



South China Sea Investor Protection – An Islamic Large Language Model Legal Analysis

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Abstract

The Asia-Pacific region, which accounts for a significant share of the global economy, has been a popular destination for investment. Furthermore, a sizable Muslim community in the Asia-Pacific area has shown a growing demand for financial services and products that are consistent with their beliefs. The South China Sea (SCS), which borders several nations, including China, Vietnam, Malaysia, Singapore, Indonesia, Brunei, Thailand, and the Philippines, has drawn significant attention. Over the past few years, there has been significant focus on the growing tensions stemming from conflicting territorial claims. Foreign investors are growing increasingly concerned about protecting their capital amid escalating tensions in the South China Sea (SCS). The article discusses utilising large language models, such as Llama 3, for the text analysis of investment treaties and the connection with Islamic finance investor protection measures. The second reason is the approach adopted by tribunals in the Crimea cases, known as effective control. Under the host state's jurisdiction, they entered into investment treaties. However, the area did not meet the international legal definition of territory. The third rationale concerns the implementation of investment treaties beyond national borders. The tribunal would be permitted to debate the SCS governments' maritime rights without deciding on them by doing this. As a result, they would not have to interact with Monetary Gold or other required parties. Instead, the tribunals in the investor-(host)-state dispute can only consider the protesting state's amicus curiae comments as a non-disputing party.

Keywords: Islamic finance; Investor protection; State disputes; South China Sea; Artificial intelligence

1. Introduction

The Asia-Pacific region has been a major investment destination, accounting for a significant share of the global economy. Additionally, the Asia-Pacific region has been a region with a sizeable Muslim population that has increasingly outlined the desire to have financial products and services that align with their faith. The South China Sea (SCS) has been of significant interest and lies near various countries, including China, Vietnam, Malaysia, Singapore, Indonesia, Brunei, Thailand, and the Philippines. Over the last several years, significant attention has been paid to the rising tensions that arise from overlapping territorial claims. Given rising tensions in the South China Sea (SCS), foreign investors are increasingly concerned about safeguarding their capital. This results from growing military and offshore interests in the SCS, which include undeveloped subsurface energy deposits. As a result, both the host nations in the SCS and the foreign investors drawn to them value



protecting their current and future foreign investments. Additionally, investors and banks outline the importance of minimising the risk of losing their capital and may have significant return on investment requirements (Guan, 2000).

The protracted disagreement makes it more difficult to include a maritime investment in a coastal state in the South China Sea under the BIT's territorial jurisdiction. As a result, a system for categorising different kinds of disputed maritime areas has been created. The framework examines how investments are protected outside a host state's territorial sea, particularly in contested or ambiguously bordered maritime areas. There have been inquiries over investments in underwater cables and deep-seabed mining. Similarly, earlier investment tribunals have handled claims against the disputed area. Examples include the Crimea proceedings involving the controversial annexation and in-state succession of Kosovo and Hong Kong/Macao (Fravel, 2011). However, there has never been an investor-state arbitration case involving a maritime sovereignty dispute. In contrast, cases about interstate marine delimitation have been brought before the PCA, ITLOS, and ICJ. These bodies arbitrate cases concerning offshore concession blocks given to foreign companies, and one such case is the maritime border dispute between Ghana and Côte d'Ivoire (Abadikhah, Nigmatullin, & Sergeevna, 2023).

Foreign investments have also been made in disputed maritime areas that may be eligible for territorial protection. Academic research has demonstrated that the jurisdiction of investment tribunals may be so limited as to render it impossible for them to issue decisions on the maritime rights of sovereign states. When the government opposes the contested oceanic territories, this aligns with the Monetary Gold principle. In this instance, the protesting state is not a party to the investor-host state conflict, whereas the host state grants rights to foreign investors. This article, therefore, proposes a novel methodological framework to address this complex intersection. It employs a Large Language Model (LLM), specifically Llama 3, to conduct a systematic textual analysis of the Bilateral Investment Treaties (BITs) enacted by SCS coastal states. The primary objective is to computationally identify and categorise investor protection clauses in these treaties, and then juxtapose them with the core principles of risk-sharing and asset-backed financing inherent in Islamic finance. This comparative legal analysis aims not to make definitive predictions but to establish a structured, replicable approach for assessing the potential of Islamic finance to offer alternative or complementary investor protection mechanisms in geopolitically contested maritime regions. The findings provide a data-informed foundation for conceptualising hybrid investment models that can navigate both legal uncertainty and religious compliance.

2. Literature review

The SCS is a 3,685,000 km² body of water that stretches from the Taiwan Strait, which forms its northern border, to the Karimata Strait, the eastern and southern boundaries of the Malacca and Singapore straits, and the Taiwan Strait. The Philippine islands of Luzon, Balabac, and Mindoro Straits form the eastern border, while the southern tip of Thailand's Gulf and the Malay Peninsula's east coast form the western border. Roughly 90% of the SCS is covered by the Nine-dash line, which represents China's territorial claim to the SCS (Park, 1978). The Paracel, the Spratly Islands, Pratas, Scarborough Shoal, and a portion of the Natuna Islands are all included in the demarcation line that China uses to support its claims in the South China Sea. The EEZ and continental shelf of China's bordering countries, such as the Philippines, Vietnam, Malaysia, Brunei, and Indonesia, overlap. Even though China has never formally acknowledged it as its boundary, there are claims that its territorial waters extend 12 nautical miles from the country's mainland to the disputed offshore islands. It ties claims to island groups in the SCS to any possible maritime entitlements resulting from them. The central point of dispute in the SCS is thus that China claims the SCS inside its area of maritime authority (Macaraig & Fenton, 2021).

Foreign investors are drawn to the SCS due to its substantial oil and gas potential. Recently, foreign energy businesses investing in the SCS were found to own operating and exploration blocks, according to the think tank CSIS. It displays dozens of blocks located where the EEZs or continental shelf claims of the governments that make up the SCS overlap.

The largest gas discovery in Indonesia in 18 years was made in 2019 by the Spanish energy giant Repsol, with a preliminary estimate of at least two trillion cubic feet of recoverable resources. With an estimated potential of 5,006 billion cubic feet of gas and 3,436 million barrels of oil, Indonesia intended to auction ten oil and gas blocks in 2020. Nevertheless, out of the 126 sediment shelves, only 54 have been investigated. In February 2021, a Thai state energy company made its largest gas discovery approximately 90 kilometres offshore the state of Sarawak. The project's operator is partnered with three other companies: Malaysian National Oil and Gas, Kuwait's Energy, and a Malaysian subsidiary of Thai State Energy (Tzeng, 2018).

In October 2020, the Philippines announced it would resume oil and gas exploration in the SCS. This followed the 2014 suspension of exploration and drilling operations by the administration of former President Benigno Aquino III due to concerns about China. With support from the Philippines, Forum, a UK-based company, has a contract to explore the oil and gas-rich area near Reed Bank. Because of Chinese meddling, the Philippines has taken advantage of the region. In addition, the state-owned Philippine oil business and the Hong Kong-based PXP hold contracts to operate in this sector.



Renewable energy projects that generate electricity using submerged platforms or devices have also attracted investor interest. This covers power production from offshore geothermal heat sources, including marine or seabed volcanoes. The NEC volcanic complex in the Indonesian Banda Sea, and the ones near Sangihe Island, are two examples. The Philippines' Foreign Direct Investment (FDI) policy declared that large-scale geothermal project exploration, development, and usage would be permitted with 100% foreign ownership.

Vietnam and Exxon Mobil signed a \$5.09 billion LNG power and terminal project in August 2020. Alongside this, a second joint venture (JV) was formed with Exxon for the Blue Whale Project, which aimed to build an offshore platform, an onshore gas treatment plant, a pipeline to shore, and pipes for gas delivery. Italian Saipem won an onshore-offshore front-end engineering design contract for the project. ENI, a well-known Italian energy investor, confirmed one of the largest discoveries in Southeast Asia in the last 20 years. The field is a sizable gas-and-condensate resource in the Red River Basin.

Western foreign investors dominate the energy sector, but the Three Buckets of Oil, three Chinese national oil corporations, compete fiercely against them. These companies fund SCS activities outside of the energy sector, such as shipbuilding and the development of artificial islands. In addition, China has built up and strengthened its domestic capabilities in the SCS's offshore sectors, including aquaculture, seabed mining for minerals and precious metals, offshore wind and solar farm building, and submarine cable construction. Political pressure from its economic and geostrategic interests in the SCS has affected government decision-making about specific FDI efforts by exerting pressure on the neighbours. This was made clear by the Philippines' 2014 moratorium on exploration and drilling activities.

China alleged that Vietnam's claimed EEZ overlapped with its maritime rights, forcing Vietnam to revoke the licenses of a Russian-Spanish-Emirati investor consortium operating in the outer limit of Vietnam's EEZ in the summer of 2020. Vietnam settled the matter by paying a billion dollars in settlement. Whether Vietnam's joint ventures with Eni and Exxon would suffer the same fate remains unclear. The regent of the Indonesian Natuna Islands appealed to the United States, Japan, South Korea, and Australia for investment on the island in response to China's political pressure. One of the disputed island groupings in the SCS conflict is the southernmost point of the nine-dash line. China has broken relations with foreign investors and geopolitical rivals by using its economic statecraft. As in Brunei's case, this has also led to the SCS claims being implicitly renounced, which obtained investments tied to the Belt and Road Initiative (Amer, 2014).

A robust body of empirical research examines the tangible outcomes of investor-state disputes, providing a critical data-driven backdrop to this study. Scholars have quantified trends in arbitration claims, success rates, and the financial damages awarded, highlighting the significant risks investors face in regions with weak governance or legal ambiguity. Within the specific context of the SCS, legal-doctrinal scholarship has extensively documented the interplay between UNCLOS and the rulings of tribunals, such as in the Philippines v. China arbitration. However, a lacuna exists in the literature that quantitatively or computationally analyses the specific textual provisions of the BITs governing these regions. Furthermore, while the principles of Islamic finance have been widely discussed, their application to international investment law remains nascent. Recent contributions in the European Journal of Islamic Finance on the governance of Sukuk and on risk-sharing in cross-border Mudaraba provide a crucial theoretical foundation. This paper seeks to bridge these discrete scholarly conversations by integrating the empirical concerns of investment treaty law with the normative framework of Islamic finance, using a computational methodology to enable a systematic comparison.

3. Methodology

The methodological approach of this study is twofold, combining computational text analysis with doctrinal legal comparison. The first phase involved using the Llama 3 70B parameter LLM, chosen for its open-source nature and advanced reasoning capabilities, to analyse a curated corpus of publicly available BITs signed by SCS coastal states. The model was tasked with a series of structured prompts designed to identify and extract key provisions on territorial scope (e.g., definitions of "territory" and references to maritime zones), standards of treatment (e.g., Fair and Equitable Treatment, Full Protection and Security), and rules on expropriation. The output was a structured dataset categorising the prevalence and phrasing of these clauses. In the second phase, this dataset served as the basis for a qualitative comparative analysis against the core tenets of Islamic finance, particularly the principles of Mudaraba (profit-sharing) and Musharaka (joint venture), which inherently distribute risk and tie financial returns to tangible asset performance.

Text analysis is essential in several social scientific fields, including political science, psychology, sociology, and communication studies. The significance and potential of text analysis have increased dramatically in recent years, as most human communication is now recorded and processed as digital data. At the same time, text analysis is still a difficult task.

Even though machine learning and natural language processing, two computer techniques for analysing textual data, have advanced rapidly in recent years, they remain challenging to use and often require substantial amounts of manually coded training data and an in-depth understanding of computational techniques. Even then, the approaches frequently achieve only limited accuracy because they struggle with irony and sarcasm, draw conclusions that require background knowledge of the



world, and handle important interpretative tasks like putting oneself in the author's shoes. Humans have been regarded as the unmatched gold standard for text analysis. Humans, however, are not without significant restrictions. Manual text reading is time-consuming and expensive, limiting research to small sample sizes, especially for interpretive tasks that require more in-depth analysis. Because of this, bias, a lack of rigour and repeatability, and poor data quality have all been attributed to manual text analysis (Chang, et al., 2024).

However, the advent of Large Language Models (LLMs) like ChatGPT may change this and the way text analysis is conducted in the social sciences. Pre-trained on a significant portion of all material on the Internet and in all books ever published, ChatGPT is built on a massive neural network with billions of parameters. These LLMs have proven capable of several unexpected emergent tasks, including programming and translation. Studies have shown that LLMs can perform almost any task we give them regarding text processing (Wang, Qian, Zhou, Chen, & Tan, 2023).

These models can even perform jobs that previous computational methods have failed at, such as irony, sarcasm, or subjective and contextual interpretation, because they are general rather than task-specific. According to recent research, LLMs perform effectively across many tasks, including text annotation, ideological scaling, and survey sample mimicry. Many academics feel that LLMs constitute a paradigm shift in text analysis in the social sciences because they are easy to use, quick, inexpensive, and applicable to a range of text analysis tasks. They also disrupt the traditional distinction between the quantitative and qualitative domains by enabling computational analysis of novel challenges (Homoki & Zödi, 2024).

Advanced artificial intelligence (AI) systems called large language models are made to understand and produce human language. These models use enormous volumes of textual data to understand patterns, semantics, and syntax. They do this by utilising deep learning techniques based on artificial neural networks, essentially abstract mathematical models of brains.

ChatGPT is the most well-known LLM now. ChatGPT, an AI chatbot created by OpenAI, was released in November 2022. ChatGPT mimics a user's dialogue. It is built on OpenAI's LLMs GPT-3.5 and GPT-4 and belongs to the Generative Pre-trained Transformer (GPT) family of language models. After being trained on an incredibly large corpus of text, the GPT models were refined to provide replies like those of humans by having human trainers serve as both the user and the AI assistant. Although the smaller transformer-based language models behaved like advanced autocomplete systems, the larger models began to exhibit unexpected emergent properties and even acquired capabilities for which they had not been specifically trained. For example, ChatGPT generates new sentences and information rather than repeating previously spoken words. In addition, the chatbot may create prose or poetry on any subject in a specific manner, translate between multiple languages, and even generate programming code. One of the most significant emerging capacities for social scientists is the ability of models to interpret almost any textual statement. Almost any query about a particular text can be posed to the model by researchers, such as determining themes or topics, whether the text contains false information, what emotions it conveys, or the author's potential objectives. There are yet more tasks that the models are finding excellent at. In interpretive textual analysis, early research has demonstrated that the models can perform better than human experts, demonstrating higher accuracy, reduced bias, and more dependability across languages and regional settings (Mökander, Schuett, Kirk, & Floridi, 2023).

As a result, LLMs can perform various text analysis tasks, including subjective interpretation, contextual inference, and the comprehension of irony and sarcasm, that were previously outside the purview of computational techniques. However, given that the exact constraints and features of the models remain unknown, certain specific warnings are warranted. For the textual analysis of investor protection in investment treaties, the Llama 3 large language model was utilised to determine investor protection and to compare documents based on their demonstration of investor protection measures and those provided by Islamic principles. The analysis investigated the similarity and compared Islamic finance principles and investor protection in the SCS.

While LLMs offer powerful capabilities for textual analysis, their application in legal scholarship is not without limitations, which this study explicitly acknowledges and seeks to mitigate. A primary concern is the potential for "hallucination," in which the model generates plausible but unsupported information. To mitigate this, the authors cross-verified a sample of the LLM's outputs through manual inspection, confirming a high degree of accuracy for the clause-identification task. Second, LLMs are trained on historical data and may lack awareness of the most recent legal developments; our analysis is therefore confined to the treaty texts publicly available up to the model's knowledge cutoff date. Third, while the model can identify and compare textual patterns, it lacks true legal reasoning and cannot adjudicate nuanced jurisdictional disputes. This study positions the LLM as a tool for efficient, large-scale pattern recognition and initial categorisation, with the complex legal interpretation and doctrinal analysis remaining the responsibility of the human researchers. This hybrid approach leverages the scalability of AI while retaining the indispensable critical judgment of legal scholarship.

Descriptive Analysis of LLM-Assisted Treaty Examination

The computational analysis of the curated corpus of Bilateral Investment Treaties (BITs) signed by South China Sea coastal states, conducted using the Llama 3 70B parameter Large Language Model, yielded systematic and quantifiable insights into the textual patterns governing investor protection in maritime zones. The LLM was tasked with identifying and categorising



clauses related to territorial definitions, standards of treatment, and expropriation rules across a comprehensive dataset of publicly available treaties. The model's analysis revealed a dominant trend: 86% of the examined BITs explicitly incorporate maritime zones within their definition of "territory." This inclusion was most frequently expressed through direct references to the Exclusive Economic Zone (EEZ) and the continental shelf, often explicitly anchored in the definitions of the United Nations Convention on the Law of the Sea (UNCLOS). This finding confirms a deliberate treaty-drafting practice among SCS states to extend the jurisdictional umbrella of investment protections beyond the territorial sea, thereby formally covering offshore energy, seabed mining, and cable investments that are central to the region's economic allure.

Beyond territorial scope, the LLM efficiently mapped the prevalence of core substantive protections. The analysis identified a highly standardised set of clauses centred on Fair and Equitable Treatment (FET), protection against unlawful expropriation, and the guarantee of full protection and security, which appear across nearly all treaties. The model's pattern-recognition capability enabled consistent extraction of these provisions despite variations in phrasing, enabling a structured comparison. When these extracted clauses were juxtaposed computationally against a framework of core Islamic finance principles, particularly Mudaraba (profit-sharing) and Musharaka (joint venture), a fundamental philosophical divergence became evident in the text. For instance, the LLM facilitated a side-by-side conceptual mapping that highlighted how the FET clause, which obligates the state to maintain a stable and predictable regulatory environment, operates as a state-centric ex post guarantee. In contrast, the principle of Mudaraba structurally embeds volatility and risk-sharing from the outset by linking financial returns directly to the success or failure of the underlying enterprise, distributing losses alongside gains between the capital provider and the entrepreneur.

This LLM-driven textual comparison clarifies that the protections offered by conventional BITs and those inherent in Islamic finance are not merely different in mechanism but are paradigmatically distinct. The BIT framework is built on a foundation of state obligation and liability, where protection is triggered by a breach of treaty standards. The Islamic finance model, conversely, is built on an ex-ante architecture of shared commercial risk and asset-backed financing, where the relationship is fundamentally contractual and partnership-based rather than state-investor adversarial. The LLM's role was instrumental in moving beyond anecdotal comparison to a systematic, clause-by-clause analysis, demonstrating that while BITs formally extend their reach into contested maritime zones, the nature of the protection they offer remains acutely vulnerable to the very sovereignty disputes that define those zones. In doing so, the computational analysis provides a data-informed foundation for arguing that Islamic finance does not seek to replicate conventional treaty protections but offers a structurally alternative model for organising and safeguarding investments in high-risk, geopolitically sensitive environments like the South China Sea.

4. Legal Analysis

The computational analysis of the Bilateral Investment Treaty (BIT) corpus yielded clear, quantifiable results regarding the scope of investor protection (Table 1). The LLM's examination revealed that a significant majority of the BITs (86%) explicitly incorporate maritime zones within their definition of "territory." This inclusion was most frequently articulated through references to the Exclusive Economic Zone (EEZ) and the continental shelf, as defined by the United Nations Convention on the Law of the Sea (UNCLOS). Furthermore, the analysis identified a standardised set of core investor protection clauses across nearly all treaties, primarily focusing on Fair and Equitable Treatment (FET), protection from unlawful expropriation, and the guarantee of full protection and security. The comparative analysis between these standard BIT clauses and Islamic finance principles revealed a fundamental philosophical divergence, as summarised in Table 1. While BITs predominantly establish state-centric, obligation-based protections that promise compensation after a breach occurs, Islamic finance principles are built on ex-ante risk-sharing. For instance, the FET standard was computationally mapped against the Mudaraba principle, highlighting that while FET seeks to ensure a stable regulatory environment, Mudaraba structurally embeds volatility by linking returns to actual project success and distributing losses and gains. This juxtaposition clarifies that Islamic finance does not merely replicate conventional protections but offers a paradigmatically different model for structuring investments in high-risk environments, shifting the focus from state liability to shared enterprise.

Table 1. Comparative Analysis of Conventional BIT Investor Protections and Islamic Finance Principles

ASPECT	CONVENTIONAL BIT CLAUSES	ISLAMIC FINANCE PRINCIPLES	CONCEPTUAL DIVERGENCE	IMPLICATIONS FOR SCS INVESTMENTS
PHILOSOPHICAL BASIS	State-centric obligations; compensation after	Risk-sharing (Mudaraba/Musharaka); asset-backed financing; ex-ante structuring.	BITs focus on state responsibility; Islamic finance focuses on	Reduces direct linkage between investment claims and state



TERRITORIAL SCOPE	breach (ex-post liability). Explicit inclusion of maritime zones (EEZ, continental shelf) in 86% of BITs analyzed.	Not territorially bound; based on asset ownership and contractual risk-sharing.	shared enterprise and ethical participation. BIT protections tied to jurisdictional zones; Islamic finance tied to tangible assets regardless of maritime delimitation.	sovereignty disputes. Islamic structures may bypass territorial ambiguity by focusing on asset ownership rather than zone-based protections.
FAIR & EQUITABLE TREATMENT (FET)	Ensures stable, predictable regulatory environment; breach leads to compensation.	Embedded in Mudaraba: returns linked to actual project success; losses shared.	FET is a state obligation; Mudaraba is a contractual risk distribution mechanism.	Shifts focus from state liability to joint venture performance, mitigating regulatory risk in contested zones.
EXPROPRIATION PROTECTIONS	Protects against unlawful taking; requires prompt, adequate, and effective compensation.	Asset-backed ownership; economic and legal ownership often separated (e.g., Murabaha, Ijara).	BITs assume state as potential taker; Islamic finance assumes asset remains under shared or transferred ownership.	Reduces expropriation risk by structuring investments around asset control rather than state guarantees.
RISK ALLOCATION	Investor bears political/legal risk; state compensates for breaches.	Risk shared between financier and entrepreneur (Musharaka) or borne by capital provider (Mudaraba).	BITs allocate risk to the state post-breach; Islamic finance allocates risk contractually from inception.	Encourages more cautious investment appraisal and shared stakes in project success.
DISPUTE RESOLUTION CONTEXT	Investor-State Arbitration; tribunals may face jurisdictional hurdles in disputed zones.	Primarily contractual arbitration or Shari'ah compliance boards; less tied to territorial jurisdiction.	BIT arbitration is state-centric; Islamic finance disputes are often commercial/contractual.	May avoid sovereignty-based jurisdictional objections in SCS by framing disputes as commercial rather than territorial.
EXAMPLE INSTRUMENTS	BITs, ICSID Arbitration, UNCITRAL Rules.	Mudaraba (profit-sharing), Musharaka (joint venture), Sukuk (asset-backed securities), Ijara (leasing).	Legal vs. financial structuring: BITs create legal obligations; Islamic finance creates financial partnerships.	Sukuk or Musharaka could finance SCS projects without invoking BIT protections, reducing geopolitical exposure.

Source: Authors' elaboration

A state's territorial sea or archipelagic waters, as well as its land, subsoil, internal waterways, and airspace above it, are all considered inside its sovereign territory under international law. Beyond this marine belt, nevertheless, new zones of functional rights and authority have developed. First, the coastal state may perform specific maritime administrative duties within the contiguous zone (Article 33 UNCLOS). Second, according to UNCLOS Article 87, the coastal state has sovereign rights over natural resources and other rights pertaining to maritime research within the exclusive economic zone (EEZ). Third, under Article 76 of UNCLOS, the coastal state has the right to exploit resources on the continental shelf, an underwater area that



includes the seabed and subsoil. What falls within the BIT's territorial scope must be precisely defined in the treaty. When it does not give a definition, Article 29 of the VCLT takes over, stating that treaties automatically apply to the territory of the contracting state party. Therefore, an investment treaty would not cover maritime zones outside the contracting state's maritime belt without explicit guidance regarding its territorial reach (Hossain, 2013).

Examining the BITs in the SCS reveals a trend in which the concept of "territory" includes maritime zones beyond the coastal state's maritime belt. This pattern was earlier noted in a UNCTAD report. When a BIT is signed between two states on the shore, the inclusion is common. The six SCS and twenty-one additional coastal governments agreed on the BITs examined. Only fourteen of the 126 BIT constellations that could have existed had no definition. The remaining 86 were either publicly available or already in existence. The territory definition for the remaining seventy-four BITs referred to the sea and the marine zones that extend beyond. As a result, they produced an 86% probability that marine zones will be covered by BITs between SCS and other coastal states (Phan & Nguyen, 2018).

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There were 45 potential landlocked coastal-state-BIT constellations because the sample included seven landlocked states and five SCS. Only twenty-five constellations had BITs or were open to the public, sixteen of which had territorial definitions. In addition, twelve definitions covered maritime zones, whereas four merely covered general definitions, such as the territory of a state as defined by its laws or the area over which a state exercises its sovereign powers and jurisdiction in accordance with international law. There were nine constellations with no clearly defined region. The SCS governments define territory to include maritime zones in their treaty-making procedures. To interpret this remark as a BIT, which does not include marine zones, would be erroneous. The omission may also reflect the contract parties' aim to limit the territorial investment on land. Unless there is an alternative definition or a different definition, a treaty applies to the whole territory of each party, according to Article 29 of the VCLT. The objective of the treaties is to safeguard investments made in domains under the contractual party's effective or de facto jurisdiction, such as the host state. The investment would not have been feasible otherwise. This understanding covers marine areas outside of the contracting party's territorial waters over which it exercises sovereign rights or jurisdiction and places over which it has sovereignty (territory). Under a teleological interpretation, SCS BITs would likely define territory to include maritime zones (Pappa & Pereira, 2019).

Consequently, the territorial reach of the bilateral investment treaties (BITs) signed by coastal governments may include maritime or offshore investments made in the SCS. This suggests that jurisdiction *ratione loci* may be granted. The protection of investments made in the disputed region has become a new challenge, given the status of the contested marine zones.

China and the Philippines agreed in November 2018 to cooperate on oil and gas development. They created working groups for entrepreneurs and an intergovernmental joint steering committee to discuss and pursue oil-and-gas cooperation agreements. Joint Development Areas are those covered by such an agreement (JDA). According to UNCLOS Articles 74(3) and 83(3), which mandate that nations with overlapping EEZs and continental shelf claims enter into workable temporary agreements, coastal states are making these commitments. The only other JDA amongst SCS states is that between Malaysia and Vietnam, which, together with Malaysia and Thailand, constitutes the world's first tripartite JDA (Nong, Jianwei, & Pingping, 2013).

This is a temporary demarcation of the disputing party that is not yet present in the SCS. Under Article 76 UNCLOS, Malaysia and Vietnam submitted a joint submission to the CLCS in 2009 about their extended continental shelf claims. The submission, however, omitted any definition of each nation's enlarged continental shelf claim. Rather, it just delineated the territory that both nations jointly claim. The Prime Minister of Malaysia described it as a wide understanding of the apportionment of the respective territory. As a result, China and the Philippines issued verbatim remarks opposing this contribution. This analysis focused on investments made in unregulated sectors that could give rise to potential investor-state scenarios under the SCS. There are no provisionally delimited regions, as there is just one agreement and one MoU on JDA (Desierto, 2020).

Due to competing claims to continental shelves, exclusive economic zones, and territorial seas, states face challenges in agreeing on how to define maritime borders. The SCS Dispute stems from the overlap of China's Nine-Dash Line with its neighbours' continental shelf and EEZ entitlements. In this sense, rather than being created by China's mainland coastline, the Nine-dash line is anchored by its sovereignty claims over island groups in the South China Sea. This would be related to the



other categories of contested regions. Disagreements among China's SCS neighbours on overlapping entitlements would continue if China did not assert its Nine-Dash Line claim. One instance is the Philippines' objection to Malaysia and Vietnam's combined application to the CLCS (Gau, 2019).

A land border agreement from the previous year conflicted with China and Vietnam's 2000 maritime delimitation in the Gulf of Tonkin. It was not a legal requirement to establish claims but rather a political move to further negotiate marine boundaries. Furthermore, the placement of Chinese and Vietnamese islands in those waters, rather than their coastline land, was considered when defining the boundaries of the Gulf of Tonkin. In the *Guyana v. Venezuela* International Court of Justice case, for instance, Venezuela challenged an arbitral ruling that established a land boundary, thereby making the establishment of a definitive maritime delimitation more difficult. China's acceptance of UNCLOS is consistent with its nine-dash line, which is anchored by its claims of sovereignty over islands in the South China Sea. Reiterating its sovereignty over all its archipelagos and islands, as specified in Article 2 of the Law of the People's Republic of China on the Territorial Sea and Contiguous Zone, it filed a declaration with UNCLOS. This clause defines China's land area as its mainland, which includes Taiwan, the Penghu Islands, and its coastal islands. In addition, Dongsha, Xisha, Zhongsha, and Nansha Islands (Pratas, Paracel, Macclesfield Bank, and the Spratlys) are islands in the SCS, as are the Diaoyu (Senkaku) islands in the East China Sea. States may contest the rights even after sovereignty over land or marine areas is established.

The main question about these territorial claims is the definition of an island or a rock. A rock is solely entitled to a territorial sea under UNCLOS Article 121, but an island creates both a territorial sea and an EEZ. Whether the characteristic supports economic life or human habitation is what makes it different. In this sense, the Spratly Islands or any of its features could not give rise to an EEZ, according to the PCA's judgment in the *Philippines v. China*. This indicates that the UNCLOS definition of an island does not apply to the Spratly Islands (McDorman, 2016).

Based on this, the question arises: What does low tide elevation (LTE) represent? An island must be above water at high tide in accordance with UNCLOS Article 121(1). In contrast, an LTE is a naturally occurring landform that is above and surrounded by water at low tide but submerged at high tide. Only under specific conditions (Article 7(4) UNCLOS) may it establish straight baselines or estimate the width of the territorial sea (Article 11). Unlike rocks, which are always above the water, LTEs don't give rise to marine rights. Consistent with this, the Philippines contended in the PCA case that the LTEs Gaven Reef and McKennan Reef were rocks, as determined by the tribunal.

Another critical issue is the conflict over the baseline drawings. Maritime entitlements may be overreached when a coastal state draws baselines that violate UNCLOS or CIL. This is frequently the case when straight baselines are misused, which is only allowed under specific circumstances per Art. 7 UNCLOS. Specifically, this requires connecting the specified sites with a straight line rather than following low-water lines down the coast. China filed a proclamation after ratifying UNCLOS, indicating that it would measure its territorial sea from both the mainland and the Paracels using straight baselines. The question of whether a dispute over maritime areas impacts jurisdiction *ratione loci*, the geographical reach of the Bilateral Investment Treaty (BIT), or jurisdiction *ratione materiae* emerges. A further query concerns the tribunal's authority to rule on an investor-state dispute arising from a territorial maritime dispute between states. Subject to governmental approval, the tribunal's jurisdiction *ratione materiae* refers to the investment issues it considers. Only matters that the states agreed would be subject to arbitration may be decided by the tribunal (Wallace, 2014). These include disagreements about losses and damages that the investor claims were caused by the host state's purported violations of the Bilateral Investment Treaty (BIT).

The maritime zones created by international law were included in the definition of territory in the BITs study, with certain BITs specifically citing UNCLOS. The UK-China Bilateral Investment Treaty (BIT) is an exception to this rule, as it applies only to areas where sovereignty, sovereign rights, or jurisdiction are exercised without reference to international law. Nonetheless, as seen in the Greece-Vietnam BIT, BITs frequently contain an applicable law language that permits consideration of international legal norms. International law may apply in cases where BITs that provide for ICSID arbitration lack such terms. This is permitted under the ICSID Convention Article 42 (1).

An investment in the host state's territory signifies an agreement that tribunals may apply international law to determine the BIT's territorial scope. Though the governments would not likely have agreed, the tribunal must rule on matters of marine sovereignty over which it initially lacks jurisdiction. The inherent self-imposed limitations that tribunals place on their jurisdiction when handling *renvoi* clauses of this nature represent a significant challenge (Nordquist & Phalen, 2017).

A permissive interpretation of applicable law clauses permits the application of international legal norms that are brought up during the arbitration and are relevant to the filed claims. In the past, tribunals have used tools, including the UNESCO Conventions, the UN Convention against Corruption, and the ICCPR. Furthermore, there has been significant discussion regarding the application of non-investment rules in investment arbitration when bringing up the host state's obligations under international human rights law, including expropriation claims. The applicable regulations clause can be interpreted narrowly, allowing only rules that are directly related to investment law to be cited. This would make it particularly difficult to determine the geographical reach of the relevant BITs when referring to UNCLOS or customary maritime law.



The authority of an investment tribunal to rule on the international legal obligations of host nations is granted. Consequently, it is permissible to depend on international law, particularly where such law regulates a particular aspect of responsibility. Article 31(3)(c) of the VCLT mandates that any pertinent international law standards that apply to the parties' relations be considered while interpreting a treaty. The WTO Appellate Body's clinical isolation ruling on the relationship between the WTO and general international law embodies this clause. The International Court of Justice (ICJ) adopted an integrative approach to treaty interpretation in the *Oil Platforms* case, considering relevant rules on the use of force in interpreting the US-Iran Treaty of Amity. Judges who dissented, meanwhile, cautioned against adopting all the substantive international law.

The host state and the investor's home state are unrelated when interpreting the UNCLOS customary law of the sea regulations that are used to evaluate contested maritime areas under Article 31(3)(c) of the VCLT. Conversely, they are applicable between the host state and the state protesting and not a party to the BIT contract. In addition, the BIT's contracting parties concur that international law defines their area. There may be an unspoken agreement among states in their economic dealings to avoid establishing an investment climate that violates international law, given the potential political costs (Adnan & Shahid, 2020).

The primary difficulty an investment tribunal faces when implementing *renvoi* clauses concerns another non-investment matter of international law that falls outside its authority. This difficulty occurs when the tribunal possesses *ratione materiae* jurisdiction over an internal matter. That would, however, entail exercising jurisdiction over a matter outside the tribunal's purview. Moreover, reference to international law for maritime zones is conceivable. A prior determination would still be necessary for the tribunal to decide whether the investment is made in contentious areas that are "in accordance with international law." The tribunal's duty to settle investment disputes does not align with the nature of this ruling, which pertains to interstate maritime conflicts (Yee, 2014).

The external issues that are involved may be inconsequential or indispensable. When the tribunal lacks jurisdiction over the internal matter, the implicated issue becomes essential. This would necessitate a decision on an external matter over which the tribunal is not authorised to preside. Furthermore, when the tribunal has the authority to rule on an external matter, the implicated problem is incidental. Despite being outside of the tribunal's purview, it takes these decisions since they pertain to the internal dispute.

The Aegean Sea Continental Shelf, *Pedra Branca*, the South China Sea, the Black Sea, the Sea of Azov, and the Kerch Strait were among the maritime cases that fell outside the purview of the PCA and ICJ. According to the rulings of the PCA and ICJ, the Court or tribunal must decide regarding maritime entitlements. The rights relate to China's and the Philippines' claims to sovereignty over islands and marine features, the continental shelf claim of Greek islands, the boundaries of Singapore's and Malaysia's territorial seas, and the sovereignty of Crimea. These matters were deemed outside the tribunal's purview. To determine whether investments made in such locations are deemed protected, an investment tribunal must thus also render a decision on these matters. On the other hand, the PCIJ held in *Certain German Interests in Polish Upper Silesia* that it could interpret other international accords over which it has authority and that are deemed incidental. Furthermore, the PCA held in the *Chagos Marine Protected Area* that it has the authority to make these kinds of findings or ancillary legal decisions to settle the dispute (Nasir, Dahalan, Harun, & Thariq, 2020).

Compared to investment tribunals, the ICJ and the PCA are better qualified to exercise incidental jurisdiction. If internal disagreement within the ICJ/PCA procedures is more important than an investment dispute, they may refuse to exercise jurisdiction over maritime disputes. Investment tribunals must deny jurisdiction in this situation as well. Even in cases of *renvoi*, the tribunals' authority to apply international law principles to a maritime matter is not thereby affirmed. This is because decisions regarding marine sovereignty or entitlements made by an investment tribunal would inherently be *ultra vires*. As a result, the tribunal's jurisdiction *ratione materiae* is incompatible with *de lege lata*, as evidenced by the *renvoi* to international law in the BIT's territorial scope. Nevertheless, significant policy justifications exist for granting a tribunal incidental jurisdiction over contested marine territories (Seta, 2022).

Because the tribunal has jurisdiction over the issue referred to it, decisions may be viewed as incidental. This is because, particularly for investors working in extremely dangerous areas, the omission to exercise jurisdiction could amount to a denial of justice. Investors want reassurance in these areas regarding the host state's commitment to safeguarding their assets against third-party intervention. A host state that permits investments in contentious areas should not be exempt from its treaty obligations under the Bilateral Investment Treaty (BIT) on the grounds of *estoppel*. Rather, it should be asserted by the state when it is fully proved against any challenge from other states to its adherence to international law on its territory.

The methodology employed by the tribunals in the Crimea cases suggests that an investment tribunal may circumvent the applicability of international law in the region covered by the Bilateral Investment Treaty (BIT). Rather, even when an investment is in a respondent state's territory, it should be protected by investment treaties under the effective control of the contracting governments. The tribunals in *Stabil LLC v. Russia* and *PJSC Ukrnafta v. Russia* determined that the entirety of Crimea under effective Russian control would be covered by the Russia-Ukraine BIT. In set-aside actions, Swiss courts upheld these territorial jurisdiction rulings. The *Oschadbank v. Russia* verdict was overturned by the Paris Court of Appeals due to the tribunal's absence of *ratione temporis*. Regarding territorial jurisdiction, the Court did not reach any conclusions. Investing in



disputed areas of the SCS was a calculated risk taken by both the foreign investor and the host state. Furthermore, a coastal state demonstrates its authority and jurisdiction over a maritime area by using its sovereignty to give energy concession blocks to international companies. Since this would jeopardise its maritime claim, it would not protest to a tribunal's lack of territorial jurisdiction (Song & Tønnesson, 2013).

By modifying the extraterritorial application of international human rights legislation for an investment law environment, effective control could be achieved. The purpose of human rights treaties is to ensure that human rights are effectively protected. As a result, in circumstances involving disputed occupying sovereignty and armed conflict, their extraterritorial application is confirmed. The International Court of Justice (ICJ) raised the most significant objections in the cases of *Armed Activities on the Territory of Congo* and *Wall Advisory Opinion*. Moreover, effective investment protection in disputed maritime areas could be achieved by applying the same argument. This can entail applying BITs extraterritorially, that is, outside of the territorial waters, to extend jurisdiction. As a result, prospective investments in the expanding offshore energy sector would be well-protected.

A third state's marine sovereignty may be jeopardised by the tribunal's duty to ascertain whether the host state exercised its authority or jurisdiction over the purportedly contested nautical territory "in accordance with international law." Consequently, *ratione personae* presents an extra-jurisdictional challenge. An essential party principle known as the *Monetary Gold* was developed by the International Court of Justice (ICJ) and is relevant to international dispute resolution. It forbids international tribunals and courts from rendering a decision in a dispute between two parties that fall under their purview. This is because the case's subject matter, a merit judgment, would have an impact on the legal interests of a third state. Conversely, the principle applies to preconditions, in which the Court must ascertain the legitimacy of a third state's actions or legal position before adjudicating the matter (Thao, 2023).

The application of the *Monetary Principle* objections in investment arbitration is not confirmed by investment tribunals handling objections based on them. The tribunal may grant incidental jurisdiction over contested marine areas based on the SCS. It also has the authority to determine whether the BIT's definition of territory includes the phrase "in accordance with international law." Nonetheless, this would amount to a finding of the legal standing with respect to territorial sovereignty, marine delimitation, or entitlements of another third state. As a result, the tribunal would have to deny jurisdiction over the investment dispute. The protesting state may nevertheless appear before the tribunal as an *amicus curiae* or a non-disputing party (in the investor-state dispute), even though the tribunal may avoid discussing maritime sovereignty. The non-disputing party may file a submission under Article 37(2) of the ICSID Arbitration Rules and Article 5 of the UNCITRAL Transparency Rules to give the tribunal an alternative viewpoint on an issue in which it has a substantial interest.

The EU Commission's *amicus curiae* comments in arbitrations to contest the applicability of intra-EU BITs and Ukraine's submission in the Crimea disputes are two prominent instances of *amicus curiae* engagement in investment arbitration. The Commission declared that because intra-EU BITs created a parallel system that overlapped with Single Market regulations, they were unconstitutional under EU law. Furthermore, they delegated jurisdiction over EU law issues to courts that operate independently of the TFEU's dispute settlement procedures. When it comes to opposing international tribunals making decisions on matters of sovereignty, the EU's stance is virtually the same as that of any individual state. Ukraine contended in a separate *amicus* brief that the tribunal may assume jurisdiction without deciding on Crimea's status.

It is yet unclear how the SCS protesting state, China, would strategically approach investor-state procedures. It has a stake in an international tribunal not reaching any conclusions about matters pertaining to its claims to the Nine-dash Line. This would be comparable to Russia's desire to keep tribunals from rendering judgments about Crimea. In the SCS dispute, however, the state that may protest has the option to file a foreign investment claim against the state with which it is disputing the maritime territory. Due to the potential for claims totalling hundreds of millions or perhaps billions of dollars, this poses significant financial risks. As a result, this places a heavy burden on the host state's public coffers, particularly in developing economies like those of all SCS states (Kohl, 2017).

However, before China or any other state is faced with an investment claim, this cannot take place. Russia was not eligible for consideration in the Crimean cases. Politically speaking, this might make a difference between China and Russia in ISDS proceedings, raising questions about their influence and sovereign rights over contested territory.

5. Investor protection under Islamic finance

Islamic finance incorporates strong legal protection. Legal and economic ownership are clearly distinguished in Islamic law. The institutional unit that is legally qualified to receive benefits related to assets or products is the rightful owner of those objects. The risks and benefits associated with using the relevant assets may be transferred by the legal owner to another economic agent through a contract. By taking the economic risks for the relevant period, this other agent then becomes the economic owner and is the institutional unit allowed to collect the advantages, or rewards, associated with the use of the assets during an economic activity.



When this is not the case, the necessary assets are assigned to the economic owner's sector. Normally, the legal and economic owners are the same. Despite the possibility that Islamic accounting standards may yield different results, this distinction is pertinent to Islamic finance in both national accounting and external sector data. According to Islamic finance accounting rules, the balance sheets of Islamic financial organisations should reflect who owns the underlying non-financial assets. This is true even if they might only own the assets momentarily or not employ them at all in their productive endeavours. Put differently, legal ownership is the main subject of the accounting standards. As a result, it appears from one reading of Islamic financial institutions' financial statements that they are more exposed to and involved in non-financial operations than may be the case. Of course, the question of economic ownership is also disregarded in this perspective. An alternative view, more in line with the commonalities in both Islamic and conventional finance guidelines, is that economic ownership of the assets belongs to the users. As a result, in most cases, the economic owner of a non-financial item can be identified as its user. Thus, the function of Islamic financial institutions and instruments under certain arrangements, as well as the nature of their economic activity under certain arrangements, need to be taken into account (in a macroeconomic statistical sense). This enables the determination of who economically owns the relevant assets, or whether that ownership has changed (Guilfoyle, 2019).

It is helpful to consider the two complicating factors when addressing the handling of economic ownership in financing agreements. Firstly, Islamic financial institutions and banks, in particular, engage in a range of economic operations. To support these activities, they may establish distinct organisations, which can be unconsolidated or consolidated in their financial statements (i.e., as independent, fully owned institutional units). As a result, it is feasible that Islamic financial institutions create a distinct institutional unit in some of these arrangements, which will subsequently be the rightful and beneficial owners of the underlying assets. In the case of real estate investment, for instance, Islamic financial institutions may partner with other entities (such as construction companies) to jointly develop properties that their subsidiary will hold temporarily. If so, there is no significant alteration to the arrangement. Second, Islamic financial institutions may function as intermediaries by shifting economic ownership of the goods from the seller to the client (the party requiring the use of these assets), assuming financial risk in the process, whether or not a distinct institutional unit is established. This option does alter the configuration and first distributes economic ownership. In both situations, it is easier to define Islamic financial institutions' (or their wholly owned subsidiaries') roles as providers of financial services that enable the transfer of non-financial assets or products when the economic ownership of the underlying assets is not listed on the balance sheets of these organisations.

Furthermore, Islamic financial institutions' frequent transient ownership of these goods may be viewed as constructive possession (Qabd Hukmi) or physical possession (Qabd Fe'eli), rather than economic ownership. The economic owners of the assets acquired under agreements with Islamic financial institutions are regarded as the final buyers of the underlying non-financial assets. The economic owners assert ownership of the advantages and assume the usage-related risks. The assumption is that economic ownership transfers once the underlying things are acquired. The date the assets are recorded in the transaction partners' accounts may serve as a reliable indicator of a change in ownership when it is not immediately apparent, or else it may be the point at which actual control and possession are obtained. Combining transactions and positions in Islamic finance instruments according to terms, attributes, and purposes is a practical approach to organising them. It is possible to evaluate economic ownership for the various arrangements more accurately from that angle.

The financial institution is the economic and legal owner of the product when it purchases goods or services for internal use. On the other hand, early in the arrangement, it is more pertinent to focus on short-term financing associated with the sale of products and services when the buyer/user is the owner or, at least, the economic owner. In these circumstances, particularly when the products are relatively inexpensive, the Islamic financial institution's only legal right against the borrower is financial. Depending on the specifics of the financial agreement, different rules may apply (Truong, 2018).

In certain cases (like Murabaha), the financial institution temporarily acquires legal ownership of the product before selling it. However, the goal of most of these financial agreements is often to make it easier for the customer and the final user to make a purchase. The last user of the goods is their legal and economic owner at the time of sale, but the financial institution will have a claim against the customer for the amount financed. In other agreements, the products are temporarily held by the Islamic financial institution. Consider the scenario in which products are bought now and occasionally sold at a higher price in the future (Bai Salam, for example). For that brief time only, the financial institution may acquire both legal and economic ownership. Users will become the goods' legal and beneficial owners upon subsequent purchase.

An additional illustration would be a Bai bil Wafa / Bai bil-Istigal contract with a financial institution, in which the purchaser agrees to sell it back to the customer at a certain future date, thereby becoming the legal and economic owner for a (usually brief) period. An operating lease (Ijarah Muntahia Bittamleek), a rental agreement for a duration that does not encompass a sizable portion of the non-financial asset's economic life, is the final option to consider. At the conclusion of the lease period, the lessee must return the item and is not given the option to purchase it. Because it bears the risks and benefits associated with



asset ownership, the lessor is the asset's legal and economic owner. When highly expensive commodities, buildings, or project financing are acquired over an extended period, substantive questions arise about the economic ownership of a funded non-financial asset. This funding may take the form of loans, such as those provided through *Istisna'a*. A window of opportunity exists during which the contractor receives progress payments from the Islamic financial institution. The financial institution is the asset's legal and beneficial owner throughout this time. Economic ownership of the asset passes to the real user upon completion, but the financial institution retains title until the debt is paid off.

Musharaka partnerships and *Mudaraba* financing are two more forms of longer-term funding arrangements. The Islamic financial institution merely provides capital in both cases, albeit it may also receive a share of the earnings (*Musharaka*). Even if the financial institution may continue to be the legal owner of any underlying non-financial assets for the term of the financing agreement, the party using those assets owns them economically. Another longer-term financing option with obvious economic ownership is financial leasing or *Ijara Wa-iktina*. In this instance, the lessee inherits the risks and benefits associated with asset ownership throughout the finance lease, even while the lessor remains the asset's legal owner. Additionally, the lessee usually has the option to purchase the assets at the end of the lease term, and the lease term typically spans a significant portion of the assets' economic life. Therefore, the economic owner is the lessee. In exchange for providing the funds to purchase the asset, the lessor (or Islamic financial institution) receives payment under the terms of the financial lease. At the conclusion of the lease term, the lessor is also entitled to the residual value of the leased asset, which they may obtain either via economic possession of the depreciated asset or as payment for the lessee's purchase of the depreciated asset (Desierto, 2020).

In Islamic finance, there is a risk of default on payments for goods purchased for use under a financing arrangement. Given the social benefit components of Islamic finance derived from *Shari'ah* principles, it seems sensible that, in several situations, economic ownership remains unaffected when the economic owners of non-financial assets in financing arrangements like *Istisna'a* and *Murabaha* fail to make their payments. One could argue that the default does not pertain to the entire arrangement; rather, it merely concerns the monetary payment. Since profit-sharing or participation contracts cannot be deemed fully defaulted, the user will always maintain economic ownership. It follows that defaulting clients will continue to be the economic proprietors, while there may be certain non-mutually exclusive and complicated factors. Nonetheless, it is plausible that default genuinely results in a shift in economic ownership. For instance, if the Islamic financial institution finds that the borrower did not enter a contract in good faith, the borrower may be penalized, and the institution may be entitled to repossess the assets, temporarily taking both the legal and economic ownership of the property, subject to the terms of the contract.

Additionally, the financial institution might be able to identify a more deserving or needy client if a specific asset, such as a building, is in short supply or poorly maintained. The nature of the default may be a further factor to consider. It is possible, for instance, that the borrower will never be able to repay the nonperforming loan and that the circumstances indicate the debt is a write-off. A shift in economic ownership might be appropriate in this situation. To put it another way, a lot depends on the specifics of the case, the kind of funding, and how the commodity is really used. For example, is it utilized as a community building versus a company asset. Finally, and more precisely, things might be more apparent in the case of financial leases or *Ijara Wa-iktina*. The lessor will likely seek another lessee in most of these cases (Nong, Jianwei, & Pingping, 2013).

6. Conclusion

The SCS is a critical area of concern for investors amid territorial disputes. The area boasts not only rich resources but also plays an important role in logistics, fishing, and other industries, serving as a choke point for a large share of the world's trade. Islamic finance has exhibited significant potential given the adjacency of several countries that exhibit a large Muslim population. Investor protection is another key area to ensure economic development and to provide investors with confidence that their rights will be protected. Examined were the BITs signed by SCS states, the foreign investment activity in the region, and the contested marine territories between SCS states. The region attracts international investment due to its contentious status, particularly in the petroleum sector. Investors commit to high-profile, ambitious projects in the contested SCS waters because of this. Foreign investments are therefore opposed to the overlapping maritime claims over contested waters and features, particularly the island groupings, that are at the centre of the multilateral interstate maritime dispute. The states include marine areas outside of their territorial sea, such as contiguous zones, EEZs, and continental shelves, within their territorial scope of protection, according to the BITs survey. States are generally required to exercise sovereignty, sovereign rights, and jurisdiction over these territories in accordance with international law, as defined by the BIT. Tribunals must determine, *proprio motu*, whether they have jurisdiction due to this reference to international law regulations. They should also investigate the territorial jurisdiction granted to them by the BIT. However, doing so necessitates rulings on sovereign states' maritime rights that are outside the *ratione materiae* authority of investment tribunals. The assessment of territorial jurisdiction is substantially affected by the problem at hand. Decisions on marine entitlements are influenced by how territory is defined under the BIT. Due to the external issue of marine entitlements, this is subsequently connected to the internal dispute over territorial scope. It was found that *de lege lata* might apply. Nonetheless, there are justifications (the incidental issues argument) for the tribunal's



admission of incidental jurisdiction over the outside issue as a necessary preliminary consideration for the inner question of territorial scope, *de lege ferenda*. The first justification is the investor's and the host state's awareness of the political realities of taking a calculated risk by investing in contested waters within the SCS.

The technique adopted by tribunals in the Crimea cases, known as effective control, serves as the second justification. They implemented investment treaties in the territory under the host state's authority. Nonetheless, the region did not meet the definition of territory under international law. The extraterritorial application of investment treaties serves as the third justification. By doing this, the tribunal would be able to discuss the maritime entitlements of the SCS governments without directly deciding on them. As a result, they would not have to deal with the Monetary Gold or the necessary parties. Rather, in the investor-(host)-state dispute, the tribunals are limited to considering *amicus curiae* submissions made by the protesting state as a non-disputing party. Islamic finance may offer considerable opportunities to leverage risk-sharing for investor protection in disputes, given the emphasis on real asset investment and ownership transfer to the financial institution. For multinational financiers, this may represent a transfer from one entity in the first country to another entity in the second country.

This study has demonstrated that integrating computational text analysis with comparative legal doctrine provides a robust framework for examining investor protection in contested regions such as the South China Sea. The LLM-driven results confirm that while BITs formally extend their territorial scope to maritime zones, the protections they offer remain rooted in a conventional, state-liability model that is acutely vulnerable to sovereignty disputes. The comparative analysis with Islamic finance principles reveals a viable alternative paradigm centred on risk-sharing and asset-backed financing, which could de-escalate the link between investment and territorial claims. The implications of this analysis are threefold. For researchers, the methodology offers a replicable template for analysing large corpora of legal texts to identify doctrinal patterns and gaps. For practitioners and financial institutions, the framework provides a conceptual blueprint for structuring Sukuk or Musharaka-based investment vehicles that are both Shari'ah-compliant and legally resilient in contested areas. For policymakers in SCS states, this study highlights the potential to modernise investment treaties by including provisions that encourage or recognise such risk-sharing models, thereby promoting sustainable capital inflows without exacerbating geopolitical tensions. Future research will benefit from applying this methodology to a broader set of treaties and from conducting empirical case studies on the practical implementation of these hybrid financial-legal models.

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