

# POLICY BRIEF

No. 06, 2025

School of Modern Diplomacy Series 2024

## Policy Brief on International Investment Law Reform and Parallel Proceedings

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### Summary

This policy brief on international investment law reform addresses the critical issue of parallel proceedings in investor-state dispute settlement (ISDS). Parallel proceedings occur when the same or closely related disputes are pursued in multiple forums, often under overlapping treaties.<sup>1</sup> This phenomenon has significant implications for both investors and states, as it can lead to inconsistent rulings, delayed resolutions, and conflicting obligations, undermining the legitimacy and effectiveness of the ISDS system.<sup>2</sup> The brief aims to provide a comprehensive overview of the current challenges posed by parallelism, emphasizing its adverse effects on legal predictability, fairness, and efficiency. Furthermore, the decentralized nature of international investment law, governed by over 2,500 bilateral investment treaties (BITs)<sup>3</sup>, multilateral agreements, and regional trade treaties, exacerbates the problem by creating a fragmented framework with varying provisions and dispute resolution mechanisms.

<sup>1</sup> Erk-Kubat, Parallel Proceedings in International Arbitration: A Comprehensive European Perspective (2014)

<sup>2</sup> Gabrielle Kaufmann-Kohler, „How to handle parallel proceedings: A practical approach to issues such as competence-competence and anti-suit injunctions”, 2008 Dispute Resolution International, Pg. 110-113

<sup>3</sup> UNCTAD, "International Investment Agreements," UNCTAD Investment Policy Hub, <https://investmentpolicy.unctad.org/international-investment-agreements>

### Highlights

Parallel proceedings in investor-state dispute settlement (ISDS) create legal uncertainty, increase costs, and undermine the legitimacy of the system.

The decentralized nature of international investment law, with over 2,500 treaties, allows investors to pursue multiple claims in different forums.

Key challenges include conflicting rulings, prolonged dispute resolution, and the risk of forum shopping by investors.

Proposed reforms include treaty harmonization, a multilateral investment court, and stronger procedural rules to prevent duplicate claims.

An incremental approach—starting with treaty harmonization and diplomatic engagement—can help establish a more predictable and fair dispute resolution system.

To address these issues, this policy brief advocates for actionable reforms aimed at fostering greater predictability, fairness, and efficiency in the ISDS system. It highlights the need for a unified approach to international investment law that minimizes the occurrence of parallel proceedings. Proposed reforms include the establishment of coordination mechanisms among tribunals, the adoption of clearer procedural rules within treaties to prevent the occurrence of multiple claims for the same dispute, and the promotion of a multilateral investment court system to centralize dispute resolution and ensure consistency.

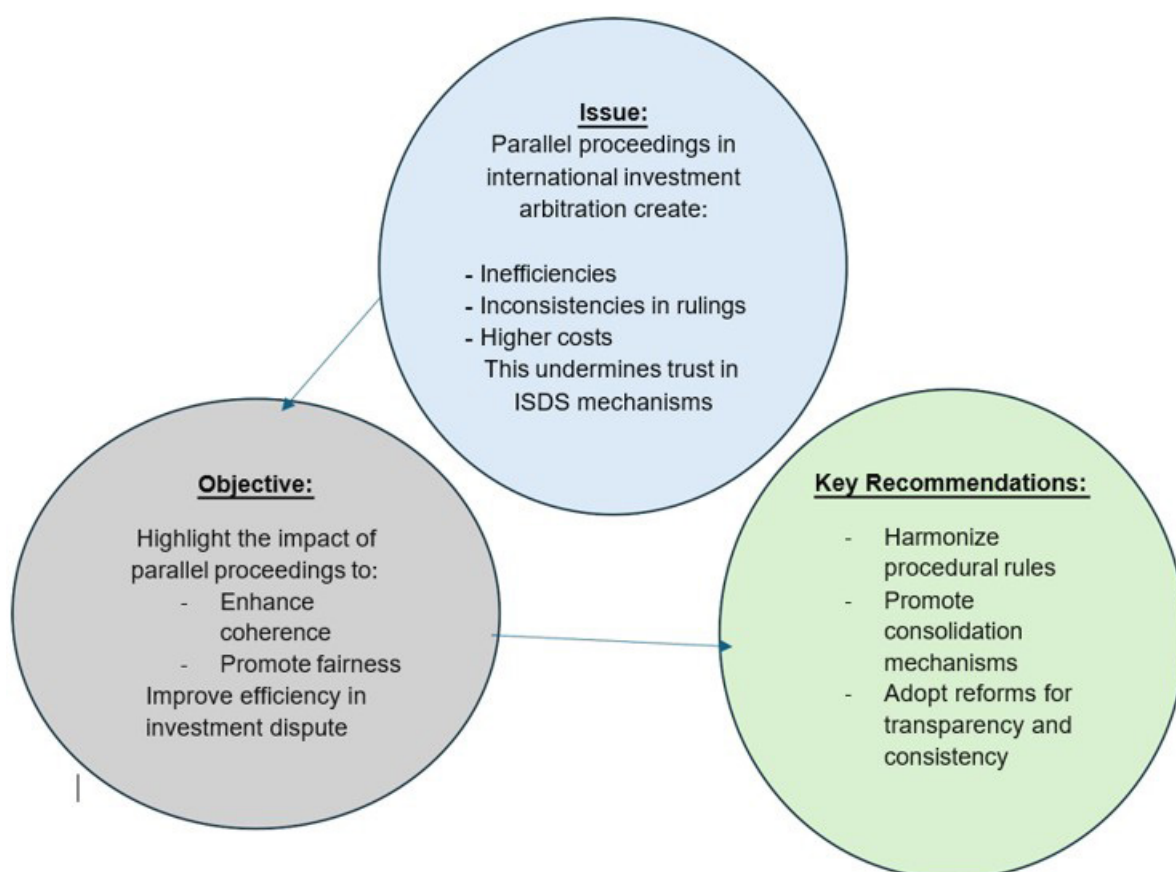
In addition to diagnosing the problem and proposing solutions, the brief underscores the importance of aligning these reforms with the interests of all stakeholders, including investors, host states, and the broader international community. It calls for the active involvement of policymakers, international organizations, and arbitration institutions in designing and implementing effective solutions. Finally, this policy brief

aims to enhance the legitimacy and functionality of the ISDS system. A fair and efficient investment dispute resolution is essential to preserving trust in international investment law and fostering sustainable economic development in an increasingly interconnected global economy. Figure 1 illustrates the key components.

## Context and Importance of the Issue

Foreign direct investment (FDI) plays a pivotal role in international economic law and development by facilitating the transfer of capital, technology, and expertise across borders. This process enables economies to integrate into the global marketplace, fostering economic interdependence<sup>4</sup>. However, this interdependence also necessitates the

<sup>4</sup> OECD, International Investment Law: Understanding Concepts and Tracking Innovations (OECD, 2021), [https://www.oecd.org/en/publications/international-investment-law-understanding-concepts-and-tracking-innovations\\_9789264042032-en.html](https://www.oecd.org/en/publications/international-investment-law-understanding-concepts-and-tracking-innovations_9789264042032-en.html).



**Figure 1:** Key Components  
**Source:** Author

establishment of legal frameworks to manage cross-border disputes, trade relations, and regulatory consistency, highlighting the crucial role of international investment law.

FDI is regulated and protected through bilateral investment treaties (BITs) and multilateral frameworks such as the Energy Charter Treaty or regional trade agreements. These legal instruments are designed to shield investors from risks like expropriation or discriminatory treatment. Once an investor operates within the territory of a host state, they can invoke the provisions of relevant investment treaties. In the event of disputes, these treaties provide mechanisms for resolving conflicts, often allowing investors to pursue claims through international arbitration.

Despite its significance, international investment law operates within a decentralized legal framework. It lacks a unified treaty or regulatory system and is instead governed by over 2,500 BITs, multilateral agreements, and regional trade treaties. Each of these instruments has unique provisions, defining investor rights and protections—such as safeguards against expropriation and guarantees of fair treatment—differently.

undermining the legitimacy of the dispute resolution system, as seen in high-profile cases like Chevron<sup>5</sup> and Yukos<sup>6</sup>.

For investors, parallel proceedings create risks of inconsistent rulings and prolonged resolution processes. For states, such scenarios may lead to conflicting obligations, which could erode their regulatory autonomy and strain diplomatic relations. These challenges underscore the urgent need for reform in the international investment law framework to enhance coherence, ensure fairness, and preserve the legitimacy of the dispute resolution process.

Short summary of some landmark cases which illustrate in depth the Issue of Parallel Proceedings follows .

### Complications, Issues and available solutions

As mentioned above, the claims which overlap before different legal forums often lead to the occurrence of parallel proceedings, and these situations can cause a lot of complications and issues.

#### Yukos v. Russia

**Overview:** Shareholders of Yukos Oil Company pursued claims against Russia under multiple treaties and forums, including the Energy Charter Treaty (ECT) and other mechanisms, following the expropriation of Yukos.

**Key Issues:**

- Claims were pursued in parallel before various international arbitration tribunals and domestic courts.
- Russia challenged the legitimacy of the claims, leading to conflicting awards and significant delays in resolution.

**Outcome:** Tribunals under the ECT awarded a record-breaking \$50 billion in damages to Yukos shareholders, which Russia resisted, complicating enforcement across jurisdictions.

**Figure 2:** Summary case Yukos v. Russia  
**Source:** Author

This fragmented framework often results in inconsistencies in the interpretation and application of laws during disputes.

Investors frequently have the option to initiate disputes in various arbitration forums, such as ICSID, UNCITRAL, or ICC. Some treaties even permit recourse to domestic courts as an alternative to international arbitration. This flexibility, however, allows investors to exploit overlaps in treaties by filing multiple claims in different jurisdictions or under multiple treaties for the same dispute. For instance, an investor might pursue claims under both a BIT and a regional trade agreement. This situation places considerable strain on arbitration tribunals, which operate independently within their jurisdictions. Consequently, conflicting awards may arise,

#### Some key circumstances which lead to complications in proceedings

- **Multiple Investors and Claims:** Investors can initiate claims against a state based on the same measures, often under different international agreements, such as bilateral investment treaties. This interconnection between various international courts and tribunals can result in the same dispute being heard in multiple forums. This raises the challenge of different tribunals reaching conflicting

<sup>5</sup> Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I) (PCA Case No. 2007-02/AA277)

<sup>6</sup> Yukos Universal v. Russia Yukos Universal Limited (Isle of Man) v. The Russian Federation (PCA Case No. 2005-04/AA227)

### Chevron v. Ecuador

**Overview:** Chevron initiated claims against Ecuador under both domestic courts and international arbitration (under the U.S.-Ecuador BIT) over environmental liabilities tied to oil extraction in the Amazon.

**Key Issues:**

- Parallel proceedings arose as Chevron pursued arbitration at the Permanent Court of Arbitration (PCA) while Ecuadorian courts adjudicated a related environmental damages case.
- The arbitration tribunal issued awards in Chevron's favor, including orders for Ecuador to suspend enforcement of the domestic court judgment, leading to conflicts between domestic and international decisions.

**Outcome:** Highlighted the lack of coordination between domestic legal systems and international tribunals, exacerbating disputes over jurisdiction and enforcement.

**Figure 3:** Summary case Chevron v. Ecuador

**Source:** Author

decisions based on the same facts.<sup>7</sup>

- **Broad Definitions of Investment and Investor:** BITs often define "investment" and "investor" broadly, encompassing both direct and indirect shareholders. For example, shareholders in a foreign company may have the right to bring a claim for damages (e.g., a loss in the value of shares) against the host state. This broad definition can lead to multiple claims by different entities (direct or indirect investors) associated with the same investment.
- **Joint Contract and Treaty Claims:** In some cases, an investor may bring claims based on both contractual agreements and a BIT, especially when the state and the investor have entered into specific contracts with dispute resolution mechanisms that allow for both local court proceedings and arbitration. This can result in a situation where the same dispute is being addressed through multiple forums simultaneously.
- **Impact on Multiple Investors:** When a state introduces a measure affecting a range of investors, such as changes in tariffs or regulations, it can lead to multiple investors bringing separate claims under the same BIT. This can result in different proceedings with potentially divergent outcomes. For example, the tariff changes in Spain's renewable energy sector led to at least 22 arbitration claims at ICSID, as well as additional cases under UNCITRAL or SCC rules.

#### Some key issues arising from Parallel Proceedings

- **Conflicting Decisions:** The biggest concern is the risk of inconsistent rulings from different tribunals or courts. If multiple forums address the same issue, they may issue conflicting decisions, creating confusion and undermining

the legal certainty that is crucial for effective dispute resolution.

- **Increased Costs and Delays:** Parallel proceedings lead to duplication of legal efforts, such as repeated legal arguments and administrative procedures, which increases costs and prolongs the dispute resolution process. This can be a significant burden for the parties involved, particularly investors.
- **Waste of Judicial Resources:** Multiple courts or tribunals addressing the same issue place a strain on judicial resources. This inefficiency can delay resolutions and affect the quality of justice, as the same issue is litigated multiple times.
- **Uncertainty in Jurisdiction and Applicable Law:** The complexity of determining the correct jurisdiction and applicable law, especially when the dispute involves both treaty and contract claims, can create uncertainty. This can make it difficult for tribunals to manage the dispute and for parties to understand the scope of their legal rights.
- **Risk of Forum Shopping:** Parallel proceedings can incentivize parties to engage in forum shopping, where they strategically choose the most favourable forum for their case. This undermines fairness and can lead to manipulation of the legal process.
- **Enforcement Issues:** Conflicting rulings across multiple forums create challenges for enforcing decisions. Parties may find it difficult to know which decision to comply with, and inconsistent rulings may erode the authority of legal outcomes.<sup>8</sup>

<sup>7</sup> Yannaca-Small Katia, „Parallel Proceedings“, Oxford University Press, 2008, Volume 1, p. 4

<sup>8</sup> Daniel W. Rivkin, The impact of parallel and successive proceedings on the enforcement of arbitral awards in Bernardo M Cemades and Julian D. M Lew, Parallel State and Arbitral Procedures in International Arbitration (Dossier of the ICC institute of World Business Law 2005), p.277

### Available Solutions/Tools to tackle the problems of Parallel Proceedings

- Fork-in-the-road clauses: These require parties to choose a single forum for dispute resolution, preventing them from pursuing claims in multiple forums.
- Anti-suit injunctions: These can prevent one party from pursuing litigation in a forum that would conflict with another proceeding.
- Umbrella clauses: These clauses can protect investors by expanding the scope of obligations that a host state owes to foreign investors under a BIT.

However, these mechanisms are not always effective in preventing the complications arising from parallel proceedings, and the need for more consistent regulation remains a key issue in international investment law.

### Policy Options and Comparative Analysis

This section explores four potential policy solutions to address parallel proceedings in ISDS.

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## Treaty harmonization offers a practical starting point, ensuring faster adoption while paving the way for longer-term systemic reforms

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1. Creation of a Multilateral Investment Court: Establish a centralized court to hear all investment disputes, ensuring consistency in rulings and reducing parallel proceedings. While this would enhance legal predictability, gaining widespread acceptance remains challenging.<sup>9</sup>
2. Treaty Harmonization: Encourage states to harmonize BITs to include provisions that prevent parallel proceedings, such as 'fork-in-the-road' clauses, requiring investors to select a single dispute resolution path.
3. Appellate Mechanism: Establish an appellate body within existing arbitration frameworks to hear appeals from initial awards, reducing incentives for multiple claims.
4. Enhanced Role for UNCITRAL or ICSID: Support UNCITRAL or ICSID in developing guidelines on addressing parallel proceedings within the existing arbitration frameworks.

### Recommendations

This brief recommends an incremental approach to investment law reform, starting with treaty harmonization to minimize parallel proceedings, followed by supporting a multilateral investment court if diplomatic support is achievable. Treaty harmonization offers a practical starting point, ensuring faster adoption while paving the way for longer-term systemic reforms.

### Implementation Steps

1. Encourage the adoption of model BITs addressing parallel proceedings through diplomatic channels.
2. Foster diplomatic dialogues within platforms like the G20 and WTO to build consensus for reforms.
3. Advocate for UNCITRAL and ICSID to issue guidelines or model clauses that could be included in BITs to prevent parallel proceedings.

### Conclusion and Call for Action

Reforming international investment law to prevent parallel proceedings will strengthen investment predictability and fairness. A concerted, cooperative approach is essential for aligning investment treaties with modern needs and maintaining global economic stability. Diplomatic collaboration is critical to achieving reforms that support fair, predictable dispute resolution and foster better international relations.

This brief would help policymakers prioritize reform measures and navigate the complexities of parallel proceedings in international investment law.

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<sup>9</sup> European Commission. (n.d.). Multilateral investment court project. European Union. Retrieved from [https://policy.trade.ec.europa.eu/enforcement-and-protection/multilateral-investment-court-project\\_en?prefLang=sv](https://policy.trade.ec.europa.eu/enforcement-and-protection/multilateral-investment-court-project_en?prefLang=sv)

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**Publisher:** United Nations University Institute on Comparative Regional Integration Studies (UNU-CRIS), Bruges, Belgium

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