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Non-state actors, extractive industries, and the investment regime:

What can be learned from five Amazonian investor-state disputes?

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Non-state actors, extractive industries, and the investment regime: What can be learned from five Amazonian investor-state disputes?

Abstract. The international investment regime was designed to reduce political risks—risks created by government action or inaction—faced by enterprises venturing abroad. It assumes that political risks are due to unitary host states, who, guided by national interests, would confiscate profitable foreign enterprises when opportune. This article argues, however, that political risks can have a different origin. In ecologically vulnerable areas, extractive projects can be polarizing, as some groups benefit from their existence while others suffer their consequences. In this setting, non-state actors may fight legally and politically to attract or expel extractive industries, generating policy uncertainties and political risk. To check this argument, the article examines five investor-state disputes coming from extractive projects located in the Amazon and which were caused, in part or completely, by the actions of non-state actors. The cases studied provide insights about the importance of non-state actors in the investment realm as well as inadequacies of the current investment regime.

Keywords: investor-state disputes, non-state actors, extractive industries, Amazon, indigenous groups

Resumen. El régimen de inversión internacional fue diseñado para reducir los riesgos políticos—riesgos creados por la acción o inacción del gobierno—que enfrentan las empresas que se aventuran en el extranjero. El régimen asume que los riesgos políticos se deben a los estados anfitriones unitarios, quienes, guiados por los intereses

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nacionales, confiscarían las empresas extranjeras rentables cuando fuera oportuno. Este artículo argumenta, sin embargo, que los riesgos políticos pueden tener un origen diferente. En áreas ecológicamente vulnerables, los proyectos extractivos pueden ser polarizantes, ya que algunos grupos se benefician de su existencia mientras que otros sufren sus consecuencias. En este escenario, los actores no estatales pueden luchar legal y políticamente para atraer o expulsar industrias extractivas, generando incertidumbres políticas y riesgo político. Para comprobar este argumento, el artículo examina cinco disputas inversionista-Estado provenientes de proyectos extractivos ubicados en la Amazonía y que fueron causados, en parte o en su totalidad, por acciones de actores no estatales. Los casos estudiados brindan información sobre la importancia de los actores no estatales en el ámbito de la inversión, así como sobre las insuficiencias del régimen de inversión actual.

Palabras clave: disputas inversor-estado, actores no estatales, industrias extractivas, Amazonía, grupos indígenas

Introduction

In 2003, when Burlington Resources bought Block 23's oil exploration concession in the Ecuadorian Amazon, the signs of trouble were clear. The Ecuadorian government had already declared the block's *force majeure*, as the previous concessionaire had failed to cooperate with local communities. Burlington must have thought it could do a better job, but they were wrong. "Negotiations (...) were encumbered by several attacks from members of indigenous groups, which included the destruction of the contractors' seismic study base, the setting on fire of their camp, and the kidnapping of several employees" (*Burlington v. Ecuador*, 2010, par. 35).

These events happened because the indigenous peoples living there were never properly consulted by authorities. The Ecuadorian government and the foreign investor wanted to produce oil, while the local communities preferred to preserve their lands and way of life. Knowing the destruction brought by oil production elsewhere in the country (FINAE, FIPSE and FICSH, 2003), the indigenous groups decided to resist.

In 2008, Burlington initiated an investor-state dispute against Ecuador in international courts, claiming that the Ecuadorian government had failed to protect its interests in Block 23, among other issues. The arbitrators dismissed their claims regarding Block 23, but only for technical reasons: Burlington did not state its claims to Ecuador in a correct and timely matter (*Burlington v. Ecuador*, 2010, pars. 336-8).

This article argues that investor-state disputes can be caused by nonstate actors, but the international investment law is ill-prepared to deal with such cases. Designers of international investment law understood that political risks faced by foreign investors were caused by rational, unitary host states who, guided by national interests, would confiscate profitable foreign enterprises whenever it was opportune. However, this understanding may not always be appropriate. Rather than having a homogenous national interest, different groups within a state can have opposing views with regards to the desirability of foreign investments. This is particularly true for extractive projects, which degrade the environment and threaten the wellbeing of nearby communities, while at the same time creating concentrated economic benefits. How does the investment regime fare in these circumstances?

To answer this question, this article examines investor-state disputes coming from extractive projects located in the Amazon and which were caused, in part or completely, by the actions of non-state actors. It finds that (1) non-state actors participated in 25% of all extractive sector investor-state disputes in the Amazon; (2) national governments are sometimes captured by private interests when expropriating; (3) non-state actors may not intend to confiscate a foreign business, but rather prevent it from happening; and (4) the international investment regime may be ill suited to bring justice and foster development for expropriations of the kind seen in these cases. The events at Block 23 in Ecuador exemplify well some of these findings, as indigenous groups were protagonists, the oil business was not confiscated but destroyed, and the international regime only dismissed the case on technicalities, but could have demanded a large compensation to be paid for the lost business.

In recent years, some studies have mentioned how anti-mining action by local communities may result in investor-state disputes (Williams 2022, Bortner, 2021). This article contributes to this literature in two ways. First, by arguing that part of the problem lies in the well-known but simplistic assumption that states are unitary and rational, but unable to credibly commit to respect investor's rights. As argued in the next section, this assumption is embedded in the investment regime. This article argues, instead, that some investment disputes arise from the heterogeneous preferences of non-state actors within a state. Second, this article presents the first attempt to examine systematically the universe of cases. By focusing on a well-defined sector and geographical region— extractive projects in the Amazonian regions of independent countries — it is able to check all relevant cases within this limited scope. Doing so reduces the problem of cherry-picking and allows for preliminary quantitative findings.

Political Risks and the International Investment Regime

Foreign Direct Investment (FDI) is one of the economic activities that define modern globalization. It has been instrumental in establishing global production chains and multinational companies (Vernon 1971), and it helped disseminate products, technologies, and institutions globally (Moran et al, 2005). At the same time, FDI has been criticized for exploiting permissive labor and environmental regulations of developing countries (Moran, 1978, Evans, 1979, Klein, 2000, Ramya and Linda, 2007; Sabir, Qayyum and Majeed, 2020).

Foreign investors and developing states have a complicated relationship. Many developing states welcome FDI by enacting pro-investment laws and signing investment treaties (Allee and Peinhart, 2010). Yet, the same states may violate investor's rights later (Brower and Blanchard, 2014; Duncan, 2006; Sun, Deng and Wright, 2020). These events are significant enough that a large literature has emerged with the objective of understanding why, when, and how governments expropriate foreign investors: The political risk literature.

The mainstream political risk literature has been deeply influenced by the Obsolescing Bargain Model (OBM), first developed by Raymond Vernon (1971). Vernon theorized that the relative bargaining power of investors and host states is what defines how they divide investment-derived surplus between themselves at different points in time. Before the investment is made, foreign investors have bargaining power because host states are competing to receive their investment. Host states compete at this stage by enacting pro-investment laws, creating tax free zones or sectors, constructing infrastructure to support future investments, among other measures. Once the investment is made, however, investors lose bargaining power. Their financial capital is transformed into immobile assets located in the territory of a host state. Free to select policies within their territory, sovereign host states can alter the legal conditions that attracted investors. They can expropriate these firms by raising taxes and tariffs, freezing the price they can charge on customers, confiscating their business, among many other methods. Firms can hardly escape this predicament because states are leviathans within their sovereign territory.

According to OBM, political risk will be highest in sectors where investors are essential in the investment phase, but unnecessary in the operational phase. One example is in the extractive industry, where foreign capital and expertise is needed in the exploration and build up phase, but replaceable in the production phase (Vernon, 1971, ch. 2; Hajzler, 2012). In contrast, investment projects in sectors that require foreign investors' specific contributions in the operational phase—due to complex

technology that is not transferred to local workers, a need to perform continuous innovation, or a need to access international production chains—are less exposed to political risks, because host states know they can't manage well these businesses after confiscation (Kobrin, 1987, Hajzler, 2012). Political risk may also depend on state capacity (Bakir, 2015, Kobrin, 1984), sector of activity (Hajzler, 2012), and overall level of development (Kobrin, 1984, Lucas, 1990).

OBM offers a powerful, but simplified, understanding of the source of political risks. It sees host states as rational, unitary actors that will take over foreign investments whenever the benefits of doing so are larger than the costs. With respect to timing, it predicts expropriations will take place after the capital investment is made. It also identifies the government's lack of commitment to foreign investors as the essential problem to be solved.

Critical Perspectives

Other perspectives exist. Many have seen foreign direct investments as instruments of empires and state-bourgeois alliances, to the detriment of target states (Hobson, 1902). The *dependentista* literature of the 1960s, 1970s and 1980s, argued that foreign investors, local business owners and national governments formed a triple alliance to lower salaries and deny labor rights (Oneal 1994; Evans 1979). While the idea that business co-opt governments was not new, this literature argued that foreign and domestic capitalists are natural allies in politics, despite being competitors otherwise. More recently, Pablo M. Pinto has proposed a liberal, microeconomic, model that predicts heterogeneous preferences within a state with respect to foreign investments (Pinto, 2013). In a recent book, Zoe Williams finds that conflicts between foreign investors and local communities to cause some investor-state disputes in the mining sector (2022, chapter 5).

Other perspectives exist. Some have seen foreign direct investments as instruments of empires and their bourgeois class, who act in alliance to exploit target states (Hobson, 1902). The *dependency theory* literature of the 1960s, 1970s and 1980s argued that states were made of different groups, with different policy preferences regarding foreign investments. A Marxist *dependentista*, Vânia Bambilra argued that foreign investments convert the industrial bourgeoisie of developing countries into subordinates of multinationals, which are based on developed countries (Bambilra, 2012). As a consequence, these elites would forego attempts to foster a deeper national development or anti-imperialist fight. A structural *dependentista*, Peter Evans argued that foreign investors, local business owners and

national government formed a triple alliance to lower salaries and deny labor rights (Evans, 1979). More recently, Pablo M. Pinto has proposed a liberal, microeconomic, model that predicts heterogeneous preferences within a state with respect to foreign investments (Pinto, 2013). In a recent book, Zoe Williams finds that conflicts between foreign investors and local communities have caused some investor-state disputes in the mining sector (2022, chapter 5).

However, these alternative perspectives have been questioned, as mainstream literature believes investment is a Pareto-improving activity (i.e. win-win on a societal level) (Moran, 1978, pp. 81-82), which virtually eliminates the importance of domestic non-state actors. Studies that see investments as desirable, and the state as an approximately unitary agent, such as Moran (1978), Kobrin (1984, 1987) Lucas (1990), Price (2000) and Brower and Blanchard (2014), have been much more influential within national and international policy circles.

The Investment Regime Assumes Rational States and the OBM.

International investment law is characterized by a fragmented collection of bilateral investment treaties, provisions contained in trade agreements, national investment laws, and a myriad of other legal instruments. Despite being so fragmented, the international investment law is often referred to as an international ‘regime’ for its ability to set rules, norms, and expectations in a consistent way through its web of interconnected parts (Behn, Fauchald and Langford, 2022).

Inspired by the OBM, international investment law was designed with a “hands-tying” approach to investment protection. Priority was given to ensure that host states, assumed to be rational, will respect foreign investors. Investments treaties achieve these goals with the help of three innovations, all of which raise the cost of expropriations. First, the regime has expanded the concept of expropriation, regulating what states should do, can do, and cannot do. Besides respecting existing laws, contracts and treaties, states should refrain from enacting new laws that negatively affect existing investors—the principle of “legal stability”. States should also respect investor’s “legitimate expectations” (Potestà, 2013), implying that states must comply with unwritten norms. Further, states are responsible for securing foreign investors from violence or illegal acts of other parties, as states have the monopoly on the use of legitimate violence to enforce the law.

Second, the investment regime has innovated by empowering foreign investors to bring disputes against host states in international courts, without the need to seek diplomatic espousal. This innovation is crucial because diplomatic espousal—the use of diplomacy by a state to protect the interests of other states or non-state

actors—is often denied (Choi, 2008). Thus, the best way to enforce investors’ rights is to empower them to bring disputes themselves.

Third, the investment regime has made investor-state disputes expensive, both directly and indirectly. According to Hodgson, Kryvoi and Hrcka (2022, p. 28), the mean value of damages awarded by investors between 2017 and 2020 was US\$ 315.5 million, a considerable value. Even when states win, they spend, on average, US\$ 4.4 million just to sustain their case (*ibidem*). This occurs, in part, because the investment regime adopts the principle of “fair market value” (Simmons, 2012). States facing disputes also lose future investments, because of reputation costs (Allee and Peinhardt, 2011).

Together, these three innovations are supposed to make expropriations costly. The intention is not to make states lose money, but rather to enforce that they will not expropriate in the first place.

First appearing in 1959, bilateral investment treaties (BITs) entered frank expansion in the 1990s, and thousands have been signed and ratified (Allee and Peinhardt, 2014, p. 50). Important bilateral and regional trade agreements (PTAs), such as NAFTA and the Energy Charter, as well as a myriad of other legal instruments, have also incorporated this commitment-centered design. Today, a large share of investments made in developing countries can initiate investor-state disputes in international courts if expropriated.

There is a vast literature recognizing that the international investment regime assumes states to be unitary, rational actors. According to Bonnitcha and Williams (2019, p. 85), “[f]rom the perspective of international law, including international investment law, the state is a unitary actor.” When investment disputes are “politically motivated”—responding to social pressure, for instance—arbitrators tend to stick to the unitary actor assumption, ignoring deviations from this ideal or considering deviations harmful. When comparing existing theories on the design of investment treaties, Todd Allee and Clint Peinhardt (2014) find three branches, all of which assumed states to be rational.

The assumption of unitary, rational states is usually only mentioned by authors departing from it. When trying to explain why states were changing attitudes and becoming reticent with the international investment regime, Poulsen and Aisbett (2013) did not abandon the notion that states are rational and unitary. Instead, borrowing from behavioral economics, they propose that “policymakers” have bounded rationality. Although the article acknowledges that states’ decision making involves many actors and institutions, the cast seem to move in harmony.

There is also empirical and historical evidence that the investment regime was based on an obsolescing bargain model. Allee and Peinhardt (2014) article identifies three explanations for the design of investment treaties we see today. The first two identify obsolescing bargain as the essential problem that investment treaties were designed to solve, but differ in why and when developing states accepted to sign treaties solving this problem. The third explanation, which is based on the rational design of institutions approach (Koremenos, Lipson and Snidal, 2001), does not require obsolescing bargaining as the source of political risk problems, but is considered the least plausible one after empirical tests.

When examining the historical development of Bilateral Investment Treaties (BITs)—the most relevant and numerous instruments of international investment law—, many see it as a mechanism to solve the obsolescing bargain problem. For Guzman (1998), developing countries didn't want to solve the obsolescing bargain problem, but were induced to sign BITs anyway because, otherwise, they would lose investments to other developing countries who did. More recently, Alvarez (2011), an authority on the evolution of international investment norms, disputes the argument presented by Guzman, but agrees that BITs were designed to solve the obsolescing bargain problem.

Alvarez further argues that the United States saw in the BITs a mechanism to constrain state action, in its global fight for market liberalization and against soviet-inspired state intervention (p112-3). As such, BITs could be seen as part of a larger neoliberal agenda, and akin to the contemporaneous GATT reforms as described by Lang (2011, chapter 8).

Problems with the Current Investment Regime

Despite being successful by many standards, the international investment regime has been criticized for its design, priorities, and side effects. It has been accused of granting investors too much protection (Choi, 2008, Feighery, 2014), making investor-state disputes too expensive (Poulsen and Aisbett, 2013), reducing the sovereignty of capital-importing states (ibidem, van Aaken, 2010), not protecting the environment (Dupuy and Viñuales, 2013) or indigenous rights (Bortner, 2021). The investment regime has not been able to stop expropriations from happening, with 40 to 80 disputes brought to international courts every year (UNCTAD, 2023), twice as much as the number of disputes brought to the World Trade Organization. The regime has also shown instability, as some of its conventions and treaties were abandoned or abrogated by Bolivia, Venezuela, Ecuador, South Africa, Indonesia, and Russia (Peinhardt and Wellhausen, 2016).

In this context, it is worth asking whether we have correctly understood the source of political risks and whether the investment regime is effective. This article proposes that looking at the role of non-state actors—such as local communities, non-governmental organizations, social movements, private companies, interest groups—could be fruitful. If nations are composed of diverse social groups with heterogeneous interests, it is hard to predict which group and preference will be expressed by the state at any one time. Expropriations could take place, then, when groups who oppose investors are in power or control those in power. In this view, the state is not unitary and thus, not rational. Imposing costly disputes may not prevent the state from expropriating, if the cost of disputes is paid by actors which are not currently making the decisions. Does it make sense, then, to design treaties imposing legal stability?

The existence of diverse groups with heterogeneous preferences who alternate in power can also explain other anomalies. It may explain states' apparent irrationality when performing expropriations whose benefit is probably smaller than the cost of the disputes it will generate. While a rational, unitary state would refrain from these acts, collective action problems make it possible that subnational groups will accept these costs and perform the expropriation, even though it is suboptimal collectively. This argument is illustrated in the examination of the *Chevron-Texaco v. Ecuador* dispute later in this article.

Extractive Industries in the Amazon: Impacts and Heterogeneous Preferences

Mineral extraction in the Amazon presents well-known environmental, social, and economic risks. In the rainforest, it is hard to contain waste products that are released by oil drilling operations (Jernelöv, 2010, p. 360) and metal mining. The transportation of oil requires an extensive network of pipelines, which may leak if not carefully maintained (*ibidem*). These projects also cause deforestation, both in the areas used for mining, and indirectly, in the infrastructure raised to support it (Sabin, 1998, p. 147). The ecological balance of large regions can also be impacted, as the Amazon environment is highly interconnected and dynamic (Martins et al, 2022).

Extractive operations can cause severe social problems to local indigenous groups. Indigenous groups know that contaminants can destroy the ecological balance that sustain themselves and important non-human entities (High, 2020). Meanwhile, the incoming workers—mostly male, young, and unaware of the local culture—, can disrupt preexisting social structures and norms (Wetzlmaier, 2012). Contact with the incoming culture can also provoke the complex phenomena of

acculturation, which produces marginalization and loss of mental and physical wellbeing (High, 2020).

Economically, the picture is more complex. On one hand, mining and oil extraction creates jobs, not only to incoming workers, but also indigenous ones (High, 2020, 312-3). These jobs are created directly, in the mines and oil fields, and indirectly, in support industries or public services. Taxes and royalties paid by mining and oil extraction projects can be redistributed to local communities or invested in better schools, clinics, infrastructure (Lu, Valdivia and Silva, 2017, pp. 120-3; Sabin, 1998, p. 147). On the other hand, these economic opportunities and investments can have perverse effects. Jobs, monetary transfers, and public services are instruments of acculturation. The economic benefits are also concentrated, creating new inequalities. Furthermore, regions made dependent on oil or mineral extraction can experience economic crisis when global markets devalue their products, although public policy can mitigate these impacts (Mien and Goujon, 2022).

While the Amazon rainforest is uniquely large, wet, and diverse, the argument made here can be extended to other environmentally vulnerable regions. Wherever mineral extraction creates concentrated economic benefits and diffuse social costs, the population may end up polarized into groups for and against mineral investments. Indigenous groups in the Andean paramos, African savannas, and Arctic coast, to mention a few examples, are exposed to a similar dynamic.

The Political Economy of Approving Extractive Projects

Despite these potentially negative impacts, extractive projects are often approved by local and/or national authorities. To understand why, one must analyze preferences and decision-making processes at both levels.

At the national level, these projects are seen as mostly positive, particularly in developing countries. Extractive investments create jobs, increase exports, pay substantial taxes, serve as collateral of international loans, and foster economic growth—at least in the short term (Rollins, 1956, Mien and Goujon, 2022). Unsurprisingly, few national leaders of Amazonian countries have consistently fought against the expansion of the extractive sector, although some have used environmental rhetoric in campaigns for their political benefit (Lu, Valdivia, and Silva, 2017, p. 219).

Historically, national governments have ignored the will of local communities, imposing investments to them, in the Amazon (Sabin, 1998) and elsewhere. However, these communities can organize over time to resist these projects (Jimbicti Pandama, 2004). While the sparse Amazonian groups lack sufficient

electoral power, they can protest, promote regional and national strikes, occupy mining plants and oil fields, or destroy infrastructure required by those. Their actions, while sporadic, can severely disrupt the profitability of extractive projects, making their voice heard—as some cases investigated in this article illustrate. Thus, local communities can organize to become effective stakeholders. Nonetheless, the high cost of mobilization—particularly under brutal regimes—may prevent them from doing it more often.

Most democratic regimes developed institutions to respect the rights of these local communities and avoid social unrest. Apart from Guyana, French Guyana (France) and Suriname, all Amazonian countries signed ILO Convention 169, which grant several rights to indigenous peoples, including the right to be consulted about the use of their traditional territories. Thus, mining agencies usually require extractive projects to obtain wide approval by local stakeholders as a prerequisite to apply for licenses. In this way, investors and local communities can negotiate and improve plans to accommodate their needs. After all, indigenous groups are strategic and able to negotiate and adapt to new circumstances (Lu, Valdivia and Silva, 2017, pp. 120-3; Sabin, 1998; Rollins, 1956; High, 2020, p. 314). One cannot dismiss the possibility that a negotiated project could be mutually beneficial. However, risks remain, as the process can be corrupted, defective in design (Lu, Valdivia and Silva, 2017, p. 50; High, 2020, p. 304), and some of the projects' impacts may only be realized in the long term (*idem*, p. 313).

The Cases

The previous sections have explained why the political risk literature should be interested in studying investor-state disputes that are caused or strongly influenced by non-state actors, and why the Amazon rainforest is a setting where these cases are expected to happen. This section presents and analyses five cases that fit these characteristics.

The cases studied were selected from the set of investor-state disputes, disputes made possible by the existing regime. All five cases were found using the Investor-State Disputes Dataset (ISDD), a data collection project based on Universidad San Francisco de Quito.

The ISDD investigates investor-state disputes filed in international courts to find what events motivated the case. It provides new and detailed information on: (1) the date of alleged expropriation events; (2) the governmental and non-governmental actors allegedly responsible for these events; and (3) the nature of the

alleged events, that is, which actions impinged on foreign investors' rights. The ISDD also records other details of the investing firms, such as their country of origin and sector of activity, legal characteristics of the disputes, and many other variables. In its current stage of development, the ISDD has gathered an extensive and comprehensive set of data, identifying, and classifying, expropriation events for all 551 disputes filed between 1972 and 2011. It is currently being extended to include the 600+ cases filed after that.

The ISDD is not the first dataset on investor-state disputes. Numerous efforts to understand them have emerged in the last decade (Franck, 2007, Behn, Fauchald and Langford, 2022, UNCTAD 2023). Yet, scarce attention has been paid to the nature of the events that motivated disputes in the first place. This unique contribution of ISDD makes it possible to investigate the role of non-state actors in causing investor-state disputes.

Thanks to the ISDD, it is easy to identify these cases from the large number of investor state disputes, by checking the coordinates of the project, its sector of activity, and identifying which actors have been accused to be responsible for the expropriation events.

The table below lists the number of disputes filed against each of the 8 independent Amazonian countries — excluding the French Guyana, an overseas department of France. Venezuela appears the state with most cases (60), followed by Peru (46) and Ecuador (28). Suriname appears with 0 cases, together with Brazil—a country known for its decades-long avoidance of the investment regime, with only two investment treaties ratified so far. While it would be enriching to explain the scale and variation in the number of disputes faced by other Amazonian countries, this article will avoid doing so for brevity. In total, the Amazon countries have faced 172 investor-state disputes, 27 of which were located in the Amazon.

Of the 27 Amazon-located cases, 20 were related to extractive projects. The only cases which were not related to extractive projects were the ones located in the urban areas of Guayana, a large Venezuelan city in the Amazon outskirts, and Georgetown, the capital of Guyana. Of the 27 Amazon cases, 6, or 22%, had a relevant participation of non-state groups: local populations, NGOs, other enterprises, regional governments, and so on. Combining these two aspects, 5 disputes were both from the extractive sector and included a relevant participation of non-state groups. These are the cases further investigated by this article.

<i>Amazon Countries</i>	<i>Number of investor-state disputes</i>				
	<i>Disputes based on investments located in the Amazon rainforest</i>				
	<i>Total</i>	<i>Total in the Amazon</i>	<i>Extractive sector (A)</i>	<i>Non-state groups involved (B)</i>	<i>Cases selected (Intersection of A and B)</i>
Bolivia	16	0	0	0	0
Brazil	0	0	0	0	0
Colombia	20	1	1	1	1
Ecuador	28	11	11	3	3
Guyana	2	2	0	0	0
Peru	46	2	2	1	1
Suriname	0	0	0	0	0
Venezuela	60	11	6	1	0
Total	72	27	20	6	5

Table 1. Number of investor state disputes, by type and country.

The table below presents basic characteristics of the five cases. All the cases are recent, having been filed in international courts from 2006 to 2021; many are still undergoing the arbitral process. The investment regime started to coalesce around the late-1990s, and investor-state disputes became frequent at the turn of the millennium.

The study presented in the next pages does not intend to offer novel details about the 5 cases selected. Rather, it is focused on shedding light on three aspects of these cases: (1) what is the role of non-state actors in the expropriation of foreign investors, (2) whether the obsolescing bargain theory truly captures the nature of

these expropriations; and (3) whether the investment regime functions well when non-state actors are a relevant factor in causing investor-state disputes.

ID	Case name	Dispute name (From UNCTAD ISDS Navigation dataset)	Year filed	Mineral product	Period of events
1	Chevron v. Ecuador	Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (II) (PCA Case No. 2009-23)	2009	Oil	2006-2012
2	Burlington v. Ecuador	Burlington Resources, Inc. v. Republic of Ecuador (ICSID Case No. ARB/08/5)	2008	Oil	2000-2009
3	Occidental v. Ecuador	Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II) (ICSID Case No. ARB/06/11)	2006	Oil	2001-2006
4	Cosigo v. Colombia	Cosigo Resources, Ltd., Cosigo Resources Sucursal Colombia, Tobie Mining and Energy, Inc. v. Republic of Colombia	2016	Gold	2009-2014
5	Worth Capital v. Peru	Worth Capital Holdings 27 LLC v. Republic of Peru (ICSID Case No. ARB/20/51)	2020	Oil, natural gas	2015-2018

Table 2. The investor state disputes studied in detail.

Considering that there are about 1300 investor-state disputes of the kind investigated in this article, five cases could seem like an irrelevant sample. However, this small sample does allow for some interesting advances in our understanding. First, by selecting a few cases, it is possible to track the three aspects of interest mentioned in the last paragraph. For the task of theory building, five cases is a good start. Second, the number of cases studied is small, but it contains all international investor-state disputes of interest (extractive, with relevant nonstate action) in the Amazon rainforest of independent countries. Within this limited and well-defined

region, the sample is exhaustive, allowing for preliminary quantitative interpretations. It would be interesting to check, in later studies, if the findings of this research can be extended to disputes based on extractive projects in other ecologically vulnerable regions, such as other rainforests, tundra and deserts.

Chevron v. Ecuador

The most emblematic case of the list is *Chevron-Texaco v. Ecuador*, involving two multinational oil companies, a large Amazonian community composed of indigenous and non-indigenous groups, two Ecuadorian presidents, as well as multiple national and international courts. This high-profile case has been extensively investigated by books, articles, and even a feature-length documentary (Lu, Valdivia and Silva, 2017, Kimerling, 2005, *Crude*, 2009).

In the 1960s, Texaco discovered the Lago Agrio field, which became the epicenter of oil production in Ecuadorian Amazon. In its exploration, Texaco made a substandard management of the toxic waste produced by its oil field, contaminating the water and soil of a large area near Lago Agrio. After finishing operations there, the authorities accepted Texaco's environmental remediation plans in 1995 (*Chevron v. Ecuador*, 2009, pars. 14-5). But these plans were inadequate.

Accepting Texaco's remediation plans made sense for the government of president Sixto Durán Ballén, who defended neoliberal reforms (Lu, Valdivia and Silva, 2017, 75; Sánchez, 1993) and was trying to attract new foreign investments during his presidency. Durán Ballén was very active on this matter, having signed the US-Ecuador Bilateral Investment Treaty of 1993 and enacting the Hydrocarbon Law in the same year. However, local Amazonian communities and NGOs, known as Lago Agrio plaintiffs, did not accept this outcome, and brought a lawsuit against Texaco in New York courts. Lacking jurisdiction there, the case was sent back to Ecuador in 2002 (*Chevron v. Ecuador*, 2018, par. 4.027). Texaco was sold to Chevron in 2000.

Elected in 2006, Rafael Correa espoused the Lago Agrio plaintiffs, embarking on a public defamation campaign against Chevron and Texaco. In the fourth month of his presidency, Correa made a well-publicized trip to Lago Agrio, where he denounced the "barbarity committed by that multinational corporation [Texaco]" (*Chevron v. Ecuador*, 2009, par. 39). Fearing political interference, Chevron brought in 2009 an investor-state dispute against Ecuador to the Permanent Court of Arbitration.

The Ecuadorian courts gave victory to the Lago Agrio plaintiffs in 2011, awarding them US\$ 18.2 billion dollars in compensation, to be paid by Chevron (*Chevron v. Ecuador*, 2018, par. 5.2). In 2018, the Permanent Court of Arbitration decided in favor of Chevron, on the grounds that, besides political interference, one Ecuadorian judge had been bribed (with promises of future proceeds of the case) by “one or more of the Lago Agrio plaintiff representatives” (*idem*, par. 10.4), and the government wrongfully attempted to enforce the corrupted decision of that judge. Ecuador had to dismiss the Lago Agrio case and could not enforce it internationally.

To this day, Ecuador has only been able to recover \$358 dollars from Chevron—less than an Ecuadorian minimum wage (*idem*, par. 4.133). It is unknown whether Ecuador has repaid Chevron. Yet, one can be sure that both sides lost, as the legal fees of each party were adding to dozens of millions already in 2014 (Raymond, 2014).

With respect to the theme of this article, there are several lessons to be learned from this case. First, the timing of events does not fit well with the obsolescing bargain model. Texaco did not have a productive investment when it was expropriated. Rather, the “expropriation”, if it can be called by this name, happened when Texaco had left the country and its parent company, Chevron, had almost no assets there.

Second, the case questions the notion that rational, unitary states are the main cause of political risks. The case against Chevron was brought by social movements, instead of the government. The judicial system—which is supposed to deliver fair judgements, independent of national interest—acted for the private benefit of one of its judges. Similarly, the national government did not act as a rational, unitary actor in defense of the national interest. Durán Ballén’s acceptance of Texaco’s remediation plans was rational for Durán Ballén’s political agenda, but hardly so for the collective benefit of Ecuador.

What about Correa? Stirring up popular passion against Chevron and Texaco helped Correa portray himself, in the first years of his presidency, as someone that would break with past excesses of the oil sector. It rhymed well with his proposal to include “nature as a fundamental value” in the constitution (Lu, Valdivia and Silva, 2017, p. 86). But these stunts soon turned farcical. In 2013, when Correa repeated the accusations against Texaco and Chevron with the “Mano Sucia” campaign, he was at the same time promoting new oil projects in sensitive Amazonian areas (*idem*, p. 219).

Since the discovery of commercial oil fields in Lago Agrio in the 1960s, Ecuador has pursued policies to expand oil production in its Amazonian region. Two thirds of the Ecuadorian Amazon have been sliced into oil blocks that overlap with indigenous communities, national parks, and ecological hotspots (Lessmann et al, 2016, p. 4997), with rivers flowing into and from the blocks. Many of these oil blocks remain unused but may eventually be developed. From time to time, the Ecuadorian government offers contracts to explore new or previously abandoned blocks through public bids.

The *Burlington v. Ecuador* case stems from events happening in four oil exploration blocks, named 6, 21, 23 and 24. Blocks 23 and 24 are the focus of this case study, as the events there were caused by indigenous groups.

Like most other indigenous groups, the Shuar and Achuar have been acculturated for centuries, through their contact with religious missions, the military, oil companies, and invading settlers. Like many other indigenous groups, the Shuar and Achuar were at some point educated only in Spanish, through religious missions financed by the state (Jimbicti Pandama, 2004, p. 12). But the Shuar and Achuar are known for having a long history of resisting the outside intervention, from the Incas to the Spanish Empire (Cedeños, 2008).

In the late 1990s, blocks 23 and 24 were granted by the government to private oil investors. Arco, the winner of block 24 concession, was unable to make use of its contract, as it faced organized opposition by the local Shuar peoples. Arco obtained a suspension of its contract, so that it would not incur any punishment for failing to produce oil until the situation stabilized. (*Burlington v. Ecuador*, 2010, par. 29).

In the early 2000s, Burlington Resources Inc., a US-based company, was purchasing shares in several oil blocks in Ecuador. Noticing the troubles faced by Arco, and confident it could obtain a better outcome, Burlington purchased block 24 in its entirety in May 2000. It then proceeded to negotiate with indigenous communities. Upon finding itself unable to break the impasse, Burlington asked assistance from the Ecuadorian government to no avail.

The company also purchased 50% of Block 23. There, the violence was more consequential, with “the destruction of contractors’ seismic study base, the setting on fire of their camp, and the kidnapping of several employees” (idem, par. 35). Burlington asked Ecuador to intervene and protect its property, and later made the case that it deserved compensation due to Ecuador’s failure to do so.

Why did the Shuar and Achuar use violence to resist the oil companies? According to Jimbicti Pandama (2004, p. 19), they were aware of the projects, but had not been consulted about their implementation. They started to organize in 1998, forming a confederation of organizations that acted in coordination to resist these projects.

Arbitrators eventually declined jurisdiction over blocks 23 and 24, as the events reported on those blocks were too old by the time the dispute was brought to international courts. Burlington eventually won the other claims related to blocks 6 and 21 and settled its dispute with Ecuador for \$412 million dollars (Williams, 2017).

What conclusions can be learned from this case? As in the previous dispute, *Burlington v. Ecuador* does not seem to conform to the OBM. The main actor behind block 23 and 24 expropriations was not the state, but indigenous groups, that is, non-state actors. No business was stolen from foreign investors in blocks 23 and 24; rather, a potential business was destroyed before it could be put into production. At first glance, one could think that the international investment regime is well suited to deal with this type of expropriation, as it declined to have jurisdiction over the actions of the indigenous groups. However, this was due to a technicality and not a substantive principle. Had investors brought those claims to international courts in 2004, they would have had jurisdiction and could have asked for compensation based on the market value of the project.

Occidental v. Ecuador

Occidental Petroleum Corporation (“OPC”) and Occidental Exploration and Production Company (“OEPC”), henceforth called together “Occidental”, are two U.S. oil companies that first invested in Ecuador in the 1980s. In 1999, Occidental obtained a participation contract with Petroecuador for the exploration and exploitation of block 15 in the Amazon (*Occidental v. Ecuador*, 2012 par. 105).

Occidental attempted to sell itself to Alberta Energy Corporation (AEC), a large oil producer based in Canada. According to the participation contract of block 15, Occidental couldn’t change its ownership, unless it received prior approval of Ecuadorian authorities. This ended up causing a scandal around 2004, when Occidental received funds from AEC before asking authorities for their permission. Around that same time, Occidental won an unrelated investor-state dispute against Ecuador (*idem*, par. 147-69).

The Occidental-AEC scandal grew, with anti-American and anti-foreign investor demonstrators protesting in the streets of Quito in January 2005 (*idem*, par.

181). The national assembly took moves to clarify its position, making it increasingly apparent that Ecuador's then president, Lucio Gutierrez, was the one resisting the pressure to terminate the contract with Occidental (*idem*, pars. 182-5). Amidst other scandals and violent protests, the position of the president became unsustainable, and he was ousted by the National Assembly in April 2005. One year later, under a new administration, the government terminated Occidental's contract in block 15, and the enterprise filed its investor-state dispute.

If it was not for the protests in Quito, the national assembly could perhaps have kept President Gutierrez, who was trying to negotiate with Occidental. Yet, the Occidental-AEC scandal cannot be blamed for the fall of the president, as the protestors were mainly focused on other scandals plaguing his administration (Baque-Cantos, Peña-Ponce and Baque-Parrales, 2020, pp. 150-2). Further evidence that anti-oil movements were not so powerful is that other protests were violently repressed by the state a few months later (Amnesty International, 2012, p. 10).

This case is mostly compatible with the mainstream perspective. Even though the national government was divided (and thus, not unitary), it was the protagonist of the expropriation. Non-state actors had a role, but it was subsidiary, and possibly manipulated. As predicted by OBM, the expropriation transferred an existing business into the hands of the government. Thus, it would not be inappropriate to ask the government to pay compensation that was proportional to the market value of the confiscated business.

Cosigo v. Colombia

This investor-state dispute involves two north American investors, Cosigo Resources Ltd. and Tobie Mining and Energy, Inc., who were trying to obtain a gold mining concession to explore deposits near Taraira, a small village in the Colombian Amazon. In their Notice of Arbitration, investors recount how they followed all legal steps with perfection. After staking their claims in 2007 and performing an environmental study, they began a lengthy consultation process with local indigenous groups. These groups approved the project, and their approval was certified by authorities. The last step was to obtain a mining concession contract. The company fulfilled all requisites of the concession contract by April 2009, but Ingeominas (now Agencia Nacional de Minería) delayed the contract's delivery by several months (*Cosigo v. Colombia*, 2016, par. 19).

While investors were working to get a mining concession, the non-governmental organization Gaia Amazonas was working towards creating the Agoije-

Apaporis Natural National Park in the same place. The creation of this park required approval by local indigenous communities, just like the mining concessions.

Local communities were at the time divided into two camps, called ACIYA (Asociación de Capitanes Indígenas del Yaigojé Apaporis) and ACITAVA (Asociación de Capitanes Indígenas del Tairaira-Vaupés). While the ACIYA camp was working together with Gaia Amazonia to create the national park, ACITAVA sided with the prospective investors to develop the gold mine (*idem*, par. 11).

According to the investors, Gaia Amazonia performed a hasty, incomplete approval procedure for the creation of the park (*idem*, par. 13). Nonetheless, their process was approved, and the park was formed two days before investors finally obtained their mining concession contract. Investors could not build the mine inside the park, despite having a concession to do so.

As in the *Chevron-Texaco v. Ecuador* and *Burlington v. Ecuador* disputes, the *Cosigo v. Colombia* does not conform to the OBM. Investors were not expropriated after establishing a business, but rather before the business could be established. The case also provides evidence of the relevance of non-state actors, such as Gaia Amazonia and the different indigenous groups and organizations.

Assuming investors win this dispute, which is currently pending, what should be the value of damages they receive? As mentioned in section 2 of this article, the investment regime prioritizes tying the hands of host states, and it does so by making disputes costly in expectation. When it comes to the valuation of damages, the Colombia and United States Trade Promotion Agreement of 2012, article 10.7, follows the usual design and declares that compensation should be based on the “fair market value” principle. According to Simmons (2012, p. 197), the principle stipulates that states should pay compensation that “wipes out all the consequences of the illegal act”. If the government had not created the park, the mine would be operating. Investors are thus permitted, by the rules of the investment regime, to seek compensation for the entire stream of profits they would obtain if they had been allowed to build the mine.

This is not a mere thought experiment. According to their Notice of Arbitration and Statement of Claims, investors are asking for \$ 16.5 billion dollars, plus \$11 million, the amount they invested in their attempt to obtain the licenses (*Cosigo v. Colombia*, 2016, par. 31). If they win this much, their investment will be multiplied 14 thousand times. What line of business is that good?

They would not be the first ones. In the *Société Générale (SG) v. Dominican Republic* case, SG made an investment of just 2 dollars to purchase a large public utility company. They were able to buy it so cheap because the previous owners were unwilling to continue to operate while also quarreling with the Dominican

government. Despite making such a small investment, Societé Générale later settled with the Dominican Republic for millions of dollars (IA Reporter, 2009).

Investors would still have the incentive to risk their capital in foreign lands if, upon been expropriated, they could recover an amount proportional to their investment, incremented by standard remuneration. However, the current investment regime was designed not to compensate proportionally, but to tie the hands of rational, national states against changing laws, in hopes that there would simply be no expropriations.

Worth Capital v. Peru

The Peruvian case orbits around Pedro Pablo Kuczynski (known as PPK), who was the President of Peru when the main events in this dispute happened. Kuczynski's career before becoming president of his country was impressive: one time World Bank economist, lobbyist, three times minister, private consultant. Over this trajectory, Kuczynski gained notoriety but also infamy, and ended in shame when impeached from the presidency in a corruption scandal.

According to the case's Memorial on the Merits, Kuczynski was for a long time in a revolving door, switching back and forth between working privately for Hunt Oil and publicly as finance minister. When serving as finance minister, he would use his influence to help Hunt Oil obtain contracts (Otra Mirada, 2015). In 2011, Blue Oil Trading Ltd found itself in two disputes against Hunt Oil, allegedly creating an enduring animosity between Kuczynski and Blue Oil (Diario del País, 2015).

In 2015, Kuczynski was running for the country's presidency. His past interventions in the oil sector, including its disputes with Blue Oil, became newsworthy material and threatened to harm his electoral prospects (ibidem). That same year, Blue Oil Trading Ltd acquired Maple Gas, an important hydrocarbon enterprise in the Ucayally region, in central Peruvian Amazon. Maple Gas had rights to several local oil fields, but its main business was the Pucallpa Refinery, which was leased from Petroperú, the state-owned oil company (*Worth Capital v. Peru*, 2022, par. 4).

In 2016, Kuczynski was elected. Soon after, Petroperú began to act against the interest of Blue Oil and Maple Gas. First, it required the main supplier of Maple Gas to sell its entire crude oil production to Petroperú at a lower price. This was uneconomical not only for the supplier, but also for Petroperú, which could only

refine the product in Iquitos, hundreds of kilometers away (Diario Correo, 2017). Petroperú would then have to bring back the refined products to be sold in Pucallpa, or otherwise the region would lack fuel. After losing its main supplier, Maple Gas applied for licenses to operate nearby oil fields. However, Petroperú denied these applications (*Worth Capital v. Peru*, 2022 pars. 228-245). Blue Oil sold Maple Gas to Worth Capital, in hopes that doing so would protect it from Kuczynski, but this transaction had no effect.

Petroperú would later require Maple Gas' refinery to act as a crude depot for Petroperú, which meant it could no longer operate as a refinery. As the refinery was not adequately adapted to its role as a storage facility, oil spills were frequent at the improvised docking stations and barges used to transport crude (Diario Correo, 2017).

These interventions of Petroperú resulted in nightmarish scenario: frequent oil spills, high transportation costs between Pucallpa and Iquitos, oil scarcity and high prices in Pucallpa. This chaotic situation led to continuous protests. Instead of assuming its errors, the government decided to run a campaign accusing Maple Gas of being the culprit (*Worth Capital v. Peru*, 2022, pars. 248-264). It is not clear whether the population turned against the company, and the media recognized that the government was the cause of ongoing problems. However, other business lost confidence they could work with Maple Gas. This isolated the company, leading to its collapse (*idem*, pars. 265-267).

Different from most other cases in the list, the *Worth Capital v. Peru* fits some important characteristics of the Obsolescing Bargaining Model. The national government was responsible for the expropriation of Maple Gas, and its goal was to nationalize a business that was operated by a foreign, private investor. As in the *Occidental v. Ecuador* dispute, the population and other non-state actors had a subsidiary role. It would be hard to argue, however, that the expropriation was beneficial for the national interest. The method used to provoke the collapse of Maple Gas was extremely costly for public finances, the local population, and the environment. Why was such a wasteful method used?

One possibility is that the government of Kuczynski was trying to expropriate Maple Gas in a manner that would not result in an investor-state dispute. As a Minister of Finance in the 2000s and having contacts in the World Bank as well as Wall Street, Kuczynski would certainly know of the costs and risks of investor-state disputes. He would therefore know that international arbitrators tend to favor investors when governments directly confiscate private businesses. Using Petroperú's role as supplier of last resort, Kuczynski could pretend that Petroperú's acts were legal and not expropriatory.

However, this is not a very convincing argument. A more plausible explanation for the indirect tactics employed by Kuczynski is that he was unable to pass legislation to expropriate Maple Gas in a direct fashion. He had to use executive branch powers to perform the expropriation indirectly, hoping other branches of power would not stop it.

Conclusion

The investment regime that exists today was born out of a perception that political risks stem from unitary and rational states who will expropriate whenever doing so is beneficial for the national interest. To convince states not to expropriate, the investment regime created a dispute system that acts as a deterrent.

The five Amazon cases investigated reveal several lessons. First, the cases show that non-state actors can be protagonists of the expropriation events, such as they were in the *Chevron-Texaco v. Ecuador*, *Burlington v. Ecuador* and *Cosigo v. Colombia* disputes. The cases also show that, when the national government is responsible for the expropriation, it may not be for the common good, but rather the private interests of non-state actors. Ecuadorian President Durán Ballén was indirectly responsible for the Lago Agrio Plaintiffs and the ecological disaster there, as he didn't care to oblige the foreign company or his own government to clean contaminated lands. His successor, Rafael Correa, used Lago Agrio's dispute with Chevron to portray himself as a savior of the people against destructive oil corporations. Kuczynski had no problem with oil spills, costly logistics and fuel shortages, if that was the cost of achieving his personal goals. Non-state actors can thus be the cause of expropriations in two ways. Social movements, indigenous groups and NGOs may be able to press governments into expropriating, while politicians and private interests may capture governments to perform expropriations that benefit them.

Second, it was shown that many expropriations do not intend on confiscating the operating business of an investor, but rather preventing that business from existing, such as in the *Burlington v. Ecuador* and *Cosigo v. Colombia* cases. Thus, the logic behind the obsolescing bargain theory is not applicable sometimes. This is an important finding, as it affects the financial desirability of asking defendant states to repay the "fair market value" of expropriated business. If the business was prevented from existing, there is no confiscated asset producing surpluses to repay investors.

Third, the five cases reveal that costly investor-state disputes can be a blunt tool. The threat of costly investor-state disputes was not designed to make states lose money frequently, but to convince rational states not to expropriate. Such a mechanism may not prevent expropriations, however, if the state is not acting as a rational entity but being captured by non-state interests, or if the government is not the one making decisions. Costly investor-state disputes can also lead to perverse side effects. It may convince governments to disguise their actions through wasteful indirect tactics, as one interpretation of the *Worth Capital v. Peru* case would suggest. It may also convince states to ignore the pleas of environmentalists and indigenous communities.

The five cases investigated in this article represent only about 0.5% of all investor-state disputes, a drop in the bucket. At the same time, they represent 25% of all Amazonian disputes based on extractive projects. This suggests that expropriations of extractive projects could be often caused by non-state actors. Future scholarship should extend the work to figure out how often that is the case. Moreover, debates about reforming the investment regime should consider that tying the hands of states may not always be possible nor desirable.

References

- van Aaken, A. (2010) 'The International Investment Protection Regime through the Lens of Economic Theory.' In Michael Waibel, Asha Kaushal, Kyo-Hwa Chung, Claire Balchin (Eds.) *The Backlash against Investment Arbitration: Perceptions and Reality*. (pp. 537-554) London: Kluwer Law International.
- Allee, T. and Peinhardt, C. (2011) 'Contingent credibility: The impact of investment treaty violations on foreign direct investment.' *International Organizations* 65, p 401–32.
- Allee, T. and Peinhardt, C. (2014) 'Evaluating three explanations for the design of bilateral investment treaties.' *World Politics* 66(1), p47–87.
- Alvarez, J. E. (2011). *The Public International Law Regime Governing International Investment*. Brill.
- Amnesty International. (2012) 'So that no one can demand anything: Criminalizing the right to protest in Ecuador?' Available at <https://www.amnesty.org/en/documents/amr28/002/2012/en/>.
- Aylwin, J. (2011). 'The TPPA and Indigenous Peoples: Lessons From Latin America.' In *No Ordinary Deal - Unmasking the Trans-Pacific Partnership Free Trade Agreement*, Edited by Jane Kelsey. Sydney, Australia: Allen & Unwin.
- Bambirra, V. (2012). *O Capitalismo Dependente Latino-Americano*. Florianópolis: Insular.

Baque-Cantos, M. A., Katuska, D. and Baque-Parrales, E. M.. (2020) 'La corrupción y su incidencia en la administración pública; análisis de sus causas y efectos.' *FIPCAEC* 17 (5), p137-157.

Bakir, C. (2015) 'Bargaining with multinationals: Why state capacity matters.' *New Political Economy* 20(1), p63-84.

Behn, D., Fauchald, O. K. and Langford, M. (2022) Chapter 2: The international investment regime and its discontents. In: *The legitimacy of investment arbitration*. Cambridge University Press.

Bonnitcha, J. and Williams, Z. (2019). 'State liability for 'politically' motivated conduct in the investment treaty regime'. *Leiden Journal of International Law* 33, p77-100.

Bortner, D. D. (2021) Amending ICSID to safeguard indigenous rights. *Georgetown Journal of International Law* 52(4), p1057-1106.

Brower, C. N. and Blanchard, S. (2014) 'What's in a meme? The truth about investor-state arbitration: Why it need not, and must not, be repossessed by states.' *Columbia Journal of Transnational Law* 52, p689-777.

Burlington Resources, Inc. v. Republic of Ecuador (ICSID Case No. ARB/08/5) (2010) Award on jurisdiction.

Cedeño, Y. E. (2018) 'El modelo de desarrollo de la etnia Shuar de la parroquia Yungaza de la provincia de Morona-Santiago.' *Trabajo de Titulación*. Licenciatura en Gestión para el Desarrollo Local Sostenible, Universidad Politécnica Salesiana-Cuenca.

Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. The Republic of Ecuador. (2009) Notice of arbitration.

Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. The Republic of Ecuador. (2018) Second partial award on track II.

Choi, W. M. (2007) 'The Present and the Future of the Investor-State Dispute Settlement Paradigm.' *Journal of International Economic Law* 10(3), p725-747.

Cosigo Resources, Ltd., Cosigo Resources Sucursal Colombia, Tobie Mining and Energy, Inc. v. Republic of Colombia. (2016) Notice of arbitration and statement of claims.

Crude: The real price of oil. (2009) Directed by Joe Berlinger [Film]. United States: Produced by Joe Berlinger, Michael Bonfiglio, Richard Stratton and J.R. DeLeon.

Diario Correo. (2017) 'Embarcación produce derrame de petróleo crudo en río Ucayali.' *Diario Correo*, 13 January. <https://diariocorreo.pe/peru/embarcacion-produce-derrame-de-petroleo-crudo-en-rio-ucayali-723877/>

Dupuy, P.M. and Viñuales, J.E. (eds.) (2013) 'Harnessing foreign investment to promote environmental protection, incentives and safeguards.' Cambridge University Press.

Evans, P. (1979) *Dependent development: The alliance of multinational state and local capital in Brazil*. Princeton University Press.

Feighery, T. J. (2014) 'In Search of a roadmap: Lessons for the ISDS regime in the U.S. experience of lump-sum claims settlement processes.' *Transnational Dispute Management* 11(1)

FINAE, FIPSE and FICSH. (2003). *Letter from Shuar and Achuar peoples to the CEO of Burlington Resources*.

Franck, S. (2007) 'Empirically evaluating claims about investment treaty arbitration.' *North Carolina Law Review* 86(1), p1–88.

Guzman, A. T. (1998) 'Why LDCs sign treaties that hurt them: Explaining the popularity of bilateral investment treaties.' *Virginia Journal of International Law* 38, p639–688.

Hajzler, C. (2012) 'Expropriation of foreign direct investments: Sectoral patterns from 1993 to 2006.' *Review of World Economics* 148(1), p119–49.

High, C. (2020) 'Our land is not for sale!': Contesting oil and translating environmental politics in Amazonian Ecuador. *The Journal of Latin American and Caribbean Anthropology* 25 (2), p185-362.

Hobson, J. A. (1902) *Imperialism: A study*. London: Ballantine, Hannon and Co.

Hodgson, M., Kryvoi, Y. and Hrcka, D. (2021) 'Costs, damages and duration in Investor-State Arbitration.' *British Institute of International and Comparative Law*. Available at: https://www.biicl.org/documents/136_isds-costs-damages-duration_june_2021.pdf

Jernelöv, A. (2010) 'The threats from oil spills: Now, then, and in the future.' *AMBIO* 39:353–366.

Jimbicti Pandama, T. (2004) 'El petróleo en la región Amazonica: El bloque 24 y los derechos colectivos en la nacionalidad Shuar.' *Tesis*. Facultad Latinoamericana de Ciencias Sociales, Ecuador.

Jodice, D. (1980) 'Sources of change in third world regimes for foreign direct investment, 1968-1976.' *International Organization* 34, p177–206.

Kimerling, J. (2005) "Indigenous peoples and the oil frontier in Amazonia: The case of Ecuador, ChevronTexaco, and Aguinda v. Texaco". *New York University Journal of International Law and Politics* 38, p413–538.

Klein, N. (2000) *No logo: Taking aim at the brand bullies*. New York: Picador.

Kobrin, S. (1984) 'Expropriation as an attempt to control foreign firms in LDCs: Trends from 1960 to 1979.' *International Studies Quarterly* 28(3), p329–48.

Kobrin, S. (1987) 'Testing the bargaining hypothesis in the manufacturing sector in developing countries.' *International Organization* 41(4), p609–38.

Koremenos, B., Lipson, C., and Snidal, D. (2001) 'The rational design of international institutions.' *International Organization* 55(4), p761-799.

Lang, A. (2011). *World Trade Law After Neoliberalism*. Oxford University Press.

Lessmann, J., Fajardo, J., Muñoz, J. and Bonaccorso, E. (2016) 'Large expansion of oil industry in the Ecuadorian Amazon: biodiversity vulnerability and conservation alternatives.' *Ecology and evolution* 6(14), p4997–5012.

Lucas, R. E. (1990) 'Why doesn't capital flow from rich to poor countries?' *The American Economic Review* 80(2), p92–96.

Lu, F., Valdivia, G. and Silva, N. (2017) *Oil, Revolution and Indigenous Citizenship in Ecuadorian Amazonia*. New York: Palgrave MacMillan.

Diario del País (2015) 'Lluvia de demandas contra PPK.' *Diario del País*, 10 April. Available at: https://issuu.com/diario-del-pais/docs/merged_98a8053dbf5491/8

Martins, B. R., Rodrigues, J., de Oliveira, V., Ribeiro, S., Barros, W., and Schwartz, G. (2022) 'Mining in the Amazon: Importance, impacts, and challenges to restore degraded ecosystems. Are we on the right way?' *Ecological Engineering* 174. <https://doi.org/10.1016/j.ecoleng.2021.106468>

Mien, E. and Goujon, M. (2022) '40 Years of Dutch Disease Literature: Lessons for Developing Countries.' *Comparative Economic Studies* 64, p351–383.

Moran, T. (1978) 'Multinational Corporations and Dependency: a Dialogue for Dependencistas and Non-Dependencistas.' *International Organization* 32(1), p79–100.

Moran, T., Graham, E., and Blomström, M. (2005) 'Introduction and Overview.' In *Does Foreign Direct Investment Promote Development?* Edited by T. Moran, E. M. Graham, and M. Blomström, 1-19. Peterson Institute for International Economics.

Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (ICSID Case No. ARB/06/11) (2012) Award.

Otra Mirada. (2015) 'Los negocios del candidato PPK.' *Otra Mirada*, 5 May. Available at: https://otramirada.pe/los-negocios-del-candidato-ppk_

Peinhardt, C. and Wellhausen, R. L. (2016) 'Withdrawing from Investment Treaties but Protecting Investment.' *Global Policy* 7(4), p571–576.

Peterson, L. E. (2009, September 19) Dominican Republic settles trio of electricity arbitrations. *IA Reporter*.

Pinto, P. M. (2013) *Partisan Investment in the Global Economy: Why the Left Loves Foreign Direct Investment and FDI Loves the Left*. Cambridge University Press.

Potestà, M. (2013) 'Legitimate expectations in investment treaty law: Understanding the roots and the limits of a controversial concept.' *ICSID Review - Foreign Investment Law Journal* 28 (1), p88–122.

Poulsen, L. S. and Aisbett, E. (2013) 'When the Claim Hits: Bilateral Investment Treaties and Bounded Rational Learning.' *World Politics* 65 (2), p273-313.

Price, D. M. (2000) 'Chapter 11 - Private party versus government, investor-state dispute settlement: Frankenstein or safety valve?' *Canada-United States Law Journal* 26, p107–114.

Raymond, N. (2014, March 19) Chevron seeks \$32 million in legal fees in Ecuador case. *Reuters*. Retrieved from: <https://www.reuters.com/article/us-chevron-ecuador-idUSBREA2I1PS20140319>.

Rollins, C. E. (1956) 'Mineral development and economic growth.' *Social Research* 23(3), p253-280.

Sabin, P. (1998) 'Searching for middle ground: Native communities and oil extraction in the northern and central Ecuadorian Amazon, 1967-1993.' *Environmental History* 3(2):144-168.

Sabir, S., Qayyum, U. and Majeed, T. (2020) 'FDI and environmental degradation: the role of political institutions in South Asian countries.' *Environmental Science and Pollution Research* 27, p32544–32553.

Sánchez, J. (1993) Menos estado y más gobierno. *Ecuador Debate* 30, p44-53.

Simmons, J. B. (2012) 'Valuation in investor-state arbitration: Toward a more exact science.' *Berkeley Journal of International Law* 30(1), p196-250.

Sun, P., Deng, Z. and Wright, M. (2021). 'Partnering with Leviathan: The politics of innovation in foreign-host-state joint ventures.' *Journal of International Business Studies* volume 52, p595–620.

UNCTAD. (2023) 'Investment dispute settlement navigator' United Nations Conference on Trade and Development 2023. Available at <https://investmentpolicy.unctad.org/investment-dispute-settlement>

Vernon, R. (1971) *Sovereignty at bay: The multinational spread of US enterprises*. New York: Penguin Books.

Vijaya, R., and Kaltani, L. (2007) 'Foreign direct investment and wages: a bargaining power approach.' *Journal of World-Systems Research* 13(1), p83–95. <https://doi.org/10.5195/jwsr.2007.361>.

Wetzlmaier, M. (2012) 'Cultural impacts of mining in indigenous peoples' ancestral domains in the Philippines.' *ASEAS - Austrian Journal of South-East Asian Studies* 5(2), p335-344.

Williams, Z. (2017, December 4) Ecuador settles long-running ICSID arbitration with US oil company. *IA Reporter*.

Williams, Z. (2022). *The Political Economy of Investment Arbitration*. Oxford University Press.

Worth Capital Holdings 27 LLC v. Republic of Peru (ICSID Case No. ARB/20/51) 2022 International Centre for the Settlement of Investment Disputes. Memorial on Merits.

Yackee, J. W. (2008) 'Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law: Do BITs Promote Foreign Direct Investment?' *Law and Society Review* 42(4), p805–831.