

International Arbitration and Ecological Conservation - An Unlikely Pairing

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The Amazon, often referred to as the "lungs of the world," faces constant threats due to deforestation, illegal mining, and other destructive activities. Protecting this and other crucial ecosystems is essential for mitigating climate change and preserving biodiversity. In this context, investment arbitration emerges as an innovative tool that can significantly contribute to ecological conservation. This article explores how investment arbitration, traditionally used to resolve disputes between investors and states, can be an ally in environmental protection.



What is International Arbitration?

International arbitration is a dispute resolution mechanism that allows parties to resolve their conflicts outside national courts. In the context of investments, arbitration typically involves foreign investors and host states. Through bilateral and multilateral investment treaties, states agree to submit certain disputes to international arbitration, thus providing a neutral forum for conflict resolution.

Investment arbitration has historically been a tool for investors to protect their rights against adverse actions by host states. This mechanism has been mainly used in cases of improper expropriations, where a state takes possession of an investor's assets without adequate compensation, as well as in situations involving abrupt regulatory changes that negatively affect investments. By using arbitration, investors can ensure their rights are safeguarded under an international legal framework, allowing them to obtain fair compensation if their investments are harmed.

Multiple cases exist where investors have resorted to arbitration to resolve disputes related to conservation and the environment, often with outcomes favoring the investors. For example, in the case of *Chevron v. Ecuador*, Chevron filed a claim against the Ecuadorian government alleging unfair treatment and improper expropriation of its investments in the Ecuadorian Amazon. The arbitral tribunal ruled in favor of Chevron, ordering Ecuador to pay significant compensation, highlighting the importance of the international legal framework for protecting investors.

The sums in dispute in these cases can be enormous, often reaching billions of dollars. These amounts reflect not only the value of the affected investments but also the potential costs associated with environmental remediation and compensation for economic damages. For instance, in the case of *Yukos v.*

Russia, the tribunal ordered Russia to pay \$50 billion to Yukos' former shareholders, underscoring the magnitude that disputes in the realm of investment arbitration can reach.

Arbitration and the Environment

Although investment arbitration has traditionally been used to protect investors, its role is evolving. Increasingly, states are using counterclaims to hold investors accountable for environmental damages. This trend reflects a shift towards integrating environmental considerations into the investment arbitration framework, promoting greater corporate responsibility and aligning investments with sustainability and conservation goals.

A landmark case highlighting this shift is *Perenco v. Ecuador*, where Ecuador successfully filed a counterclaim for environmental damages caused by Perenco's oil activities in the Amazon. The tribunal not only recognized the validity of Ecuador's environmental claims but also ordered Perenco to pay for the damages and restoration of the environment.

A recent and significant development in this area is the victory of the Republic of Colombia in an environmental dispute against a foreign company. In this case, Colombia defended its right to implement environmental protection measures that affect a mining company's investments. The tribunal ruled in favor of Colombia, emphasizing the legitimacy of national environmental regulations even when they negatively impact foreign investments. This decision is an important milestone, reaffirming the ability of states to protect the environment without fear of disproportionate economic repercussions.



Integration of Environmental Clauses in Investment Treaties

The inclusion of environmental clauses in investment treaties is an increasingly adopted strategy to balance investor rights with ecological conservation needs. These clauses allow states to implement and enforce environmental regulations without violating the terms of the treaty. For example, several recent treaties have incorporated provisions that enable states to take necessary measures to protect public health and the environment, as long as these measures are not arbitrary or discriminatory.

Impact on the UN Sustainable Development Goals

The growing use of investment arbitration to protect the environment aligns closely with the United Nations Sustainable Development Goals (SDGs). In particular, SDG 13 (Climate Action) and SDG 15 (Life on Land) are supported by states' ability to hold investors accountable for environmental damage. By integrating these considerations into investment arbitration, economic development that respects and protects the planet's natural resources is promoted.



As investment arbitration continues to evolve, it is expected to play an increasingly significant role in environmental protection. It is crucial for future investment treaties to include clear environmental protection clauses and for tribunals to continue developing jurisprudence that balances investor rights with the urgent need to protect ecosystems.

To move forward, sustainable investment practices and the adoption of clean technologies by investors must be encouraged. Additionally, it is essential to strengthen international cooperation and develop capacities in developing countries to effectively present and manage environmental counterclaims.

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