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Is it growth or just greed?

A case study on the Mandalika project conducted with a TWAIL lens to research if international law reinforces neocolonialism.

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Abstract

This essay presents a case study on the tourism-driven development project Mandalika, in Lombok, Indonesia with the use of a TWAIL lens to explore if international law reinforces neocolonial dynamics. It does so through a comparison between foreign investors and local communities conflicting rights to Mandalika land in investment and human rights law. The case study resulted in a conclusion that while the rights of the foreign investors and the local persons have similar strength in the concrete legal regulation it in practice favours the foreign investors, the global north bias and reinforce neocolonial dynamics. This happens through a distinct, legally binding BIT with a dedicated arbitration mechanism that governs the rights of foreign investors while in contrast the non-binding, "universal" framework of human rights without arbitration opportunities governs the rights of local communities. The case study has through this analysis exposed structural power imbalances, favorable biases, reproduction of neocolonialism, the importance of the domestic regulation and the historical origins in accordance with the TWAIL theory.

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List of Abbreviations

TWAIL	Third World Approaches to International Law
BIT	Bilateral Investment Treaties
ICSID	International Centre for Settlement of Investment Disputes
CSA	Case Study Analysis
L&D	Law and Development
NIEO	New International Economic Order
SEZ	Special Economic Zone
ITDC	InJourney Tourism Development Corporation
AIIB	Asian Infrastructure Investment Bank
PPP	Public-Private Partnership
UN	United Nations
NGO	Non-Governmental Organization
FDI	Foreign Direct Investments
MFN	Most Favored Nation
ICJ	International Court of Justice
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights

1.0 Introduction

It was this March that I found myself sitting in a TukTuk on the island Siargao in the Philippines, a place I had visited once already a year before. I was shocked by how much the island had changed in just one year. What had once been a calm, culturally rich place with relatively few tourists was now filled with newly opened "western" resorts, restaurants, cafes and spas. I mentioned my surprise to the driver. He explained that most businesses were no longer owned by Filipinos. Wealthier Westerners had moved to the island, started companies, and taken over land that many Filipinos felt forced to sell just to keep up with the rising cost of living. "We are colonized again" he said. He described how Filipinos now work for minimal wages in businesses owned by and serving foreigners. In their own country, on an island their families have lived on for generations. He told me that his own family was preparing to leave the island and move to the capital Manila to find better work in order to survive. The wages offered by foreign employers simply did not cover the rising cost of living which is one consequence of foreign wealth and western standards being brought to the island. "We are slaves in our own home" he concluded. At the time I did not yet have the language for what he described but since then I have encountered similar stories including in Lombok, Indonesia. These are not isolated incidents, they are symptoms of a larger and more complex global phenomenon called neocolonialism.

Even though all states are since the decolonialization, in theory, independent and sovereign[1] many remain subject to external influence in practice.[2] This influence often happens through religious, ideological, cultural or economic means by more powerful external states or actors.[3] While it may not involve formal colonial rule the effects is similar to the dynamics of traditional colonialism but without the formal exercise of political authority.[4] This modern form of control is what is known as *neocolonialism*.[5]

A central mechanism of neocolonialism is development aid.[6] It is presented as a tool to support growth in the Global South but is frequently tied to conditions that ultimately serve economic

[1] F. Viljoen. *International Human rights Law in Africa*. 2. Edition. (Oxford University Press, 2012). https://academic.oup.com/book/2219/chapter/142271945?login=true (2025-23-10). p. 20.
[2] K.Nkrumah. *Neo-Colonialism: The Last Stage of Imperialism.* (Thomas Nelson and Sons LTD, 1965), p.ix.
[3] Ibid. p. ix and 239.
[4] Ibid. p. 243.
[5] Ibid. p. xi.
[6] Ibid. p. 239.

and political interests of the state giving aid.[7] The inflow of foreign capital under the name of development often leads to patterns of exploitation rather than empowerment. The reason being, that the aid given from a first nation to a third nation country frequently flow back to where it came from with increased profits. While leaving barely any profit for the third nation country that was used to receive the profit. Investments like this from the Global North countries into Global South economies can reinforce global inequalities and deepen the divide between the wealthy and the poor.[8]

The Mandalika project in Lombok is a striking example of this pattern. It is a large-scale tourism development project launched by the Indonesian government. The intention of the project is to attract foreign investments to receive economic benefits through tourism infrastructure so that living standards on the island can be improved.[9] The Mandalika project creates a beneficial environment for foreign investors from the Global North through tax holidays, import duty exemptions, simplified custom procedures and flexible labor regulations.[10] Conditions that lowers the costs and risks for foreign companies and makes it easier and more profitable for them to operate in Indonesia. It helps them gain indirect control and economic domination over land in another country. The Indonesian government further requires that foreign investors construct, for example accommodation, so it lives up to an internationally acceptable standard. The standard attend to the expectations of foreign tourists and investors. Frequently prioritizing the expectations and cultural preferences of western tourists. Shaping everything from cuisine and activities to accommodate their standards, in order to create a tropical holiday experience that aligns with western ideals. By doing this they often marginalize local cultural practices and traditional livelihoods and replicate colonial power dynamics under the name of development, reproducing neocolonial dynamics.[11] The result is a development model where economic and symbolic control shifts away from the local population and towards foreign actors which is a signature for neocolonialism. While formal political sovereignty remain intact real influence over land use, labor conditions and profit flows, lies increasingly in the hands of external

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[7] Ibid. p. 243.
[8] Ibid. p.x. and xv.
[9] S,Aminah. B,Wardhani. V,Dugis. J.Susanto. The paradox of nation branding: A lesson learned from the Mandalika Special Economic Zone. *Asian Journal of Comparative Politics.* 10:4 (2025) https://journals-sagepub-com.ezproxy.ub.gu.se/doi/10.1177%2F20578911251366112 (2025-10-03).
[10] S.B. Cantika Yuli, M. Azizurrohman, R. Angga Pramuja, Y.M. Ginting. Tourism-driven development: evaluating the benefits of the Mandalika Special Economic Zone**.** *Cogent Social Sciences.* 11:1 (2025) https://www.tandfonline.com/doi/full/10.1080/23311886.2025.2460317#d1e216 (2025-10-03).
[11] Asian Infrastructur Investment Bank. *Project Summary Information (PSI).* AIIB https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/mandalika-urban-tourism-infrastructure.pdf (2025-10-03) p. 2.

powers. These development projects are governed by international law, regulating both the rights of the foreign investors and the local persons, the two actors most directly affected by these projects. This raises important questions regarding the role of international law. To what extent does international law reduce or reinforce these development projects as well as the structural inequalities and neocolonialism it entails.

1.1 Purpose of the Essay and Its Research Questions

As described in the introduction, development of tourist destinations in regions such as Lombok are framed as efforts to reduce poverty and boost local economies. Often masking the deeper reality of economic and cultural domination shaped by the interests of the global north. The purpose of this essay is to examine how the tendencies of neocolonialism in these development projects is either mitigated or reproduced through International Law. With the aim to achieve a better understanding of international laws impact on societal inequalities. In order to conduct this critical analyze in an academically valuable way the theory Third World Approaches to International Law (TWAIL) will be used. The purpose will further be reached through a case study on the development project Mandalika in Lombok. Where the foreign investors´ rights on one hand that represents the Global North and the local persons´ rights on the other hand that represents the Global South are examined. To achieve the purpose of the essay, these questions have been identified:

1. How substantial is the protection of Mandalika land afforded to foreign investors under investment law through BITs?

2. How does the Mandalika project violate the local persons´ rights to housing in Lombok and what does this reveal about the strength of this right under international human rights law?

3. What does the interaction between foreign investors´ and the local persons´ rights to Mandalika land, reveal about TWAIL´s critique of international laws reproduction of neo-colonialism in practice?

1.2 Delimitations

1.2.1 Why BITs and The Right to Housing?

The analysis in this essay will focus on foreign investors´ rights under Bilateral Investment Treaties (BITs) and local persons´ right to housing according to international human rights law. The motivation behind this delimitation of international law is the purpose of the comparison between the two rights. Development projects such as the Mandalika project in Indonesia relies heavily on foreign investments to build infrastructure on land that may already be inhabited or used by local communities (see 1.0 and 3.0). This raises competing claims to land. On one hand, the foreign investors legal right to land where their investment is placed, in accordance with Indonesias BITs with other states. On the other hand, the local communities right to land according to the rights to housing in international human rights law. The analysis is limited to these specific rights because they directly reflect the legal claims to land at the center of tourism-driven development projects. It creates a possible comparison between an actor from the global north and an actor from the global south as well as an understanding of the potential structural imbalances and neocolonial dynamics between them.

Investment law has been limited to only BITs. This essay needs only enough knowledge about investment law to do a successful comparison between the two rights and shed light on the bigger structural perspective. To achieve this purpose BITs are seen as enough. At the same time the limitation also helps avoid an overly descriptive essay without relevant context.
The reasoning behind the limitation to BITs specifically is that BITs are the most important regulator of foreign direct investments (FDI) made in developing countries.[12]

1.2.2 Why Lombok, Indonesia?

It is of relevance to say something about why Lombok and the Mandalika Project were selected as the case study for this essay. There are several reasons that made it initially interesting to focus on. Firstly, compared to other potential geographical areas such as Siargao in the Philippines, that made me aware of the problem with neocolonialism in the first place, the

[12] Z. Elkins, A.T. Guzman, B.A. Simmons. Competing for Capital: The Diffusion of Bilatertal Investment Treaties, 1960–2000. *International organization.* 60:4 (2006): p. 811–846. https://doi.org/10.1017/S0020818306060279 (2025-09-29) p. 812.

Mandalika project is fairly well documented. It has attracted both domestic and international attention, including media coverage, UN-reports, NGO-reports as well as existing academic research (see 3.0). This provides a strong base of accessible and credible source material to base the analysis on.

Secondly the project illustrates a clear tension between investment interests and the rights of the local communities, the global north and the global south, which is relevant when exploring the neocolonial dynamics within International Law. Moreover, unlike regions such as Bali[13]or Hawaii[14], where the impacts of mass tourism and land dispossession is already well established, Lombok remains in the earlier stages of the tourism development project Mandalika.[15] Lombok therefore presents an opportunity to analyze ongoing legal and structural development which ensures that it entails an up-to date case study.

Lastly, when looking at neocolonialism with a TWAIL lens it is of particular interest that Indonesia has been subject to colonialism.[16] The most recent and most influential colonizer is the Netherlands that occupied the country from the 1800s up until 1950[17], with a slight interruption by the Japanese invasion during 1942-1945.[18] Indonesia had to fight for their independence during a 4-year long war with the Netherlands that ended in 1949 when their independence got recognized, but the official economical domination continued for another year despite this. Indonesia is still to this day, affected by the past colonialization through institutions, legal regulation, economy, education, language and cultural aspects that have continued to exist because of their long history of colonialization.[19] The countries history of colonialization deepens the possible discussion on potential structural inequalities between the global north and the global south and how they came to be.

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[13] A.Carrigan. *Post-colonial Tourism: Literature, Culture, and Environment*. (Taylor & Francis e-Library, 2011). (2025-10-04) p. 11.
[14] Ibid. p. 1.
[15] K.Ewe, T.Wahyuni, A.Latief Apriaman. *Is this island the new Bali? Some think so - but not everyone's impressed*. BBC. (2025) https://www.bbc.com/news/articles/c5yp87ppk7eo (2025-11-12).
[16] A.Dragojlovic, K. Mcgregor. ”They call me Bambu”: the politics of visibility and gendered memories of Dutch colonialism in Indonesia. *Womens history review.* 31:6 (2022): p. 933–952. https://doi-org.ezproxy.ub.gu.se/10.1080/09612025.2022.2090709 (2025-11-04).
[17] D.V, Reybrouck. *Revolusi: Indonesiens frigörelse och den moderna världens ursprung.* Swedish edition. (Natur & Kultur, 2024), p. 438.
[18] A.Dragojlovic, K. Mcgregor. ”They call me Bambu”: the politics of visibility and gendered memories of Dutch colonialism in Indonesia.
[19] Ibid.

1.4 Earlier studies and the essays contribution

An overview of existing student essays from Swedish universities shows that there are some essays that explores related topics. For example, one examines arbitration from a TWAIL perspective with a focus on institutions, multiple concerns humanitarian intervention in relation to neocolonialism and the role of the UN. While these studies are relevant to the broader topic, they do not address the same questions as this essay. They also tend to focus primarily on the regions Africa or South America and not Southeast Asia.

This essay engages with aspects of human rights, investment law, neocolonialism, TWAIL and development, which collectively constitutes areas of law where extensive research exists. It is therefore not possible to include all previous research in this chapter, instead the focus will mainly be on the most influential TWAIL works concerning human rights, investment law and development. This results in a more limited overview of the field but enough to provide an insight on what this essay contributes to the critical field.

TWAIL primarily examines the problematic connection between international law, colonialism, structural inequalities as well as how this affects the global south (see 2.2.1). The specific manifestations of these dynamics however vary depending on the scholar. Some of the more essential TWAIL scholars such as Antony Anghie[20], B.S. Chimni[21] and Sundhya Pahuja[22] mostly tend to concern themselves with criticising the concept of international law including investment law and human rights. While demonstrating how it through history and geographical structures serve the interests of the Global North. In doing so they develop TWAIL´s theoretical foundations.

While many TWAIL studies as well as other related critical studies, including works by the scholars mentioned above, draw on legal frameworks, institutions and concrete societal problems to support their argument.[23] Fewer studies apply TWAIL theory to a case study

[20] See for example his work *Imperialism, sovereignty and the making of international law.* (Cambridge University Press, 2005).
[21] See for example his work Third World Approaches to International Law: A Manifesto, *International Community Law Review.* 8 (2006): 3-27. 10.1163/187197306779173220 (2025-12-16).
[22] See for example her work *Decolonising International Law: Development, Economic Growth and the Politics of Universality.* (Cambridge University Press, 2011) https://doi.org/10.1017/CBO9781139048200 (2025-12-11).
[23] See for example K.Miles. *The origins of International Investment Law: Empire, Environment and the Safeguarding of Capital.* (Cambridge University Press, 2013) and

approach where an observation of how international law affects concrete, real-life circumstances in the global south tests the theory. This is where this essay contributes to the broader field of TWAIL studies. It applies the theoretical framework to a contemporary, real-life case study and conducts a comparative analysis of international investment and human rights law. The aim of this analysis is to provide further insights into TWAIL´s theoretical assumptions in a practical context.

1.5 Outline of the Thesis

The previous sections of the essay, which institutes the *first chapter*, introduces the background to the essay topic, earlier studies as well as the essays contribution to the field, delimitations, the purpose of the research as well as the three research questions that will be studied and answered throughout this essay.

Chapter two outlines the methodological and theoretical frameworks used. The chapter begins by describing the two methods, Case Study Analysis (CSA) and the Sociology of law. This section explains how these methodological choices benefit the subject. The chapter then proceeds to *section 2.2* that introduces and motivates the theory of choice, the Third World Approaches to International Law (TWAIL). This section also establishes a foundation of TWAIL and introduces some key concepts from the scholars Anthony Anghies, B.S. Chimni and Sundhya Pahuja that are especially relevant for the interpretation of the essay's findings later on.

After the topic has been put in its theoretical context in chapter two it is time to introduce the circumstances of the case study, the Mandalika project, in *chapter three*. This chapter explains the circumstances of the Mandalika project and how it has affected both the foreign investors and the local persons on Lombok.

Chapter four then moves on to an evaluation on how substantial foreign investors´ rights to the Mandalika land are through Indonesian BITs. Conclusions can be drawn from an

M. Matua. Domestic Human Rights Organizations in Africa: Problems and Perspectives. *A Journal of Opinion.* 22:2 (1994): 30–33. https://www.jstor.org/stable/1166730 (2025-12-11) and M. Sornarajah. *The International Law on Foreign Investment.* 4. Edition. (Cambridge University Press, 2017).

examination of who can benefit from a BIT between Indonesia and another state, how extensive are the rights included in the BITs clauses and how effectively are they enforced.

C*hapter five* focuses on local persons´ rights to housing according to art 17(1) ICCPR and art 11(1) ICESC to be able to later compare their rights with the foreign investors´ rights. This section applies the circumstances of the Mandalika project to the legal regulation to evaluate if their rights have been violated and if so what this reveal about the strength of their right to housing in international law.

Chapter six brings together the details and conclusions drawn in chapter four and five to theoretically analyse if international law based on these findings are reinforcing global north biases, power imbalances and neo-colonialism as well as why the results appear as they do. *Chapter seven* and *eight* finally concludes the essay and give some future food for thought.

2.0 Theoretical and Methodological Frameworks

2.1 Methodology

2.1.1 Case Study Analysis (CSA)

This essay adopts a single Case Study Analysis (CSA) of the Mandalika development project to examine whether international law, specifically investment law and human rights law, reinforces neocolonial dynamics in tourism driven development projects. A case study is a suitable method when a real-life example has the potential to shed light on the theoretical questions that are being researched.[24] As this essay aims to provide deeper insights on how the theoretical views of TWAIL operate in practice by examining a real-life case it makes the CSA method well suited (see 1.4).

A CSA involves collecting and analyzing data related to a specific real-life context or problem related to a person, group of people or unit in depth.[25] Data on the Mandalika case, how it has affected foreign investors, and local persons have been collected from diverse sources to ensure a comprehensive analysis. These sources include academic studies, UN reports, websites of the actors involved in the development project such as AIIB and Injourney as well as relevant academic articles.

The purpose of conducting a CSA is to draw more general conclusions that can also be applied to comparable cases. This is even essential for a study to be allowed to be considered a CSA.[26] However it is important to draw the line between generalizing and making universal claims. The CSA should not aim to make universal claims as its empirical scope is considered to narrow. The study should instead focus on providing a deeper understanding of a phenomenon.[27] The aim with the case study on the Mandalika project is not to make universal claims about international law as a whole. It instead intends to use insights from the specific

[24] R. Yin. *Case study research and applications: design and methods.* 6. edition. (SAGE publication, 2018) p.15.
[25] Yin. *Case study research and applications: design and methods,* p.14 and J.Gerring. *Case study research: principles and practices.* 2. Edition. (Cambridge University Press, 2017) p. 28.
[26] J.Gerring. *Case study research: principles and practices.* p. 30.
[27] L, Webley. Stumbling Blocks in Empirical Legal Research. *Research Gate.* https://doi.org/10.5553/REM/.000020. (2025-09-16) p. 4–5 and Yin. *Case study research and applications: design and methods,* p.21.

case of Lombok to expand the understanding of structural tendencies in international laws regulation on other similar development contexts where investment law and human rights law are involved. In that way adding knowledge to the already existing theoretical field of TWAIL (see 1.4). The analysis of the case study serves as a type of theory testing and a real-life addition to the growing field that together with existing TWAIL research and future research can give expanded insights on the intersection between investment law, human rights law and development.

The CSA approach is further particularly appropriate for this essay as it effectively addresses questions that explores the relationship between two elements by asking the questions "how" and "why" they are connected to one another.[28] This essay aims to explore how foreign investors rights interact with local persons rights, why asymmetries between these might arise as well as how international law interacts with neocolonial dynamics and why this interaction exists and potentially persists.

2.1.2 Sociolegal Method

The Methodological decisions made in a legal essay shapes its scope, focus and conclusion. This essay does from start to finish take on a critical approach which makes a method that allows critical discussion necessary to satisfy the research questions and purpose. Although, to be able to critically assess or evaluate how international law influences neocolonial dynamics in the Mandalika project, it is essential to first identify what the law says. Some might argue that this initial stage of the essay could or maybe even should be approached through the doctrinal legal method (also known as black letter law). However, this essay rejects the doctrinal method as a sufficient or appropriate approach for its aims. That using it might rather do the thesis a disservice and that a sociolegal method is more appropriate for the essays aims.

The doctrinal legal method seeks to determine legal outcomes by applying established legal norms to a specific set of facts.[29] It is traditionally considered the primary tool for legal analysis, as it relies on authoritative sources such as statutes, case law and treaties to derive legal meaning. However, as stated, this essay rejects the use of the doctrinal method for a few reasons.

[28] Webley. Stumbling Blocks in Empirical Legal Research. p. 7–8 and Yin. *Case study research and applications: design and methods,* p. 27.
[29] J. Kleineman. Rättsdogmatisk metod. *Juridisk metodlära.* 3. Edition (Studentlitteratur AB, Lund). p. 29.

First of all, while the sections four and five do identify and apply the legal rights to the circumstances of the Mandalika case, which is in line with the doctrinal method. They do so with an awareness and a critical reflection related to broader political, social, and economic implications for example the distinction between the global north and the global south as well as the impact of investor strategies. The legal field is from the start of the essay discussed as a concept that are shaped by power imbalances, it is never suggested that it would be neutral. Which is in line with the sociolegal method but on the other hand falls outside the scope of the traditional focus of the doctrinal legal method. The doctrinal method claims that engagement in broader critical evaluation of how the law affects society should not be considered when law is applied to specific circumstances.[30] Using the doctrinal legal method would therefore in this case not satisfy the purpose of the essay. Additionally, because the doctrinal legal method assumes the legal system to be largely self-contained, neutral and universally applicable[31] which is assumptions that are directly challenged in this essay, and the method should therefore not be used even in the essays initial part.

Instead, this essay adopts a sociolegal methodology throughout the whole essay, which recognizes that legal rules arise from, operate within and shape social, political and economic realities.[32] As highlighted by sociolegal scholars, law does not exist in a vacuum, it is embedded in and form broader structures. It can therefore not be understood fully on its own but rather in the context of other societal values.[33] Sociolegal studies examine not only law in the books but also law in action as well as the gap between these and why it exists.[34] This approach is particularly useful for research that seeks to uncover how law functions in practice and to investigate its real-world effect on different groups within society, as will be done in this essay.[35] This makes the sociolegal method a good choice for this research as it explores how International Law influences the local community and foreign investors in Lombok. Including how their rights and interests are either protected or undermined by the international legal regulation. It asks not just what the law is, but how it functions in practice, whose interests it

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[30] Ibid. p. 29.
[31] M. Salter, J.Mason. *Writing Law Dissertation – An Introduction and Guide to the Conduct of Legal Research.* (Pearson Education, 2007) p. 82.
[32] Ibid. p. 126.
[33] Ibid. p. 122
[34] Ibid. p. 125.
[35] Ibid. p. 180.

serves, and what this reveal about broader legal and political structures. As well as how the relationship between law, ideology and the state works.[36]

Sociolegal research also allows for the use of a wider range of sources beyond traditional legal texts enabling a richer, more contextualized analysis that is necessary in this essay.[37] The method also works well with theoretical frameworks, including the one used in this essay, Third World Approaches to International Law (TWAIL)[38], which like the sociolegal method critiques the concepts of legal neutrality and instead focuses on the laws role in maintaining global hierarchies of power (see 2.2). This essay creates space for a deeper and more critical analysis right from the start by adopting a sociolegal approach. An approach that is well suited to address the complex relationship between international law, investment, local communities and neocolonialism. Avoiding using, even just partly, a method that goes against the core of this essay and that could send the wrong signals to the reader.

2.2 Theory

The choice of theory determines the range of answers and conclusions that can successfully be drawn from research.[39] When law, economy and development intersect in research, as they do in this essay, there is no single obvious theoretical choice. Different theories offer different views on the relationship between law, economy and development which result in varied analytical focus. Determining what the essays analytical focus is, helps decide on an appropriate theory. For example, Law and Development (L&D) is one theory that is relevant in the intersection between law, development and economy. L&D´s foundational ambitions are to understand how regulation can be used to promote human dignity, human capabilities, economic growth, reduce inequality and support political liberty through the acknowledgement of the important relationship between law and economy.[40] The theories analytical focus is, to summaries, how law and legal reform can ethically promote economic development and what institutional as well as conceptual tools are required for this purpose. [41]

[36] Ibid. p. 128.
[37] Ibid. p. 132.
[38] Ibid. p. 128.
[39] Ibid. p. 175.
[40] D. Trubek. Focus Feature: The future of law and development. *The University of Toronto law journal.* 66:3 (2016) 10.3138/UTLJ.3671 (2025-12-09) p. 327.
[41] Ibid. p. 303-304 and p. 318-320.

While these concerns relate to the essay topic, they have a different analytical focus than the purpose and research questions of this essay. Since the desired essay analysis concerns development, economy and law but seeks to understand international laws neocolonial effects rather than how law may contribute to ethical development TWAIL aligns more closely with the analytical focus of the essay (see 2.2.1). The focus being to research how international law either mitigates or reinforces neocolonial dynamics in the context of tourism-driven development. In contrast to L&D´s view that development is desirable[42], TWAIL scholars such as Anghie, Chimni and Pahuja, problematizes both concept and regulation of development in international law which allows for a critical discussion more in line with the purpose of this essay.

2.2.1 Third World Approaches to International Law (TWAIL)

Third world states is a concept dating back to the cold war, where it coexisted with the ideas of a first world and second world. The third world definition would today more likely be referred to as "developing countries" or the "global south" and the first world would be defined as "developed countries" or "global north".[43] In this essay both terms will be used as synonyms even if the essay recognize that they have slightly different backgrounds and ideology.[44] The concept of a third world was more than just a definition of non-European countries, it was a political movement referred to as Third Worldism. The political movement was initiated by the third world. It was rooted in solidarity among colonised and postcolonised states to resist the power advantage that the first world had over them as well as structural inequalities in the international order. [45] The third world wanted to achieve an economic development and independency outside of the western standards after their decolonialization. These aspirations turned into demands from the third world to create common development policies separated from colonialism.[46] This is foundational for TWAIL`s theoretical beliefs as well as many international regulations of that time.

TWAIL is a broad theoretical framework that includes numerous scholars and a wide range of works with differing views. Given the scope of this essay, it is not possible to cover all aspects

[42] Ibid. p. 327.
[43] M. Baaz. *Law and Politics in the International Society*. (Jure Förlag AB, 2019) p. 198.
[44] A. Anghie. Rethinking International Law: A TWAIL Retrospective. *The European Journal of International Law.* Vol 34:1 (2023) p.7-112. https://doi.org/10.1093/ejil/chad005 (2025-12-14) p. 12.
[45] G.Rist. *The history of development.* 5. edition. (Zed Books Ltd, 2019) p. 143-144.
[46] Ibid.

of the theory or all scholars. The analysis of this essay will therefore primarily draw on TWAIL's general principles as well as the overarching perspectives that are agreed upon within the community. TWAIL´s common beliefs are a few. The TWAIL scholars first of all agree that it is important to put international law in both a geographical and a historical context to trace colonial patterns in international law.[47] They believe that colonialism continued after the decolonialization but took a different form and that international law is now reinforcing it. Countries began using economic domination also referred to as neocolonialism. It was a quieter method than direct political domination[48] because neocolonialism uses other means than directly claiming the third world states sovereignty as the first world state would within historical colonialization. The state will instead take the other states resources as well as economic assets and transfer the economic benefits to the first world.[49] TWAIL research serves to better understand how this affects the distribution of power and resources between the global north and the global south today. With persistent power imbalances and biases that favors the global north.[50] This all, challenges claims that international law would be universal or objective.[51]

TWAIL will in this essay be used to analyze how international investment law and human rights law interact in tourism-driven development projects in the global south with investors from the global north and what this can reveal about continued colonialism. These questions make it necessary to engage with some specific TWAIL scholars whose works directly theorizes these dynamics. The essay analyze therefore also relies on the ground values of TWAIL as demonstrated above but also on Anthony Anghie's concept of "dynamic of difference", Chimni´s theory of the "Global State" and Sundhya Pahulas view on development and universality. These scholars together provide the conceptual tools necessary to critically analyze the Mandalika project and situate it within broader patterns of unequal global structures.

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[47] M. Baaz. *Law and Politics in the International Society.* p. 198-199 and Anghie. Rethinking International Law: A TWAIL Retrospective. *The European Journal of International Law*. p. 11 and B.S. Chimni. International Institutions Today: An Imperial Global State in the Making, *EJIL.* 15:1 (2004): p. 1–37. https://www.ejil.org/pdfs/15/1/334.pdf (2025-12-11) p. 30.
[48] Anghie. Rethinking International Law: A TWAIL Retrospective. *The European Journal of International Law*. p. 5 and 34.
[49] Ibid. p. 49 and 36.
[50] M. Baaz. *Law and Politics in the International Society.* p. 198–199 and S.Pahuja. *Decolonising International Law: Development, Economic Growth and the Politics of Universality*. p. 2.
[51]M. Baaz. *Law and Politics in the International Society.* p. 199.

2.2.1.1 Anthony Anghie – the dynamic of difference

Antony Anghie is one of the most influential scholars within TWAIL and his works provide a foundational framework within the theory. In his work "*Imperialism, Sovereignty and the Making of International Law"* from 2005 he introduces the concept he terms the "dynamic of difference". The concept highlights the constructed hierarchical gap between European and non-European states that according to Anghie are being reinforced through international law. European countries gained control by spreading the belief that they themselves were civilized while the non-European states were uncivilized. To transform all states into a civilized society and allow them to participate in the international sphere, international law would be used.[52] This was a way for the European states to maintain a global order that resembled the world before decolonisation by managing the development of the newly independent states.[53]Anghie´s concept of the "dynamic of difference" is of particular importance when TWAIL is applied to examine whether international law reproduces neocolonial patterns through its regulation on local communities in the non-European world and foreign investors from the European world.

2.2.1.2 B.S. Chimni – The Global State

Chimni is an influential TWAIL scholar that focuses on the relationship between reinforced capitalism and international law. He coined the concept of the "Global State". A concept that explains how international law and global institutions have historically been and continue to be structured to serve the capitalist interests of the Global North while undermining those of the Global South. According to Chimni the west relies on third world states to sustain this imperial global order, and they do this by exploiting the third world states existence to obtain the global state, the ultimate capitalism.[54] Including Chimni´s concept of the global state in the TWAIL theory part is essential as this essay research economical phenomenon in connection to international law. It offers an opportunity to analyse the relation between international laws regulation on investments that benefits the global north and disbenefits the global south in an academically more suited way.

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[52] Anghie. *Imperialism, sovereignty and the making of international law.* p. 56.
[53] Ibid. p. 207.
[54] Chimni. International Institutions Today: An Imperial Global State in the Making. p. 5–6.

2.2.1.3 Sundhya Pahuja – The concept of universality and development

In her book "*Decolonising International Law"* Pahuja describes how universality and development are concepts connected to international law that are made out to be something they are not. The concepts are used as marketing tools to make the third world states participate in international situations they disbenefit from.[55] The concept of universality is just a false promise from the first world to the third world that they will be included and looked after by international law but instead it is used as a mean for the first world to take advantage of them.[56] To keep the third worlds view on international law as universal and beneficial, Pahuja argues that the third worlds desire to achieve development and economic growth after the decolonialisation and the first worlds promise to help them achieve it by the means of international law are the two essential cornerstones.[57] The theoretical tool Pahuja provides with this idea is included in this essay because of the extra theoretical interest it provides in connection to the essays purpose, to understands what international laws regulation on tourism-driven development projects reveal about their impact on structural inequalities.

[55] S.Pahuja. *Decolonising International Law: Development, Economic Growth and the Politics of Universality.* p. 2–3.
[56] Ibid. p. 2.
[57] Ibid p. 7

3.0 The Mandalika Project – a case study

This section of the essay serves to introduce the Mandalika project and its impact on the local persons and the foreign investors to establish concrete real-life circumstances that makes a critical evaluation of international law in practice possible in later parts of the essay.

3.1 What is the Mandalika project?

The Mandalika Project was under the Indonesian Government Regulation Number 52 of 2014 made a Special Economic Zone (SEZ)[58] and a part of Indonesia's project to create "10 new Balis" with the purpose of enhancing tourism in the country.[59] The zone is located on the south coast of Lombok with long beaches and almost guaranteed ocean view from the new tourist destinations, being one of the reasons the government believe it will serve its purpose well.

The project is governed by InJourney Tourism Development Corporation (ITDC) which is a State-Owned organization that is assigned to develop and oversee successful tourism projects in Indonesia to make the country a more appealing tourist destination.[60] The project is financed by the Asian Infrastructure Investment Bank (AIIB).[61] A bank with members from all over the world, with the vision to develop Asia to reach sustainable economic development, wealth and improve infrastructure connectivity.[62]

The AIIB claims that the main purpose with the Mandalika project is for the benefits to reach and serve the local community by reducing poverty, improve the local infrastructure, create job opportunities as well as skill-based training for these jobs. They also claim that they want to make sure that they reduce negative effects that tourism and companies created from the Mandalika project have on the local community. The project further states a desire to protect and enhance culture and nature within the Mandalika area since it is the main reason tourists want to visit Lombok.[63]

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[58] Injourney Tourism Development Corporation. *The Mandalika.* ITDC. https://www.itdc.co.id/portofolio/the-mandalika (2025-09-15) and Cantika Yuli, Azizurrohman, Angga Pramuja. Ginting. Tourism-driven development: evaluating the benefits of the Mandalika Special Economic Zone**.**
[59] Ibid.
[60] Injourney Tourism Development Corporation. *About Us.* ITDC. https://www.itdc.co.id/about-us (2025-09-15).
[61] Asian Infrastructur Investment Bank. *Project Summary Information (PSI).*
[62] Asian Infrastructur Investment Bank. *Who We Are.* AIIB. https://www.aiib.org/en/about-aiib/index.html (2025-09-15).
[63] Asian Infrastructur Investment Bank. *Project Summary Information (PSI).* p. 1-2.

3.2 The effects on foreign investors

The zones have the purpose of, as stated earlier, among other things, attract investments from both foreign actors, speed up economic and social growth as well as improve living standards in more underdeveloped areas of the country, such as Lombok. To attract investors there are multiple perks if you decide to invest in a SEZ such as tax holidays, import duty exemptions, simplified customs procedures and flexible labor regulations. Lowering the costs and creating favorable conditions to make it easier, safer and more profitable to be doing business in the area.[64]

Within what the Indonesian government refers to as the Mandalika Masterplan it is included that after land has been prepared with essential infrastructure and utilities it will be leased to private investors. The private investors will then be free to create tourist facilities such as restaurants and accommodation with the only requirement, that it must have an internationally acceptable standard that appeals to tourists.[65] One main reason the government is so focused on getting investors interested in the area is because they rely on the public-private partnership (ppp) model to provide critical infrastructure. The partnership implies that since the Indonesian government does not have the means to provide critical infrastructure, they get the private sector to finance it instead.[66] Even if the governments purpose behind the SEZ is "selfish", to achieve economic growth through investments, it has positive consequences for the foreign investors as well. Foreign investors have a lot to gain from this type of favorable investment climate if they have interest in investing in Indonesia's tourism sector.

3.3 The effects on the local communities

AIIB claims that the main purpose of the development project is to benefit the local community but in reality, this has primarily not been the case. There has been research made by scholars to evaluate the Mandalika projects success in improving the community's well-being. In this one study from 2025 the results from analyzing interviews, observations and documents declared

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[64] Cantika Yuli, Azizurrohman, Angga Pramuja. Ginting. Tourism-driven development: evaluating the benefits of the Mandalika Special Economic Zone**.**
[65] Asian Infrastructur Investment Bank. *Project Summary Information (PSI).* p. 2.
[66] I. Zitiri. C. Kurniawan, T.Octastefani. Public-Private Partnership: In the Development of the Mandalika Circuit, Indonesia. *Journal of Governance and Public Policy.* 11:2 (2024) p. 156–166. https://journal.umy.ac.id/index.php/GPP/article/view/17714 (2025-09-15) p. 156–157.

that the Mandalika Special Economic Zone has increased job-opportunities, incomes as well as skill-based training programs. These positive benefits however mostly only reached richer people with more experience and education (that can read and write). The study for example showed how people that already owned businesses had increased sales and the people with qualifications and expertise got more job opportunities as the tourism infrastructure developed. On the other hand, the people that did not have a business before or enough qualifications to compete for a job did not receive the same benefits. People without the desirable skills have not received training or skill development from the government or other establishments the way it was promised. The training programs that have been established are mostly available for the people that already work within the village's government or tourist organization, and the benefits are therefore not widespread. This creates a bigger gap within the community, the richer becomes richer and the poor poorer. Although the poverty and unemployment rate have at the same time overall decreased as a consequence of the Mandalika project.[67] To conclude the study's findings, it shows that there have been positive outcomes from the project but not available to all. The negative consequences of the project have also been more widespread than the study shows. This can be seen through multiple reports from UN experts as well as other academic research. These sources also expose human rights violations that are happening to actualize the project (more on this further down).

An academic report from 2023[68] shows how there have been violent evictions in Lombok because of the Mandalika project which has resulted in people losing their homes as well as their livelihood from 2019 onwards. The local community has not had the opportunity to defend their land and resist eviction because when decisions of destruction have been made it happens fast, without consent, payment and with military and police force. 82 % of the villagers reported that if someone would have asked for consent they would not have given up their land but if they try to defend their land they open up for threats and violence. The fear of being a victim of this violence have shown to be true for 2/3 of the villagers. After experiencing violent eviction many local people end up in relocation shelters for years without knowledge of how long they are allowed to stay before they get evicted from there as well. Additionally, since

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[67] Cantika Yuli, Azizurrohman, Angga Pramuja. Ginting. Tourism-driven development: evaluating the benefits of the Mandalika Special Economic Zone**.**

[68] W. Wawa. Indonesia´s Mandalika Project Reveals the Dark Side of AIIB Lending. *The Diplomat.* https://www.proquest.com/docview/2831747281?accountid=11162&parentSessionId=DPGhWXC%2BE%2B7HpwdE7EFV4A21k6%2F1gtNzpxj%2FJ5ndjWk%3D&pq-origsite=primo&searchKeywords=mandalika+project&sourcetype=Magazines (2025-09-16).

only 15 % have received compensation of any sort for their earlier eviction it makes it hard for them to find a new home even more so if their livelihood were connected to their land. An important take away from this is that benefits the community have gained from the Mandalika project reach only a small proportion of the citizens, which does not include the poor or the displaced.

The poor treatment of the local community on Lombok because of the Mandalika project can also be seen through the multiple UN reports made on the situation since 2021 that support the claims made in the academic report from 2023. The UN reports states that they have received briefings on human rights violations committed by police and military through the excessive use of violence during eviction and when they try to restrict the local communities´ rights to demonstrate. On top of this Indonesia has also failed to fulfil the communities´ right to effective remedy and compensation for eviction. The destruction has reportedly not only included houses but also fields, water sources, cultural and religious sites as well as graves.[69]

The UN reports warn the accountable in the Mandalika Project that they are responsible to ensure that the violence happening is not forthgoing. The responsible at that time was according to the UN, the Government of Indonesia, ITDC and AIIB as well as the foreign investors and their states that could be detected at the time, France, Spain and the United States. UN declares that the actors cannot allow security forces that use excessive force, they need to get informed consent from the local people before eviction, and they need to fully comply with the international human rights.[70] This does however not seem to reach the responsible actors well. The AIIB has responded to the allegations and claim that they have not received any information of anything that could be considered excessive force or problematic security forces. They further claim to have everything closely monitored to make sure it does not happen and that they surely live up to international human rights law as well as their own safeguards.[71] It seems

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[69] United Nations. *Indonesia: UN experts denounce mega tourism project that `tramples on human rights´.* UN. https://news.un.org/en/story/2021/03/1088742 (2025-09-16). and United Nations. *Rights experts concerned over intimidation around mega tourism project in Indonesia.* UN. (2023). https://news.un.org/en/story/2023/03/1134237 (2025-09-16). and United Nations. *Indonesia: UN experts alarmed by reports of increased militarisation and intimidation around Mandalika project.* UN. https://www.ohchr.org/en/press-releases/2023/03/indonesia-un-experts-alarmed-reports-increased-militarisation-and (2025-09-16).

[70] Ibid.

[71] Letter from AIIB regarding human rights impacts in the Mandalika project (December 2024) https://www.aiib.org/en/projects/details/2025/_download/indonesia/AIIB-response-to-the-UNOHCHR-letter-dated-December-2024.pdf .

as though the vision, or maybe more bravely referred to as the advertisement, does not align with the reality of the situation.

4.0 International Investment Law

After outlining the circumstances of the Mandalika project in the previous section, this part shifts to a more legal focus. It aims to answer the research question, of how substantial foreign investors´ rights to Mandalika land are under international investment law. The findings presented here will further, together with the analysis in section 5.0 on the extent of local persons´ rights, be used in section 6.0 to draw conclusions on how this intersection potentially exposes structural power imbalances, favorable biases, reproduction of neocolonialism and the historical origins in accordance with the TWAIL theory.

4.1 Foreign Investors´ rights

All states are (in theory) sovereign but there are exceptions that affects a state's sovereignty. Investment law is one of these exceptions.[72] States never have to allow foreign investments, that decision is part of their sovereignty. But if they do decide to allow foreign investments, they must accept that they give access to their territory and extend rights to foreign investors.[73] Foreign private investors is either a private person or company that makes profit.[74]

Investment law regulates the relationship between foreign investors and the host state (aiming at where the investment is made).[75] Investment law is advertised as a legal ground for a joint purpose between the investor and the host state. The host state needs the investment to grow economically, and the foreign investor wants profit to take home. The idea is that they can reach this goal together with complementary rights and duties. This happens through the investors business plan and their respect for the domestic legal order.[76] Domestic laws content is therefore highly relevant for the understanding of international Investment Law.[77]

[72] R. Dolzer, U. Kribaum, C. Schreuer. *Principles of International Investment Law.* 3. Edition. (Oxford University Press, 2022). p. 29.
[73] P.Muchlinski. The Framework of Investment Protection: The Content of BITS. K.P. Sauvant, L.E. Sachs. *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment* Flows. (Oxford University Press, 2009). https://doi.org/10.1093/acprof:oso/9780195388534.003.0002 (2025-09-29). and Dolzer, Kribaum, Schreuer. *Principles of International Investment Law.* p. 132.
[74] Dolzer, Kribaum, Schreuer. *Principles of International Investment Law.* p. 59.
[75] Ibid. p. 17.
[76] Ibid. p. 26–28.
[77] Ibid. p. 15.

It is of interest to understand that the purpose of international investment law is in the end to protect investments made by foreign private investors and the regulation shows little concern for the host country's interests.[78] There are different types of agreements within international investment law that protects the foreign investors rights, but BITS are the most common international investment agreement and is the main governor of foreign direct investments (FDI) made in developing countries.[79] BITs will therefore be the part of investment law used in this essay to evaluate how extensive the foreign investors rights to land are (see 1.2 regarding the delimitation).

4.1.1 Bilateral Investment treaties (BITs)

BITs primary focus is to regulate how investments made by a foreign investor from one state in the territory of another, a so-called host country, should be treated.[80] A BIT that has entered into force are internationally legally binding.[81] The Mandalika project remains in the earlier stages of development.[82] AIIB is currently financing and overseeing the construction of basic infrastructure, intended to enable future tourism-related investments that is to be conducted by private foreign investors according to the Mandalika masterplan (see 3.2). Since most of the foreign investors have yet to begin their operations, it remains unclear what nationalities they will represent, and thus what specific BITs may apply. The discussion will therefore remain open, as all Indonesian BITs could be relevant.

4.1.1.1 Termination of BITs and the relevance of national planning

Examining the extent of foreign investors´ rights is central to the essay´s purpose because it allows for a comparison between global north and global south actors in section 6.0. This comparison is essential for identifying structural tendencies within international law and drawing deeper conclusions related to the TWAIL theory. It is therefore in this context relevant

[78] Ibid. p. 58.
[79] Z. Elkins, A.T. Guzman, B.A. Simmons. Competing for Capital: The Diffusion of Bilatertal Investment Treaties, 1960-2000. p. 812.
[80] P.Muchlinski. The Framework of Investment Protection: The Content of Bits. K.P. Sauvant, L.E. Sachs. *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment* Flows.
[81] UNCTAD, The entry into Force of Bilateral Investment Treaties (BITs), IIA MONITOR No.3 (2006) https://unctad.org/system/files/official-document/webiteiia20069_en.pdf (2025-12-17).
[82] K.Ewe, T.Wahyuni, A.Latief Apriaman. *Is this island the new Bali? Some think so - but not everyone's impressed*.

to note that Indonesia began terminating many of its BITs in 2014[83], particularly those with global north states[84]. This development is important to acknowledge as it affects BITs legal scope and therefore the global north actors' part in the comparison. A more detailed examination of their function as well as the continued relevance is therefore necessary before evaluating the strength of foreign investors rights.

After the termination of their BITs Indonesia still have 28 BITs currently in force, along with several others that have been signed but not yet ratified. Of the remaining BITs, only a small number involve Global North states, such as Sweden and Switzerland.[85] If the investors in the Mandalika project happens to be from global north states with active BITs, the protections in those treaties will be actualized. However, as the foreign investors nationality cannot be assumed at this stage of the project it is necessary to examine how international law allows investors to access international protection through BITs even in the absence of a direct BIT between their home state and Indonesia.

Indonesia's goal with the termination seems to be to renew most of its BITs so they align with their desire to regain more control over its sovereignty as well as aligning investment policies more with the interest of the Indonesian people.[86] The exact timeline for future investments in Mandalika as well as possible renegotiations or replacements of the BITs remains uncertain. Nevertheless, the BIT framework is still highly relevant when assessing the rights that foreign investors may invoke in Mandalika for four main reasons. First of all because countries with existing BITs may still invest. Second of all Indonesian BITs does not expire as soon as the termination is clarified and can sometimes remain in force for up to 10-15 years after the termination.[87] Third of all because renewed treaties may be in place by the time investments are made. Lastly because national planning allows for investors to access the protection of BITs outside of their home state. Investors may through national planning gain protection under BITs

[83] UN Trade and Development. *International Investment Agreements Navigator-Indonesia.* UNCTAD. https://investmentpolicy.unctad.org/international-investment-agreements/countries/97/indonesia?type=bits (2025-09-30).
[84] Hamzah. Bilateral Investment Treaties (BITS) in Indonesia: A Paradigm Shift, Issues and Challenges. *Journal of Legal, Ethical and Regulatory Issues.* 21:1 (2018): p. 1–13. https://heinonline-org.ezproxy.ub.gu.se/HOL/Page?handle=hein.journals/jnlolletl21&id=23&collection=journals (2025-09-30) p.1.
[85] UN Trade and Development. *International Investment Agreements Navigator-Indonesia.*
[86] Hamzah. Bilateral Investment Treaties (BITS) in Indonesia: A Paradigm Shift, Issues and Challenges. p. 1–2 and 9.
[87] S.P. Subedi. *International Investment Law: Reconciling Policy and Principle.* 5.edition. (Hart Publishing, 2024). https://research-ebsco-com.ezproxy.ub.gu.se/c/dsdbhl/search/details/fqtodk6kmb?db=nlebk (2025-09-30). p. 266.

for their investment by claiming nationality in other jurisdictions with more favorable treaties than their own.[88]

The practice of national planning complicates Indonesia's seemingly desire to be able to control the nationality of the investors that are allowed to access the protection of BITs under their jurisdiction. The phenomenon, national planning is also referred to as "treaty shopping". It involves establishing a company in a country that has an existing BIT or another international investment treaty with the host state, in this case Indonesia, that offers a more favorable legal protections for their investments than their home country.[89] The tribunal has through the case *Aguas del Tunari v Bolivia* made it clear that national planning is, in principle, in line with the purpose of international investment law. It appears the only time national planning would not be allowed would be if it is conducted solely in anticipation of a legal dispute. Tribunals clarified that it constitutes an abuse of process if the corporate creation is undertaken with the primary aim of getting arbitration after a dispute has arisen or become foreseeable. The purpose of national planning must be to engage in genuine economic activity, not merely to gain standing for legal claims (see cases *Phoenix v Czech Republic and Banro v Congo*). Therefore, provided that the corporate planning takes place prior to the emergence of a dispute national planning is allowed and in accordance with the purpose of international investment law.[90] This reflects a broader reality where the host country has only limited control over who can make beneficial investments in their territory through international law, if they decide to engage in international investment law at all. It further shows how strong the protection and how broad the possibilities are for foreign investors under international investment law.

Because of the continued importance of BITs, despite the circumstances of the termination there will be a further evaluation of the potential rights that can be given to the foreign investor through BITs. To remain realistic about what Indonesia could potentially agree to and to stay grounded in the case study, the investors rights discussed in this essay will be based on the provisions found in Indonesia's remaining BITs with Global North countries.[91] An interesting observation that can be made here is that their remaining BITs with the Global North does not

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[88] Dolzer, Kribaum, Schreuer. *Principles of International Investment Law.* p. 71–72.
[89] Dolzer, Kribaum, Schreuer. *Principles of International Investment Law.* p. 71–72.
and J. Baumgartner. *Treaty shopping in international investment law.* (Oxford University Press, 2016) https://doi.org/10.1093/acprof:oso/9780198787112.001.0001 (2025-09-30).
[90] Dolzer, Kribaum, Schreuer. *Principles of International Investment Law.* p. 72–73.
[91] See for example the BITs between Switzerland – Indonesia, Denmark – Indonesia, Sweden-Indonesia and Finland – Indonesia (2006).

seem to be less controlling than other BITs despite the purpose to weaken the grip the Global North had on them through the termination. They include the normal clauses such as expropriation, transfer of money, fair and equitable treatment, national treatment, most-favored-nation, full protection and security and investment dispute. These clauses will therefore all be discussed shortly to understand the rights they entail for the foreign investor. The essay will discuss the potential reasons as well as the impact of Indonesia's decision to keep strong BITs after their termination more later.

4.1.1.2 National treatment

The clause of national treatment in a BIT requires the host state to treat the foreign investors no less favorable than the treatment given to domestic persons engaged in similar business activities with the purpose of having a level playing field within the host country. If this clause is not followed, the investor is allowed to make a claim.[92]

4.1.1.3 Most Favored Nation (MFN)

The clause of Most-Favoured-Nation regulates the situation where a third state gets a more favorable term then another state. If this happens the first state automatically gets this as well. The purpose is to give all foreign investors the same conditions to compete fairly on the host states market.[93] If a country has a BIT with Indonesia where an MFN clause is included this might entail that it is possible for them to receive the treatment stated in the more favorable BIT as well. It might even include other international agreements that have an MFN clause for example a WTO agreement.[94] This strengthens the possibilities for foreign investors to go beyond their home countries BIT with Indonesia in additional ways than just opportunities arising from national planning.[95] This similarly entails that if Indonesia decide to keep one BIT that is more allowing and open than other BITs it can benefit other nationalities as well. Even without the complications of national planning. Different BITs are not as separated from each

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[92] P.Muchlinski. The Framework of Investment Protection: The Content of Bits. K.P. Sauvant, L.E. Sachs. *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment* Flows.
[93] Ibid.
[94] Subedi. *International Investment Law: Reconciling Policy and Principle*. p. 136.
[95] J. Baumgartner. *Treaty shopping in international investment law.*

other as you might believe at first sight. Host states must to some extent always contemplate that all investors can be covered by the most favorable BIT.[96]

4.1.1.4 Fair and Equitable treatment

The clause of fair and equitable treatment is the minimum obligations the host country has in regards of the foreign investor.[97] In Indonesia's BIT with Switzerland, they have decided to define what they mean by this by including a list of the bare minimum and when the state can be viewed to have broken the clause. The list includes denial of justice, fundamental breach of due process, manifest arbitrariness, targeted discrimination and abusive treatment. To specify what is meant by the clause is potentially a way for the host country to have more control over how far they must go in their treatment of the foreign investor.

4.1.1.5 Full protection and security

Even if the clause "Full protection and security" may sound like an ultimate protection, it is not. The host state is not obligated to protect the investment from all losses or damages but rather against force towards the physical integrity of the investment.[98] Especially by taking appropriate measures to protect the investment if the violator is especially targeting foreigners or certain groups of foreigners according to the case of *Saluka v Czech Republic*.

4.1.1.6 Expropriation

Expropriation of the foreign investor´s investment is only allowed under certain circumstances specified in each BITs with the purpose of not giving away all internal control to the investor. The most common situations where BITs permit expropriation of investments are if it's done for a public purpose, under due process of law, without discrimination and if the investor receives adequate payment in accordance with the market value of the investment right before the expropriation happened and the payment is made promptly and effectively.[99]

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[96] Subedi. *International Investment Law: Reconciling Policy and Principle*. p. 137.
[97] P.Muchlinski. The Framework of Investment Protection: The Content of Bits. K.P. Sauvant, L.E. Sachs. *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment* Flows.
[98] Ibid.
[99] Ibid.

4.1.1.7 Free transfer of money

The purpose of investing in another country than your home is for the foreign investor to make profit and bring money back home again (see 4.1). To make sure that the foreign investors´ rights and interest are protected there are a clause in most BITs regulating free transfers of payments to ensure that investors can, without issue, transfer the income made from the investment out of the jurisdiction of the host country into their home country.[100]

4.1.1.8 Investment dispute and ICSID

This essay is interested in the foreign investors´ rights which is why the relevant subject of analysis is the investment dispute between the investor and the host state, rather than between two states. Most BITs contain a clause on international arbitration, which may be invoked when conflicts between the investor and the host country occurs.[101] Diplomatic protection as well as action in domestic courts has not been seen as efficient enough to protect the investors rights. Which is why international law has seen a need for investors to have direct access to effective international procedures through international arbitration.[102] While other procedures than arbitration exists and can be used, for example confidentiality, arbitration remains the most popular option because it is a formal proceeding that leads to a binding decision which other options do not.[103]

In practice, the host state is almost always the respondent and the foreign investor the claimant. In most international investment treaties, only investors are granted the opportunity to make claims that lead to arbitration and the host state is not provided the same opportunity.[104] This is because an arbitration´s primary purpose is to protect the foreign investor (see 4.1) and not the host state. If a state wishes to take actions towards a foreign investor, they have to do so through national means, for example via a central government body, a local authority such as a province or municipality or a specialized state agency for example an investment board. Although this is not uncomplicated, the host states actions must still comply with international law and not violate the BIT, for example through acts that can be viewed as expropriation. If

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[100] Ibid.
[101] Dolzer, Kribaum, Schreuer. *Principles of International Investment Law.* p. 365 and Elkins, Guzman, Simmons. Competing for Capital: The Diffusion of Bilatertal Investment Treaties, 1960–2000. p. 814.
[102] Dolzer, Kribaum, Schreuer. *Principles of International Investment Law.* p. 340.
[103] Ibid. p. 341.
[104] Subedi. *International Investment Law: Reconciling Policy and Principle*. p.262.

the state acts outside of these international legal frames it can be hold internationally responsible, which is another clear example of the strong rights of the foreign investor.[105]

Even though arbitration claims to be neutral towards both the host state and the investors[106] the system is as other parts of investment law created to protect the investor.[107] The foreign investors benefit is evident, they get access to effective remedy as well as, as a consequence of the arbitration being a private proceeding, a significant level of confidentiality, which offers additional protection of the foreign investor. For host states the benefit lies, as within all investment law, in appearing more attractive to investors while at the same time protecting themselves from potentially more harming procedures such as diplomatic protection.[108]

States can within BITs designate a specific arbitral institution to administer disputes. However, if such institutions are not specified, the case can also be referred to ad hoc arbitration. Although the most common way is using the International Centre for Settlement of Investment Disputes (ICSID) as the arbitral institution.[109] The purpose of ICSID convention is according to its preamble to give access to a more favorable investment environment by providing a neutral and effective dispute resolution mechanism. For ICSID to hear a case, it must first establish jurisdiction, which according to article 25(1) in the ICSID convention requires the existence of a legal dispute, as well as that both the investor's home state and the host state are parties to the ICSID Convention and have consented to ICSID arbitration. However, even if one or both states are not parties to the ICSID Convention, but consent exist, the dispute can still be administered under ICSID through "Additional Facility". ICSID serves in such case as the administering institution, but another convention, that has rules specifically created for this purpose is used rather than ICSIDs own convention.[110]

Despite the termination of BITs foreign investors still have a strong protection when they invest in Indonesia through mechanisms such as national planning, the MFN clause specifically but also the other key clauses such as expropriation, free transfer of funds and international arbitration through ICSID. They all collectively provide the foreign investors with seemingly

[105] Dolzer, Kribaum, Schreuer. *Principles of International Investment Law*. p. 355.
[106] Ibid. p. 345.
[107] Ibid. p. 356.
[108] Ibid. p. 340.
[109] Ibid. p. 342.
[110] Ibid. p. 344–345 and 359.

strong safeguards of their interests to Mandalika land. This section has highlighted the limited control host states have over foreign investments under international law as well as the broad protection that are afforded to investors. Although before making a final conclusion on how substantial the foreign investors rights are it is relevant to understand how effective the enforcement is.

4.1.2 Enforcement of ICSIDs decisions

According to art 53(1) in the ICSID convention an award made by the tribunal is binding for all parties and they must accept and comply with the tribunals decision immediately. The parties further must enforce the award within the territory of the host state according to art 54(1) ICSID convention. But what happens if any of the parties deny the award enforcement, are there any mechanism that can force compliance and how strong are these?

Enforcement options for investors under ICSID are limited, really. The investor can in principles get help from their home state if the home state go against the host state and make a claim before the International Court of Justice (ICJ) for the investors sake according to article 64 ICSID convention. This can however only be successful if the home state are willing to take on the case as well as the costs and even a favorable ICJ decision not guarantee enforcement which makes the alternative unreliable.[111] There is also the opportunity to seek help from a state other than the home state or the host state if they are willing to assist in enforcing an ICSID award for example by seizing assets the host country has in that country. This opportunity follows from the openness of art 54(1) ICSID convention, that the decision by the tribunal relates to all states, not only the affected ones. This can nonetheless be problematic regarding state immunity, which limits a state´s ability to intervene in affairs of another without consent, which is reflected through state sovereignty.[112] In conclusion, no enforcement mechanism guarantee effectiveness and compliance by the host state in accordance with the award. This makes the seemingly strong right of the foreign investor weaker. Without compliance, the award has no effect and is therefore potentially useless.

[111] J.M. Hunter, J.G. Olmedo. Enforcement/Execution of ICSID Awards Against Reluctant States. *The Journal of World Investment & Trade.* (2018). https://brill-com.ezproxy.ub.gu.se/view/journals/jwit/12/3/article-p307_2.xml (2025-10-10) p. 319.
[112] Ibid.

4.1.3 Conclusion

This part of the essay served to understand how strong rights the foreign investors are permitted through international investment law. The conclusion that can be drawn is that international investment law at first sight gives the foreign investor very strong and broad rights even if the host country does not have BITS with the foreign investors home country, possibly because the legal field's main purpose it to protect the investor. But the problem that serves as a disadvantage for the foreign investor is enforcement if the host state acts reluctantly. Although it is of importance to remember that many developing countries are as we have seen positive towards foreign investments because they need them, which again works in favor of the foreign investor.

5.0 International Human Rights Law

Having previously examined the strength of foreign investors´ rights to Indonesian land (section 4.0), this section will shift focus to the rights of the local persons. Particularly on their right to housing under international human rights law, their equivalent to the investors indirect right to Indonesian land under BITs. This will allow for a comparison between the rights in the next section (6.0) of the essay which is necessary to achieve the essay's purpose and reveal more about potential power imbalances and structural inequalities within the legal system as is highlighted by TWAIL. The purpose of this section is twofold, one micro and one macro, as it first also tends to answer the research question of how the Mandalika project has violated the local persons´ right to housing and what this reveal about the strength of their rights.

5.1 The local persons´ right to housing – definition, application, crime against it

The right to housing originally follows from art 25 Universal Declaration of Human Rights (UDHR) but is internationally binding through art 17(1) International Covenant on Civil and Political Rights (ICCPR) but essentially from art 11(1) International Covenant on Economic, Social and Cultural Rights (ICESC). Art 17(1) ICCPR declares that unlawful interference with someone's home is illegal and art 11(1) ICESC establish the right to an adequate standard of living which also includes the right to adequate housing. As Indonesia ratified both covenants, ICCPR and ICESCR, in 2006 the country is legally bound by both.[113] This makes the right to housing a relevant legal standard for assessing the situation of the local population in the Mandalika project and how strong their rights to land through their rights to housing are.

Both art 17(1) ICCPR and art 11(1) ICESC grant the right to housing to every human being, which means that all local persons in the Mandalika area have the right to housing. The right to housing has been laid out in General Comments 4 and 7 to art 11(1) ICESC (from now on only referred to as general comment 4 and 7). Even if the comments are not legally binding or even soft law, they serve to make implementations and the understanding of human rights easier for

[113] OHCHR. *Ratification Status for Indonesia*. OHCHR. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=en (2025-10-15). and D.Moeckli, S.Shah, S.Sivakumaran. *International human rights law*. 3. Edition. (Oxford University Press, 2018). p. 67.

the states.[114] The comments are therefore viewed to be of big importance for the understanding of the right to housing and will be used with this purpose in the essay.[115] According to general comment 4, the right to housing entails not only a shelter or a roof over your head, but a home that gives the individual security, peace and dignity. Forced eviction or relocation of people has been of big relevance in relation to the rights to housing in both art 17(1) ICCPR[116] and art 11(1) ICESC[117] and has extended into the main subject of general comment 7 as well as big parts of general comment 4. The definition of forced eviction or relocation are according to general comment 7 that people as individuals, families or communities are removed from their homes or lands permanently or temporarily without their consent and without access to legal remedy or other similar protection. It is of general belief that forced eviction, or relocation is not in line with the right to housing.[118] The right to housing is not fulfilled just because individuals have somewhere to live, if there is a constant possibility that your home might be taken away from you at the decision of someone else.[119]

The local people that have house or land in the Mandalika area have, as stated above, according to international human rights law the right to their land and home, they are not to be removed from it under normal circumstances the way they have been because of the Mandalika project (see 3.3). There are only in certain situations and with specific conditions that states are allowed to carry out evictions, especially when it concerns big groups like it does in the Mandalika case. This is according to general comment 4 when less forceful alternatives do not exist and that this is a conclusion that has been drawn through research made together with the affected people. Eviction should only happen if it is stated in the law according to general comment 16 to art 17(1) ICESC, entailing that the law should specify when forced eviction is allowed. General comment 4 also states that the eviction needs to be reasonable under the particular circumstances as well as proportionate.

[114] Moeckli, Shah, Sivakumaran. *International human rights law*. p. 205. and J. Hohmann. *The Right to Housing: Law, Concepts, Posibilities.* (Hart Publishing Ltd, 2013). p. 20.
[115] Ibid. p. 20.
[116] Ibid. p. 34.
[117] UN Committee on Economic, Social and Cultural Rights, General comment No 7 to Article 11 (Forced Eviction), 20 May 1997 https://www.refworld.org/legal/general/cescr/1997/en/53063 (2025-10-15) and UN Committee on Economic, Social and Cultural Rights, General comment No 4 to Article 11 (Right to Adequate Housing), 13 December 1991. https://www.refworld.org/legal/general/cescr/1991/en/53157 (2025-10-15).
[118] Hohmann. *The Right to Housing: Law, Concepts, Posibilities.* p. 21 and general comments 4 and 7 (see footnote 116).
[119] Hohmann. *The Right to Housing: Law, Concepts, Posibilities.* p. 21.

If the eviction is allowed to happen there are some minimum conditions that must be met. There needs to be adequate and reasonable notice before the date of eviction, the people of the local community should have legal remedies available as well as adequate compensation provided, and the government should minimize use of force and provide legal aid if possible. It is of importance that eviction does not result in homelessness for the person, and the government needs to provide adequate alternative housing, resettlement or access to productive land. They may also not violate any of the local persons´ other human rights while executing eviction. It is clear under the circumstances of the Mandalika project (see 3.3) that the local communities right to housing in articles 17(1) ICCPR but essentially from art 11(1) ICESC has been broken. The evictions have not happened in consultation with them, they have not received notice in reasonable time before the eviction, there has been lack of legal remedies, adequate compensation and minimizing use of force (see 3.3). They have furthermore been put in relocation camps that cannot be seen as adequate alternative housing because of both the condition the buildings are in[120] as well as the circumstances that the local persons can be removed from it at any time (see 3.3). The local persons´ rights to housing on Lombok have been broken through forced eviction and relocation, which leads to the question, what are the state's legal responsibility in ensuring that such violations do not occur and have Indonesia succeeded to achieve this?

5.2 The states responsibility and how Indonesia has failed

When Indonesia decided to bind themselves to the covenants they added another exception to their state sovereignty, similar to how they add an exception when they bind themselves to BITs.[121] When a state ratifies a treaty, they accept duties to, respect, protect and fulfil the human rights regulation[122] by using all means at their disposal.[123] The states must respect human rights by not taking actions that violates them. They must protect them by making sure human rights violations do not occur within their jurisdiction because of their shortcomings and lastly to fulfil them by taking adequate steps to achieve human rights mostly by providing remedy to victims.[124] The duty to respect the right to housing also entails that the state itself is not to take

[120] W. Wawa. Indonesia´s Mandalika Project Reveals the Dark Side of AIIB Lending.
[121] F. Viljoen. *International Human rights Law in Africa.* p.20.
[122] P. Alston, R. Goodman. *International Human Rights Law: The Successor To International Human Rights In Context.* (Oxford University Press, 2013). p. 159.
[123] Ibid. p. 1048.
[124] Moeckli, Shah, Sivakumaran. *International human rights law*. p. 97–98.

part in forced evictions. The duty to protect means that they must ensure that the law works effectively against the ones that take part in forced evictions or relocation of local persons.[125] The Indonesian state has in the Mandalika case broken their duty to both respects, protect and fulfil local persons´ rights to housing by creating an economic zone that allow forced evictions and relocation of the local persons living in the area previously. The violation of the local persons´ rights is executed by ITDC, a state-owned enterprise (see 3.1). It is regulated in Indonesian law through the regulation on the SEZ (see 3.1) and this regulation allows for other actors, such as foreign investors, to take over land that constitutes a local person's home. Despite Indonesia's obligations according to international human rights law, the state has failed to uphold the right to housing which raises important questions about the strength and effectiveness of international human rights law. Even if the state is bound to legal obligations on paper, how effective are these protections in practice, especially when the state is part of the violation itself? The following section will address these questions by exploring enforcement mechanisms, their limitations and finally come to a conclusion on how strong the local persons´ rights to housing can be said to be on its own.

5.3 Is the right to housing effective?

International human rights law is legally binding for its members, and this fact is not changed by the lack of courts and tribunals that try human rights cases.[126] The international responsibility lies on the national state's shoulders. They need to bind themselves to treaties[127] and they need to make sure that there are effective protections of human rights[128]. The main problem with this system occurs when the states, that are in charge of actualizing the rights, break their duties, like they have in the case of Mandalika. If the state breaks their duties, in the way the Indonesian state has through the Mandalika Project it equalizes an international delinquency. But there is no way for international law to directly control and change national law or the actions of the state because of international laws subsidiarity status towards national law.[129] The options to force compliance exist but are not necessarily effective and might be wrongly referred to as forceful. There is an option for interstate sanctions which means that another state takes actions

[125] General comment 7 to art 11(1) ICESR (see footnote 116).
[126] Moeckli, Shah, Sivakumaran. *International human rights law*. p. 63.
[127] Ibid p. 67.
[128] Alston, Goodman. *International Human Rights Law: The Successor To International Human Rights In Context. p. 1047.*
[129] Ibid. p. 1057.

to restrict the state that has broken its human rights obligations for example through boycotts, immigration and travel restrictions as well as discouraging investments.[130] But this requires that an outside state care enough about the human rights violations against the local persons affected by the Mandalika project and that the country itself does not gain something from the violating treatment.

It is also possible to send individual complaints to different actors within the UN. You can for example complain to the Special Rapporteur, this serves as a way to get a comment from the state as well as to remind them and other parties involved of their obligations towards international law. Although this all happens privately.[131] There is also a possibility for all people to complain about any human rights violation made by any actor or state to Special procedures and there are no obligation that the state must have ratified international human rights law for a claim to be allowed.[132] The special procedures are also communications to states that have committed violations, but the statements are instead of the Special Rapporteur made by human rights expert that reports on the violation as well as if it's necessary for the state to stop their actions. This happens publicly.[133] The special procedures have the same purpose as the communications with states made by the Special Rapporteur[134] but they additionally make reports to the Human rights Council on the violations happening.[135] Complaints to the Special procedure has already been made because of the violations the Mandalika project has entailed (see 3.3). This is what has in turn led to the UN reports on the mistreatment of the local persons including demands against Indonesia, state representatives, investors and AIIB to stop the violation (see 3.3). Although this is as far as the complaints reach, to reports, that hope to raise awareness on the subject as well as shame Indonesia and the other parties involved into compliance as they are not binding.[136] The reports do not seem to have had much effect in the

[130] Ibid. p. 1118–1119.
[131] United Nations Human Rights Office of the High Commissioner. *Submission of information on allegations and individual complaints.* United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/en/special-procedures/sr-housing/submission-information-allegations-and-individual-complaints (2025-11-03).
[132] United Nations Human Rights Office of the High Commissioner. *Choosing where to submit you complaint.* United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/en/choosingyourcomplaint (2025-11-03).
[133] United Nations Human Rights Office of the High Commissioner. *Submission of information to the Special Procedures.*
[134] United Nations Human Rights Office of the High Commissioner. *What are Communications?.* United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications (2025-10-03).
[135] United Nations Human Rights Office of the High Commissioner. *Submission of information to the Special Procedures.*
[136] United Nations Human Rights Office of the High Commissioner. *What are Communications.*

Mandalika case, since the AIIB has decided to deny all allegations in the reports (see 3.3). The UN also continues to ask the involved parties to listen to the accusations made and take actions accordingly as recalled for in their earlier reports on the situation which further entails noncompliance.[137]

If the Mandalika project would get the Human Rights Council attention, which is the utmost level of UN´s human rights regime, it would publicly signal that the human rights violations are severe.[138] The Human Rights Council only takes on cases that are considered to be part of a pattern of gross violation of human rights. Gross violations are when the human rights violations have reached a level that it can by no means any longer be seen as something that falls within the domestic state's jurisdiction only and must instead be considered an international matter. Forced eviction is one example that has been agreed to fall within this definition so it is not impossible to imagine that the council will make a statement in the future if the violation in Lombok continues.[139] Even if there are no legally binding decisions made by the council, studies show that such reports affect the violating states reputation as well as the amount of FDI they get. There is a difference between reports made by lower instances in the UN and the ones made by the council. The council's statements have bigger effect on the states reputation as well as the NGOs that decide to invest in the country despite of the reported violations of human rights. At the same time, it has also been shown that the council's statements sometimes are too technical for an ordinary audience to absorb and that they need help from the media to achieve a greater reach of the information.[140]

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[137] OHCHR. *Indonesia: UN experts warn of harm to Indigenous Peoples' rights ahead of AIIB loan disbursement for Mandalika project and MotoGP race.* Business and Human Rights resource centre. https://www.ohchr.org/en/press-releases/2024/09/indonesia-un-experts-warn-irreparable-harm-indigenous-peoples-rights-ahead (2025-11-03).

[138] K. Chaitanya Vadlamannati, N.Janz, Ø. Isachsen Berntsen. Human Rights Shaming and FDI: Effects on the UN Human Rights Commission and Council. *World Development.* 104 (2018): p.222–237. https://www-sciencedirect-com.ezproxy.ub.gu.se/science/article/pii/S0305750X17303765 (2025-11-03). p.222.

[139] United Nations Human Rights Council. *Human rights Council complain Procedure.* United Nations Human Rights Council. https://www.ohchr.org/sites/default/files/Documents/HRBodies/ComplaintProcedure/ComplaintProcedurebooklet_E.pdf (2025-11-03).

[140] K. Chaitanya Vadlamannati, N.Janz, Ø. Isachsen Berntsen. Human Rights Shaming and FDI: Effects on the UN Human Rights Commission and Council. p.234.

5.3.1 Conclusion

The rights to housing for the local persons according to human rights law is in itself binding and should be respected by the states bound by it, but as can be seen through the Mandalika project it is not especially hard for states to commit crimes against these rights and when they do, the enforcement and remedy options cannot guarantee success. The tools used so far in the Mandalika have at least not had a positive effect on the situation for the local persons.

6.0 Structural inequalities in the International Legal Order

The focus of this essay has so far been on two main actors affected by the Mandalika project, foreign investors representing the global north and local persons the global south. The two previous sections of the essay (4.0 and 5.0) focused on researching the extent of each actor's land-related rights within development projects separately. There is a complex dynamic between these two competing interests. They are in theory equally internationally binding rights, but they cannot coexist under the circumstances of Mandalika, where their rights relate to the same piece of land. The local communities´ right to Mandalika land through their right to housing has been violated to actualize the opportunity for foreign investors to access the land with their investments. This in turn actualized the foreign investors´ right to Mandalika land according to international Investment law. The next section of this essay will use the research in section 4.0 and 5.0 and dive into a deeper analysis with TWAIL as a lens to understand how these dynamics reflect the structural tendencies of international law and if it tends to either mitigate or reinforce neocolonialism

6.1 Structural Biases within International law

An initial observation from the case study gives the impression that foreign investors and local persons have comparable rights to the domestic land of Mandalika if you focus on the legal regulation. Neither of their buildings on the land is under normal circumstances to be removed. Removal is only allowed under circumstances when it can be deemed proportionate and necessary (see 5.1 and 4.1.1). If their buildings are removed either way, both legal regulations give the right to compensation (see 5.1 and 4.1.1). A closer examination of the practical application of these laws however reveals what TWAIL scholars would identify as a power imbalance between the foreign investor and the local person, that reflects a bias that favors the actors from the global north. This observation also aligns well with Chimni's view on how international law functions to serve the interests of the "global state" and Pahuja´s critique that universal international law is just a construction by the west to regain power over the global south.

The rights granted to foreign investors under international investment law are all internationally legally binding, given that all rights are stated directly in the BITs (see 4.1.1), which as a whole has binding international status (see 4.1.1). The protection of the local persons´ right to housing

in contrast constitutes a weaker legal framework. While the right to housing itself is legally binding through treaties, critical elements that guarantees the right to compensation, proportionate evaluation and the right to not get evicted, is regulated in the general comments. These comments lack binding force and are generally not considered to have soft law status (see 5.1). This structural difference has concrete legal consequences. Foreign investors can rely on defined binding rights making it easier for them to argue that their rights have been violated. Local persons do in contrast have to, before they can claim that their rights have been violated, establish that they have binding rights that can be violated according to international law in the first place. This illustrates what TWAIL refers to as false universality, the idea that international law claims to be universal and equally protective of all, while to a greater extent in practice give more extensive protection to foreign investors rather than the local community because it serves the global north bias (see 2.2.1). The Mandalika project exemplifies how this power imbalance work in practice especially through the discrimination of the local communities´ rights to housing. Local residents have experienced displacement and violation of their right to housing. UN reports have voiced this concern and described the violations as problematic, however the local community has had limited success in effectively defending their rights through the international legal mechanisms (see 3.2 and 5.0). The international investment law framework in contrast remains ready and available to support the foreign investors in protecting their rights if they need it (see 4.0).

Another factor that contributes to the lack of legal remedies for the local community affected by the Mandalika project that further shows the power imbalances with the global north bias, is the absence of guaranteed enforcement mechanisms (see 5.3). Enforcement is unpredictable within both investment law and human rights law, which is a common occurrence in international law due to its secondary nature (see 4.1.2 and 5.3) which mostly requires domestic cooperation for effective enforcement. The power imbalance is nevertheless evident here as well. Even though the enforcement of an ICSID decision on an investment law case is not guaranteed to be followed by the host state. It shows an incitement from investment law to give the foreign investor access to international arbitration to get the case decided. Local communities do not, in contrast, have this opportunity when their human rights have been violated which further illustrates how international law structurally favors the protection of foreign investors. The lack of effective remedy is continuously demonstrated in the Mandalika project which proceeds despite ongoing violations of the local persons´ rights (see 3.0).

The incitement within international law as illustrated by the Mandalika project through the comparison of the rights of the two parties becomes particularly interesting from a TWAIL perspective given that investment law has been customized to serve and protect foreign investors when they do business in developing countries (see 4.1). Their rights have been designed so that they are rarely open to challenge and have many ways for foreign investors to go around the common way to use the regulation if they want (see 4.1.1.1 and 4.1.1.3). Through Indonesia's termination of BITs this case study has revealed the extent of which the system is created with loopholes all around to make sure that the benefits reach the foreign investors even if it is not the host country's desire, through national planning as well as MFN clauses (see 4.1.1.1 and 4.1.1.3).

The local persons do again in contrast not enjoy rights that are similarly customized, their rights are instead derived from frameworks that claim to be universal and neutral for all humans to enjoy.[141] It is impossible to successfully make legislation universal, because different people in different regions have different lived experiences and it is impossible for legislation to successfully cover every possible situation.[142] To make the claim that human rights protections are universal and neutral therefore results in failed protection of local communities. Especially when they are put against the robust protections afforded to foreign investors by investment law. The incitement within international law that has been detected to favor the Global North and reinforce the hierarchy between the two rights is confirmed further when the two rights are brought up within the same case. They rarely get addressed by the same tribunal[143] and if they do it happens through the investment law framework, which is the only one of the two that has a binding tribunal (see 4.1.2 and 5.3). A system that tends to, even when there is other interest to consider at hand, prioritize the commercial considerations and consistently rule in favor of the investors.[144]

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[141] M. Mahlmann. *Mind and Rights: The History, Ethics, Law and Psychology of Human Rights.* (Cambridge University Press, 2023). https://www.cambridge.org/core/services/aop-cambridge-core/content/view/6EC7BD2099FAF02F2D9925000B4198EF/9781107184220c1_43-67.pdf/concept_of_human_rights.pdf (2025-11-13). p. 50.

[142] L. Ramina. TWAIL – "Third World Approaches to International Law" and human rights: some considerations. *Journal of Constutational Research.* 5:1 (2018): p. 261–272. https://revistas.ufpr.br/rinc/article/view/54595/35012 (2025-11-13). p. 271.

[143] P. Dupuy, E.Petersmann, F. Francioni. *Human Rights in International Investment Law and Arbitration.* (Oxford University Press, 2009) https://academic-oup-com.ezproxy.ub.gu.se/book/7245/chapter/151926334 (2025-11-13) p. 46.

[144] S.P. Subedi. *International Investment Law: Reconciling Policy and Principle.* p. 10.

The establishment of a distinct, binding legal regime with a dedicated arbitration mechanism for governing the rights of foreign investors rights specifically when they conduct investments in developing countries. In contrast to the non-binding, "universal" framework without arbitration that governs the rights of local communities and allow violation to facilitate investment, highlights the incitement to prioritize stronger protection for the foreign investors. This reflects a clear prioritization to serve the interests of the foreign investors, actors from the global north over local persons in the global south. It is seemingly as if international law has made it intentionally hard for local persons to protect their rights to housing and purposely easier for the foreign investors to keep theirs. From a TWAIL perspective especially through Puhujas view on universality and Chimni`s concept of the global state this outcome is not to be understood as a coincident. Rather it reflects how international law has been constructed to justify prioritizing the global north over the global south. In this context international law leaves the local persons without effective legal protection so that they have no legal way to prevent land grabbing and hinder foreign investors interest and their purpose to serve the global capitalism. The right to housing is claimed to be a universal right but it has no actual force. It only exists to continue to have the third world believe that international law is inclusive and protective of all (see Pahuja). While in reality the right to housing is not meant to be strong enough to win over the opportunity to start development projects, like Mandalika, that benefits the global capitalism (see Chimni).

The whole foundation of investment law is in reality built upon the idea that the foreign investors bring capital to developing countries through investments, supporting their economic growth, while they earn profits for themselves in the west (see 4.1). This clearly reflects Pahujas argument that third world countries desire to reach development and economic growth under the belief that international law is universally beneficial which is how the west can continue to exploit them through BITs. At the same time, it also reflects Anghies concept of dynamic of difference. Because without a developing country, without the others, the investment law would lose both its spoken purpose of benefiting the global south, that makes investment law successful but also its underlying purpose to exploit others to benefit themselves.

A comparison between the structures of investment law and human rights law as well as how strong their rights are, exposes structural power imbalances and favorable biases in accordance with the TWAIL theory. It is all about undermining the global souths rights to satisfy the global north bias.

6.2 The reproduction of Neocolonial power

The Mandalika case illustrates how investment law can and will actively undermine human rights protections even though they technically exist within the same overarching legal framework of international law. BITs exemplify the contradiction of investment law working against human rights law, as they consist of a contractual regulation that has the purpose of benefiting the rich foreign investors when they make investments in vulnerable countries (see 4.1). General comment 7 to art 11(1) ICESCR for instance is calling for a law that prohibits forced eviction unless they meet very strict and justifiable conditions. General comment 4 to art 11(1) ICESCR similarly urges states to stop legislation that deepens the suffering of groups that are already more vulnerable because of regulation that benefit groups that are already better off to begin with. That investment law and human rights structurally prioritise foreign investors as illustrated in 6.1 has on Lombok resulted in deepened existing inequalities, causing already marginalized groups to suffer even more including being displaced to make way for foreign investments (see 3.3). Investment law actively works for development projects and cash flow back to the investor (see 4.1.1) instead of mitigating the harm of the neocolonial dynamics that development projects entail (see 5.0). Displacing local persons in Lombok to allow tourism-driven development project, illustrates not only a power imbalance that favors a global north bias (see 6.1) within international law. It also reveals reproduction of neocolonialism. International law is constructed to allow investment law to actively undermine the human rights protection for investment law to succeed with its own purpose of giving back money to its investors. Human rights are in turn not made strong enough to fight this.[145] Which is clearly demonstrated through the discussion in 6.1. It creates an international climate where economic as well as cultural domination by the global north over the global south is possible, even encouraged through development projects and international investment law. Precisely how Chimni describes the global state, hungry for capitalism (see 2.2.1.2).

This confirms TWAIL´s main concern, that colonialism is being reproduced through neocolonial patterns (see 2.2.1) of domination. Through protection of economic and cultural interests of foreign investors in development projects at the expense of the human rights of local communities in the Global South. Neocolonialism is deeply persistent in international laws

[145] L. Ramina. TWAIL – ”Third World Approaches to International Law” and human rights: some considerations. p. 265.

structure as well as how investment law and human rights law intersect when their rights are put up against each other. This reproduction of neocolonialism however does not occur in a legal international vacuum. Even though international law provides the structures that allow neocolonialism it is also significantly controlled by the decisions and priorities of domestic states. Domestic law provides the mechanisms that let neocolonialism operate.

6.3 The importance of domestic law

Domestic law is of big importance within both investment law as well as human rights law. Without cooperation from the national state enforcement within neither field are guaranteed (see 4.1.2 and 5.3). In the end the national state is therefore the one to decide what part of international law that matters to them, and international law has limited impact on their decision.

Signing a BIT as a developing country often comes from their economic self-interest. They wish to encourage more investments from developed countries with the assumption that it can help their country's economic welfare. This results in a willingness to meet many of the developed countries conditions of strong protections for the foreign investor even if it is sometimes very intrusive for them.[146] This confirms Pahujas theory that development and economic growth are two strong factors in controlling developing countries (see 2.2.1.3).

BITs can somewhat be described as its own market, where developing countries are competing with each other for a piece of the foreign investment. Who can give the foreign investors the highest protection and therefore entail more investments?[147] Indonesia needs investments and tourism to develop their country, they even to a large extent rely on the investments to develop the necessary infrastructure (see 3.2) which have led to the government creating the economic zones (see 3.1). This has further created a very investment friendly climate even outside of international investment law. The need for investments is also the cornerstone in the human right violation of the local community (see 3.3). The Indonesian government has decided to align their regulation with investment law rather than human rights, probably without

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[146] P.Muchlinski. The Framework of Investment Protection: The Content of Bits. K.P. Sauvant, L.E. Sachs. *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment* Flows.
[147] Z. Elkins, A.T. Guzman, B.A. Simmons. Competing for Capital: The Diffusion of Bilatertal Investment Treaties, 1960-2000. p. 811.

purposeful intent to harm their citizens but instead because their goal is to achieve a growing economy, it is the main interest for the country's development and survival. The lack of enforcement and allowance for domestic interests to decide the influence of international law is allowing historic and geographical structural inequalities and neocolonialism to persist with support from international legal rules even if international law would not in itself create circumstances that reinforced it. It is not a coincident that this is the economic or legal reality for Indonesia. It is deeply rooted in their colonial past, which serves as an explanation to why neocolonialism continues to be reinforced through international law as well as why the legal field has participated in creating these circumstances.

6.4 The importance of history – why this system exists and persists

TWAIL emphasizes the importance of history of colonialization to understand the international legal regime today (see 2.2.1). Indonesia was, as many other countries, a colony until the 1950s (see 1.2.2). Being colonialized during more modern times did not only mean that they lost control over their land or goods to the Netherlands (see 1.2.2) but also that Indonesia's economy was reconstructed to serve the colonizer´s interests. This created an economic imbalance where the colonizer´s economy grew through a capitalism expansion, and the colonized countries, including Indonesia, were left economically dependent and underdeveloped.[148]

Indonesia and other colonies faced the consequences of this imbalance after the decolonization. Around the same time as the decolonialization of many European colonies, including Indonesia, after the second world war, investment law was conveniently created. This body of law was largely shaped by western businessmen who feared that without continued control over the economics of the third world, the west´s economy could not be maintained. Investment law therefore provided a new framework for regulating global economic relations between the global north and the global south without consideration of the people that sometimes already

[148] A.Loomba. *Colonialism/postcolonialism.* 3. Edition. (Routledge, 2015). https://research-ebsco-com.ezproxy.ub.gu.se/c/dsdbhl/ebook-viewer/epub/mhc3vjboa5/section/navPoint-6?location=https%25253A%25252F%25252Fresearch-ebsco-com.ezproxy.ub.gu.se%25252Fc%25252Fdsdbhl%25252Fsearch%25252Fdetails%25252Fmhc3vjboa5%25253Fdb%25253Dnlebk%252526db%25253Dnlabk (2025-11-13).

lived on the property they wanted with the argument that it was an inevitable consequence to reach their goal. [149]

TWAIL scholars have the common understanding that the creation of investment law right after the decolonialization was a way to shift the control of the third world states from the national regulation of western countries to an overarching international jurisdiction instead. It was created with the intent to continue to serve the colonial powers interests.[150] Since postcolonial economies were still vulnerable and dependent, many states accepted this system. Their economic self-interest grew which effectively made investment law replace direct colonialism with economic control through legal structures that allow the continued economic control by their former colonizer. Investment law became a modern substitute for colonial domination, and the political independence that was achieved became an illusion of full independence as the economic control remained limited and continue to this day.[151] It resembles Anghies concept "dynamic of difference" as it upholds hierarchical structures between the developed and underdeveloped countries with the promise that international law will change their circumstances (see 2.2.1.1).

It is also important for the essays purpose to consider the parallel development of international human rights law. Human rights law was created around the same time as Investment Law, also in the after mass of World War II.[152] It had initially a promotional rather than an enforceable character, there were rights but no binding obligations or remedies. This was largely because most of the bigger nations that shaped human rights law was western powers that at the time did not want human rights to control their domestic affairs or colonial policies. Smaller countries, especially from the third world, on the other hand supported the creation of strong human rights. Hoping that it would create better conditions for them, promoting equality and destroying colonial hierarchies. Despite the third world states engagement the final version of

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[149] N.M. Perrone. *Investment Treaties and the Legal Imagination: How Foreign Investors Play By Their Own Rules.* (Oxford University press, 2021). https://academic.oup.com/book/39600/chapter/339528301 (2025-11-13).
[150] L. Ramina. TWAIL – "Third World Approaches to International Law" and human rights: some considerations. p. 263.
[151] Ibid.
[152] M. Mahlmann. *Mind and Rights: The History, Ethics, Law and Psychology of Human Rights. p. 75.*

human rights still ended up reflecting a western bias with rights to strive towards but no duties that can hold the states accountable. [153]

The historical development of both investment law and human rights law thus reveal how the interests of the colonial powers were allowed to shape the international regulation. Both fields were designed to protect western economic and political interests. To ensure that they kept their own colonial rights strong and integrated into the global system and the protection against them weaker to continue to serve the European capitalist interests even after doing the right thing and letting their direct political domination go. The history of investment law, human rights law and the relationship between them shows how neocolonialism has come to exist and persist in the international legal field today. The inequalities in the Mandalika project and how it is reproduced by international law is not an accident, it is a continuation of an historical design based in colonialism.

[153] M. Freeman. *Human Rights.* 3 edition. (Polity Press, 2017). https://research-ebsco-com.ezproxy.ub.gu.se/c/dsdbhl/ebook-viewer/epub/kin4tpka6z/section/navpoint-23?location=https%25253A%25252F%25252Fresearch-ebsco-com.ezproxy.ub.gu.se%25252Fc%25252Fdsdbhl%25252Fsearch%25252Fdetails%25252Fkin4tpka6z%25253Fdb%25253Dnlebk%252526db%25253Dnlabk (2025-11-13).

7.0 Conclusions

This essay has conducted a case study on the Mandalika project with the use of a TWAIL lens which has revealed how international law reproduce neocolonial dynamics within development initiatives. The founding's reveal a recurring pattern that traces back to colonialism itself confirming the theory of TWAIL and that the imbalance between the actors from the global north and the global south that was revealed in this essay (see 6.1) is not incidental. Neocolonial tendencies are not sustained only through the structure of international law that legitimizes development projects and prioritize the interest of the Global South while offering inadequate protection for affected local communities in the Global North. It is equally sustained through the domestic legal systems of the host states that have these historical tendencies embedded in their legal system as well. Both the international and the domestic legal system are shaped by historical, economic and cultural conditions that are rooted in colonial legacies that to this day affects developing countries and its people. The problem runs deeper than reinforcement of neocolonialism through the current international law and rather that the international legal system is constructed upon it, even for it. Investment law was designed to secure and expand access to resources and market for the former colonial powers while human rights law was framed in aspirational terms while being limited to avoid constraining those same powers. The system continues to use the vulnerabilities in society that colonialism left behind to make sure that it continues to be something the west can use and benefit from. In our part of the world, luxury is created for us, we are the users and the beneficiaries. In their part of the world, the luxury is also made for us, we remain the users and the beneficiaries. Read that again. If there is one central point to take away from this essay, it is this, as it describes the issue at its core.

8.0 Concluding remarks

Third world countries own awareness of how the west still controls them through international law has existed since international laws creation (see 2.2.1) and their resistance against it continues (see termination of BITs). It is relevant to, in the future, explore the topic further to better understand Indonesia's and other third world countries´ possibilities to break free from the western dominance. To ask, at what point can developing countries overcome these historical dependencies on the first world and thrive on their own? How significant do they have to transform their economy and are there other ways to economically benefit the global south without exploitation?

I have during my travels been confronted with the structural inequalities that shape our world. Sitting in that Tuktuk in Siargao I was reminded again that global inequality is not an abstract concept but for many a lived reality. Individuals are born into severely different circumstances, shaped by histories that came before them. We are all dealt a particular hand and while we cannot do anything other than play the cards we have received, the people that have received the better hand have an undeniable responsibility. As tourists, investors, regulators but first and foremost as people, we carry an obligation towards those whose circumstances are shaped by the systems we often benefit from.

Before I began studying law, I somewhat believed that legal structures were inherently protective, even sacred. My legal education has challenged that perception. Law is a human creation based on politics which is what makes it both powerful and flawed, it is deeply shaped by inequalities that it often seeks to regulate. Recognizing that nothing man-made is faultless or neutral is essential. Only through this awareness can we critically assess how legal systems perpetuate or disguise for example neocolonial patterns and consider how they might instead be reshaped to address them.

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