

MAPPING SUSTAINABLE DEVELOPMENT IN INVESTMENT TREATIES: AN ANALYSIS OF ASEAN STATES' PRACTICE

Mark McLaughlin^{*}

ABSTRACT

The interaction between sustainable development and international investment treaties is of growing concern. Could investment protection stymie health regulation? Will States be sued for introducing measures to tackle climate change? A growing body of sustainability-related case law is evidence that arbitral tribunals balance investment obligations against States' ability to regulate for national security, health, the environment, labour rights, transparency, and corporate social responsibility. Against this background, this paper maps sustainable development issues in 371 bilateral investment treaties (hereinafter "BITs") concluded by the Association of Southeast Asian Nations (ASEAN) States. It finds that only 26% of these treaties make any reference to sustainable development issues, most of which cover matters relating to security, health, and the environment. However, a small number of recent BITs reflect an expanding concept of sustainable development beyond orthodox boundaries. This paper proposes several options to elevate sustainable development in the hierarchy of norms in investment arbitration.

^{*} Global Visiting Assistant Professor, Singapore Management University. Email: mmclaughlin@smu.edu.sg.

KEYWORDS: *sustainable development, investment arbitration, bilateral investment treaties, ASEAN, climate change, health regulation*