W. 22, 350, 458
- Salini* test 210, 215, 571–2, 656, 657
see also ICSID (International Centre for Settlement of Investment Disputes), jurisdiction; ‘investment’ concept
- Sauvant, Karl P. 306
- scepticism towards ISDS *see* investor-state dispute settlement (ISDS), scepticism towards
- Schreuer, Christoph 314, 321
- scope of IIAs *see* international investment agreements (IIA), scope of protection
- services trade and FDI 5, 241–2, 268–9
- CETA services trade provisions 246, 250
see also Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
- dispute settlement 254–5, 269
- Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v Pakistan* 261–3, 267
- British Caribbean Bank Ltd (Turks & Caicos) v Belize* 258–61, 267
- China – Certain Measures Affecting Electronic Payment Services* (WTO) 264–7
- GATS disputes under WTO dispute settlement system, dearth of 255, 264
- ISDS, number of disputes 255–6
 no parallel ISDS and WTO disputes 256–7, 266–8
- FDI as services trade 242–4
- General Agreement on Trade in Services (GATS) 44, 178–9, 241, 242, 246
see also WTO (World Trade Organization)
- ‘commercial presence’ definition 243, 245
- domestic regulation rules 263
- GATS disputes under WTO dispute settlement system *see* services trade and FDI, dispute settlement
- general and national security exceptions 261, 263, 374
- national treatment and MFN obligations 245, 260, 262–3
- quantitative restrictions (market access) rules 245, 260
- investment chapters of IIAs, types of relationship with 248–54
see also investment chapters of IIAs
- NAFTA services trade provisions 244, 246
see also North American Free Trade Agreement (NAFTA)
- services trade rules on FDI 244
- domestic regulation 246
- local presence 245–6
- non-discrimination and investment liberalization 244–5
- quantitative restrictions (market access) 245
- transport services excluded from EU’s exclusive FDI competence 438
see also EU (European Union)
- see also* international investment agreements (IIAs)
- shareholders’ ISDS claims 201–2
see also investor-state dispute settlement (ISDS), jurisdiction
- Shihata, Ibrahim F.I. 322–3, 324, 326, 328, 331
- Singapore
- BITs
- with Indonesia, termination of 377
- with Nigeria 373
- EPA with Japan 254
- FTAs
- with Australia *see* Singapore-Australia FTA (SAFTA)
- with EFTA 253
- with the EU *see* EU-Singapore FTA
- with New Zealand 393, 422
- ISDS
- arbitral jurisdiction, judicial review of decisions on 370
- mediation 376
- Singapore International Arbitration Centre 75, 125
- Singapore International Commercial Court 385–6
- third-party funding for international arbitration 384–5
see also Asia
- Singapore-Australia FTA (SAFTA) 391, 393

- expropriation protections 402, 404, 406, 408, 409–10
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
- FET protections 400–401, 420
 - see also* fair and equitable treatment (FET) protections of IIAs
- general exceptions 413–14, 415, 416
- indigenous and socially marginalized peoples' protections 412
- ISDS under 420, 423, 424, 426, 429–30, 431, 432
- MFN obligations 397, 410–11, 420
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
- non-conforming measures clause 410–11, 412
- tobacco control carve-out 430
 - see also* tobacco plain packaging policies
- Slovakia
 - BITs
 - with Greece 659
 - with Iran 162, 604
 - Československá Obchodní Banka A.S. v Slovak Republic* 475, 485
 - Slovak Republic v Achmea B.V. (C-284/16)* (ECJ) (on EU law compatibility of intra-EU BIT-based ISDS) 203–4, 490–91
 - Velvet Revolution 465, 484
 - see also* Central and Eastern Europe (CEE)
- soft law instruments for FDI regulation 47–9
 - on sovereign debt restructuring 48–9, 683
 - see also* financial crises
 - see also* international investment law
- sole effect doctrine 180
 - see also* expropriation protections of IIAs
- Sornarajah, Muthucumaraswamy 109, 336
- South Africa
 - model BIT 576
 - South African Protection of Investment Act 2015 regime 161–2, 344, 360
 - see also* Africa
- South America *see* Latin America
- South Korea
 - BIT with Chile 372–3
 - FTAs
 - with Australia *see* Korea-Australia FTA (KAFTA)
 - with China 188
 - with EU 588–9
 - with New Zealand *see* New Zealand-South Korea FTA
 - with US 251
 - Trilateral Investment Agreement with China and Japan 368
 - see also* Asia
- Southern African Development Community
 - see* SADC (Southern African Development Community)
- Southern Observatory on Investment and Transnational Corporations (Latin America) 520–21
 - see also* Latin America
- sovereign bonds
 - collective action clauses (CACs) in 650–51, 654, 683
 - whether 'investments' 655–60
 - see also* financial crises, ISDS; 'investment' concept
- sovereign debt crises *see* financial crises
- sovereign wealth funds
 - ISDS initiated by 368–70, 374
 - Santiago Principles on 49
- Soviet Union, former *see* Central and Eastern Europe (CEE)
- Spain, energy transition ISDS cases 583, 611–12
 - see also* sustainable development and FDI, energy supply sustainability (SDG 7)
- Sri Lanka, BIT with Australia 399, 402
 - see also* Asia
- stabilization clauses of investor-state contracts
 - see* investor-state contracts, stabilization clauses
- state contracts *see* investor-state contracts
- state insolvency *see* financial crises
- state-owned entities
 - China – Certain Measures Affecting Electronic Payment Services* (WTO) 264–7
 - see also* services trade and FDI, dispute settlement
 - ISDS initiated by 368–70, 374
- state responsibility *see* Articles on State Responsibility (International Law Commission)
- state-to-state disputes
 - under IIAs 231–2, 423–4
 - WTO dispute settlement *see* WTO (World Trade Organization), dispute settlement system
- Stockholm Chamber of Commerce 110, 219

- see also* investor-state dispute settlement (ISDS)
- substantive provisions of IIAs *see* international investment agreements (IIAs), substantive provisions
- sustainable development and FDI 8, 563
- Brazil, promotion via Cooperation and Facilitation Investment Agreement 568–9, 576
- CETA, sustainable development measures 550
- see also* Comprehensive Economic and Trade Agreement between EU and Canada 2016 (CETA)
- climate change mitigation/adaptation (SDG 13) 126–7, 138–42, 607, 608–9
- energy supply sustainability (SDG 7) 134–8
- energy transition ISDS cases 582–3, 608, 611–12
- renewable energy investments 142
- FDI, positive and negative impacts of 76, 123–4, 127–30, 336–9, 564–6
- future research agenda 142–3, 595
- IIAs for sustainable development promotion
- exceptions and carve-outs 578–9
- see also* exceptions and carve outs from scope of IIAs
- expropriation protections 576–7
- see also* expropriation protections of IIAs
- FET protections 573–6
- see also* fair and equitable treatment (FET) protections of IIAs
- ‘investment’ concept linked to sustainability objectives 361, 362, 570–72
- see also* ‘investment’ concept
- performance requirements 143–5, 189–90, 577–8, 591, 606–7
- preambles, sustainability objectives included in 569–70, 591
- ‘right to regulate’ protections 563, 566, 576, 601, 614
- scope linked to host state’s good governance performance 145–8
- sustainability impact assessment of IIAs 147–8, 587–8, 593
- sustainable development provisions 588–94
- ‘upholding level of protection’ clauses 592, 600
- see also* international investment agreements (IIAs)
- ISDS for sustainable development
- promotion 361, 362, 579–80, 593–4, 595
- corruption and fraud as basis for rejecting claims 143, 144, 146, 163, 290–91, 585–6
- energy transition cases 582–3, 608, 611–12
- environmental protection 580–82
- human rights protection 583–5
- ISDS design 586–7
- local content requirements 124, 137, 577, 578
- Model of International Agreement on Investment for Sustainable Development (International Institute for Sustainable Development) 513
- NAFTA, sustainable development measures 536–7
- see also* North American Free Trade Agreement (NAFTA)
- Performance Standards on Social and Environmental Sustainability (International Finance Corporation) 605, 606
- political risk insurance and investment guarantees, sustainable development promotion 567–8, 595
- see also* political risk insurance and investment guarantees
- poverty reduction (SDG 1) 132–4, 337
- public infrastructure sustainability (SDGs 6, 7 and 9) 134–8, 577–8
- SDGs (Sustainable Development Goals) 2, 4, 131–2, 148, 565
- FDI required to promote 130–31, 564
- policies to promote SDGs via FDI 133, 135–6, 141–2, 147, 566–9
- see also* UN (United Nations)
- UNCTAD initiatives *see* UNCTAD (UN Conference on Trade and Development)
- see also* corporate social responsibility; environmental protection and FDI; human rights and FDI
- Sweden
- BIT with Egypt 348–9
- Stockholm Chamber of Commerce 110, 219
- see also* investor-state dispute settlement (ISDS)
- Switzerland
- BIT with China 265

- Friendship and Commerce Treaty with Liberia 346–7
- FTA with Japan 251
- TAFTA *see* Thailand-Australia FTA (TAFTA)
- Tanzania, *Biwater Gauff (Tanzania) Ltd v Tanzania* 643
 - see also* Africa
- tax vetoes and carve-outs 159, 191, 616–17
 - see also* exceptions and carve-outs from scope of IIAs
- technology transfer
 - to achieve SDGs 130
 - see also* sustainable development and FDI
 - for climate change mitigation/adaptation 141
 - FDI relationship with 11, 123, 127, 128
 - as goal of NIEO 87, 90
 - see also* New International Economic Order (NIEO) initiative
- Thailand
 - FTAs
 - with Australia *see* Thailand-Australia FTA (TAFTA)
 - with New Zealand 393, 404, 422, 425
 - see also* Asia
 - Thailand-Australia FTA (TAFTA) 393, 395
 - expropriation protections 402
 - see also* expropriation protections of IIAs, Australian and New Zealand IIAs
 - FET protections 399
 - see also* fair and equitable treatment (FET) protections of IIAs
 - general exceptions 414, 415
 - ISDS under 420–21, 423, 424–5
 - non-conforming measures 411
 - theoretical approaches to international investment law *see* international investment law, theoretical approaches
 - third-party funding developments, ISDS implications 384–5
 - see also* investor-state dispute settlement (ISDS)
 - Third World approaches to international law (TWAAIL) 3, 58
 - definitions, methodologies and concerns 100–102
 - emergence 73, 77, 99–100
 - regime bias critique of FDI law 73–4, 104–7
 - BITs system application 107–9
 - ISDS application 106–7, 109, 111–18, 157
 - need for more constructive approaches 75–7, 117–21, 125
 - substantive themes 102–4
 - see also* developing countries; international investment law, theoretical approaches; international relations
 - tobacco plain packaging policies
 - disputes concerning 257, 390–91, 421, 429
 - SAFTA, tobacco control carve-out 430
 - see also* Singapore-Australia FTA (SAFTA)
 - TPP, tobacco control carve-out 428–9
 - see also* Trans-Pacific Partnership Agreement 2016 (TPP)
 - TPP *see* Trans-Pacific Partnership Agreement 2016 (TPP)
 - trade in services and FDI *see* services trade and FDI
 - Trans-Pacific Partnership Agreement 2016 (TPP) 45
 - analysis of impact on FDI decisions 147
 - Australia and New Zealand, opposition towards 390–91
 - Australian and New Zealand side agreements to 153, 419–20
 - Comprehensive and Progressive Trans-Pacific Agreement 2018 373, 549
 - expropriation protection clause 182, 403, 406–7, 409
 - general exceptions 415, 416
 - ISDS precluded 423, 430, 432, 433, 509
 - MFN obligations 397
 - see also* most-favoured nation (MFN) treatment provisions of IIAs
 - state-state dispute settlement 423
 - tobacco control carve-out 428–9
 - see also* tobacco plain packaging policies
 - US withdrawal from 555–6
 - see also* free trade agreements (FTAs)
 - Transatlantic Trade and Investment Partnership (TTIP) negotiations, EU-US 555
 - transition economies
 - of CEE *see* Central and Eastern Europe (CEE)
 - definition 464
 - FDI inflows to 11
 - BITs, impact of 24

- see also* political economy analysis of
BITs
- unique characteristics of 477
- see also* developing countries
- transnational legal order concept *see*
international investment law, as
transnational legal order
- transparency of ISDS *see* investor-state
dispute settlement (ISDS),
confidentiality *versus* transparency
- treaties, law of *see* Vienna Convention on the
Law of Treaties 1969
- treaty-based dispute settlement *see*
investor-state dispute settlement (ISDS)
- treaty shopping, reforms to address 158–9,
175, 423–4, 572–3
- see also* international investment
agreements (IIAs), reform initiatives;
investor-state dispute settlement
(ISDS), reform initiatives
- Trends in International Trade. A Report by a
Panel of Experts* (Haberler Report, 1958)
85
- TRIMs (Agreement on Trade-Related
Investment Measures 1994) 44
- see also* WTO (World Trade Organization)
- Trinidad and Tobago 75
- see also* Caribbean region
- Trump, Donald 557, 560
- TTIP (Transatlantic Trade and Investment
Partnership) negotiations, EU-US
555
- Turkey
 - BIT with Australia 395, 399, 402
 - FDI inflows 99
 - ISDS, law reforms facilitating 98–9
 - see also* Asia
- TWAIL *see* Third World approaches to
international law (TWAIL)
- umbrella clauses of IIAs 159, 212–13, 287–8,
368, 664
- see also* international investment
agreements (IIAs), substantive
provisions
- UN (United Nations)
 - Basic Principles on Sovereign Debt
Restructuring Processes (General
Assembly) 683
 - Charter of Economic Rights and Duties
of States (NIEO Charter) 89–91, 93,
345
 - see also* New International Economic
Order (NIEO) initiative
- Global Compact 48, 605, 623
- human rights
 - business obligations, recognition by UN
human rights agencies 621–3
 - business obligations, UN’s work to
develop binding instrument on 2,
622
 - Guiding Principles on Business and
Human Rights 48, 605, 623–4
 - see also* human rights and FDI,
investors’ human rights obligations
- International Monetary Fund 45–6
- Mauritius Convention on Transparency in
Treaty-based Investor-State Arbitration
2014 169–70, 225, 239
- Principles for Responsible Investment in
Agriculture and Food Systems 49,
605
- SDGs *see* sustainable development and
FDI, SDGs (Sustainable Development
Goals)
- TWAIL critique of 103
- see also* Third World approaches to
international law (TWAIL)
- UNCITRAL *see* UNCITRAL (UN
Commission on International Trade
Law)
- UNCTAD *see* UNCTAD (UN Conference
on Trade and Development)
- UNASUR (Union of South American
Nations) Centre for the Settlement of
Investment Disputes 166, 516–18
- see also* Latin America
- UNCITRAL (UN Commission on
International Trade Law) 46
- Arbitration Rules 219
- awards
 - British Caribbean Bank Ltd (Turks &
Caicos) v Belize* 258–61, 267
 - under NAFTA *see* North American Free
Trade Agreement (NAFTA), ISDS
under
- EU investment court, disputes referable
under UNCITRAL rules 236
- see also* EU (European Union),
investment court system proposal
- ISDS reform initiative 383
- Model Law on International Commercial
Arbitration 96, 219–20, 229
- multilateral investment court proposal 5,
34, 170, 238–40

- see also* investor-state dispute settlement (ISDS)
- Rules on Transparency in Treaty-based Investor-State Arbitration 169, 224–5, 379
- UNCTAD (UN Conference on Trade and Development) 24, 34–5, 565
- benefits of FDI for Africa, views on 337–8
- Global Action Menu for Investment Facilitation 170–71
- Investment Policy Framework for Sustainable Development 121, 157–8, 598
- Mapping of IIA Content database 158
- Principles on Promoting Responsible Sovereign Lending and Borrowing 48–9, 683
- ‘roadmap’ for IIA reform 158
- see also* sustainable development and FDI
- United Arab Emirates, BIT with Vietnam 371–2
- see also* Asia
- United Kingdom
 - BIT with Cameroon 348
 - Brexit, FDI implications *see* Brexit, FDI implications
 - Channel Tunnel Group v France and United Kingdom* 627–8
 - UK Export Finance 313, 314
 - see also* political risk insurance and investment guarantees
- United States
 - BITs
 - with Argentina 666–7
 - asymmetric power relations between US and BIT partners 108
 - with Cameroon 349
 - impact on FDI flows from 22, 25
 - model BIT *see* United States, model BIT
 - number of 539
 - reasons for entering into 27–8, 34, 531–2
 - Trade and Investment Framework Agreements preferred since 2008 555
 - diplomatic protection, attitudes towards 82, 83, 84, 528
 - FDI impact of NAFTA 556–7
 - ‘First Hickenlooper Amendment’, termination of aid to host states that harm US investors’ interests 114–15
- FTAs
 - with Australia *see* Australia-US FTA (AUSFTA)
 - Free Trade of the Americas Agreement proposal 539
 - with South Korea 251
 - sustainable development chapters 588
 - Trade and Investment Framework Agreements preferred since 2008 555
 - Transatlantic Trade and Investment Partnership (TTIP) negotiations with EU 555
 - US-Dominican Republic-Central American FTA 539, 553–4
- history of FDI and international investment law in
 - pre-1980s 529–32
 - FTA with Canada, negotiations for 532–4
 - NAFTA, background to entry into 536–7
 - post-NAFTA 552–6, 560
- ISDS
 - appellate mechanism contemplated 554–5
 - with Canada abolished 232, 559
 - economic development test 571
 - with Mexico restricted 232, 559
 - under NAFTA *see* North American Free Trade Agreement (NAFTA), ISDS under
 - non-NAFTA experience 547
 - transparency of 545–6
 - model BIT 554, 598
 - amicus curiae* participation 546
 - applicable law 639
 - essential security interests exception 190
 - expropriation protection clause 179, 182, 543–4, 576
 - FET/minimum standard of treatment clause 184, 186–7, 542, 574
 - ISDS, economic development test 571
 - ISDS, transparency of 545–6
 - performance requirements 189–90
 - multilateral investment court proposal, opposition to 238
 - NAFTA renegotiation, US objectives 558–9, 560–61

- Overseas Private Investment Corporation (OPIC) 144–5, 313, 314, 334
see also political risk insurance and investment guarantees
- scepticism towards ISDS 232
- TPP, US withdrawal from 555–6
see also Trans-Pacific Partnership Agreement 2016 (TPP)
see also North American Free Trade Agreement (NAFTA)
- 'upholding level of protection' clauses of IIAs 592, 600
see also international investment agreements (IIAs), substantive provisions; sustainable development and FDI, IIAs for sustainable development promotion
- Urbaser S.A. v Argentina* 584–5, 620
 on host states' human rights obligations *versus* investors' treaty rights 183–4, 639, 640
 on human rights counterclaims, admissibility 629, 634, 666
 on investors' human rights obligations 605, 624–7, 638
 on necessity defence 644, 671
see also Argentina; human rights and FDI
- Uruguay
 tobacco plain packaging policies, disputes concerning 257, 429
see also tobacco plain packaging policies
see also Latin America
- US Mexico Canada Agreement 2018 232, 559–60, 561
see also North American Free Trade Agreement (NAFTA)
- Uzbekistan
 BIT with Kazakhstan 635
Kim v Uzbekistan 637
Metal-Tech Ltd v Uzbekistan 586
see also Asia
- Van Harten, Gus 476
- Venezuela
 BIT with the Netherlands, termination of 508–9
- ISDS
Autopista Concesionada de Venezuela CA (Aucoven) v Venezuela 675–6
 ICSID, withdrawal from 74, 98, 99, 115, 116, 502–3
 ISDS clauses in BITs 509
 law restricting access to 511
 pending ICSID claims against 503–5
 Permanent Court of Arbitration claims brought against 505–6
 natural resource sovereignty measures 509–10
 sovereign debt default military crisis 1901–1903 79–80, 82, 646
see also financial crises
see also Latin America
- Vienna Convention on the Law of Treaties 1969
 treaty amendment rules 237
 treaty interpretation rules 422, 489, 625, 639, 640, 645, 667, 679–80
 treaty termination rules 154
- Vietnam
 BITs
 with Australia 394
 with United Arab Emirates 371–2
 EU-Vietnam FTA 234, 235, 250, 375, 378, 380, 454
see also Asia
- war clauses of IIAs 188
see also international investment agreements (IIAs), substantive provisions
- Washington Consensus 470–71, 496
see also neoliberal economics
- Washington Convention *see* ICSID Convention (Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966)
- water services sustainability, FDI contribution to 134–8
see also sustainable development and FDI
- World Bank 45, 49, 87, 95, 216, 496
 ICSID *see* ICSID (International Centre for Settlement of Investment Disputes)
- MIGA *see* Multilateral Investment Guarantee Agency (MIGA)
- World Bank Guidelines on the Treatment of Foreign Direct Investment 320–21, 331–2
- World Trade Organization *see* WTO (World Trade Organization)
- WTO (World Trade Organization)
 Agreement on Trade-related Aspects of Intellectual Property Rights 1994 (TRIPS) 402

- Agreement on Trade-Related Investment Measures 1994 (TRIMs) 44
dispute settlement system 5, 18, 228, 254–5
GATS disputes *see* services trade and FDI, dispute settlement
parallel WTO and ISDS disputes 256–7
see also investor-state dispute settlement (ISDS)
remedies 266
- General Agreement on Tariffs and Trade 1994 (GATT), Article XX general exceptions *see* exceptions and carve-outs from scope of IIAs, general and national security exceptions
- General Agreement on Trade in Services (GATS) *see* services trade and FDI, General Agreement on Trade in Services (GATS)
investment facilitation initiatives 171
investment matters excluded from Doha Development Round negotiations 44
- Zimbabwe
investment law reforms 359
von Pezold v Zimbabwe and Border Timbers v Zimbabwe 628
see also Africa

