

Green Foreign Direct Investment (FDI) Incentives Within International Investment Agreements (IIAs): Effectiveness, Challenges, And Policy Implications

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Abstract- The increasing severity of the climate change and the degradation of the environment have further increased the global endeavors to make the foreign investment more consistent with the sustainable development goals. Here, Green Foreign Direct Investment (FDI) is now a favored tool of advancing environmentally sound economic activities, such as renewable energy, environmentally friendly technology and environmentally friendly infrastructure. Increasingly, the design of International Investment Agreements (IIAs) aimed at protecting investors and enabling the movement of capital includes provisions of sustainability orientation. The effectiveness of these commitments in motivating green FDI is also unclear, however. This paper is a critical look of the role of IIAs in the promotion of green FDI with the focus of the nature, scope and effectiveness of investment incentives within the framework of treaties. Following the method of a qualitative doctrinal research, the paper will examine the texts of the treaties, the policy documents and the scholarly literature to uncover the existing tendencies and shortcomings. The results indicate that even though contemporary IIAs have environmental provisions and corporate social responsibility clauses, and references to sustainable development, these provisions are mostly non-binding and unable to provide enforcement mechanisms, thus curtailing their practical influence on investment behavior (UNCTAD, 2023; OECD, 2022). Moreover, effective implementation of these incentives is compromised by such structural issues as the overwhelming influence of investor protection norms, regulatory limitation of host countries, and the threat of green washing (Sornarajah, 2017). The work posits that IIAs cannot be used to steer investment towards more sustainable results without fortification in law through stronger commitments of binding environmental requirements and enhanced accountability measures.

I. INTRODUCTION

The concept of Foreign Direct Investment (FDI) has been considered one of the key factors that stimulate economic growth, increase a better transfer of technology, and the assessment of national economies into a global market. Traditional and modern economic theories always focus on the influence of FDI on stimulating productivity, job creation, and capital accumulation (Dunning, 1993;

OECD, 2022). Nevertheless, the growing problems of climate change, environmental damage and resource exploitation have driven a radical shift of global investment priorities. Here, the idea of Green Foreign Direct Investment (Green FDI) has become prominent, implying cross-border investments with the benefit to environmental sustainability, such as green energy, low carbon technologies, and green infrastructure (UNCTAD, 2023).

In line with such practices, the role of International Investment Agreements (IIAs) (which consist of Bilateral Investment Treaties (BITs) and investment chapters of Free Trade Agreements (FTAs) has long since been viewed as a legal mechanism used to secure the protection of foreign investors and to make it easier to implement investment flows. Provisions that are commonly found in these agreements relate to fair and equitable treatment, anti-illegal expropriation protection and access to investor-state dispute settlement (ISDS) mechanisms (UNCTAD, 2021). Although these protections have played a crucial role in establishing a predictable investment environment, much of the scholarly literature has condemned IIAs as contributing to the imposition of investor rights in host states to the detriment of their regulatory freedom, especially in environmental protection and the welfare of its citizens (Sornarajah, 2017).

In the past, IIAs have been mostly isolated in terms of environmental governance structures. Their main goal has been the liberalization and protection of investment whereby little emphasis has been given to the effects of investment on the environment. Nonetheless, a slow yet significant pivot towards considering sustainability in IIAs has taken place over the last ten years. In modern-day agreements one is likely to see clauses referring to sustainable

development, environmental protection, and corporate social responsibility (CSR), and international community-wide commitments like the United Nations Sustainable Development Goals (SDGs) (Gordon and Pohl, 2015; OECD, 2022). This development implies that there is a new understanding that investment policy needs to agree with environmental goals and lead to the achievement of sustainable development.

Irrespective of these normative developments, the success of IIAs in stimulating green FDI is a highly debatable question. The available literature reveals that even as environmental provisions become more common in treaty writing, they are usually made of non-binding or even inspirational nature, without the means of enforcement and with lack of specific implementation means (UNCTAD, 2023). Consequently, their real impact on investors behavior and capital formation towards sectors that are environmentally sustainable seems to be minimal. Furthermore, even the IIAs structural design remains focused on protecting the investors, which may be incompatible with the environmental regulations. As an example, host states can face criticism in environmental regulatory actions participating in the ISDS mechanisms when they are deemed to undermine the interests of investors and, thus, develop a chilling effect on regulation (Sornarajah, 2017).

The other severe challenge is the heterogeneity of the approaches, which is adopted in different jurisdictions. Developed sectors, especially the European Union have gone a long way to entrench sustainability the clauses of their investment agreements such as binding environmental standards, as well as, references to international environmental agreements (OECD, 2022). Many developing countries, on the other hand, are still using traditional IIA models that provide minimal integration of environmental factors. Adaptation to other structural obstacles such as limited institutional capacity, economic reliance on foreign investment, and regulatory challenges can impede the capacity of these countries to design and implement effective green investment incentives (UNCTAD, 2021). This confusion does provoke some significant questions

about the international uniformity and usefulness of IIAs in encouraging green FDI.

Despite the increasingly expanding literature dealing with sustainable investment, there is still a gap in research. Lots of the existing literature dwells upon the aspect of environmental provisions in IIAs or looks at the tendencies of FDI in broad strokes. Nonetheless, the effectiveness of certain types of incentives in IIAs in practice to attract and guide green FDI is not thoroughly systematically examined. Specifically, limited focus has been placed on determining whether these incentives are effective regulatory instruments or are only symbolic or political to treaty regimes. This gap is critical in terms of analyzing practical role of IIAs in promoting sustainability goals.

This paper attempts to analyze, therefore, at a critical level, the role of IIAs in the incentivization of green FDI. It seeks to (i) determine the kinds of green investment incentives that have been integrated into IIAs, (ii) determine whether they are effective in directing investment behaviour and (iii) discuss the legal and structural constraints that restrain their effectiveness. The following research questions guide the study: How far IIAs encourage green FDI? What are some of the incentives included in these agreements? And what is the effectiveness of these incentives on attaining environmental and sustainability objectives?

The article reveals that IIAs should enhance their sustainability provisions since such rules at the moment restrict their capacity to facilitate green foreign direct investment. Three primary factors contribute negatively to the system and they are; non-binding environmental clauses, inequity between investor rights and responsibilities of the state and lack of any effective enforcement mechanism (Gordon & Pohl, 2015; UNCTAD, 2023). International investment law is in need of total reform that must establish binding environmental commitments and grant host state more control over matters and create systems of investment governance that comply with international target sustainability criteria.

These paper researches specific problems that create the problems of sustainable governance of investment even though it reveals what reforms should be applied to the IIAs to create a global economy that works at low carbon emissions and environmental sustainability.

II. LITERATURE REVIEW

The nexus of Foreign Direct Investment (FDI), environmental sustainability, and International Investment Agreements (IIAs) has been an area of increased scholarly interest over the past few years. This is indicative of a larger trend in the global economic governance where investment is no longer evaluated only on economic delivery but on other outcomes such as the environmental and social. The green FDI and IIAs can be broadly divided into four main strands of literature: (i) theoretical bases of FDI and its effects on the environment, (ii) the development and definition of green FDI, (iii) development of IIAs to be more sustainability oriented and (iv) critical review of the effectiveness of green incentives on investment in IIAs.

FDI and Environmental Implications

Conventional theories of FDI, especially the Eclectic Paradigm, focuses on ownership, location, and internalization (OLI) advantage as determinant of cross-border investment (Dunning, 1993). Although these frameworks mainly concern economic efficiency and the level-firm strategy, the latter scholarship has investigated the impact of FDI on the environment. The early arguments were overshadowed by the so-called pollution haven hypothesis that arguments proposing that multinational corporations might leave their environmentally damaging production to countries that do not enforce as strong environmental policies (Copeland & Taylor, 2004). The second hypothesis, in turn, is the so-called pollution halo hypothesis, which presupposes that FDI may provide a positive impact on the environmental performance, in fact, by transferring the cleaner technologies and managerial practices (Albornoz et al., 2009).

There is still inconclusive evidence. According to some works, FDI inflows may increase environmental degradation in developing nations

because of poor regulatory areas (Cole et al., 2017), and others say that foreign investment may enhance environmental quality under specific institutional circumstances (Pazienza, 2015). These conflicting results support the relevance of the structure of governance such as IIAs in determining the environmental performance of FDI.

Conceptualizing Green FDI

Green FDI has become an answer to the necessity to align investment flows with the goals of sustainable development. In general, green FDI refers to investment that leads to environmental sustainability, especially in the fields of renewable energy, energy efficiency, waste management, and sustainable infrastructure (UNCTAD, 2023). Researchers believe that green FDI is very important in the process of enhancing a shift towards low-carbon economies, particularly in the developing economies that do not have access to domestic capital and technological base (Golub et al., 2011).

Recent sources also note that green FDI is not some kind of a background of FDI but a qualitatively new type of investment that incorporates environmental goals into business practices (OECD, 2022). But the absence of a universal definition and standardized measures of measurement becomes problematic in both the empirical analysis and policy design (Taglioni et al., 2013). Moreover, the success of green FDI in delivering outcomes in sustainability is hinged on the policy surrounding, such as those created in IIAs.

Evolution of IIAs and Sustainability Integration

IIAs have experienced tremendous change in the last 20 years. Historically, these agreements were mainly interested in safeguarding investors against political risk and assuring non-discrimination and resolving disputes (UNCTAD, 2021). Nonetheless, raising concerns about the imbalance of IIAs, tending to investor rights more than state regulation freedom, has also led to the proposals of a reform (Sornarajah, 2017).

Responding to that, the appearance of new generation of IIAs has started to include sustainability-related provisions. They contain the mention of environmental protection, pledges to sustainable

development, and clauses stimulating corporate social responsibility (CSR) (Gordon and Pohl, 2015). There are agreements that clearly accept the right of the states to act in the collective good such as environmental protection thus trying to alter the balance between the rights of investors and the sovereignty of the states (Newcombe & Paradell, 2009).

The broader international systems, including the Sustainable Development Goals (SDGs) and the Paris Agreement on climate change also impact the process of environmental considerations applied to IIAs. Researchers observe that such international obligations have prompted states to incorporate sustainability terminology into investment deals as part of a fantastical plan to harmonize economic and environmental regulation (OECD, 2022). Nevertheless, there exist vast differences in the scope and detail of such integration between agreements and regions.

Green FDI Incentives within IIAs

There is a mounting competitive literature on the contribution of IIAs towards encouraging green FDI by different types of incentives. Such incentives could be divided into the financial, regulatory, and legal measures. Tax breaks, subsidy, and preferential financing of environmentally sustainable projects are examples of financial incentives, whereas streamlined approval procedures, and reduced administrative obstacles are examples of regulatory incentives (UNCTAD, 2023). Instead, the legal incentives encompass provisions that protect investments, making them less risk-related and increasing investor's confidence.

Other researchers believe that IIAs may have a positive impact by generating a predictable and stable environment of investment (Berger et al., 2011). Some, however, warn that the historic structure of IIAs might not be particularly advantageous to support sustainability goals. Specifically, the priority of the investor protection can make governments reluctant to adopt strict environmental regulations because of the threat of investor-state disputes (Tienhaara, 2009).

Critiques and Limitations

Although sustainability provisions have increased in terms of inclusion in IIAs, a considerable amount of literature has been emphasizing their limitations. Among the most serious objections is the fact that environmental provisions in IIAs are quite often non-binding and cannot be enforced (UNCTAD, 2023). Consequently, they can be seen as symbolic commitments as opposed to effective regulatory instruments. This gives the question of the so-called green washing when the sustainability jargon is made a part of the agreement with no substantial effect on the investment practices (Alschner, 2013).

The other critical problem is that investor protection and regulation of the environment could come into conflict. This has been the case especially with investor-state dispute settlement (ISDS) mechanisms that enable investors to criticize governmental actions that can impact their investments including environmental policies (Sornarajah, 2017). This may have a regulatory chill effect of governments being afraid to enforce environmental regulations due to fear of litigation (Tienhaara, 2009).

Additionally, the success of green FDI incentives is subject to more macro-structural considerations such as home regulatory capacity, institutional quality and economic factors. The design and implementation of effective green investment policies are problematic in developing countries, especially because of limited resources and development priorities (UNCTAD, 2021). This underscores the importance of developing a more subtle comprehension of the ways in which IIAs are related to domestic policy systems.

Research Gap

Although the current literature offers a considerable contribution to the transformation of IIAs and the idea of green FDI, a significant gap of the systematic analysis of the effectiveness of the definite incentives implemented in IIAs can be identified. The scholarship is mainly about the existence of sustainability provisions as opposed to their practical effects on investment flows and environmental results. More so, not much comparative analysis has been done concerning the functioning of various forms of incentives in a variety of legal and economic settings. This gap needs to be addressed to evaluate

the effectiveness of IIAs as tools of sustainable investment.

III. METHODOLOGY

The research design of the study is a qualitative research doctrinal approach to critically investigate how International Investment Agreements (IIAs) can stimulate Green Foreign Direct Investment (FDI). The use of doctrinal research in the present study is quite suitable because such study involves such systematic examination and explanation of textual and theoretical matters and frameworks that control international investment law (McCrudden, 2006). The study is mostly interested in assessing the quality, form, and efficiency of the legal instructions pertaining to the sustainability and green investment in IIAs.

Research Design

The study employs a descriptive and analytical research design. The descriptive element explains how IIAs evolved and the initiative of green FDI being a policy goal, and the analytical element critically examines the effectiveness of the incentives entrenched in such agreements. Such a two-fold focus allows seeing the normative framework in its entirety and understanding its practical implications.

Data Sources

The study will be based on secondary data, such as:

- Official treaty texts of IIAs, such as Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs)
- Publications by international organizations such as the United Nations Conference on Trade and Development (UNCTAD) and the Organisation on Economic Co-operation and Development (OECD) in the form of (reports and policy papers) as well.
- Journals, books, and working papers concerned with international investment law, environmental governance and sustainable development.

The sources that are chosen are to guarantee the legal accuracy and academic rigor.

Analytical Approach

A comparative and thematic analysis is employed in the study. Thematic analysis is used to determine and classify various forms of green FDI incentive under IIAs including financial incentive, legal incentive and sustainability incentive. A comparative analysis is utilized to discuss differences among various agreements and regions and indicate the difference in how these incentives are designed, scoped, and implemented.

Scope and Limitations

The research does not focus on empirical analysis of investment flows or on the study of the legal and policy frameworks in IIAs, but on it instead. This way, though permitting a detailed legal analysis, could restrict the possibility to quantify the actual effect of green FDI incentives in the reality. Further, the research concentrates on a limited number of examples of IIAs and might not reflect all the regional differences.

Irrespective of these shortcomings, the selected methodology offers a solid framework to critically evaluate the effectiveness of IIAs in facilitating green FDI and pinpointing vital areas where the policy would need reform.

Conceptual Framework

The study is informed with a concept framework that incorporates the main constructs of the Green Foreign Direct Investment (FDI), International Investment Agreements (IIAs) and investment incentives into the framework behind the context of sustainable development. The framework attempts to clarify the way legal and policy arrangements carried in IIAs serve to determine the direction of foreign investment flows, its quality and the environmental impact of such flows.

Green Foreign Direct Investment (FDI)

Green FDI can be defined as investments, which are made at the cross-border level and which help in promoting environmental sustainability. Green FDI, as opposed to traditional FDI, is characterized by the inclusion of its environmental goals in maximizing profits and market sales, carbon emissions reduction,

energy efficiency, and the utilization of renewable resources (UNCTAD, 2023; OECD, 2022). It normally concerns the renewable energy, sustainable infrastructure, waste disposal, and clean technology. Conceptually, green FDI resonates well with the ideals of sustainable development, of combining economic development with environmental preservation and social welfare.

International Investment Agreements (IIAs)

IIAs are the legal framework of cross-border investments. They are created to establish a predictable and stable investment climate by providing assurances of fair and equitable treatment, expropriation protection, and access to dispute settlement methods, i.e. Bilateral Investment Treaties (BITs), where they exist, and investment chapters of Free Trade Agreements (FTAs) (UNCTAD, 2021). Historically, the focus of IIAs has been to mitigate risk to investors but increasingly it is taking on the role of considering sustainability too. Present day IIAs have clauses pertaining to environmental protection, corporate social responsibility (CSR), and sustainable development and thus affect the character and trend of investment flows.

Investment Incentives as a Linking Mechanism

The key connectivity between IIAs and green FDI as part of this framework is the investment incentives. There are three broad types of these incentives:

- Financial incentives, including tax breaks, subsidies, and grants on environmentally friendly projects.
- Regulatory incentive such as simplified green investment approvals and administrative barriers.
- Legal incentives provided by the law and especially investor protection measures that lower risk levels and ensure more security in investments.

These incentives are also aimed to attract foreign investors but they also aim at promotion of environmentally friendly investing habit. Their effectiveness however is dependent on design, enforcement and their correspondence with sustainability objectives.

Sustainability and Policy Integration

The broader context of global sustainability objectives, especially the alignment of investment policies with environmental objectives is also included in the framework. Green FDI is ideally conceptualized as an instrument of realizing climate change mitigation and sustainable development. On this matter, IIAs may act as policy tools, as well as legal tools, which may serve to promote or prevent sustainable investment, based on how they are designed.

Conceptual Relationship

The conceptual nexus that informs this research can be reduced to the following: IIAs furnish the legal and institutional framework in which incentives to investment are made, and which incentives, in turn, will affect the flow and character of FDI. Incentives used in IIAs may encourage green FDI when well structured and used to decrease risks and increase returns of green investment. But in case incentives are not strong, binding, or are inconsistent with sustainability objectives then their effects are minimal.

Accordingly, this framework allows breaking down the specifics of implementing legal provisions of IIAs into real effects in relation to green investment through its potential and the limitations it has.

Incentives Analysis

International Investment Agreements (IIAs) are major actors in the global investment frontier; contributing to a kind of legal and institutional framework in the context of which foreign investment activity is practiced. Against the backdrop of sustainable development, IIAs are increasingly coming to be perceived as a tool that can turn the trends in Foreign Direct Investment (FDI) into those that are more environmentally sustainable. This chapter critically evaluates the varieties of incentives that are entrenched in IIAs that aim to encourage Green FDI in their nature, scope and efficacy.

1. Financial Incentives

One of the most direct ways of attracting green FDI is through the use of financial incentives. They are tax incentives, exemptions, subsidies and special financing programs on environmentally friendly

projects. Such incentives are usually on the domestic policy level, but IIAs may indirectly facilitate those by promoting good investment climate and preventing any discriminating activity against international investor (UNCTAD, 2023).

As an illustration, certain IIAs provide incentives encouraging foreign investors to invest in certain industries, e.g., renewable energy or environmental technologies through the guarantee that foreign investors are not any worse treated than home investors. This principle of non-discrimination would be able to make the green investments more appealing by eliminating fiscal and operational obstacles. Nevertheless, financial incentives within IIAs have a tendency of being indirect and limit their effectiveness. IIAs do not often prescribe particular financial incentives; they allow a free atmosphere with such incentives, which can be provided by host states. Consequently, the degree to which financial incentives positively influence green FDI is mostly influenced by domestic policy regimes and not the treaty commitments.

2. Regulatory Incentives

Regulatory incentives are schemes that minimise administrative and procedural support to foreign investors thereby enhancing investments flows into green areas. In IIAs, such incentives commonly come in the form of transparency promises, expedited decision making and regulatory collaboration. As an example, clauses mandating the publication of investment-related legislation and laws, and undertaking to equitable and open administrative process can minimize uncertainty and transaction expenses to investors (OECD, 2022).

Regulatory incentives in the context of green FDI can also manifest themselves in the form of giving priority to environmentally-friendly projects during investment approval procedures or creation of a fast-track system in investments in renewable energy. Even though these measures may contribute greatly to the appeal of green investment, they are not a common feature of IIAs and, in many cases, are not very specific. In addition, the regulatory incentives are often broad and flexible, creating a wide range of options in their application by the states. Although this flexibility has its advantages in the context of

integrating national situations, it can also decrease predictability and effectiveness of these incentives.

3. Legal Incentives: Investor Protection Mechanisms
Legal incentives are a fundamental element to IIAs, and possibly the most effective in influencing investment decisions. These entail clauses that ensure equitable and fair treatment, expropriation safeguard, and Investor-state Dispute Settlement (ISDS) provisions. Such provisions also boost investor confidence by minimizing political and regulatory risks; they promote cross-border investment (UNCTAD, 2021).

To the eyes of the green FDI, legal incentives may have a twofold role to play. On the one hand, high investor protection may help to attract backing of investment into the environmentally sustainable sector due to the stability in the legal environment, created by the government. This is even more crucial in case of green investments that have high initial capital, and long payback cycles. Conversely, the very same protections can weaken the environmental goals, when they hinder the capability of host states to enforce strict environmental policies. As an illustration, environmental policies realized through the ISDS mechanisms can be disputed by investors when those policies are seen as having a negative impact on their investments, which causes a regulatory chill effect (Sornarajah, 2017).

Therefore, although legal incentives are the core of the IIAs operations, they have multiple influences on the green FDIs that are context-specific. The strike between the investor protection and regulatory freedom argument is a path-goal when it comes to the effectiveness of a regulatory authority.

4. Environmental and Sustainability Provisions

Another interesting aspect of the recent IIAs is the introduction of environmental and sustainability clauses to ensure responsible business conduct. They can be commitments to maintain environmental quality, allusions to international environmental accords, and sustainable development provisions (Gordon & Pohl, 2015).

In select IIAs, the autonomy of regulations is specifically highlighted as states have the right to

regulate to meet the environmental goals and thus, issues of regulatory autonomy will be achieved. Others contain clauses favoring collaboration of environmental concerns or call upon investors to abide by home countries environmental regulations. Also, some of the agreements include the terms concerning the impact assessment on the environment and best practices implemented in environmental management.

Nonetheless, such provisions are not binding in most cases and property lack effective enforcement measures even though they are gradually increasing in number. They tend to be expressed as broad values or objectives instead of specific requirements and restrict their role in the real-life practice of investment (UNCTAD, 2023). Consequently, they are doing little to actively incentivize green FDI.

5. Corporate Social Responsibility (CSR) and ESG Integration

Corporate Social Responsibility (CSR) and Environmental, Social and Governance (ESG) are part of more comprehensive practices surrounding IIAs being incorporated in efforts to facilitate sustainable investment. These mechanisms also motivate investors to engage in responsible business activities, such as protecting the environment, including social integration, and ethical governance (OECD, 2022).

Although the CSR provisions have the potential to foster the emergence of green FDI through promotion of environmentally friendly conducts, they are mostly voluntary and not enforced. This casts doubts on whether they are effective in impacting decision making by investors. Worst still, the lack of uniformity of the ESG criteria in the framework of IIAs makes their implementation and evaluation even more of a challenge.

6. Critical Evaluation of Effectiveness

The effectiveness of the overall green FDI incentives in IIAs is largely limited. To start with, the majorities of incentives are indirect and rely on the domestic execution making them less significant internationally. Second, most non-binding provisions are predominant thereby restricting their enforceability and practical relevance. Third, the

paradoxical relationship between investor protection and environmental control can decrease the objective of sustainability.

Moreover, there are no established definitions and measurement systems of green FDI and that is why it is not easy to evaluate the effectiveness of these incentives. Devoid of standardized criteria, differentiating between truly sustainable investments on the one hand and those merely purporting to be environmentally friendly, thus, turning the risk of green washing into a risk.

Conclusion of Analysis

Overall, although IIAs have started to include different forms of incentives that help to encourage green FDI, the efficacy of such tools is still limited due to the legal, structural, and practical issues. Financial and regulatory incentives tend to be rather indirect and rely on domestic policies, whereas legal incentives can facilitate and limit environmental goals. Environmental and CSR provisions are often non-binding and do not have enforcement mechanisms, though are getting more frequent. Thus, the existing system of IIAs offers a weak assistance in enhancing green FDI, which speaks to the necessity of more robust and binding methods of sustainable investment regulations.

Case Studies

To understand how International Investment Agreements (IIAs) facilitate Green Foreign Direct Investment (FDI), in practice, this section will be analysing some of the chosen treaty frameworks with diverse methods of integrating sustainability within themselves. The case studies concentrate on the modern agreements of the European Union, the Association of Southeast Asian Nations (ASEAN) investment framework and the Model Bilateral Investment Treaty (BIT) of India. These instances demonstrate the development as well as shortcomings of green FDI incentives inclusion in IIAs.

1. European Union Investment Agreements

The European Union (EU) has taken the lead in ensuring that consideration of sustainability is integrated in its investment agreements throughout the world. The EU–Canada Comprehensive Economic and Trade Agreement (CETA) and the

EU–Vietnam Free Trade Agreement (EVFTA) include specifications on environmental protection and sustainable development.

An example is CETA that includes a specific chapter on Trade and Sustainable Development that obliges the parties to take high standards of environmental protection and fully apply international environmental agreements (European Commission, 2016). It also acknowledges the right of states to regulate with a view to justifiable public policy goals such as environmental protection. Equally, the EVFTA has its clauses that ensure sustainable investment, environmental co-operation, and climate related obligations.

Based on green FDI, such agreements have an indirect effect of incentive, as they lead to greater regulatory predictability, transparency, and a predictor of high-quality environmental governance. The fact that it includes environmental clauses and focuses on sustainable development can appeal to environmentally-aware and responsible investors who would like to invest in areas like renewable energy, or clean technology.

Nevertheless, even with these developments, the impact of EU agreements in having a direct incentive of green FDI is still weak. Various environmental clauses cannot be addressed in the context of dispute settlement procedures and do not have direct connection between the environmental performance and investment protection (OECD, 2022). Therefore, the EU agreements are a progressive model, but their influence is mostly the normative rather than the coercive one.

2. ASEAN Comprehensive Investment Agreement (ACIA)

The ASEAN Comprehensive Investment Agreement (ACIA) is an approach towards managing investments in the region by the Southeast Asian countries. The agreement seeks to establish a liberal, facilitative and transparent investment environment in the ASEAN region (ASEAN Secretariat, 2009).

ACIA has investment protection provisions, liberalization and promotion, yet its sustainability seems rather limited relative to EU agreements.

Although the accord recognizes the role of sustainable development, there are no elaborate and binding provisions on the environment. Rather, environmental issues are solved in an indirect manner via general policy statements and cooperation structures.

Regarding the green FDI incentives, ACIA leans more on market based and regulatory incentives, which includes enhancing facilitation of investment and minimizing entry barriers. The agreement boosts investor confidence by guaranteeing a non-discriminatory treatment and expropriation security, which may indirectly encourage investment in green sectors.

Nevertheless, the lack of powerful environmental commitments or the specific incentives to facilitate such a shift towards green investment is limiting the efficiency of green investments to encourage sustainable FDI. Additionally, the economic development level and regulatory ability of the member states of the ASEAN presents disparities in the way it is applied. Consequently, although ACIA has a positive impact on the total increase in investments, its contribution to assigning investment to areas related to sustainability of the environment is insignificant (UNCTAD, 2021).

3. India's Model Bilateral Investment Treaty (2016)

The Model Bilateral Investment Treaty of 2016 in India is a bold move of the country in relation to the traditional bilateral investment treaty framework. The model BIT was created to balance out the asymmetry between investor protection and state sovereignty with the key issue being the fears about investor-state disputes and regulatory limitations.

Another prominent characteristic of the Indian Model BIT is a clear identification of the right of the state to control the common good such as the protection of the environment. The treaty has provisions to ensure that investors abide by local laws, and also focuses on corporate responsibility (Government of India, 2016). Unlike most financial traditional IIAs it places some obligation on investors, thus creating more balanced approach to investment governance.

On green FDI front, Indian Model BIT offers regulatory and legal incentives as it will establish a platform to support sustainable investment but leaves the regulation of the environment space. Responsible investment practices can be promoted with a focus on the responsibility of the investors and adherence to the environmental laws.

Nevertheless, financial or specific incentives to green FDI are not cited in the treaty. Also, its more limiting nature of investor protection such as restrictions on access to ISDS could make it less attractive to some foreign investors.

Comparative Analysis

An analysis of these case studies shows that there is a substantial difference in the ways IIAs integrate green FDI incentives. It is the EU paradigm, characterized by both the integration of normative sustainability and an elaborate environmental regulation, and vigorous signalization, but rough enforcement. The ASEAN framework is all about investment facilitation and liberalization where little focus is directed towards environmental sustainability. Conversely, the Indian Model BIT follows a moderate regulatory approach which considers state sovereignty and environmental protection as well as basic investor protection.

In all the three situations, similar setback is that there are no binding and enforceable strategies that are specially formulated to encourage the idea of green FDI. Although more and more environmental provisions start to be incorporated, they tend not to be referred to directly in terms of investment incentives or outcomes. Additionally, the implementation and the institutional capacity of these agreements is largely determined by the domestic implementation.

Conclusion of Case Studies

These case studies confirm that despite the fact that IIAs are undergoing changes to add green considerations in them, their capacity to be effective at incentivizing green FDI is limited. Lack of specific, actionable incentives and the fact that the traditional means of protection of investment remain in place restrict their usefulness.

Challenges and Limitations

Although the sustainability-oriented provisions in International Investment Agreements (IIAs) are becoming increasingly integrated in the agreements, there remain some significant difficulties and drawbacks that limit their effectiveness in facilitating Green Foreign Direct Investment (FDI). These have not just been technical issues but exist deep in the structure, legal and institutional frameworks of the international investment regime. Critical analysis highlights that although IIAs have taken a normative evolution, they have a limited potential to guide investment to environmentally friendly outcomes.

1. Non-Binding Nature of Environmental Provisions

The environmental and sustainability provisions largely have non-binding nature, which renders one of the most crucial restrictions of IIAs. Whereas contemporary treaties often contain statements about sustainable development, protecting the environment, and corporate social responsibility (CSR), these are most often discursively presented as inspirational or even voluntary instead of the legal binding consideration (UNCTAD, 2023). In contrast to investor protection systems, which are usually specific and legally binding, environmental obligations have no specific standards and monitoring systems and have no clear avenue of dispute resolution. Such asymmetry greatly undermines their effectiveness since there is no legal requirement that states and investors should focus on environmental goals.

2. Imbalance between Investor Rights and State Regulatory Power

One of the enduring structural inefficiencies of IIAs is the disproportionate focus on investor rights and neglect of state interests. The fundamental protections include just and fair treatment, expropriation protection, and access to investor-state dispute settlement (ISDS) frameworks are firmly in place, and in most cases, investors have the right to contest state actions impacting their investments (Sornarajah, 2017). By contrast, environmental rights are seldom enforced to equal effect or accord upon investors.

This contradiction may give rise to the conflict between the protection of investments and

environmental regulation. Application of environmental policies can pose legal risks on governments applying such policies towards foreign investments, especially those related to energy, mining, and infrastructural fields. This is a contributing factor to the effect of regulatory chill in which states are reluctant to implement strict environmental rules in fear of high-priced arbitration suits (Tienhaara, 2009). This means that the same legal framework that is supposed to encourage investment may end up limiting environmental governance.

3. Lack of Targeted and Measurable Incentives

The other serious constraint is lack of well spelt and focused incentives that actually aim at encouraging green FDI. The majority of IIAs do not make differences between environmentally sustainable and environmentally non-sustainable investments; all types of FDI are subject to the general protection standards of investments (OECD, 2022). Whereas there are agreements with extensive language on sustainability, these agreements seldom attach incentive-the tax benefits or facilitation of regulation to relatively quantifiable environmental results.

This imprecision makes it hard to determine whether IIAs truly promote green investment or merely help to set up a fertile neutral investment climate. In the absence of explicit benchmarks, pointers, or conditionality's on environmental performance, incentives will be scattered and irrelevant. As a result, investors might lack the adequate incentive to invest more in green projects as compared to other potentially more profitable but ecologically unfriendly project.

4. Risk of Greenwashing

Another worry about the growing use of language of sustainability in IIAs is the risk of green washing, where green words are applied figuratively but with no real effect. Governments can use environmental clauses in treaties to indicate that they are committed to sustainability but will not change the policy, or adopt enforcement provisions, in any meaningful way (Alschner, 2013). Equally, investors can declare the project as green to enjoy the good policies or perceptions of the people, whereas its environmental advantages are minimal or doubtful.

This is worsened by the fact that we lack clear definitions and checks to verify what qualifies to be considered green FDI. In the absence of clear criteria and accountability models, the differentiation between a truly sustainable investment and an investment that is merely purporting to be so becomes tricky.

5. Institutional and Capacity Constraints in Developing Countries

There are specific difficulties in developing countries to capitalize on IIAs in attracting green FDI. Among them, there are weak institutional capacity, weak regulations, and reliance of the economy on foreign investment (UNCTAD, 2021). Most governments in most instances focus on any kind of FDI; as a way of boosting economic growth at the expense of environmental considerations.

Moreover, the introduction and enforcement of the environment provisions demand administrative knowledge, finances and efficient systems of governance, which might not be present in the developing settings. This puts a distance between agreement on the formal commitments made in IIAs and the actuality. Consequently it happens that even well thought incentives are unable to realize the desired effect.

6. Fragmentation and Inconsistency across IIAs

The nature of the global investment regime has been described as being highly fragmented by thousands of IIAs which vary in scope, content and legal requirements. That absence of consistency gives rise to discrepancies in the design and implementation of green FDI incentives at different jurisdictions (UNCTAD, 2023). Different countries have different regulatory frameworks and this may heighten the uncertainty and diminish efficacy of sustainability incentives to investors running businesses across a multitude of nations.

In addition, a lack of a consistent multilateral structure to implement sustainability in investment deals constrains the possible ability to work together. Although the efforts by certain areas like the European Union are a step forward in this direction, the world is still uneven and fragmented.

7. Tension between Economic and Environmental Objectives

Lastly, a key issue is the very contradiction between economic development and environmental sustainability. IIAs are typically structured in a way that encourages maximum investment flows and economic gains, and green FDI demands the focus on long-term environmental results, which do not necessarily coincide with short-term profitability. This strain is especially pronounced in those areas where fossil fuel investment might still be given protection through IIAs even though the world has made a commitment to decarbonization.

Unless there is a radical change in the investment priorities and legal frameworks, IIAs might not be able to balance these conflicting goals. Incremental reforms including incorporation of non-binding environmental provisions are unlikely to help in this structural challenge.

Conclusion of Challenges

Overall, legal, institutional, and structural limitations are a set of factors that limit the effectiveness of green FDI incentives in IIAs. The fact that environmental provisions are non-binding, the disproportion of investor rights and the power of the state to regulate, the absence of specific incentives, and the possibility of green washing all weaken their effectiveness. These issues underscore the fact that thorough reforms are necessary that go beyond the symbolic promises of binding, enforceable, and measurable mechanisms that can actually foster sustainable investment.

Policy Recommendations

To overcome the shortcomings of Green Foreign Direct Investment (FDI) incentives in International Investment Agreements (IIAs), it is necessary not just to make minor changes, but to re-calibrate legal design, incentive structures and governance mechanisms. The recommendations which follow are practical and implementable reforms to make IIAs effective in steering investment towards environmentally sustainable results.

1. Introduce Binding Environmental Obligations

One of the main shortcomings of the existing IIAs is that sustainability provisions are not binding. The renegotiation of agreements in the future must have explicit, binding environmental commitments by both states and investors. This may involve the enforcement of domestic environmental legislation, the enforcement of major multilateral environmental legislation and the incorporation of environmental impact assessment (EIA) conditions on major investments. Importantly, these commitments must be subject to dispute resolution procedures such that environmental commitments are given legal enforceability on par with the protection of investors.

2. Link Incentives to Measurable Sustainability Outcomes

In order to enhance performance, incentives on green FDI have to be conditional and performance-based. IIAs need to clearly associate benefits, including access to the market, protections, or preferential treatment, with measurable environmental results, such as the reduction of emissions, renewable energy production, or resource efficiency. Setting standardized indicators and reporting requirements would also allow governments to track compliance and assess the environmental impact of investments. This would also help to minimize the ambiguity and discourage opportunistic behavior among investors.

3. Reform Investor–State Dispute Settlement (ISDS)

The existing ISDS regime tends to cause conflicts between the protection of investments and environmental policies. We have to change so that the legal public policy actions, especially those concerning environmental protection, are not compromised. IIAs ought to come with clear-cut carve-outs that prevent investor claims on environmental and climate-related rules. Also, the tribunals must be mandated to place into consideration the environmental principles and global sustainability commitments in dispute adjudication. Other mechanisms like state to state dispute resolution or multilateral investment courts may also be more balanced in their results.

4. Enhance Regulatory Flexibility for Host States

IIAs should allow adequate policy space to governments to make environmental regulation

without the fear of taking legal action. This may be through the reinforcement of the provisions which declare the right to regulate in the common good, such as in climate change mitigation and environmental protection. Flexibility is especially crucial to developing countries that have to adjust the policies to the local circumstances and the changing sustainability preferences. Specific treaty wording can be used to minimize ambiguity and restrictive interpretations that can cripple regulatory discretion.

5. Integrate ESG and Corporate Accountability Mechanisms

IAs ought to include binding Environmental, Social and Governance (ESG) parameters to encourage responsible investment practices. The investors are supposed to be bound to international recognized frameworks including OECD Guidelines on Multinational Enterprises or the UN Guiding Principles on Business and Human Rights. Notably, IAs must have accountability measures, including reporting requirements, independent monitoring, and the threat of penalties in case of non-compliance. This would transform IAs as mere protective tools, to those that actively influence investor behavior.

6. Strengthen Institutional Capacity in Developing Countries

Domestic implementation capacity is vital in the effectiveness of green FDI incentives. Less developed countries are limited in the enforcement of regulations, technical expertise and finances. International collaboration is thus a must. IAs must have capacity building, technical assistance and knowledge transfer provisions to allow host states to design, implement and monitor green investment policies effectively. International organizations can also be used to facilitate institutional development.

7. Promote Coherence and Harmonization across IAs

The disjointed international investment regime diminishes the success of sustainability efforts. The harmonization of sustainability criteria and green FDI definitions should be sought between IAs and establish a more coherent and predictable system to investors. Convergence can be done by developing model treaty provisions and promoting multilateral dialogue. Enhanced consistency would lead to less

uncertainty, more conformity, and increased overall effectiveness of green investment incentives.

8. Encourage Transparency and Anti-Greenwashing Measures

To overcome the possibility of green washing, IAs must impose transparency in reporting environmental performance and put in place verification schemes. Accountability can be improved through independent audits, standardized reporting systems and access by the public to information. Definitions of what is considered as green investment should also be clear to make sure that incentives are channeled towards activities that are truly sustainable.

Conclusion of Recommendations

In short, to turn IAs into effective tools to promote green FDI, binding commitments, measurable standards, institutional support and systemic reform are all needed. It is possible to make international investment meaningful, with positive contribution to sustainable development instead of being a mere indicator of commitment, by harmonizing the legal frameworks with environmental goals and enhancing accountability.

CONCLUSION

The paper aimed to critically analyze how International Investment Agreements (IIAs) can be used to attract Green Foreign Direct Investment (FDI) as part of sustainable development. The analysis shows that though IAs have experienced a significant shift over the recent years, to include references to environmental protection, corporate social responsibility, and sustainable development, their overall success in fostering green FDI is still limited.

The results demonstrate that there is a decisive gap between the normative development of IAs and their actual effects. Even though the contemporary agreements are more and more sustainability-oriented, they are usually not binding, ambiguously defined, and without an enforcement mechanism. Conversely, conventional standards of investor protection including fair and equitable treatment and investor-state dispute settlement (ISDS) are strong and enforceable in law. This imbalance still favors

the rights of investors over environmental factors, thus limiting the capacity of host states to enforce stringent environmental policies without the challenges of legal reprisals.

Moreover, the research points out those green FDI incentives in IIAs are usually indirect and lack sufficient focus. Financial and regulatory incentives are very much contingent on domestic policy frameworks and the provisions at treaty level seldom create clear connection between investment benefits and quantifiable environmental impacts. Lack of uniform definitions and accountability systems also predisposes green washing, which reduces the effectiveness and credibility of sustainability pledges. These conclusions are supported by the comparative case studies by showing that there is a great deal of variation by region. Although some agreements like the European Union reflect a more progressive attitude towards sustainability integration, some others including regional structures in developing environments still focus more on investment liberalization with little attention to environment. Even innovative models, including the Model BIT in India, demonstrate how difficult it still is to strike a balance between protection of the investor and regulatory discretion.

On the whole, this study claims that IIAs, as they are currently structured, are not well suited to promote the shift towards environmentally sustainable investment. There is a need to go beyond incremental reforms and incorporate inspirational language to overcome the structural constraints inherent in the global investment regime. Rather, it is necessary to radically restructure international investment law, and to make it incorporate binding environmental commitments, to tie incentives to quantifiable sustainability performance, to hold both states and investors more accountable.

The subsequent studies are to concentrate on the empirical analysis of green FDI flows in terms of the treaty design, as well as on developing universal frameworks of measuring sustainability results in investment. With the world community stepping up to the fight against climate change, it will be necessary to align IIAs to the environmental goals. It is only with thorough and binding reforms that IIAs

can transform into efficient mechanisms of promoting sustainable development.

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