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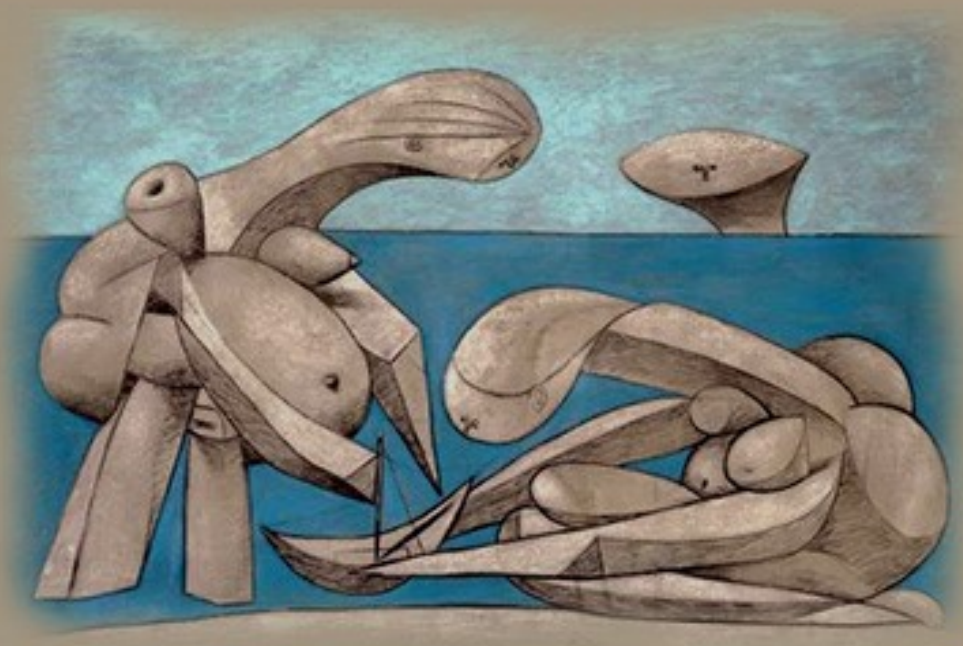

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International Investment Law and Transnational Law: Compliance with Investment Awards

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Abstract:
While international investment law embodies some essential characteristics of transnational law, it also displays some distinctive features not shared by most other fields of transnational law (e.g., regulating long-term relations between two different types of actors). Questions concerning compliance/ non-compliance with investment arbitral awards have attracted significant attention from scholars and practitioners alike. Following a brief discussion on some notable traits of international investment law, this contribution will focus on three international relations theoretical approaches explaining compliance or non-compliance with investment awards: the realist tradition (rooted in the rational choice model), the social constructivist perspective (significantly influenced by sociological scholarship), and the liberal approach (emphasizing the role of non-state actors and the type of political regime). The discussion on each theoretical perspective will briefly touch upon interactions between that particular approach and some emblematic features of transnational law. While one particular theoretical perspective may often play a more prominent role in explaining a specific instance of compliance/ non-compliance, it is clear that no single approach captures all features involved in the complex process culminating in a decision to comply or refrain from complying with an investment award. Thus, this contribution concludes that employing a methodology that incorporates multiple theoretical approaches is more likely to provide a meaningful explanation for such multi-dimensional processes taking place in transnational law.

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Introduction

International investment law embodies some essential characteristics of transnational law, yet it also displays certain distinctive features not shared by most other fields of transnational law. Following a brief discussion on the special features of international investment law, we will expand on three international relations theoretical perspectives explaining compliance and non-compliance with investment awards, and highlight how they interact with some emblematic features of transnational law. As discussed below, each of these theoretical approaches reflects certain traits of transnational law.

In an insightful article published in the first issue of this Journal, Ilias Bantekas offered a theoretical model of transnational private law. From this persuasive perspective, transnational law is conceptualized as a 'third sphere of regulation', constituting a confluence of domestic laws and international law with a valid claim for independence of

sphere-creation.[1] This multi-layered field of law occasionally encompasses contracts between states and private parties (often accompanied by arbitration procedures aimed at mitigating the risk of breach of contract) as well as 'soft law' instruments (such as guidelines and codes of conduct).[2]

International investment law exhibits some essential features of transnational private law.[3] The legal regulation of foreign investments involves legal rules drawn from contracts between the parties, national law (primarily the host state's legal system), international law (prominently investment treaties and customary international law) and soft law instruments (such as model investment treaties or resolutions of diverse international institutions).[4] Similarly, settlement of investment disputes is frequently externalized to international tribunals that are typically composed of arbitrators selected by the host state and the foreign investor. Echoing well-known observations regarding the structure of transnational law, Dolzer, Kriebaum and Schreuer explain in the leading book on international investment law: '[n]ot only is the distinction between international law and domestic law becoming blurred by the modern regime of foreign investment law, the classical separation between public and private law … also cannot be maintained neatly in this field'.[5]

International investment law also presents some distinctive characteristics not shared by most other fields of transnational law. For example, unlike many transnational transactions that typically consist of a one-time exchange of goods or payments, investment transactions are commonly involve long-term relations.[6] In addition, foreign investment relations always involve two main types of actors; a sovereign state and a private party (often a transnational corporation), thereby raising a host of questions regarding the asymmetric structure of such transactions and their accompanying dispute settlement procedures. Like other transnational operations, foreign investments take place across international boundaries but they are virtually always carried out in the territory of one of the main parties (the host state). Consequently, in the absence of a

[1] I. Bantekas, 'General Theory of Transnational Private Law' (2023) 1 *Journal du Droit Transnational* 2, 4, 6, 11.
[2] Bantekas, above note 1, 3, 6. On soft law in transnational law, see also R. Cottorrell, 'What Is Transnational Law?' (2013) 37 *Law & Social Inquiry* 500, 502, 509-510.
[3] See, e.g., N. Peronne, 'International Investment Law as Transnational Law', in Peer Zumbansen (ed.), *The Oxford Handbook of Transnational Law* (OUP, 2021) 291, 294 et seq.
[4] See, e.g., R. Dolzer, U. Kriebaum and C. Schreuer, *Principles of International Investment Law* (3rd. ed., OUP, 2022) 416. On soft law in international investment law, see, e.g., A. K. Bjorklund, 'Assessing the Effectiveness of 'Soft Law' Instruments in International Investment Law, in Andrea K. Bjorklund and August Reinisch (eds), *International Investment Law and Soft Law* (Elgar, 2012) 51, 65 et seq.; M. Hirsch 'Sources of International Investment Law', in Andrea K. Bjorklund and August Reinisch (eds), *International Investment Law and Soft Law* (Elgar, 2012) 9, 20-22.
[5] Footnote omitted. Dolzer, Kriebaum and Schreuer, above note 4, 15
[6] Dolzer, Kriebaum and Schreuer, above note 4, 27.

specific treaty or contractual provisions, the default option is application of the host state's regulatory legal system to the various activities involved in the implementation of the investment transaction in that state. Finally, the implementation of foreign investments often involves public policy issues (such as taxation or environmental protection) but the investment arbitration legal culture is dominated by the private law culture.[7] The interface between private and public law issues occasionally sparks disagreements concerning the need to protect private investors' rights and the public interest (pertaining, e.g., to protecting the human rights of individuals and communities residing in the host state).[8]

II. Compliance and Non-Compliance with Investment Awards: Three Theoretical Perspectives

States' decisions concerning compliance with investment awards[9] involve diverse factors associated with multiple theoretical perspectives. As elaborated below, each theoretical lens highlights a different set of variables for explaining compliance or non-compliance. The following discussion presents three core international relations theoretical perspectives for identifying the key factors that influence states to uphold or breach investment awards; the realist, social constructivist and liberal approaches.[10]

(a) The Realist Tradition: Realism was considered the dominant approach in international relations literature for many decades (prominently in Western Europe and the United States).[11] The principal assumptions of the realist school of thought are:

[7] See, e.g., Moshe Hirsch, 'Social Movements, Reframing Investment Relations, and Enhancing the Application of Human Rights Norms in International Investment Law' (2020), 37 *Leiden Journal of International Law* 127, 148-149; Anthea Roberts, 'Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System' (2013) 107 *American Journal of International Law* 45, 77. On the debate regarding the public-private nature of international investment law, see Peronne, above note 3, 301-306.

[8] Moshe Hirsch, 'Investment Tribunals and Human Rights: Divergent Paths", in P. M. Dupuy, F. F. Francioni, and E. U. Petersmann (eds), *Human Rights in International Investment Law and Arbitration* 97 (OUP, 2008); Peronne, above note 3, 310-311; T. Papanastasiou, 'The Role of Human Rights in International Investment Arbitration: Arguments Raised by the Parties and Procedural Implications' (2022), 21 *The Law & Practice of International Courts and Tribunals* 149.

[9] For empirical studies on compliance with investment awards, see, e.g., 'Compliance with and Enforcement of ICSID Awards' (2024), *ICSID Background Paper*, https://icsid.worldbank.org/sites/default/files/publications/Enforcement_Paper.pdf; Yuliya Chernykh et al., 'Compliance with ISDS Awards: Empirical Perspectives and Reform Implications' (2022), *Academic Forum on ISDS Concept Paper*, https://www.jus.uio.no/ior/english/research/projects/copiid/academic-forum/papers/compliance-with-isds-awards--empirical-perspectives-and-reform-implications.pdf; Emmanuel Gaillard and Ilija Mitrev Penushliski, 'State Compliance with Investment Awards' (2020), 35 *ICSID Review* 540, 544 et seq.

[10] The following discussion on the three international relations perspectives draws substantially on M. Hirsch, 'Explaining Compliance and Non-Compliance with ICSID Awards: The Argentine Case Study and a Multiple Theoretical Approach' (2016) 19 *Journal of International Economic Law* 681.

[11] See, e.g., Or Rosenboim, 'Realism' in John Baylis, Steve Smith, and Particia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations* (9th. ed., OUP, 2023) 132, 133.

sovereign states are the central actors in the international system, states are rational and egoistic, the primary interests of states are power and security, and international politics is essentially anarchic (lacking an overarching authority and conflictual).[12]

The rational choice model is rooted in the realist approach. This doctrine views individuals as instrumentally rational and calculating seekers of preference satisfaction. The standard rational choice model assumes that decision-makers are utility maximizers: they have certain goals ('preferences') which they strive to attain through their actions. They have consistent preferences ordering over the goals and they know the outcomes ('utilities') of their alternative actions. Rational decision-makers select the course of action ('strategy') which maximizes their utility, as determined by their goals and the alternative options available to them. The rational choice model treats individual preferences as predetermined goals.[13]

Proponents of the realist stream often perceive international law as an instrument through which states seek to attain their interests. Facing common tasks which are not easily amenable to unilateral attainment, national decision-makers treat international legal rules as instruments for fulfilling these common objectives.[14] Consequently, some realist scholars contend that in the absence of a central authority to legislate, adjudicate and enforce, international law is weak and has little independent impact on states' conduct. International legal rules (or treaties) are essentially expressions of states' interests and power relationships, and they are likely to be ignored or amended when these interests or power relations change.[15]

[12] On the realist tradition in international relations literature, see note 15 below.

[13] The model does not seek to explain which factors motivate decision-makers to adopt a certain aim, and how preferences are modified over time. On the rational choice model, see, e.g., Martin Hollis, *The Philosophy of Social Science* (CUP, 2011), 116-118; Shaun Hargreaves Heap et al., *The Theory of Choice: A Critical Guide* (Blackwell, 1992), 4-5, 62-63; Jon Elster, *Nuts and Bolts for the Social Sciences* (CUP, 1989), at 22 et seq.

[14] From this perspective, for example, states conclude investment treaties (that constrain their sovereign powers) in order to attract foreign investments which are essential for their national economy. See, e.g., Dolzer, Kriebaum and Schreuer, above note 4, 27. For a criticism of this view, see, e.g., Christopher M Ryan, 'Discerning the Compliance Calculus: Why States Comply with International Investment Law' (2009) 38 *Georgia Journal of International & Comparative Law* 63, 78-79.

[15] On the realist tradition in international relations literature and its perspective on international law, see Rosenboim, above note 11 133-136; Christian Reus-Smit, 'International Law', in John Baylis, Steve Smit, and Particia Owens (eds), The *Globalization of World Politics: An Introduction to International relations* (9th. ed., OUP, 2023) 293, 303-304; Daniel Peat, 'Perception and Process: Towards a Behavioural Theory of Compliance' (2022), 13 *Journal of International Dispute Settlement* 179, 181-182; Richard H. Steinberg, 'Wanted – Dead or Alive: Realism in International Law' in Jeffrey L. Dunoff and Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP, 2013) 146; Andrew T. Guzman, 'A Compliance-Based Theory of International Law' (2002), 90 *California Law Review* 1823, 1836-1837; Jack Goldsmith and Eric Posner, *The Limits of International Law* (OUP, 2005), 4-17, 26-38; Anne-Marie Slaughter, 'International Law and International Relations Theory: A Prospectus' in Eyal Benvenisti and Moshe Hirsch (eds.), *The Impact of International Law on International Cooperation* (CUP, 2004) 16, 21–28.

As to compliance with international investment law, following the rational choice model, realist decision-makers are assumed to calculate the expected positive and negative implications of compliance with or breach of a particular investment award, and, consequently, to decide whether or not to comply.[16] The threat of future sanctions by the investor's home state (or other international actors), is a considerable factor in the realist cost-benefit analysis.[17] An additional factor taken into account by realist decision-makers is the expected impact of their decisions on future inflows of foreign investments and the probability that a violation of an investment obligation could generate 'reputational costs.' Breach of an investment award may deter potential private investors and lower the motivation of potential contracting states to conclude future investment treaties with the violator.[18]

To sum up, from the realist perspective, the prominent factors affecting compliance with investment awards are the threat of sanctions (mainly imposed by other states) and 'reputational costs' that may influence the flow of foreign investment into that particular state. Additional negative measures adopted by other states' institutions (like enforcement proceedings administered in other states' courts)[19] are also expected to be considered by states, but measures undertaken by diverse non-state actors (such as Non-Governmental Organizations) would generally be downplayed. Realists and major actors in the transnational economic system (e.g., investors and traders) alike share rational thinking. The realist tradition is largely focused on one type of legal actors - sovereign states (e.g., highlighting the influence of inter-state sanctions on compliance), and it tends to downplay the role of non-state actors which often play a major role in transnational law.

(b) The Social Constructivist Perspective: Social constructivism is one of the leading schools in international relations and it has been significantly influenced by sociological

[16] See, e.g. Ryan, above note 14, 81-82. See also Anne van Aaken and Betül Simsek, 'Rewarding in International Law' (2021), 115 *American Journal of International Law* 195, 199-200.

[17] For example, an analysis of Argentina's decision to substantially comply with a set of investment awards in October 2013 (after declining to compensate investment award creditors during 2007-2013) indicates that a variety of sanctions and threats significantly influenced the Argentinian government to comply. These included the US and some other countries effectively blocked loans from the World Bank, and also voted against the extension of loans to Argentina from the Inter-American Development Bank. Hirsch 'Explaining Compliance', above note 10, 699-700 and see the references therein. See also Peat, above note 15, 192-197.

[18] On the impact of 'reputational costs' on compliance with international law, see, e.g., Ryan, above note 14, 93-94; Van Aaken and Simsek, above note 16, 201; Andrew T. Guzman, 'The Design of International Agreements' (2005), 16 *European Journal of International Law* 579, 595; Andrew C. Blandford, 'Reputational Costs Beyond Treaty Exclusion: International Law Violations as Security Threat Focal Points' (2011), 10 *Washington University Global Studies Law Review* 669, 674-680.

[19] On enforcement of investment awards by domestic courts, see, e.g., Dolzer, Kriebaum and Schreuer, above note 4, 447 et seq.

theory.[20] From this perspective, states are social actors rooted in social relations which constitute their interests and motivate them. The critical components of the international social system include shared understandings, social norms, expectations, as well as knowledge. Physical elements are part of the international system but are secondary to social and ideational elements which infuse them with meaning. The international system and states do not exist independently of the thoughts and ideas of the people involved; rather, they are constructed by diverse historical interactions. International political and economic relations (and related concepts) are human constructs and they exist as inter-subjective beliefs which are widely shared among people.[21] Norms and identities are of major importance in constructivist literature. Finnemore emphasizes that norms influence the formation of interests, and changing norms are likely to alter state interests.[22] The role of collective identities is particularly underscored in constructivist literature[23] and Hopf states that 'identities are the most proximate causes of choices, preferences, and action.'[24] State identities are constructed by their interaction with domestic societies, other international actors, and international social structures.[25] Interests are often dependent on identities.[26]

In light of the emphasis placed in social constructivist literature on norms, it is not surprising that constructivists have found considerable common ground with international law scholars. From this perspective, legal rules are constitutive not only through constraining states' behaviour but also through affecting their socialization and

[20] On the central tenets of the sociological perspective on international law, see M. Hirsch, 'The Sociological Perspective on International Law', in Jeffrey L.Dunoff and Mark A. Pollack, eds, *International Legal Theory: Foundations and Frontiers* (CUP, 2022) 282, 283 et seq.

[21] On the social constructivist approach in international relations, see Michael Barnett, 'Social Constructivism', in John Baylis, Steve Smith, and Particia Owens (eds), *The Globalization of World Politics: An Introduction to International relations* (9th. ed., OUP, 2023) 194, 195 -202; Reus-Smit, above note 15, 304-305; Alexander Wendt, *Social Theory of International Politics* (CUP, 1999) 3; Ian Johnstone and Arun Sukumar, 'Constructivism, Interpretation, and Cognitive Studies', in Anne van Aaken and Moshe Hirsch (eds.), *International Legal Theory and the Cognitive Turn* (OUP, forthcoming 2024); Martha Finnemore, 'Constructing Norms of Humanitarian Intervention' in Peter J Katzenstein (ed), *The Culture of National Security: Norms and Identity in World Politics* (Columbia University Press, 1996) 153; Jutta Brunee and Stephen J. Toope, 'International Law and Constructivism' (2000), 39 *Columbia Journal of Transnational Law* 19.

[22] Martha Finnemore, 'Constructing Norms of Humanitarian Intervention' in Peter J Katzenstein (ed), *The Culture of National Security: Norms and Identity in World Politics* (Columbia University Press, 1996) 153, 157-158.

[23] See, e.g., Alexander Wendt, 'Collective Identity Formation and the International State' (1994), 88 *American Political Science Review* 385, 386.

[24] T. Hopf, 'The Promise of Constructivism in International Relations Theory' (1998), 23 International Security 171, 174.

[25] Alexander Wendt, 'Collective Identity Formation, above note 23, 387; Peter J Katzenstein, Ronald L Lepperson and Alexander Wendt, 'Norms, Identity, and Culture in National Security' in Peter J Katzenstein (ed), *The Culture of National Security: Norms and Identities in World Politics* (Columbia University Press, 1996) 35-36.

[26] Wendt, 'Collective Identity Formation', above note 23, 386. 390; Hopf, above note 24, 176.

collective identities.[27] Decision-makers involved in international legal issues are viewed here as motivated by social factors, such as values, identities, and legitimacy, rather than a calculation of material interests.[28] Legal obligations are perceived in this context as social standards of appropriate behaviour. The prospects of compliance with international law are influenced, for example, by the answer to the question of whether the particular legal obligation constitutes a social norm internalized by the particular state, as well as the *legitimacy* of the particular legal obligation or tribunal.[29]

As to compliance with investment awards, the social constructivist approach highlights that states are more inclined to comply with investment awards rendered by *legitimate* tribunals**,**[30] and that *ideational-ideological* attitudes prevailing in particular states are also likely to influence the prospects of compliance.[31] Social pressure exerted by various actors in the international community may also affect decision-makers when considering compliance with investment awards. From this perspective, the imposition of economic sanctions is significant not only because of the above realist approach's emphasis on the material costs of sanctions but also because of the stigmatizing effects that often accompany such sanctions (that may affect states' identity).[32]

In sum, the social constructivist perspective highlights how social factors influence state behaviour and underlines that the prospects of compliance with investment awards depends to a significant measure on the legitimacy of the particular tribunal, ideological attitudes prevailing in the particular society, and social pressure levelled at non-compliant states. As to transnational law, the constructivist approach is inclined to focus on social processes and tends to downplay rational-choice motivations (that are prevalent

[27] See, e.g., Reus-Smit, above note 15, 304.
[28] See, e.g., Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance' in Walter Carlsnaes, Thomas Risse, and Beth A Simmons (eds), *Handbook of International Relations* (Sage, 2002) 538, 538, 540.
[29] On the impact of legitimacy on compliance with international law, see, e.g., Chris A Thomas, 'The Concept of Legitimacy and International Law' (LSE Law, Society and Economy Working Papers, 2013) 14-16; Beth A. Simmons, 'Compliance with International Agreements' (1998), 1 *Annual Review of Political Science* 75, 79–80.
[30] Thus, for example, an analysis of the factors influencing Argentina *not* to comply with a series of investment awards from 2007 to 2013 indicates that the hostile approach adopted by the Argentinian government vis-à-vis ICSID was prominently influenced by the ICSID tribunals' 'legitimacy deficit' in Argentina. The ruling government and Peronist groups supporting it raised significant doubts regarding the independence and impartial attitude of these tribunals. Hirsch, 'Explaining Compliance', above note 10, 692-693 (and see the references therein).
[31] One of the main reasons explaining Argentina's above refusal to comply with a set of ICSID awards (from 2007 to 2013) concerns the Peronist ruling coalition's prevailing ideology and its hostile attitude vis-à-vis the neo-liberal ideology associated with the World Bank (to which ICSID tribunals are linked). Large groups in Argentina associated the World Bank with neo-liberal ideology, and the neo-liberal policies adopted by the previous governments were often blamed for the 2001 financial crisis. Hirsch, 'Explaining Compliance', above note 10, 692-693.
[32] On international social control mechanisms and their impacts on compliance with international law, see Moshe Hirsch, *Invitation to the Sociology of International Law* (OUP, 2015), 167-169.

among many actors in the transnational economic system). Generally, constructivists are more amenable than realists to accepting that non-state actors play a significant role in the transnational legal system (e.g., in the context of building social pressure to comply).

(c) The Liberal Perspective: The liberal approach to international politics has become a significant ideological force after 1945 and some of its well-known proponents in international law scholarship embrace significant features of transnational law. Liberal theory accepts some of the underlying assumptions of the realist approach and generally posits that states act in accordance with their conceptions of national interest. Liberals agree that states act to rationally promote their interests, but unlike realists they do not consider the state as a unitary entity ('black box'). States' preferences are significantly shaped in response to the preferences of domestic groups (e.g., political parties or NGOs) and individuals within each state. The liberal perspective, and particularly the neo-liberal institutionalist strand, emphasizes the important role of non-state actors in world politics. It particularly highlights the role of international institutions that implement functions states cannot perform alone. One of the key arguments of the liberal approach is that a state behaviour in the international sphere is significantly influenced by the type of political regime. A significant body of liberal literature explores the links between *democratic governance* and peaceful relations, and between the rule of law within a state and the prospects of compliance with international law. Non-liberal governments are generally considered to be among the major causes of international conflict and insecurity. Liberal states have representative governments, independent and professional judiciaries dedicated to the rule of law**,** and they secure civil and political rights.[33]

Prominent scholars extending the liberal approach to the international legal realm highlight the concepts of 'transnational society' and 'transnational law'.[34] Slaughter observes that transnational law includes national laws designed to reach actors beyond national borders (extraterritorial jurisdiction), various agreements between the government institutions of multiple states, rules adopted by trans-governmental regulatory organizations (including non-binding guidelines and model codes), and rules

[33] On the liberal approach in international relations literature and its perspective on international law, see Tim Dunne, 'Liberal Internationalism' in John Baylis, Steve Smith and Patricia Owens (eds), *The Globalization of World Politics* (9th ed., OUP, 2023) 103-113; Reus-Smit, above note 15, 304; Andrew Moravcsik, 'Liberal Theories of International Law', in Jeffrey L. Dunoff and Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP, 2013) 83; Raustiala and Slaughter, above note 28, 547-548; Slaughter, 'International Law and International Relations Theory', above note 15, 29-32; Anne Marie Slaughter, 'International Law in a World of Liberal States' (1995), 6 *European Journal of International Relations* 503.

[34] Anne-Marie Slaughter, 'A Liberal Theory of International Law' (2000), 94 *Proceedings of the Annual Meeting of the American Society of International Law* 240, 242-246; Andrew Moravcsik, 'Liberal Theories of International Law', above note 33, 83-84.

emanating from traditional sources of public international law (treaties and customary law).[35] And she clarifies that in transnational commerce, 'the law is the law selected by individual actors to govern the interpretation and application of bilateral commercial agreements and the mode of resolving disputes arising out of those agreements.'[36]

Extending the above arguments to the compliance debate, the proponents of the liberal approach contend that compliance with international law significantly depends on the preferences and ideologies of domestic groups, the regime type, as well as international institutions. From this perspective, compliance hinges not only on 'horizontal' inter-state activities (such as states' sanctions) but also on 'vertical' enforcement that is often embedded in domestic and international bodies (including courts).[37] Since democratic leaders are more likely to face higher domestic costs for violating their international obligations, they are more inclined (compared to autocratic leaders) to uphold international law.[38] Thus, relations between liberal states (within the 'zone of law') are more governed by international law, while relations involving non-liberal states (within the 'zone of politics') are more prone to be governed by political considerations.[39] Transparency is also significant for compliance with international law. Actions undertaken by democratic states are generally more exposed to public scrutiny, and breaches of international obligations are more likely to encounter public criticism by domestic non-state actors as well as other states.[40]

To sum up, the liberal approach to compliance with investment awards tends to downplay the significance of inter-state sanctions[41] and highlight the role of non-state actors, primarily domestic groups and institutions (but also international institutions). Domestic groups may influence their governments to comply or not comply[42] with investment

[35] Slaughter, 'A Liberal Theory of International Law', above note 34, 245.
[36] Slaughter, 'A Liberal Theory of International Law', above note 34, 244.
[37] Moravcsik, Liberal Theories of International Law, above note 33, 96-97, 101-105.
[38] See, e.g., Jana Von Stein, 'The Engines of Compliance' in Jeffrey L. Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP, 2013) 477, 486, 483.
[39] Raustiala and Slaughter, above note 28, 547-548; Anne-Marie Slaughter, 'International Law in a World of Liberal States', above note 33, 532-534; on the impact of democratic regimes on compliance with soft law, see Daniel E. Ho, 'Compliance and International Soft Law: Why Do Countries Implement the Basle Accord?' (2002), 5 *Journal of International Economic Law* 647, 672, 676-678.
[40] On the influence of transparency on compliance with international law, see, e.g., Von Stein, above note 38, 486. See also Ronald B. Mitchel, Compliance Theory: A Synthesis (1993), 2 *Review of European Community and International Environmental Law* 327, 327, 330-331.
[41] On the realist emphasis on inter-state sanctions, See Section II(a) above.
[42] Domestic group may pressure their governments not to comply with their investment obligations. For example, some domestic groups pressure their governments to discriminate against foreign investors; see, e.g., S.D. Myers v Canada (Partial Award of 13 November 2000) UNCITRAL, para 9 and see also paras 118-124, http://italaw.com/sites/default/files/case-documents/ita0747.pdf.

awards,[43] and democratic countries are more likely to adhere to their investment obligations.[44] The liberal approach exhibits some emblematic features of transnational law, and this is prominent with respect to international commercial arbitration.

III. Concluding Remarks

International investment law constitutes a unique sphere of transnational law; notably involving a mix of public and private actors from different states that interact in a multi-layered legal system composed of domestic law, international law and some 'soft' rules. While international investment law embodies some essential characteristics of transnational law, it also displays certain distinctive traits absent in most other fields of transnational law (e.g., regulating long-term relationships between two very different types of actors). Each of the three international relations perspectives presented above reflects some traits of transnational law. Considering the above three international relations perspectives (realist, constructivist and liberal approaches), the liberal approach appears to be better reflect the emblematic features of transnational law. As discussed above, some well-known proponents of the liberal approach in international law literature explicitly embrace significant features of transnational law.

The discussion on compliance with awards rendered by investment tribunals directs our attention to multiple actors involved in this sphere (both state and non-state actors) as well as diverse factors motivating states' decisions concerning compliance or non-compliance. Each of the above theoretical lenses highlights a different set of variables and downplays some other factors. While each theoretical approach has some explanatory value, clearly no single perspective captures all factors involved in the in the complex process leading decision-makers to comply with investment awards or not.

The above analysis suggests that a multiple theoretical approach - which employs variables highlighted by the three principal perspectives - can provide a comprehensive and meaningful explanation for multi-dimensional processes taken place in the real life of transnational investment law. Decisions regarding compliance are adopted by policy-

[43] Domestic groups include political parties and the above Argentine decision *not* to comply with a series of investment awards during the period of 2007 -2013 is clearly related to the power of the Peronists parties in Argentina's political system and the ideology of the ruling coalition during that period. Hirsch, Explaining Compliance, above note 10, 698-699.

[44] The argument that liberal-democratic states are more likely to comply with their international investment obligations may find some support in the decision of the Argentine government to comply in 2013 with the above series of investment awards. Argentina is an electoral democracy and despite some criticism in this sphere, freedom of expression is guaranteed by law, the freedoms of assembly and association are generally respected, opposition parties have realistic opportunity to compete for political power, and the government does not restrict access to the internet (which is widely used). These essential civil liberties allowed certain opposition groups to criticize the government for its hostile attitude towards ICSID and exerted some pressure to comply with its international investment obligations. Hirsch, Explaining Compliance, above note 10, 704-705

makers who are often influenced by factors emphasized by more than a single theoretical perspective (e.g., both by realist-realist and constructivist factors). In addition, such decisions commonly emerge from a process of interactions between several decision-makers (ministers, advisors, bureaucrats, etc.), and each of them is influenced by a different blend of realist, constructivist and liberal factors.