

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 8 | Issue 2

2026

© 2026 International Journal of Legal Science and Innovation

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in the International Journal of Legal Science and Innovation after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Legal Science and Innovation, kindly email your Manuscript to submission@ijlsi.com.

Universality in International Investment Arbitration: Legal Fiction or Systemic Limitation in a Hybrid Arbitral System?

BUDWIN SIRIWARDENA* 

ABSTRACT

*International investment arbitration occupies a hybrid position between private arbitral ordering and public international law adjudication. This article examines a recurring but fragmented problem within that system: serious systemic values such as anti-corruption, human rights, environmental protection and international public order may affect investment disputes through different doctrinal routes, yet arbitral law lacks a common analytical vocabulary for explaining their limiting effect. It argues that universality becomes a legal fiction if treated as a freestanding basis for jurisdiction: arbitral authority remains grounded in consent, treaty text, party identity, subject matter, time and territorial or economic connection. Yet universality is not irrelevant. Arbitral practice invokes systemic values through legality requirements, treaty interpretation, applicable law, admissibility, counterclaims, procedural rules and remedial discretion. Drawing on cases concerning corruption, serious illegality, international public order, human rights, environmental harm, third-party interests and abuse of process, the article argues that universality is best understood as a cross-cutting systemic limitation rather than a jurisdiction-conferring principle. It therefore proposes *ratione universalis* as a cautious analytical category for organising how serious systemic values may condition claims, protection or relief within, rather than beyond, a consent-based arbitral system.*

Keywords: *International Investment Law, Investment Arbitration, Jurisdiction, Universality, Public International Law*

I. INTRODUCTION

International investment arbitration occupies a distinctive position in the international legal order, combining private arbitral ordering with the public-law function of reviewing sovereign conduct.¹ Its hybrid character has generated competing accounts of arbitral authority, the

* Author is a Ph.D. Scholar at Xiamen University, Xiamen, Fujian, China. ORCID: <https://orcid.org/0009-0009-0679-6656>

¹ Zachary Douglas, *The Hybrid Foundations of Investment Treaty Arbitration*, 74 BRIT. Y.B. INT'L L. 151, 152–53 (2003), <https://doi.org/10.1093/bybil/74.1.151>; GUS VAN HARTEN, INVESTMENT TREATY ARBITRATION AND PUBLIC LAW 3–6, 45–50 (Oxford Univ. Press 2007); Edward Guntrip, *International Investment Law, Hybrid Authority, and Jurisdiction*, in THE OXFORD HANDBOOK OF JURISDICTION IN INTERNATIONAL LAW 431, 432–34, 447–48 (Stephen Allen et al. eds., Oxford Univ. Press 2019).

relevance of public international law values and the limits of adjudicative power.² Against that background, this article examines how serious systemic values may constrain investment protection within a system whose adjudicative authority remains grounded in consent.³

Investment arbitration already encounters systemic values such as human rights, public order and anti-corruption. The unresolved question is how to classify their limiting effect in a system whose authority remains consent-based. This article argues that universality becomes fictional if used to bypass consent. A tribunal does not gain authority merely because a dispute implicates values of concern to the international community; jurisdiction still depends on consent and the limits of the applicable treaty, statute, contract or arbitral instrument.⁴ Properly understood, however, universality may operate within jurisdiction already established, affecting legality, admissibility, applicable law, defences, protection or relief.⁵

The argument is developed through arbitral decisions in which systemic values arise in different forms. Some concern investments tainted by corruption, fraud or serious illegality; others involve international public order, human rights, environmental protection or affected communities.⁶ These concerns do not operate uniformly and should not be collapsed into a single jurisdictional objection. Depending on the treaty, facts and procedural stage, they may affect the existence of a protected investment, admissibility, treaty interpretation, counterclaims, damages or relief.⁷

² Anthea Roberts, *Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System*, 107 AM. J. INT'L L. 45, 45–49, 58–63 (2013), <https://doi.org/10.5305/amerjintellaw.107.1.0045>; Van Harten, *supra* note 1, at 121–24, 143–44.

³ CEDRIC RYNGAERT, JURISDICTION IN INTERNATIONAL LAW 120–21, 126–27 (2d ed., Oxford Univ. Press 2015); PRINCETON UNIV. PROGRAM IN L. & PUB. AFFS., THE PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION princs. 1–2 (2001); Convention on the Settlement of Investment Disputes between States and Nationals of Other States art. 25(1), Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159 [hereinafter ICSID Convention]; RUDOLF DOLZER, URSULA KRIEBAUM & CHRISTOPH SCHREUER, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW 360–78 (3d ed., Oxford Univ. Press 2022).

⁴ ICSID Convention, *supra* note 3, art. 25(1); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–78.

⁵ See Vienna Convention on the Law of Treaties art. 31(3)(c), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT]. See generally Roberts, *supra* note 2, at 45, 50–52, 58–63; José E. Alvarez, *Is Investor-State Arbitration “Public”?* 28 (N.Y.U. Inst. for Int'l L. & Just., Working Paper No. 2016/6, Global Admin. L. Series, 2016), https://www.iilj.org/wp-content/uploads/2016/09/Alvarez-Is-Invest-State-Arbitration-Public-IILJ-WP-2016_6-GAL.pdf.

⁶ *World Duty Free Co. v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award, ¶¶ 138–42, 157, 188 (Oct. 4, 2006); *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, ¶¶ 230–31, 245–50, 257 (Aug. 2, 2006); *Plama Consortium Ltd. v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, ¶¶ 138–46 (Aug. 27, 2008); *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, ¶¶ 193, 372–74, 412–13 (Oct. 4, 2013); *Urbaser S.A. v. Argentine Republic*, ICSID Case No. ARB/07/26, Award, ¶¶ 1193–1210 (Dec. 8, 2016).

⁷ Dolzer, Kriebaum & Schreuer, *supra* note 3, at 106–14, 416–25; *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, ¶¶ 100–06, 113–14, 136–42 (Apr. 15, 2009); *Burlington Res. Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Counterclaims, ¶ 74 (Feb. 7, 2017); *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Interim Decision on the Environmental Counterclaim (Aug. 11, 2015).

The article does not seek to replace the established jurisdictional vocabulary of investment arbitration, including *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci* and *ratione voluntatis*.⁸ Nor does it suggest that public international law concepts such as territoriality, personality, the protective principle or extraterritoriality apply mechanically to investor-State arbitration.⁹ Its narrower purpose is to examine whether universality can illuminate systemic limitations within a consent-based arbitral process.

This inquiry supports a cautious concept of ‘*ratione universalis*’: an analytical, rather than jurisdiction-conferring, vocabulary for identifying a recurring limiting logic across otherwise distinct areas of arbitral reasoning. The concept describes systemic limits that arise when tribunals confront corruption, serious illegality, international public order, human rights, environmental harm or third-party interests within a consent-based process.¹⁰ It is therefore distinct from universality in the strict public international law sense.

The argument proceeds in four parts. It first distinguishes universality in public international law from the hybrid structure of investment arbitration. It then explains why universality cannot confer jurisdiction beyond consent and identifies the doctrinal gateways through which systemic values already operate in arbitral practice. Finally, it develops universality as a limiting principle and considers *ratione universalis* as a possible cross-cutting analytical category within, rather than beyond, consent-based arbitration.

II. UNIVERSALITY AND THE HYBRID CHARACTER OF INVESTMENT ARBITRATION

A. Universality in public international law

Universality in public international law is an exceptional basis of jurisdiction, permitting legal authority over certain offences without the usual links of territory, nationality or a specific State interest. Piracy is the classic example; modern international law also associates universal jurisdiction, in different forms and with varying acceptance, with genocide, war crimes, crimes against humanity, torture and comparable wrongs of concern to the international community as a whole.¹¹ Its scope and institutional limits nevertheless remain contested.¹² This article uses

⁸ Michael Waibel, *Investment Arbitration: Jurisdiction and Admissibility* 2–5 (Univ. of Cambridge Fac. of L., Legal Stud. Rsch. Paper No. 9/2014, 2014); FILIPPO FONTANELLI, JURISDICTION AND ADMISSIBILITY IN INVESTMENT ARBITRATION: THE PRACTICE AND THE THEORY 3–5, 75–91 (Brill Nijhoff 2018).

⁹ Ryngaert, *supra* note 3, at 49–120; Guntrip, *supra* note 1, at 431, 432–34.

¹⁰ See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74.

¹¹ Ryngaert, *supra* note 3, at 120–21, 128–30.

¹² *Id.* at 130–31.

‘universality’ more narrowly. It does not transpose universal jurisdiction into investment law; it refers to the legal logic by which serious systemic values may constrain investment protection.

The broader idea that sovereign authority may be constrained by higher norms predates modern universal jurisdiction. Western natural-law thought and analogous traditions such as the Mandate of Heaven reflect that wider claim.¹³ They did not create universal jurisdiction; their relevance is limited to showing that constraints on political authority by reference to higher norms have deeper intellectual roots.¹⁴

The post-Second World War trials at Nuremberg and Tokyo gave this broader idea a more concrete modern form.¹⁵ They did not establish universal jurisdiction in the ordinary sense of a national court acting without territorial or nationality links.¹⁶ Rather, they affirmed that aggression, war crimes and crimes against humanity could be treated as matters of international concern rather than questions reserved entirely to domestic sovereignty.¹⁷ The post-war trials thus helped shape the legal setting in which universality became associated with wrongs whose gravity transcends ordinary bilateral or territorial interests.¹⁸

Two points matter here. First, universality is not merely a moral intuition but a legal technique for exceptional wrongs where ordinary territorial or nationality allocations of authority are considered inadequate. Secondly, it is not a general licence to exercise legal power whenever a matter has public importance. Climate change, human rights, corruption, environmental degradation and financial instability may all raise transnational concerns, but public importance alone does not create universal jurisdiction.¹⁹

What is relevant for present purposes is therefore not universal jurisdiction’s competence-conferring function, but its underlying recognition that certain legally protected interests transcend the immediate bilateral interests of the actors before the adjudicator. In investment

¹³ Ryngaert, *supra* note 3, at 59–60; Martha C. Nussbaum, *Legal Reasoning*, in THE CAMBRIDGE COMPANION TO THE PHILOSOPHY OF LAW 59, 61 (John Tasioulas ed., Cambridge Univ. Press 2020); Dingxin Zhao, *The Mandate of Heaven and Performance Legitimation in Historical and Contemporary China*, 53 AM. BEHAV. SCIENTIST 416, 416–18 (2009), <https://doi.org/10.1177/0002764209338800>.

¹⁴ Ryngaert, *supra* note 3, at 59–60; Zhao, *supra* note 13, at 416–18.

¹⁵ Charter of the International Military Tribunal art. 6, annexed to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279; Charter of the International Military Tribunal for the Far East art. 5, Jan. 19, 1946, amended Apr. 26, 1946, T.I.A.S. No. 1589.

¹⁶ Kirsten Schmalenbach, *International Criminal Jurisdiction*, in THE OXFORD HANDBOOK OF JURISDICTION IN INTERNATIONAL LAW 504, 514–18 (Stephen Allen et al. eds., Oxford Univ. Press 2019).

¹⁷ INT’L L. COMM’N, *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, princs. I–II, [1950] 2 Y.B. INT’L L. COMM’N 374, U.N. Doc. A/CN.4/SER.A/1950/Add.1; Schmalenbach, *supra* note 16, at 514–18.

¹⁸ Ryngaert, *supra* note 3, at 120–21, 128–31; Schmalenbach, *supra* note 16, at 517–18.

¹⁹ Ryngaert, *supra* note 3, at 120–31.

arbitration, that trans-systemic quality cannot itself establish authority, but it may help explain why certain norms condition the exercise or consequences of authority otherwise established by consent.

B. Investment arbitration as a hybrid system

Treaty-based investor-State arbitration developed against the background of decolonisation, resource nationalism and disputes over foreign investment.²⁰ As newly independent States asserted greater control over natural resources, public utilities and strategic sectors, foreign investors and capital-exporting States sought legal mechanisms protecting property, contractual rights and expectations against expropriation or discriminatory treatment.²¹ Investment arbitration therefore emerged as part of a wider legal response to tension between sovereign regulatory authority and foreign investment protection.²²

Investor-State arbitration is therefore not purely private. Although it uses arbitral procedure, its authority commonly derives from public-law sources, including bilateral investment treaties, investment chapters, domestic investment legislation and investor-State agreements.²³ Article 25(1) of the ICSID Convention illustrates the structure: the Centre's jurisdiction extends to qualifying investment disputes only where the parties have consented in writing.²⁴

Nor does investor-State arbitration fit neatly within classical public international law. It is ordinarily a claim by a private investor against a State under treaty consent or another recognised instrument of consent, rather than a dispute between sovereigns.²⁵ Yet it cannot be reduced to ordinary commercial arbitration because the respondent is a sovereign State and the dispute often concerns regulation, treaty obligations, public resources or governmental authority.²⁶ Investment arbitration therefore combines private standing, arbitral procedure, treaty-based consent and sovereign authority; in that sense, it is best understood as a form of hybrid authority.²⁷

Calling the regime *sui generis* does not, by itself, explain the source or structure of that authority. Guntrip's model of hybrid authority is more useful because it identifies the interaction of State authority, investor participation, domestic and international law and arbitral procedure

²⁰ Van Harten, *supra* note 1, at 16–18; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 6–8.

²¹ Dolzer, Kriebaum & Schreuer, *supra* note 3, at 6–8; Van Harten, *supra* note 1, at 16–18.

²² Van Harten, *supra* note 1, at 3–5, 45–50.

²³ *Id.* at 24–25; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

²⁴ ICSID Convention, *supra* note 3, art. 25(1).

²⁵ Douglas, *supra* note 1, at 152–53; ICSID Convention, *supra* note 3, art. 25(1); Van Harten, *supra* note 1, at 24–25.

²⁶ Van Harten, *supra* note 1, at 3–5, 45–50; Roberts, *supra* note 2, at 45–49, 58–63.

²⁷ Douglas, *supra* note 1, at 152–53; Guntrip, *supra* note 1, at 432–34, 447–48.

within a framework that does not fit the traditional State-centred model of international jurisdiction.²⁸ The distinctiveness of investor-State arbitration lies in that institutional combination of public authority and private claim-making.²⁹

C. The limits of direct transplantation

The hybrid character of investment arbitration does not permit the mechanical transplantation of public international law jurisdictional principles.³⁰ Investor-State disputes remain structured by consent, treaty protection and arbitral mandate. Directly importing territoriality, personality, the protective principle or universality could distort that framework by allowing either State regulatory interests or investor appeals to international concern to enlarge the agreed jurisdictional bargain.³¹ The relevant question is therefore whether public international law values can be accommodated without displacing consent, treaty text or the tribunal's mandate.

A further difference concerns the direction of the claim. Universal jurisdiction ordinarily proceeds from an asserted international-community interest towards an alleged wrongdoer.³² Investment arbitration is instead usually initiated by a private investor against a respondent State on the basis of the State's consent and the investor's acceptance of that offer.³³ Illegality, public order, human rights or environmental concerns generally enter defensively or, where jurisdiction permits, by counterclaim.³⁴ Systemic values may therefore limit what an investor can claim or receive, or support countervailing obligations within the tribunal's mandate, but they do not alter the basic source or direction of the original claim.

Investment tribunals are not thereby insulated from public international law. In ICSID arbitration, Article 42(1) requires application of the rules of law agreed by the parties and, absent agreement, the law of the host State together with such rules of international law as may be applicable.³⁵ Treaty interpretation may also require account to be taken of relevant rules of international law under Article 31(3)(c) of the Vienna Convention on the Law of Treaties.³⁶ Transparency reforms likewise recognise that investor-State arbitration can affect interests

²⁸ Guntrip, *supra* note 1, at 432–34, 447–48.

²⁹ *Id.* at 432–34; Douglas, *supra* note 1, at 152–53; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 24–26.

³⁰ Guntrip, *supra* note 1, at 432–34, 447–48; Roberts, *supra* note 2, at 45–49, 58–63; Ryngaert, *supra* note 3, at 49–120.

³¹ ICSID Convention, *supra* note 3, art. 25(1); Van Harten, *supra* note 1, at 24–25; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

³² Ryngaert, *supra* note 3, at 120–31.

³³ ICSID Convention, *supra* note 3, art. 25(1); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

³⁴ See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74.

³⁵ ICSID Convention, *supra* note 3, art. 42(1).

³⁶ VCLT, *supra* note 5, art. 31(3)(c).

beyond the disputing parties.³⁷ The distinction is nevertheless fundamental: applicable law and public interest are not sources of jurisdiction. Systemic values may become legally relevant once jurisdiction exists, but they do not supply the consent on which that jurisdiction depends.

III. THE FICTION OF UNIVERSALITY AS JURISDICTION

A. Consent as the foundation of arbitral authority

Consent is the foundation of arbitral authority in international investment arbitration.³⁸ An investment tribunal has no general jurisdiction over investor-State disputes; its authority must be traced to a recognised expression of consent. That consent commonly arises through treaties, domestic investment legislation or contracts.³⁹ In each form, consent is not merely procedural: it is the legal source and first boundary of the tribunal's authority.⁴⁰

Consent operates through different institutional and procedural frameworks. Under Article 25(1) of the ICSID Convention, the Centre's jurisdiction extends only to qualifying legal disputes arising directly out of an investment and only where the parties have consented in writing.⁴¹ Other treaties, statutes or contracts may direct claims to the ICSID Additional Facility, UNCITRAL arbitration or another institution.⁴² Those frameworks give procedural effect to consent; they do not create it.⁴³ The central inquiry remains whether the respondent State consented to arbitration with this claimant, over this dispute, before this forum.

Article 25(1) of the ICSID Convention is therefore not sufficient by itself: it sets outer jurisdictional requirements but does not define the particular scope of consent.⁴⁴ That scope must be found in the relevant treaty, legislation, contract or other instrument.⁴⁵ The instrument may define the covered investor and investment, the disputes submitted to arbitration, the forum and procedural preconditions, and may contain carve-outs for taxation, national security, public order, public health or other regulatory interests. Depending on their wording, such clauses may operate at jurisdiction, admissibility, merits, defence or relief.⁴⁶

³⁷ UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration arts. 1–4 (effective Apr. 1, 2014) [hereinafter UNCITRAL Transparency Rules]; Roberts, *supra* note 2, at 47–48, 84–85.

³⁸ ICSID Convention, *supra* note 3, art. 25(1); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

³⁹ Van Harten, *supra* note 1, at 24–25; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

⁴⁰ ICSID Convention, *supra* note 3, art. 25(1); Van Harten, *supra* note 1, at 24–25.

⁴¹ ICSID Convention, *supra* note 3, art. 25(1).

⁴² Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65; Van Harten, *supra* note 1, at 24–25.

⁴³ ICSID Convention, *supra* note 3, art. 25(1); UNCITRAL Arbitration Rules art. 1(1) (2021); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

⁴⁴ ICSID Convention, *supra* note 3, art. 25(1).

⁴⁵ Dolzer, Kriebaum & Schreuer, *supra* note 3, at 90–91, 360–65; Waibel, *supra* note 8, at 11–15, 50–55.

⁴⁶ Fontanelli, *supra* note 8, at 7–12, 24–28, 95–108; Waibel, *supra* note 8, at 7–9, 24–31; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 303–10.

B. Why universality cannot replace existing jurisdictional objections

In *Phoenix Action*, the tribunal organised its jurisdictional analysis around *ratione personae*, *ratione voluntatis*, *ratione temporis* and *ratione materiae*.⁴⁷ Each category performs a distinct function by identifying the parties, consent, temporal scope or subject matter of arbitral authority. Scholarship also recognises *ratione loci* where the issue is whether an investment has a sufficient territorial connection to the host State.⁴⁸ Although sometimes absorbed into *ratione materiae* or the treaty definition of investment, *ratione loci* remains analytically useful because investment protection ordinarily presupposes a connection to the respondent State's territorial, legal or regulatory sphere.⁴⁹

These categories can be related to broader public international law ideas, particularly personality and territoriality.⁵⁰ *Ratione personae* identifies the claimant's relationship to the treaty system; *ratione loci* and aspects of *ratione materiae* address the investment's connection to the respondent State.⁵¹ *Ratione voluntatis*, by contrast, concerns the existence and scope of the parties' consent to arbitration.⁵² Although awards do not bind later tribunals as precedent, arbitral practice has generated a familiar and persuasive jurisdictional vocabulary around these categories.⁵³

Universality is different. It is not part of the settled jurisdictional vocabulary of investment arbitration.⁵⁴ Although systemic concerns appear in disputes involving corruption, serious illegality, international public order, human rights, environmental harm and third-party interests, tribunals have not treated universality as an independent head of jurisdiction.⁵⁵ Treating it as jurisdiction would risk enlarging arbitral authority beyond consent; ignoring the recurring limiting effect of systemic values, however, leaves an important pattern under-classified. The task is to identify that pattern without creating a new source of competence.

⁴⁷ *Phoenix Action*, *supra* note 7, ¶¶ 53–57, 67, 74–77.

⁴⁸ Fontanelli, *supra* note 8, at 50–52.

⁴⁹ *Id.*; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 90–91.

⁵⁰ Ryngaert, *supra* note 3, at 49–120; Fontanelli, *supra* note 8, at 50–52.

⁵¹ Fontanelli, *supra* note 8, at 50–52; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 90–91, 104–06.

⁵² ICSID Convention, *supra* note 3, art. 25(1); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

⁵³ ICSID Convention, *supra* note 3, art. 53(1); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 45–47, 413–14; Alvarez, *supra* note 5, at 8–9, 16–18.

⁵⁴ ICSID Convention, *supra* note 3, art. 25(1); *Phoenix Action*, *supra* note 7, ¶¶ 53–57, 67, 74–77; Fontanelli, *supra* note 8, at 50–52; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 90–91, 360–65.

⁵⁵ See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74.

C. The danger of a freestanding objection based on the universality principle

Accepting universality as an additional jurisdictional basis would suggest that tribunals may enlarge their own competence whenever systemic values are invoked.⁵⁶ The concern is not that arbitral practice has already recognised such a jurisdictional head, but that the systemic importance of a norm cannot itself supply authority that the relevant instrument of consent does not confer. That would be particularly problematic because human rights, environmental protection, public health, anti-corruption, economic development and investor protection do not necessarily point in the same direction.⁵⁷

The difficulty is practical, not merely abstract. Community consultation may support State regulation in a mining dispute while the investor invokes stability and legitimate expectations.⁵⁸ The human right to water may support regulation of a water concession while the investor relies on contractual and treaty rights.⁵⁹ A State may invoke international public order in a corruption case even where its own officials participated in the wrongdoing.⁶⁰ Universal language must therefore be mediated through legal doctrine; otherwise universality becomes a conclusion rather than an argument.⁶¹

Universality should therefore not operate as a jurisdiction-conferring principle.⁶² Its defensible role is classificatory and limiting: it may help explain why serious systemic values condition recognition, admissibility, protection or relief without themselves enlarging arbitral authority.⁶³

IV. DOCTRINAL GATEWAYS FOR SYSTEMIC VALUES IN ARBITRAL PRACTICE

A. How universality enters international investment arbitration

Systemic values enter investment arbitration through recognised legal gateways, including treaty interpretation, applicable law, legality requirements, admissibility, international public order, counterclaims and remedial discretion, and may also be brought before tribunals through

⁵⁶ See generally Van Harten, *supra* note 1, at 121–24, 143–44; Roberts, *supra* note 2, at 47–49, 58–63.

⁵⁷ Roberts, *supra* note 2, at 47–49, 70–75; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 303–10.

⁵⁸ See, e.g., *Bear Creek Mining Corp. v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, ¶¶ 406–11, 522–27 (Nov. 30, 2017).

⁵⁹ See, e.g., *Urbaser*, *supra* note 6, ¶¶ 1193–1210.

⁶⁰ See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13.

⁶¹ See generally Roberts, *supra* note 2, at 47–49, 58–63.

⁶² ICSID Convention, *supra* note 3, art. 25(1); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65; Ryngaert, *supra* note 3, at 120–31.

⁶³ See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74.

transparency and third-party participation.⁶⁴ Their legal effect depends on the treaty, applicable law, procedural posture and the tribunal's mandate.⁶⁵

Article 31(3)(c) of the Vienna Convention on the Law of Treaties is one such gateway.⁶⁶ It requires relevant rules of international law applicable between the treaty parties to be taken into account in treaty interpretation. That is a disciplined interpretive method, not a licence to rewrite jurisdictional clauses.⁶⁷ It may affect the meaning of treaty obligations while leaving the source and limits of jurisdiction intact.

Transparency and participation reforms point in the same direction. The UNCITRAL Rules on Transparency recognise that treaty-based investor-State arbitration can implicate interests beyond the disputing parties by providing for public access and, where appropriate, third-party submissions.⁶⁸ Such reforms confirm the public dimension of investment arbitration without redefining jurisdiction. Universality is therefore best understood functionally: it helps classify why claims may be denied protection, restricted or limited in relief through existing doctrine.⁶⁹

B. Corruption, fraud, illegality and international public order

Corruption, fraud and serious illegality provide the clearest examples of systemic values operating as limitations on investment protection. Arbitral decisions show that claims tainted by conduct incompatible with legality, good faith or international public order may be denied recognition, protection, admissibility or relief.⁷⁰

In *World Duty Free v. Kenya*, a contract-based ICSID arbitration, bribery in the negotiation of the contract prevented the claimant from relying on that contract, with the tribunal treating corruption as contrary to international or transnational public policy.⁷¹ In *Inceysa v. El Salvador*, fraud produced a similar result through legality and good faith: the claimant's

⁶⁴ VCLT, *supra* note 5, art. 31(3)(c); ICSID Convention, *supra* note 3, art. 42(1); *see, e.g., World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; UNCITRAL Transparency Rules, *supra* note 37, arts. 1–4.

⁶⁵ Dolzer, Kriebaum & Schreuer, *supra* note 3, at 90–91, 303–10, 360–65; Roberts, *supra* note 2, at 50–52, 58–63.

⁶⁶ VCLT, *supra* note 5, art. 31(3)(c); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 22–23, 36–38.

⁶⁷ Alvarez, *supra* note 5, at 28; Roberts, *supra* note 2, at 50–52.

⁶⁸ UNCITRAL Transparency Rules, *supra* note 37, arts. 1, 3–6; Roberts, *supra* note 2, at 47–48, 84–85.

⁶⁹ *See, e.g., World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74.

⁷⁰ *See, e.g., World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 193, 372–74, 389, 412–13; *Phoenix Action*, *supra* note 7, ¶¶ 100, 106, 113–14, 136–42.

⁷¹ *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188.

misrepresentations in obtaining the concession meant that the investment could not benefit from treaty protection.⁷²

In *Plama v. Bulgaria*, the tribunal refused treaty protection to an investment structured through deceit even though the treaty contained no express legality requirement.⁷³ *Metal-Tech v. Uzbekistan* illustrates a different route: corruption operated through the treaty's legality framework and affected whether the investment fell within the protection and consent contemplated by the treaty.⁷⁴ Together with *World Duty Free* and *Inceysa*, these cases show that corruption, fraud and serious illegality do not generate a single jurisdictional rule; their legal consequences depend on the doctrinal gateway through which the misconduct becomes relevant, including legality, good faith, jurisdiction, admissibility, treaty protection and public policy.⁷⁵

The consequences of illegality therefore vary by case. It may defeat jurisdiction where treaty protection is limited to investments made in accordance with host-State law or where misconduct prevents an asset from qualifying as a protected investment.⁷⁶ In other cases, jurisdiction may exist but the claim may fail on admissibility, good faith or abuse-of-process grounds.⁷⁷ Investor misconduct may also operate at merits or relief, including in the assessment of damages or restitution.⁷⁸ The key point is classification: the effect depends on treaty text, the gravity and connection of the misconduct, and the procedural stage at which it is raised.⁷⁹

C. Human rights, environmental concerns and third-party interests

Human rights and environmental concerns are less likely than corruption to defeat jurisdiction at the threshold, but they increasingly shape interpretation, counterclaims, merits and relief.⁸⁰ Their systemic character does not determine their arbitral effect. That effect still depends on treaty text, applicable law, counterclaim jurisdiction, the factual record and remedial powers.⁸¹

⁷² *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257.

⁷³ *Plama*, *supra* note 6, ¶¶ 138–46.

⁷⁴ *Metal-Tech*, *supra* note 6, ¶¶ 193, 372–74, 389, 412–13.

⁷⁵ *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Plama*, *supra* note 6, ¶¶ 138–46; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Phoenix Action*, *supra* note 7, ¶¶ 100, 106, 113–14, 136–42.

⁷⁶ *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 193, 372–74, 389, 412–13; *Phoenix Action*, *supra* note 7, ¶¶ 100, 106, 113–14, 136–42.

⁷⁷ *Phoenix Action*, *supra* note 7, ¶¶ 113–14, 136–42; *see also Plama*, *supra* note 6, ¶¶ 138–46.

⁷⁸ *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 106–14, 416–25.

⁷⁹ Dolzer, Kriebaum & Schreuer, *supra* note 3, at 106–14; *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13.

⁸⁰ VCLT, *supra* note 5, art. 31(3)(c); ICSID Convention, *supra* note 3, art. 42(1); *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36.

⁸¹ *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 303–10, 416–25.

Urbaser illustrates human rights reasoning entering investment arbitration through a counterclaim. Argentina alleged that the investors' failure to make required investments in a water and sewage concession contributed to a violation of the human right to water.⁸² The tribunal accepted jurisdiction over the counterclaim but rejected liability.⁸³ The distinction is significant: the systemic importance of a norm does not by itself establish an applicable investor obligation or determine the legal outcome of the claim. The significance of the case is therefore limited but important: investors were not insulated from human-rights reasoning, yet the tribunal did not become a human-rights court. Its authority remained tied to consent, the counterclaim framework and applicable law.⁸⁴

Burlington and *Perenco* similarly show environmental concerns entering arbitration without displacing consent. In *Burlington*, Ecuador's environmental and infrastructure counterclaims were considered only after the tribunal found jurisdiction within the applicable counterclaim framework.⁸⁵ *Perenco* likewise addressed alleged environmental harm through counterclaims.⁸⁶ Environmental obligations may therefore affect an investment dispute, but only through jurisdictional and procedural gateways rather than free-floating universality.⁸⁷

Third-party interests, particularly those of affected local and indigenous communities, expose the same structural limit: persons central to the dispute may remain non-parties in law. *Bear Creek* illustrates the point. The majority considered whether community outreach, social-licence difficulties and resulting unrest affected liability or damages within the treaty framework.⁸⁸ Professor Sands' partial dissent placed greater emphasis on the rights of affected communities and the investor's responsibility to engage with them transparently and effectively.⁸⁹ The case demonstrates both the normative pressure created by third-party interests and the limits of the arbitral form.

The procedural response has generally been transparency and non-disputing-party participation rather than an expansion of jurisdiction. *Methanex* and *Biwater* show tribunals addressing public interest, confidentiality and third-party submissions.⁹⁰ These mechanisms operate as procedural

⁸² *Urbaser*, *supra* note 6, ¶¶ 36, 1156–57.

⁸³ *Id.* ¶¶ 1143–55, 1193–1210, 1221.

⁸⁴ *Id.* ¶¶ 1143–55, 1193–1210; Guntrip, *supra* note 1, at 444–46.

⁸⁵ *Burlington*, *supra* note 7, ¶¶ 60–74.

⁸⁶ *Perenco*, *supra* note 7, ¶¶ 34–36.

⁸⁷ *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 416–25.

⁸⁸ *Bear Creek*, *supra* note 58, ¶¶ 408–11, 565–67.

⁸⁹ *Bear Creek Mining Corp. v. Republic of Peru*, ICSID Case No. ARB/14/21, Partial Dissenting Opinion of Professor Philippe Sands QC, ¶¶ 6–8, 38–39 (Sept. 12, 2017).

⁹⁰ *Methanex Corp. v. United States*, UNCITRAL, Decision of the Tribunal on Petitions from Third Persons to Intervene as “Amici Curiae,” ¶¶ 24–31, 49 (Jan. 15, 2001); *Biwater Gauff (Tanzania) Ltd. v. United Republic of*

channels through which wider systemic interests may be presented to the tribunal, rather than as independent legal bases for determining their effect. They recognise wider constituencies without creating jurisdiction over them or over every public interest implicated by the dispute.⁹¹

Human rights, environmental protection and third-party interests therefore support only a limited conception of universality. They may shape interpretation, State defences, submissions, counterclaims or remedies, but their relevance depends on the legal gateway through which they enter the dispute. They illustrate systemic limitation, not jurisdiction by universality.

D. The limited relevance of abuse of process

Abuse of process is best treated as a boundary case rather than direct evidence of universality. It concerns the integrity of proceedings and the misuse of legal rights, including treaty restructuring after a dispute becomes foreseeable or other bad-faith invocation of treaty protection.⁹² Its ordinary doctrinal home is admissibility, good faith or the temporal and personal limits of consent.⁹³

Phoenix Action is often discussed in abuse-of-process terms because the investment was acquired after the dispute had arisen for the purpose of bringing an international claim.⁹⁴ The tribunal's reasoning was tied to good faith and the meaning of investment under the ICSID Convention.⁹⁵ *Philip Morris Asia* more clearly treated post-dispute restructuring as an abuse of rights and found the claim inadmissible once a specific dispute was foreseeable.⁹⁶ These decisions protect arbitral integrity but do not, without more, depend on universality.

Abuse of process overlaps with systemic concerns only where the abuse is connected to corruption, fraudulent concealment, serious illegality or conduct implicating public order. The overlap should remain narrow. Abuse is principally a doctrine of procedural integrity; *ratione universalis* adds value only where a serious systemic concern enters through a recognised legal gateway.⁹⁷

Tanzania, ICSID Case No. ARB/05/22, Procedural Order No. 3, ¶¶ 135, 143–47, 149–60 (Sept. 29, 2006); *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 5, ¶¶ 50, 53, 64–68 (Feb. 2, 2007).

⁹¹ *Methanex*, *supra* note 90, ¶¶ 24–31; *Biwater*, Procedural Order No. 5, *supra* note 90, ¶¶ 50, 53, 64–68; UNCITRAL Transparency Rules, *supra* note 37, arts. 3–6.

⁹² *Phoenix Action*, *supra* note 7, ¶¶ 100, 106, 113–14, 136–42; *Philip Morris Asia Ltd. v. Commonwealth of Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, ¶¶ 539–54, 584–88 (Dec. 17, 2015).

⁹³ *Philip Morris Asia*, *supra* note 92, ¶¶ 539–54, 584–88; Fontanelli, *supra* note 8, at 64–66.

⁹⁴ *Phoenix Action*, *supra* note 7, ¶¶ 100, 106, 113–14, 136–42.

⁹⁵ *Id.* ¶¶ 100, 106, 113–14.

⁹⁶ *Philip Morris Asia*, *supra* note 92, ¶¶ 539–54, 584–88.

⁹⁷ See, e.g., *Phoenix Action*, *supra* note 7, ¶¶ 100, 106, 113–14, 136–42; *Philip Morris Asia*, *supra* note 92, ¶¶ 539–54, 584–88; *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13.

V. THE PROPER ROLE OF UNIVERSALITY IN INVESTMENT ARBITRATION

The preceding discussion shows that systemic values already operate within investment arbitration, but through different doctrinal routes and with different legal consequences. The question is therefore not whether such values are relevant, but how their relevance should be conceptualised without collapsing jurisdiction, admissibility, merits and relief or displacing the consent-based foundations of arbitral authority. This Part develops that account by treating universality as a cross-cutting limiting principle and considering whether *ratione universalis* can provide a disciplined analytical vocabulary for that recurring pattern.

A. A limiting principle, not a jurisdiction-conferring principle

This limiting account is consistent with approaches to international law that treat universal values as constraints on authority rather than automatic sources of adjudicative power. Weeramantry's project of 'universalising' international law emphasised broader traditions of non-harm, trusteeship, intergenerational responsibility and limits on power.⁹⁸ That normative insight does not create jurisdiction in investment arbitration; at most, it supports the proposition that authority validly established by consent may be exercised within systemic legal limits.⁹⁹

The same conclusion follows from the structure and history of the investment regime. As Sornarajah explains, modern investment protection developed amid post-colonial disputes over foreign property, nationalisation and competing capital-exporting and capital-importing interests.¹⁰⁰ The regime was not designed as a general mechanism for enforcing international public order; its central structure protected foreign investment against specified forms of host-State conduct.¹⁰¹ That history does not exclude public values, but it cautions against turning them into a roving jurisdictional licence.

Universality should therefore operate as a limiting, not jurisdiction-conferring, concept. It may explain why corruption defeats a claim, serious illegality prevents treaty protection, human rights inform interpretation, environmental counterclaims are heard where jurisdiction exists,

⁹⁸ See generally C.G. WEERAMANTRY, *UNIVERSALISING INTERNATIONAL LAW* (Martinus Nijhoff 2004); *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), Judgment, 1997 I.C.J. 7, 88, 95, 100 (Sept. 25) (separate opinion of Weeramantry, V.P.).

⁹⁹ ICSID Convention, *supra* note 3, art. 25(1); VCLT, *supra* note 5, art. 31(3)(c); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 360–65.

¹⁰⁰ M. SORNARAJAH, *THE INTERNATIONAL LAW ON FOREIGN INVESTMENT* ch. 1, § 1.2.2 (5th ed., Cambridge Univ. Press 2021).

¹⁰¹ *Id.*; Roberts, *supra* note 2, at 75–80.

or relief is reduced because of investor misconduct.¹⁰² It does not provide an additional source of arbitral competence.

This limited role has two advantages. It preserves consent while preventing investment protection from insulating serious illegality, and it allows tribunals to engage with public international law values without becoming general public-law courts. The tribunal remains a consent-based adjudicator, but the legal consequences of the dispute may be conditioned by systemic values.¹⁰³

B. The distinction between jurisdiction, admissibility, merits and relief

A useful account of universality must distinguish jurisdiction, admissibility, merits and relief. Jurisdiction concerns the tribunal's power to decide the dispute; admissibility asks whether a claim within jurisdiction should be heard; the merits determine breach and any defence or justification; and relief concerns the resulting legal consequences, including compensation, restitution, declarations, costs, interest and reductions for contributory fault or public policy.¹⁰⁴

Systemic values may appear at each stage with different consequences. A legality clause may exclude an unlawful investment at jurisdiction; abuse of process may render a claim inadmissible; human-rights or environmental obligations may inform the merits; and corruption, investor misconduct or environmental harm may affect damages or costs.¹⁰⁵ Treating all of these as 'jurisdiction' creates confusion, while treating them as irrelevant creates blindness. The correct approach is classification-sensitive.

A classification-sensitive approach also guards against over-theorisation. Not every reference to public order, corruption, human rights or environmental protection evidences a new jurisdictional head, but neither are such references merely rhetorical. Their legal significance depends on the source, gateway and procedural stage through which they enter the arbitration.

The practical consequence is that pleadings and awards should identify the relevant gateway. Did illegality prevent the investment from qualifying? Does abuse render the claim inadmissible? Does a human-rights or environmental objective justify or shape assessment of

¹⁰² See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36; *Bear Creek*, *supra* note 58, ¶¶ 565–67.

¹⁰³ Douglas, *supra* note 1, at 152–53; Guntrip, *supra* note 1, at 432–34, 447–48; Roberts, *supra* note 2, at 45–49, 58–63.

¹⁰⁴ Waibel, *supra* note 8, at 2–5, 7–9; Fontanelli, *supra* note 8, at 7–12, 24–28; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 416–25.

¹⁰⁵ *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Phoenix Action*, *supra* note 7, ¶¶ 113–14, 136–42; *Philip Morris Asia*, *supra* note 92, ¶¶ 539–54, 584–88; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36; *Bear Creek*, *supra* note 58, ¶¶ 565–67.

the State measure? Should investor contribution to harm reduce compensation? Each route carries a different legal test, burden and consequence. A disciplined analysis should therefore identify the legal source of the systemic concern, its gravity and material connection to the dispute, the doctrinal gateway through which it enters, and the legal consequence that follows. *Ratione universalis* is useful only if it sharpens, rather than obscures, those distinctions.

C. Preserving consent while recognising public international law values

Consent defines the outer frame of arbitral authority, but it does not require tribunals to ignore public international law values. Within that frame, such values may operate through interpretation, applicable law, public policy, counterclaims or relief.¹⁰⁶ This is consistent with investment arbitration's hybrid character and with the proposition that investment treaties form part of the wider international legal order.¹⁰⁷

Recognition of public values cannot, however, justify departure from treaty text. Anti-corruption and legality reasoning is strongest where the treaty contains an 'in accordance with law' clause or misconduct bears directly on the existence or protection of the investment. Human-rights and environmental reasoning is strongest where treaty text, applicable law, counterclaim jurisdiction or the factual record supplies a legal path. Third-party interests are strongest where procedural rules permit participation or where those interests are legally relevant to the State measure, legitimate expectations or relief.¹⁰⁸

This disciplined approach also responds to critical investment-law scholarship emphasising asymmetries within the regime and contemporary efforts to recalibrate investor protection and regulatory space.¹⁰⁹ Universality as systemic limitation may support that recalibration without giving tribunals a roving mandate to police global public values.

The framework also has implications for treaty drafting. If States intend human rights, anti-corruption, environmental obligations, responsible business conduct or community consultation to operate as jurisdictional conditions, admissibility requirements, counterclaim bases or remedial factors, they should say so expressly.¹¹⁰ Clear drafting is preferable to an unstable

¹⁰⁶ ICSID Convention, *supra* note 3, arts. 25(1), 42(1); VCLT, *supra* note 5, art. 31(3)(c); *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74.

¹⁰⁷ Douglas, *supra* note 1, at 152–53; Guntrip, *supra* note 1, at 432–34, 447–48; Roberts, *supra* note 2, at 50–52, 58–63.

¹⁰⁸ *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36; *Bear Creek*, *supra* note 58, ¶¶ 408–11, 565–67; *Methanex*, *supra* note 90, ¶¶ 24–31; *Biwater*, Procedural Order No. 5, *supra* note 90, ¶¶ 50, 53, 64–68.

¹⁰⁹ See generally Sornarajah, *supra* note 100, ch. 1, § 1.2.2; Roberts, *supra* note 2, at 75–80; GUS VAN HARTEN, *THE TROUBLE WITH FOREIGN INVESTOR PROTECTION* 1–7 (Oxford Univ. Press 2020).

¹¹⁰ See, e.g., 2012 U.S. Model Bilateral Investment Treaty arts. 12–13, annex B; Netherlands Model Investment Agreement arts. 6–7, 16, 23 (2019); cf. 2012 U.S. Model Bilateral Investment Treaty art. 20(1), (3) (prudential-

limitation inferred from general values alone. Where older treaties are silent, tribunals should proceed incrementally through recognised sources such as treaty text, applicable domestic law, general principles, public policy and relevant rules of international law.¹¹¹ General principles and public policy should not, however, operate as unmediated appeals to abstract morality; their relevance must be grounded in an applicable legal source and connected to the tribunal's existing mandate.

D. Laying the foundations for a possible *ratione universalis*

Ratione universalis is not proposed as a new head of jurisdiction. It identifies a recurring, cross-cutting logic by which corruption, serious illegality, international public order, human rights, environmental harm and third-party interests can condition investment protection through different doctrinal gateways.¹¹² Its value is therefore explanatory and classificatory, not competence-conferring.

Ratione universalis is not presently recognised as an independent jurisdictional objection equivalent to *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci* or *ratione voluntatis*. Arbitral practice nevertheless shows a recurring pattern in which serious systemic values condition recognition, admissibility, protection or relief. Its present value therefore lies in providing a structured vocabulary for identifying that recurring pattern without collapsing the distinct doctrines through which those values operate. If treaty practice and arbitral reasoning increasingly organise such concerns around systemic limitations, *ratione universalis* may develop further as an analytical category. For now, its status should remain foundational and explanatory rather than jurisdiction-conferring.¹¹³

The category's value lies in grouping decisions otherwise dispersed across illegality, corruption, admissibility, public policy, counterclaims, third-party participation and relief without collapsing those doctrines into one rule. It explains the common limiting logic while insisting that each systemic value be channelled through an existing legal gateway rather than moral assertion alone.

A cautious formulation can therefore be stated as follows: *ratione universalis* is a cross-cutting analytical category for serious systemic values that condition claims, investments, defences,

measures defence referred first to the Parties' financial authorities, whose joint determination binds the tribunal).

¹¹¹ VCLT, *supra* note 5, art. 31(3)(c); ICSID Convention, *supra* note 3, art. 42(1); Dolzer, Kriebaum & Schreuer, *supra* note 3, at 22–23, 36–38, 360–65.

¹¹² See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36; *Bear Creek*, *supra* note 58, ¶¶ 408–11, 565–67.

¹¹³ *Phoenix Action*, *supra* note 7, ¶¶ 53–57, 67, 74–77; Fontanelli, *supra* note 8, at 50–52; Dolzer, Kriebaum & Schreuer, *supra* note 3, at 90–91, 360–65.

counterclaims or relief through recognised legal gateways.¹¹⁴ It is limiting rather than jurisdiction-conferring. Its application requires identification of five matters: the recognised legal source from which the systemic concern derives; the gravity of that concern; its material connection to the dispute; the doctrinal gateway through which it becomes legally relevant; and the legal consequence that follows at the appropriate procedural stage. A concern should qualify as ‘systemic’ only where it extends beyond the immediate bilateral economic interests of the disputing parties and satisfies those requirements. These constraints prevent *ratione universalis* from becoming a general licence to refuse investment protection.

Ratione universalis should not be equated with systemic integration. Article 31(3)(c) of the Vienna Convention operates as a method of treaty interpretation through which relevant rules of international law may inform the meaning of treaty obligations.¹¹⁵ The present concept is broader and classificatory: systemic values may become legally relevant not only through interpretation, but also through legality requirements, applicable law, admissibility, public policy, counterclaims, procedural mechanisms and remedial discretion. Systemic integration is therefore one possible doctrinal gateway through which a systemic value may operate; it does not exhaust the phenomenon that *ratione universalis* seeks to describe.

The controversy surrounding the clean-hands doctrine reinforces the need for such restraint: the recurrence of investor misconduct across arbitral decisions does not by itself establish an autonomous procedural or substantive bar, since its legal consequences may instead derive from particular treaty provisions and established doctrines.¹¹⁶

This formulation is deliberately modest. It does not suggest that investment tribunals enforce *erga omnes* obligations as such, that *jus cogens* automatically expands jurisdiction, or that every human-rights or environmental concern defeats investor protection.¹¹⁷ It recognises only that a

¹¹⁴ See, e.g., *World Duty Free*, *supra* note 6, ¶¶ 138–42, 157, 188; *Inceysa*, *supra* note 6, ¶¶ 230–31, 245–50, 257; *Metal-Tech*, *supra* note 6, ¶¶ 372–74, 389, 412–13; *Phoenix Action*, *supra* note 7, ¶¶ 100, 106, 113–14, 136–42; *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74; *Perenco*, *supra* note 7, ¶¶ 34–36.

¹¹⁵ VCLT, *supra* note 5, art. 31(3)(c); Johannes Hendrik Fahner & Matthew Happold, *The Human Rights Defence in International Investment Arbitration: Exploring the Limits of Systemic Integration*, 68 INT’L & COMP. L.Q. 741, 741–59 (2019), <https://doi.org/10.1017/S0020589319000241>; Giovanna E. Gismondi, *Systemic Integration in Investment Treaty Arbitration: Between Coherence and Constraint* (2026) (SSRN working paper), <https://doi.org/10.2139/ssrn.6934439>.

¹¹⁶ Eleonora Castro, *Clarifying the Clean Hands Doctrine under General International Law*, 16 J. INT’L DISP. SETTLEMENT idaf030 (2025), <https://doi.org/10.1093/jnlids/idaf030>.

¹¹⁷ Cf. *Armed Activities on the Territory of the Congo (New Application: 2002)* (Dem. Rep. Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, 2006 I.C.J. 6, ¶¶ 64, 125 (Feb. 3); *Jurisdictional Immunities of the State* (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99, ¶¶ 93–97 (Feb. 3); *Urbaser*, *supra* note 6, ¶¶ 1193–1210; *Burlington*, *supra* note 7, ¶¶ 60–74.

consent-based investment regime can operate within a wider legal order whose systemic values may affect the exercise and consequences of arbitral authority.¹¹⁸

The category also has a negative boundary. Ordinary public-interest regulation, minor illegality or the mere presence of third-party interests is insufficient. A domestic regulatory breach may be too remote or trivial; a community objection may establish no legal defence; and a human-rights reference may prove no counterclaim. *Ratione universalis* should be reserved for serious systemic concerns linked to a recognised legal gateway. Its function is to classify gravity and cross-cutting legal relevance, not to lower the threshold for denying protection.

VI. CONCLUSION

Universality in international investment arbitration is both useful and dangerous. It is dangerous if treated as an independent source of authority because investment tribunals remain creatures of consent, treaty text, party identity, subject matter, time and territorial or economic connection. Universality cannot replace those limits. Its analytical significance lies instead in identifying a recurring pattern of systemic limitation across doctrines that otherwise remain formally distinct.

Its defensible role is narrower. Corruption, serious illegality, international public order, human rights, environmental harm and third-party interests may condition recognition, admissibility, protection or relief, but only through recognised legal gateways.

Ratione universalis should therefore be used as a cross-cutting analytical vocabulary, not a new door into jurisdiction. Properly confined by requirements of recognised legal source, sufficient gravity, material connection to the dispute, an established doctrinal gateway and a legally appropriate consequence, it helps explain how investment arbitration can remain consent-based while operating within the wider international legal order. Used in that limited sense, universality clarifies rather than distorts the structure of investment arbitration.

¹¹⁸ See generally Douglas, *supra* note 1, at 152–53; Guntrip, *supra* note 1, at 432–34, 447–48; Roberts, *supra* note 2, at 45–49, 58–63.