NeF DeF New Frontiers in International Development Finance

Climate Finance for Equitable Transitions

Just Energy Transition Partnerships, 'Green' Investments and Investment Treaties

Dr Anil Yilmaz Vastardis

Key Messages

- Just Energy Transition Partnerships demand extensive policy and legal reforms to create enabling environments for scaling up private investment in clean energy.
- Investment treaty protections can have the effect of entrenching such enabling environments and make it costly for host states to alter subsidies or regulatory environments in response to changing needs or unforeseen outcomes.
- Any regulatory reforms introduced and incentive schemes developed to mobilise private investments in clean energy could potentially form the basis of an investor's legitimate expectations that it will benefit from the regulatory regime and incentive programme throughout the life cycle of its project.
- If the host country adjusts the regulatory framework applicable to covered investments and it reduces investor returns, the investor may file an investment treaty claim before an arbitral tribunal to seek compensation for losses resulting from the breach of its legitimate expectation of regulatory stability.

Just Energy Transition Partnerships

Just Energy Transition Partnerships (JETPs) have emerged as key financing frameworks to mobilise private finance to invest in the energy transition of developing countries.[1] JETPs are 'country platforms', defined broadly as multistakeholder partnerships coordinated by national governments to generate financial resources to achieve a common goal. In the case of JETPs, participants primarily include multilateral development banks (MDBs), development finance institutions (DFIs) and developed countries as financiers and developing countries as recipients of financing to transition away from fossil fuels, notably coal, to clean energy. JETPs also contain approaches to mitigating the adverse social and economic impacts energy transition on workers and communities.

Launched in 2021 with South Africa, JETPs were extended to Indonesia and Vietnam in 2022 and to Senegal in 2023. Similar platforms have emerged modelled on the JETPs and more countries have expressed interest in pursuing similar country platforms for climate transitions.

A key aspect of these new financing frameworks are efforts to catalyse private finance and investment through a combination of financial and regulatory incentives.

[1] Tan, C Yilmaz Vastardis, A and Erdem Türkelli, G (2025),'Submission of Evidence to the House of Commons International Development Committee for the Inquiry into the UK's International Climate Finance', 21 January 2026 p 1.

The argument is that as public resources are insufficient to fund climate action, governments and their ‘development partners’ can mobilise private finance by taking steps to ’de-risk’ investing in green assets and rendering them more profitable, a phenomenon that has been termed the ‘Wall Street Consensus’.[2]

In this vein, JETPs aim to mobilise financial resources in the form of grants and concessional and non-concessional loans, often deploying them leverage private investments as well as expecting host states to undertake policy and regulatory reforms for energy transition. These financial resources and policy and regulatory reforms are aimed at phasing out fossil fuel energy production, notably coal-fired power plants, as well as to create an enabling environment scale up private investments for renewable energy.

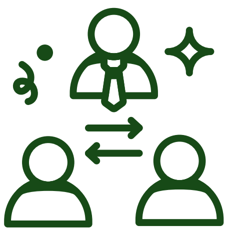
Given the centrality of private investments, and particularly of foreign investors in the global energy transition, and the scale of clean energy investments needed, it is important to consider how JETPs or other country platforms may interact with international legal protections for foreign investments and mitigate the risk of triggering foreign investment disputes.

> The availability of international arbitration to settle disputes renders the regime one of the most powerful legal protection regimes in international law.

Investment Treaties

Investment treaties are a key legal instrument in the international investment law regime that offers foreign investors protection against government measures that interfere with investor returns. Investment treaties are international agreements signed between two or more states and create enforceable rights for their national investors when they invest in the territory of the other contracting state. Investment treaties set internationally binding duties on host states regarding the treatment of foreign investors. Investment treaties contain protections against direct or indirect expropriation, require that the host state complies with the non-discrimination, fair and equitable treatment (FET) and full protection and security standards, as well as providing for settlement of disputes via international arbitration that can leapfrog domestic judicial and arbitral processes.

The availability of international arbitration to settle disputes renders the regime one of the most powerful legal protection regimes in international law (popularly known as investor-state dispute settlement mechanisms or ISDS). Almost all investment treaties allow recourse for an investor to bring claims against a host state before an arbitral tribunal without the need to exhaust local dispute settlement options. The decisions of these tribunals are binding on the parties to the dispute without recourse to appeals and damages awarded by the tribunals are enforceable in many other countries who are signatories to the International Convention on the Settlement of Investment Disputes (ICSID Convention) or the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).



[2] Ibid, also Gabor, D and Braun, B (2025), ‘Green Macrofinancial Regimes’, *Review of International Political Economy*, Online First, pp 1–27.

Investment treaties provide a layer of protection to investors that go above and beyond domestic legal standards and shield investors from changes in the domestic legal, regulatory and policy environments, especially from impacts of these changes that are deemed detrimental to profit margins.

Investment Treaties

- Investment treaties providing protection against government measures interfering with investor profits under treatment and expropriation standards.
- Dispute settlement via international arbitration avoiding local courts and using questionable methods of calculation for compensation.
- Longstanding tensions between investment law protections and states' human rights and environmental obligations.
- Cause of concern for complex and evolving energy transition policies.

Investment Law and Climate Action

There are longstanding tensions between states' obligations under international human rights and environmental laws and their obligations under international investment law. Investors have relied on investment treaty protections to challenge and seek compensation for measures or regulations adopted by host states in the public interest, including measures adopted to avoid environmental pollution or harm to Indigenous peoples.[3] These tensions are a cause for concern in the context of energy transition policies.

> Investment treaty protections can obstruct the regulatory space of host states.

Legal standards protecting foreign investments may pose significant legal risks for host countries undertaking energy transition, including 'regulatory chill' and financial costs of measures to manage a multi-faceted transition.[4]

Regulatory chill describes situations where governments refrain from or postpone regulating due to potential or actual threats of investment disputes and exposure to significant financial burdens for breaches of investment protection standards. If states, nevertheless, take measures that may interfere with investor returns, they may be liable to pay significant amounts of compensation to the investor.[5]

Both sides of energy transition may attract host state liability under investment treaties: phasing out fossil fuels and scaling up clean energy. This primer focuses on how investment treaties may interact with scaling up clean energy under the JETP frameworks.

Scaling up Clean Energy in the Shadow of Investment Treaties

JETPs commit host states to undertaking extensive legal, regulatory and policy reforms in their energy sectors. These reforms seek to achieve major transformations in the energy sectors of each host country, by creating enabling environments for mobilising private capital for clean energy projects.

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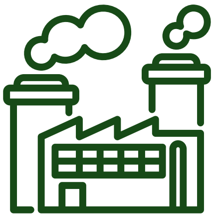
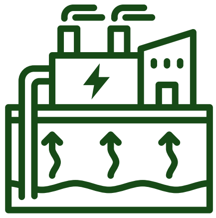
[3] *Bear Creek Mining Corporation v Republic of Peru*, ICSID Case No ARB/14/21.
[4] Tienhaara, K and Cotula, L (2020), 'Raising the Cost of Climate Action? Investor-State Dispute Settlement and Compensation for Stranded Fossil Fuel Assets', October 2020, Institute for Environment and Development (IIED) Land, Investment and Rights Series, London: IIED.
[5] Marzal, T (2021), 'Quantum (In)Justice: Rethinking the Calculation of Compensation and Damages in ISDS', *Journal of World Tade and Investment*, Vol 22, No 2.



Fossil Fuel Phase-Outs

- Early retirement of coal power plants, early termination of oil and gas licenses .
- Potential ISDS claims for compensation for indirect expropriation and breach of FET standard.
- Compensation for future lost profits and sunk costs calculated using questionable formulas.
- Risk of regulatory chill and rising cost of climate action.



Scaling Up Clean Energy

- JETPs demand extensive policy and legal reforms to create enabling environments for scaling up private investment in clean energy.
- Investment law protections can have the effect of petrifying such enabling environments and make it costly for host states to alter subsidies or regulatory environments in response to changing needs or unforeseen outcomes.

Mainstream literature promotes investment treaties as part of this enabling environment that can help attract clean energy investments by promoting stability and certainty.[6] However, studies find no evidence that investors in clean energy sectors take investment treaties into account in making investment decisions.[7] More importantly, while reforms may be necessary to create a suitable environment for scaling up clean energy, presence of investment treaty protections can obstruct the regulatory space of host states in shaping 'enabling environments' in response to evolving public needs.

The rationale behind the creation of enabling environments is to essentially 'provide market signals to incentivise and accelerate the capital flow and to improve the bankability of transition activities.'[8] These so-called 'market signals' may be necessary to attract private investors and provide confidence to financiers of projects.

Yet, these market signals can also be a source of future liability for host countries, as they may be deemed to have created 'legitimate expectations' for investors over the life cycle of investment projects. Legitimate expectations are deemed to be legally protected under the 'fair and equitable treatment' standard found in almost all investment treaties.

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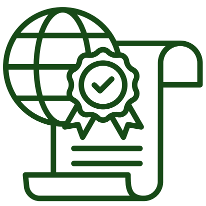
[6] Gehring, M and Tokas, M, (2022) 'Synergies and Approaches to Climate Change in International Investment Agreements: Comparative Analysis of Investment Liberalization and Investment Protection Provisions in European Union Agreements', *Journal of World Investment and Trade*, Vol 23, No 5 and 6, p 778.
[7]Mehranvar, L and Sasmal, S, (2022) 'The Role of Investment Treaties and Investor–State Dispute Settlement (ISDS) in Renewable Energy Investments', December 2022, New York: Columbia Center on Sustainable Investment (CCSI).
[8] Indonesia (2023), 'Comprehensive Investment and Policy Plan 2023', Section 7; Indonesia (2025), 'JETP Progress Report 2025',

Any regulatory reforms introduced, and incentive schemes developed to mobilise private investment in clean energy could potentially form the basis of an investor's legitimate expectations that it will benefit from the regulatory regime and incentive programme throughout the life cycle of its project. If the host country adjusts the regulatory framework applicable to such investments leading to reduction in investor returns, the investor may file an investment treaty claim before an arbitral tribunal to seek compensation for losses resulting from the breach of its legitimate expectation of regulatory stability.

There are over 190 publicly known investment treaty claims filed by clean energy investors resulting from changes to regulatory environments supporting such investments.[9] Most of these claims have been filed against states for having altered their renewable energy incentive schemes due to growing tariff deficits created by generous incentives and the rising cost of electricity for consumers that threatened the sustainability of the whole electricity system.



Fair and Equitable Treatment Standard (FET)

- In treaties, arbitral awards and in the academic literature, there are variations on what exactly the FET standard entails.
- FET is understood as a broad standard that covers denial of justice, arbitrary treatment, discrimination, breach of legitimate expectations, and lack of due process, stability and predictability.

Investors have argued that these alterations amounted, inter alia, to a breach of their legitimate expectations under the fair and equitable treatment or FET standard. In a number of these disputes, tribunals have found host states in breach of the FET standard for having altered incentives and ordered damages to be paid to investors for reduction in profits.[10] The exact measures challenged vary among jurisdictions, but the following are the types of measures that have been challenged by investors for having reduced their expected returns:

- Reductions to the subsidies/incentives offered over the life cycle of a project.
- Changes to taxation or levies applied to the investment.
- Changes to payment schedules/methods.
- Changes to priority access/dispatch to transmission networks.
- Changes to conditions of access to certain types of special payments/incentive payments.

Investors' key argument in these cases primarily centre around the protection of their legitimate expectations, which arguably guarantees that they remain subject to the same incentive regime throughout the entire life cycle of their projects.

Risk Allocation and Policy Space

In their respective JETPs, Indonesia and South Africa have committed to a series of reforms to create enabling environments, including privatisation of the electricity sector and the creation of a competitive electricity market,[11] relaxation of local content requirements,[12] simplifying processes for renewable energy procurement through simplified tariff structures, facilitating land provision, simplification of obtaining permits, improving the terms of power purchase agreements to enhance bankability, developing an attractive tariff and subsidy regime to scale up investments.

[9] UNCTAD Investment Dispute Settlement Navigator Database, as of July 2025.
[10] See for example, *The PV Investors v Spain*,PCA Case No 2012-14, Final Award, 28 February 2020, *ESPF Beteiligungs GmbH, ESPF Nr 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH amd Co KG v Italian Republic*, ICSID Case No ARB/16/5; also Mehranvar, L and Sasmal, S, (2022), nte 7 above.
[11] South Africa (2022), 'South Africa's just Energy Transition Investment Plan (JET IP) for the Initial period 2023- 2027', The Presidency of the Republic of South Africa.
[12] Indonesia (2023), note 8 above.

The creation of enabling environments is an important aspect of energy transition. However, host states should diligently assess their investment treaty obligations and reform their investment governance frameworks to ensure (1) they retain adequate policy space for further reforms and (2) that the risks of future policy evolution that may result in the reduction of investor returns are not solely shouldered by the public. The track record of investment disputes have demonstrated that investment tribunals may not sufficiently account for public interest, such as energy transition, into their decisions and uncertainty remains as to how tribunals will assess regulatory measures in the context of broader legitimate public interests.[13]

The safest approach is for states to terminate existing investment treaties and implement domestic investment governance frameworks that contain adequate safeguards against arbitrary treatment of investors and set clear obligations for investors to respect relevant domestic laws and international human rights and environmental standards throughout their operations in the host state. Survival clauses that exist in many investment treaties, which extend the protection of the treaty for a certain period beyond its termination, only apply to investments already made at the time of termination. The risks posed by these clauses upon termination is less relevant to incoming or future renewable energy projects, unlike their application to existing fossil fuel investments.

Further Resources

Mehranvar, L and Sasmal, S, (2022) 'The Role of Investment Treaties and Investor–State Dispute Settlement (ISDS) in Renewable Energy Investments', December 2022, New York: Columbia Center on Sustainable Investment (CCSI).

Tan, C, Yilmaz Vastardis, A and Erdem Türkelli, G (2025),'Submission of Evidence to the House of Commons International Development Committee for the Inquiry into the UK's International Climate Finance', 21 January 2026 p 1.3.

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About the Author

Dr Anil Yilmaz Vastardis
Senior Lecturer
University of Essex
ayilma@essex.ac.uk

https://www.essex.ac.uk/people/YILMA70407/Anil-Yilmaz%20Vastardis

[13] Yu, C and Zheng, Yawen (2026), 'Pluralizing International Investment Law for Energy Transition', Paper forthcoming in the *Vanderbilt Journal of Transnational Law*, 20 January 2026, SSRN.

About CLiFT
The Climate Finance for Equitable Transitions (CLiFT) project is a multi-institutional and multi-stakeholder initiative aimed at exploring the climate finance supply chain within the context of the multilateral climate change regime, international financial architecture and the multi-layered landscape of international economic law. For more information, please visit: go.warwick.ac.uk/nefdef/climatefinance