
INDIA'S 2016 MODEL BIT AND UNCITRAL ISDS REFORM: COMPATIBILITY, SOVEREIGNTY AND INFLUENCE

Makwana Hempallavi Govindbhai, LLM, Gujarat National Law University, Gandhinagar.

ABSTRACT

Investor-State dispute settlement (ISDS) has become the subject of growing scrutiny over regulatory autonomy, procedural efficiency, adjudicatory legitimacy and the balance between investor protection and State sovereignty. The Model Bilateral Investment Treaty (BIT) of 2016 represents a significant modification of its investment-treaty policy through narrower substantive protections, increased regulatory safeguards and conditions for access to international arbitration. In parallel, the UNCITRAL Working Group III has embarked on a comprehensive reform agenda addressing procedural, institutional and dispute-prevention concerns within ISDS. This paper compares the compatibility between these two approaches, focusing on local remedies, dispute prevention, regulatory autonomy and adjudicatory legitimacy. It argues that the two frameworks demonstrate partial functional convergence but differ significantly in substantive treaty design and institutional architecture. The paper also distinguishes convergence from influence, assessing India's participation in reforming multilateral system, alongside developments in its post-2016 treaty practice.

Keywords: Model Bilateral Investment Treaty, UNCITRAL ISDS Reform, Compatibility, Sovereignty, Influence.

Introduction

International investment law aims to protect foreign investors against certain forms of State interference while retaining the host State's ability to regulate in the public interest. ISDS has traditionally been the means by which investors may seek relief against host States, but concerns have arisen over the costs, delays, inconsistencies and lack of predictability of awards, the independence of arbitrators, parallel proceedings and the impact of investment adjudication on domestic regulatory choices. These concerns have led States and international institutions to re-examine both the substantive scope of investment protection and the design of ISDS.¹

India's response is an important part of this wider development. Informed by its experience under its earlier generation of bilateral investment treaties (hereinafter referred as BITs), including the award of *White Industries Australia Limited v Republic of India* on 30 November 2011,² India has undertaken a substantial revision of its investment-treaty policy.³ The resulting Model Text for the Indian Bilateral Investment Treaty was approved by the Union Cabinet on 16 December 2015 and published by the Department of Economic Affairs in January 2016.^{4 5} The Model BIT narrows several substantive protections, removes an MFN clause, increases recognition of regulatory space and imposes conditions on access to international arbitration via procedural requirements, including the pursuit of domestic remedies where applicable.⁶ It nevertheless retains treaty-based investor protection and international arbitration and is more accurately characterised as a recalibration of ISDS rather than its rejection.

At the multilateral level, the UNCITRAL Working Group III has been assigned a broad mandate in 2017 of examining possible reform of ISDS.⁷ Its work covers procedural and cross-

¹ United Nations Conference on Trade and Development (UNCTAD), *Reform of Investor-State Dispute Settlement: In Search of a Roadmap* (IIA Issues Note No 2, 2013); United Nations Commission on International Trade Law (UNCITRAL), 'Investor-State Dispute Settlement Reform' <https://uncitral.un.org/en/working_groups/3/investor-state> accessed 13 September 2026.

² *White Industries Australia Limited v Republic of India*, Final Award, UNCITRAL, 30 November 2011.

³ Law Commission of India, *Analysis of the 2015 Draft Model Indian Bilateral Investment Treaty*, Report No 260 (2015).

⁴ 'Model Text for the Indian Bilateral Investment Treaty' <<https://www.pib.gov.in/newsite/printrelease.aspx?lang=2®=3&relid=133411>> accessed 13 September 2026.

⁵ 'Annex Model Text for the Indian Bilateral Investment Treaty BILATERAL INVESTMENT TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA'.

⁶ Department of Economic Affairs, Ministry of Finance, Government of India, *Model Text for the Indian Bilateral Investment Treaty* (14 January 2016) arts 3, 5 and 15 <https://dea.gov.in/files/other_reports_documents/ModelTextIndia_BIT.pdf> accessed 13 September 2026.

⁷ UNCITRAL, 'Investor-State Dispute Settlement' <<https://uncitral.un.org/en/texts/isds>> accessed 13 September 2026; UNCITRAL, 'UNCITRAL deliberates possible reform of investor-State dispute settlement' (11 April 2018) <<https://uncitral.un.org/en/announcements/uncitral-deliberates-possible-reform-investor-state-dispute->

cutting reforms, codes of conduct, dispute prevention and mediation, an advisory centre and possible standing and appellate mechanisms.⁸ Crucially, this reform process is not yet complete. As of September 2026, Working Group III is still considering certain draft provisions, including, notably, those concerning a standing mechanism and damages, with its fifty-fifth session scheduled for 12–16 October 2026.⁹

After understanding this background, the paper examines the relationship between India's 2016 Model BIT and the UNCITRAL reform process through three interconnected questions:

1. How does the Model BIT balance investor protection with regulatory autonomy?
2. To what extent is its approach compatible with the objectives and mechanisms emerging from UNCITRAL's ISDS reform?
3. Does the similarity between the two frameworks indicate Indian influence or merely convergence in response to common concerns?

The paper argues that the relationship is one of partial and functional compatibility, rather than complete alignment. India's Model BIT converges with aspects of the UNCITRAL reform agenda (notably procedural discipline, dispute prevention and concerns with regulatory autonomy), but differs greatly in substantive treaty design and institutional architecture. Moreover, compatibility should not be conflated with influence: any claim that India has shaped the reform of UNCITRAL must be demonstrated by evidence of India's involvement, proposals and any negotiating positions it has taken rather than merely from similarities. The analysis therefore combines doctrinal and comparative examination of the 2016 Model BIT, UNCITRAL materials and the relevant investment-law developments.

Conceptual Framework and India's 2016 Model BIT

ISDS, Investor Protection and Regulatory Autonomy

Investor-State dispute settlement (ISDS) provides a qualified foreign investor with a way to

settlement> accessed 13 September 2026.

⁸ UNCITRAL, 'Working Group III: Investor-State Dispute Settlement Reform' <https://uncitral.un.org/en/working_groups/3/investor-state> accessed 14 September 2026; UNCITRAL, 'Codes of Conduct' <<https://uncitral.un.org/en/codeofconduct>> accessed 14 September 2026; UNCITRAL, 'Investment Mediation and Dispute Prevention' <<https://uncitral.un.org/en/investmentmediationanddispute prevention>> accessed 14 September 2026.

⁹ *ibid*; UNCITRAL, 'Tenth Intersessional Meeting' (7–9 September 2026) <<https://uncitral.un.org/en/tenth-intersessional-meeting>> accessed 14 September 2026.

raise an international claim against the host State for breach of investment-treaty duties.¹⁰ The traditional rationale is that it provides an international forum for resolving disputes over foreign investment, in the face of concerns over the availability or effectiveness of domestic remedies.¹¹ At the same time, the growth in investment protection raises the issue of whether international adjudication may constrain a state's ability to pursue legitimate policy objectives. Regulatory autonomy, therefore, is not a matter of the absence of investment obligations; rather, it concerns the State's ability to regulate in areas such as public health, safety and the environment within the limits of its treaty commitments.¹² India's 2016 Model BIT explicitly acknowledges this balance in its preamble by referring to both the promotion and protection of investment and to the Parties' right to regulate investments in accordance with their law and policy objectives.

Recalibration of India's Investment-Treaty Policy

India's 2016 Model BIT represented a substantial change from its earlier treaty position. The new text was approved by the Cabinet in December 2015 and published by the Department of Economic Affairs in January 2016.¹³ The change took place against the backdrop of India's experience under its older BITs, most notably the *White Industries* award,¹⁴ where an UNCITRAL tribunal held that India had breached an "effective means" obligation imported through the MFN clause of the India - Australia BIT.¹⁵ The instance showed how broad formulation in a treaty may lead to obligations beyond those expressly contained in a particular treaty. The 2016 Model BIT therefore sought to define more precisely the persons, investments and standards within the bounds of treaty protection,¹⁶ while strengthening the State's scope for regulation.

¹⁰ United Nations Conference on Trade and Development (UNCTAD), *Investor-State Dispute Settlement* (UNCTAD Series on Issues in International Investment Agreements II, 2014).

¹¹ UNCTAD, *Investor-State Dispute Settlement* (UNCTAD Series on Issues in International Investment Agreements II, 2014).

¹² Department of Economic Affairs, Ministry of Finance, Government of India, *Model Text for the Indian Bilateral Investment Treaty* (2016) preamble

<https://dea.gov.in/files/other_reports_documents/ModelTextIndia_BIT.pdf> accessed 14 September 2026.

¹³ Department of Economic Affairs, Ministry of Finance, Government of India, 'Model Text for the Indian Bilateral Investment Treaty' (14 January 2016) <<https://www.dea.gov.in/index.php/other-reports/model-text-indian-bilateral-investment-treaty>> accessed 14 September 2026.

¹⁴ *White Industries Australia Limited v Republic of India* (UNCITRAL, Final Award, 30 November 2011) paras 11.2.1–11.2.9.

¹⁵ *ibid* para 11.2.1 – 11.2.3, 16.1.1.

¹⁶ Department of Economic Affairs, Ministry of Finance, Government of India, *Model Text for the Indian Bilateral Investment Treaty* (2016) arts 1, 3 and 5

<https://dea.gov.in/files/other_reports_documents/ModelTextIndia_BIT.pdf> accessed 14 September 2026.

Redefining Investment and Investor

A central characteristic of the Model BIT is its enterprise-based definition of investment.¹⁷ Article 1.4 defines investment mainly by reference to an enterprise, which is constituted organised and operated in good faith in accordance with the host State's law together with its assets and specific characteristics. These include a commitment of capital or other resources, duration, expectation of gain or profit, assumption of risk and significance for the development of the host State. The Model BIT also excludes specified categories of assets from protection, moving away from the common use in earlier investment treaties of the wide asset-based formulations.¹⁸

The definition of "investor" similarly aims to establish a genuine connection with the home State. For juridical persons, the Model BIT requires incorporation and operation under the law of the relevant Party together with substantial business activities or qualifying ownership and control. These requirements narrow the access to treaty protection for entities that lack a substantive economic connection with the State whose nationality they claim and thereby address concerns of treaty shopping.¹⁹

Narrower Substantive Protection

The Model BIT also recalibrates the substantive standards that apply to investments. Article 3 does not reflect the conventional formula for a broad and autonomous fair and equitable treatment standard. Rather, it links protection to violations of customary international law with specific situations such denial of justice, fundamental breach of due process and targeted discrimination on manifestly unjustified grounds and manifestly abusive treatment. "Full protection and security" are explicitly confined to physical security.²⁰

The approach to expropriation similarly seeks to preserve regulatory space. While the treaty protects against direct and indirect expropriation subject to specified conditions, Article 5.5 provides that non-discriminatory regulatory measures designed and applied to protect legitimate public-interest objectives such as public health, safety and the environment do not

¹⁷ Department of Economic Affairs, Ministry of Finance, Government of India, *Model Text for the Indian Bilateral Investment Treaty* (2016) art 1.4

<https://dea.gov.in/files/other_reports_documents/ModelTextIndia_BIT.pdf> accessed 14 September 2026.

¹⁸ *ibid* arts 1.4, 1.5.

¹⁹ *ibid* art 1.5.

²⁰ *ibid* art 3.

constitute expropriation.²¹ The Model BIT also omits an MFN clause, an important departure given the interpretative issues raised in *White Industries*.²²

Investor Responsibilities

The Model BIT does not define investment protection solely in terms of State obligations. Article 11 requires investors and their investments to comply with applicable laws, including taxation requirements and contains provisions addressing improper advantages and information disclosure.²³ Article 12 further encourages investors to voluntarily incorporate internationally recognised corporate social responsibility standards relating to labour, the environment, human rights, community relations and anti-corruption.²⁴ These provisions do not put the investors on an equal footing to States, but they indicate an attempt to locate investment protection within a broader framework of lawful and responsible investment.

Taken together, these provisions indicate that the 2016 Model BIT was not constructed merely to reduce the protection available to foreign investors, but to redefine the conditions, scope and purposes of such protection. This recalibration of substantive rights and regulatory space, then, forms the basis for examining the Model BIT's more consequential innovation in dispute settlement: the conditions under which an investor may access international adjudication.

India's ISDS Architecture under the 2016 Model BIT

The 2016 Model BIT does not entirely eliminate investor-State arbitration. Rather, it seeks to restrict access to international ad hoc tribunals by linking it to a series of procedural conditions,²⁵ thereby prioritizing domestic over international dispute settlement, promoting dispute prevention measures and ensuring treaty arbitration as a supplement to international adjudication.

Local Remedies as a Condition of Access

The most prominent among these measures is Article 15.2, which contains a five-year local

²¹ *ibid* art 5.5.

²² *White Industries (n 14)* paras 11.2.1–11.2.9.

²³ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 11.

²⁴ *ibid* art 12.

²⁵ *ibid* art 15 – 17.

remedies exhaustion requirement.²⁶ This provision, which significantly narrows investors' access to international arbitration,²⁷ states that, if applicable, a disputing investor must pursue available judicial or administrative remedies in India for at least five years from the date on which it became aware or should have become aware of the measure and the damage or loss it had caused.²⁸

The five-year period makes the treaty arbitration inaccessible to many investors, as does the requirement to invoke it only after exhausting domestic remedies. This provision reflects the sovereignty concerns of the Indian government, which seeks to ensure that State regulation is subjected to judicial review at the level of domestic courts and tribunals before it is challenged internationally. However, the timing of the five-year threshold may also limit the effectiveness of arbitration as a remedy for treaty violations. Overall, the 2016 Model BIT does not eliminate international dispute settlement but rather narrows its scope and subjects it to procedural conditions.²⁹

Notice and Amicable Settlement

In conjunction with the five-year local remedy's exhaustion requirement, Article 15 establishes a set of procedural prerequisites for arbitration.³⁰ First, an investor must provide a notice specifying the information about the parties, the factual and legal grounds of the dispute,³¹ the allegedly violated treaty provisions and the type of remedies or compensation sought. Second, the parties must attempt to settle the dispute amicably through consultation, negotiation or third-party dispute settlement procedures for at least six months from the date of the notice of dispute.³²

The 2016 Model BIT thus promotes dispute prevention and settlement measures as a prerequisite for treaty arbitration.³³ This requirement allows the State and the investor to settle the dispute directly or through independent third parties, thereby eliminating the need for

²⁶ *ibid* art 15.2.

²⁷ Jarrod Hepburn and Ridhi Kabra, 'India's New Model Investment Treaty: Fit for Purpose?' (2017) 25 ICSID Review 312 <<https://doi.org/10.1093/ICSIDREVIEW/25.2.312>> accessed 15 September 2026.

²⁸ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15.1 – 15.2.

²⁹ *ibid* art 15.1 – 15.5.

³⁰ *ibid* arts 15.2–15.5.

³¹ *ibid* arts 15.3.

³² *ibid* arts 15.4.

³³ United Nations Commission on International Trade Law (UNCITRAL), 'Investment Mediation and Dispute Prevention' <<https://uncitral.un.org/en/investmentmediationanddisputeprevention>> accessed 16 September 2026.

international adjudication.

Limitation and Waiver

The five-year local remedies exhaustion requirement is complemented by a six-year limitation period,³⁴ calculated from the date of the investor's knowledge of the allegedly violating measure and damage or loss,³⁵ with modifications in accordance with applicable rules on domestic proceedings. Additionally, the Model BIT requires an investor to notify the State of any waiver of local remedies in other proceedings regarding the same measure and to accept the conditions of waiver in accordance with the principles of equality and good faith.³⁶

Procedural rules on limitation and waiver supplement the local remedies exhaustion requirement by ensuring that arbitration will not be available to investors indefinitely or for measures they have already accepted. Overall, this set of procedural restrictions and prerequisites significantly narrows investors' access to treaty arbitration.³⁷

Retention of International Arbitration

Despite these limitations, the 2016 Model BIT does not eliminate international arbitration as a remedy for treaty violations.³⁸ Once the procedural conditions of local remedies exhaustion and consultation have been satisfied, an investor may submit the dispute for arbitration in accordance with the ICSID Convention, the ICSID Additional Facilities Arbitration Rules or the UNCITRAL Arbitration Rules,³⁹ depending on the circumstances of the case. Additionally, the treaty confirms the parties' consent to arbitration in accordance with the rules and procedures established by the treaty under Article 17.⁴⁰

Overall, the 2016 Model BIT regulates access to international arbitration by requiring dispute prevention measures, notice of dispute, local remedies exhaustion and consultation in accordance with applicable procedural rules.⁴¹ These conditions place the domestic dispute settlement mechanism in priority over arbitration, which, in turn, supplements the domestic

³⁴ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15.5.

³⁵ *ibid* art 15.5(i).

³⁶ *ibid* art 15.5(iii).

³⁷ *ibid* arts 15.2–15.5.

³⁸ *ibid* arts 15–17.

³⁹ *ibid* art 16.3.

⁴⁰ *ibid* art 17.1.

⁴¹ *ibid* arts 15.2–15.5.

procedures.⁴²

The Ordering of Dispute Settlement under the 2016 Model BIT is key to understanding its compatibility with the UNCITRAL Reforms.

The 2016 Model BIT promotes domestic dispute settlement and makes international arbitration accessible only after local remedies have been exhausted and consultation has taken place. These procedural conditions illustrate the Indian government's preference for the jurisdiction of Indian courts and tribunals over international ad hoc tribunals in the resolution of investor-State disputes. This preference is the key to understanding the compatibility of the 2016 Model BIT with the UNCITRAL reforms.

The 2016 Model BIT consequently places domestic remedies, consultation and procedural safeguards before international arbitration while preserving the latter as a treaty-based remedy. This ordering of dispute resolution is central to understanding its compatibility with the subsequent UNCITRAL reform agenda, particularly its emphasis on procedural efficiency, dispute prevention and the relationship between domestic and international mechanisms.⁴³

UNCITRAL's ISDS Reform: Objectives and Emerging Mechanisms

The reform process of UNCITRAL Working Group III responds to concerns regarding the functioning of the current international investment law regime and the operation of its dispute settlement mechanism. The Working Group was tasked with identifying ISDS concerns, determining the desirability of reform and, if appropriate, developing reform options.⁴⁴ The reform process does not pursue a single alternative to arbitration; rather, it explores a variety of options relating to the cost and length of proceedings, consistency and correctness of awards, independence and impartiality of adjudicators, dispute prevention measures and procedures for managing the ISDS system.⁴⁵

⁴² *ibid* arts 15–17.

⁴³ United Nations Commission on International Trade Law (UNCITRAL), 'Working Group III: Investor-State Dispute Settlement Reform' <https://uncitral.un.org/en/working_groups/3/investor-state> accessed 17 September 2026.

⁴⁴ United Nations Commission on International Trade Law (UNCITRAL), 'Working Group III: Investor-State Dispute Settlement Reform' <https://uncitral.un.org/en/working_groups/3/investor-state> accessed 18 September 2026.

⁴⁵ UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Report of Working Group III on the Work of its Thirty-Fourth Session' UN Doc A/CN.9/930/Rev.1 (2018) paras 15–18.

Procedural and Cross-Cutting Reform

One of the options under consideration within the reform process pertains to the procedural and cross-cutting aspects of ISDS practice, including the conduct and management of arbitration proceedings. Concerns in this area include the length and expense of proceedings, allocation of costs, frivolous or non-meritorious claims, inconsistencies between awards and the proliferation of parallel proceedings.⁴⁶ Additionally, many States have expressed concerns regarding the ability of the current treaty and institutional regimes to respond to such issues.⁴⁷

The Working Group has developed a set of draft provisions relating to a variety of procedural and cross-cutting issues, including treaty interpretation by States, submissions of non-disputing Treaty Parties and management of proceedings.⁴⁸

Legitimacy and Conduct of Adjudicators

Another area of reform, which responds to concerns regarding the legitimacy of the international investment dispute settlement system, pertains to the conduct of adjudicators and the adoption of a code of conduct for arbitrators and judges.⁴⁹ The UNCITRAL Code of Conduct of Arbitrators in International Investment Dispute Resolution was adopted by the Working Group in 2023, while the Code of Conduct of Judges was adopted in principle the same year.⁵⁰ Both documents address issues of independence, impartiality and conflict of interests, as well as guidelines on multiple appointments, ex parte communications, confidentiality and disclosure.⁵¹

Mediation and Dispute Prevention

A separate set of measures within the reform process is devoted to mediation and dispute prevention. The focus of this initiative is on encouraging dispute settlement measures that prevent disputes from arising and promote their early resolution.⁵² In 2023, the Working Group

⁴⁶ UNCITRAL, 'Procedural Rules Reform and Cross-cutting Issues'

<<https://uncitral.un.org/en/proceduralrulesreformandcrosscuttingissues>> accessed 18 September 2026.

⁴⁷ UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Provisions on Procedural and Cross-cutting Issues' UN Doc A/CN.9/WG.III/WP.253 (2025).

⁴⁸ *ibid.*

⁴⁹ UNCITRAL, 'Codes of Conduct' <<https://uncitral.un.org/en/codeofconduct>> accessed 18 September 2026.

⁵⁰ UNCITRAL, *Code of Conduct for Arbitrators in International Investment Dispute Resolution and Commentary* (2023) <https://uncitral.un.org/en/codeofconduct> accessed 19 September 2026.

⁵¹ *ibid.*

⁵² UNCITRAL, 'Investment Mediation and Dispute Prevention'

adopted Model Provisions and Guidelines on Mediation for International Investment Disputes⁵³ and in 2025 – the Toolkit on Prevention and Mitigation of International Investment Disputes, which identify strategies for preventing and mitigating disputes that have already emerged.⁵⁴ Overall, this area of reform reflects the recognition that the investment dispute settlement system needs to be strengthened not only through arbitration but also through preventive measures.

Institutional Support and the Advisory Centre

Another critical area of reform within the competence of Working Group III is institutional support and the establishment of an advisory centre.⁵⁵ The Multilateral Advisory Centre on International Investment Disputes Resolution, whose statute was adopted in principle in 2024, is intended to provide countries with the technical and legal support needed to engage in negotiations and manage investment disputes, including through dispute settlement procedures.⁵⁶ This reform response is consistent with the general objective of promoting dispute prevention and settlement, especially for States that lack the institutional capacity to participate fully in the investment dispute settlement process.⁵⁷

Standing and Appellate Mechanisms

The most comprehensive reform options pertain to the establishment of a standing multilateral mechanism for the settlement of investment disputes and the creation of an appellate tribunal. The draft statutes for a permanent tribunal and a permanent appellate tribunal are currently under consideration by Working Group III.⁵⁸

The objective of these options is to standardize the adjudication process, promote consistency and predictability of awards and enhance the legitimacy of the international investment dispute

<<https://uncitral.un.org/en/investmentmediationanddispute prevention>> accessed 19 September 2026.

⁵³ UNCITRAL, *Guidelines on Mediation for International Investment Disputes* (2023), annex: *UNCITRAL Model Provisions on Mediation for International Investment Disputes*

<<https://uncitral.un.org/en/investmentmediationanddispute prevention>> accessed 19 September 2026.

⁵⁴ UNCITRAL, *Toolkit on Prevention and Mitigation of International Investment Disputes* (2025)

<<https://uncitral.un.org/en/investmentmediationanddispute prevention>> accessed 19 September 2026.

⁵⁵ UNCITRAL, *Statute of the Advisory Centre on International Investment Dispute Resolution* (adopted in principle 2024) <<https://uncitral.un.org/en/texts/isds>> accessed 19 September 2026.

⁵⁶ *ibid.*

⁵⁷ UNCITRAL, ‘Investor-State Dispute Settlement’ <<https://uncitral.un.org/en/texts/isds>> accessed 19 September 2026.

⁵⁸ UNCITRAL, ‘Working Group III: Investor-State Dispute Settlement Reform’

<https://uncitral.un.org/en/working_groups/3/investor-state> accessed 20 September 2026.

settlement system. The Working Group has examined the general principles that could guide the functioning of a permanent investment court and a standing appellate tribunal⁵⁹ in order to ensure their independence and institutional integrity.⁶⁰ However, as of September 2026, standing and appellate mechanisms remain an option under consideration rather than an established reform measure with a permanent institutional structure.⁶¹

The reform process of UNCITRAL Working Group III thus includes a variety of options, ranging from procedural adjustments and dispute prevention measures to the creation of a standing international investment court.⁶² The next section of this paper addresses the compatibility of the 2016 Model BIT with the UNCITRAL reforms by comparing the key aspects of the ISDS regimes established by the two instruments.⁶³

Compatibility, Divergence and the Question of Sovereignty

Comparing the 2016 Model BIT with the UNCITRAL reform agenda provides insight into the compatibility of the Indian government's approach with the general tendency to adjust the international investment law regime in response to concerns of States that adhere to the treaty arbitration system. The comparison is most useful at the level of individual provisions, as the 2016 Model BIT does not pursue a uniform objective of curtailing international arbitration. Rather, the Indian approach incorporates both restrictions on the use of treaty arbitration and procedural adjustments that apply regardless of the type of dispute settlement mechanism.⁶⁴

Local Remedies and Procedural Discipline

The area of greatest compatibility between the 2016 Model BIT and the UNCITRAL reform agenda is the procedural discipline that applies to international arbitration. As noted above, Article 15.2 of the 2016 Model BIT requires that a disputing investor pursue available judicial or administrative remedies in India for at least five years before initiating arbitration proceedings. Additionally, the treaty requires consultation after the notice of dispute and compliance with the applicable limitation and waiver rules. These procedural requirements,

⁵⁹ *ibid.*

⁶⁰ UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Statute of a Standing Mechanism for the Resolution of International Investment Disputes' UN Doc A/CN.9/WG.III/WP.239 (2024).

⁶¹ 'Investor-State Dispute Settlement Reform' (n 58).

⁶² ISDS (n 60).

⁶³ *ibid.*

⁶⁴ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15 – 17.

which impose significant restrictions on the use of international ad hoc arbitration, complement each other to ensure that arbitration is not used as a replacement for domestic dispute settlement measures.⁶⁵

The issue of domestic remedies exhaustion overlaps with one of the procedural reforms under consideration by UNCITRAL Working Group III. Although the proposed reforms do not adopt a uniform approach to this issue, they do address the concerns of States that wish to limit the use of international arbitration in favour of domestic dispute settlement mechanisms by expanding the procedural discipline that applies to arbitration.⁶⁶ The similarity between the approaches of the 2016 Model BIT and UNCITRAL reforms ends at the recognition of the need to adjust procedural rules, as the two instruments differ in detail and implementation.

Dispute Prevention and Early Settlement

Another similarity between the 2016 Model BIT and the UNCITRAL reforms is the introduction of measures for dispute prevention and early settlement. Article 15.4 of the 2016 Model BIT requires the parties to consult with each other, negotiate and consider other settlement options, including third-party dispute resolution mechanisms, for at least six months from the date of the notice of dispute.⁶⁷ This requirement allows the State and the investor to resolve the dispute without arbitration and thus prevents the ad hoc tribunal from intervening in the dispute settlement process.⁶⁸

At the same time, the 2016 Model BIT is not the only instrument that promotes early dispute resolution. The UNCITRAL reforms also pursue this objective, as demonstrated by the adoption of the Model Provisions and Guidelines on Investment Mediation and the Toolkit on Prevention and Mitigation of International Investment Disputes.⁶⁹ The latter document, which was adopted in 2025, demonstrates that States have begun to adopt measures to help prevent disputes with regard to foreign investors.⁷⁰

The common objective of dispute prevention and settlement explains the similarities between

⁶⁵ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15.

⁶⁶ UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Workplan' UN Doc A/CN.9/WG.III/WP.166 (2019) paras 8 – 9.

⁶⁷ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15.4.

⁶⁸ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15.2 – 15.4.

⁶⁹ UNCITRAL, 'Investment Mediation and Dispute Prevention' (n 8).

⁷⁰ UNCITRAL, *Toolkit on Prevention and Mitigation of International Investment Disputes* (2025) (n 54).

the 2016 Model BIT and the UNCITRAL reforms. However, while the procedural requirements of the 2016 Model BIT are binding and apply exclusively to the arbitration process, the mediation and dispute prevention measures promoted by UNCITRAL reforms are generally optional. The approaches of the two instruments are thus similar but not identical, with the UNCITRAL reforms offering a more flexible framework.⁷¹

Regulatory Autonomy: A Different Level of Reform

The comparison of the 2016 Model BIT and the UNCITRAL reforms become more complex when regulatory autonomy is considered. The 2016 Model BIT narrows the scope of protection and compensation by limiting the definition of treatment standard to customary international law, restricting the scope of total protection and security to physical security, prohibiting the inclusion of an MFN clause and specifying the conditions of indirect expropriation.⁷² Additionally, the treaty provides that certain non-discriminatory regulations are not subject to expropriation and establishes requirements for investors' compliance with domestic law.⁷³

The 2016 Model BIT thus responds to concerns regarding the sovereignty of the State by limiting the scope of compensation and protection available to investors. Unlike the procedural discipline promoted by the UNCITRAL reforms, which applies to arbitration regardless of the type of dispute, this aspect of the 2016 Model BIT creates conditions for differential treatment and establishes a uniform standard of protection and compensation for all investors. However, it is important to note that the UNCITRAL reforms do not pursue the objective of adjusting the substantive provisions of international investment agreements.⁷⁴

Adjudicator Legitimacy and Independence

Both the 2016 Model BIT and the UNCITRAL reforms address concerns regarding the legitimacy of adjudication and the independence of adjudicators. The 2016 Model BIT promotes the legitimacy of arbitration by referring to the ICSID Convention, the ICSID Additional Facility Rules and the UNCITRAL Arbitration Rules as potential dispute settlement mechanisms.⁷⁵ However, the treaty does not go beyond these general references, establishing

⁷¹ UNCITRAL, *Guidelines on Mediation for International Investment Disputes* (2023) (n 53).

⁷² *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 3, 4.

⁷³ *ibid* arts 1.4, 1.5, 11.

⁷⁴ UNCITRAL, 'Investor-State Dispute Settlement' (n 7).

⁷⁵ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 16.3.

no rules regarding the conduct of arbitration proceedings or the appointment of adjudicators.⁷⁶

The UNCITRAL reforms, in turn, promote adjudicator legitimacy not only by adjusting the arbitration rules but also by adopting a code of conduct for arbitrators and judges.⁷⁷ Specifically, the Code of Conduct of Arbitrators in International Investment Dispute Resolution and the Code of Conduct of Judges, which were adopted by Working Group III in 2023, outline general principles that apply to arbitrators in order to strengthen their impartiality and independence.⁷⁸

Institutional Divergence

The 2016 Model BIT and the UNCITRAL reforms differ significantly in terms of institutional design. The former instrument restricts the use of treaty arbitration, whereas the latter option promotes a uniform set of procedural rules and dispute settlement mechanisms. The most comprehensive reform under consideration by UNCITRAL Working Group III refers to the creation of a standing multilateral mechanism for the settlement of investment disputes. The adoption of such a mechanism would establish a permanent dispute settlement tribunal that would function independently of the ad hoc tribunals traditionally utilized under investment treaties.⁷⁹

From this perspective, the institutional design of the 2016 Model BIT and the UNCITRAL reforms represents a fundamental contradiction, as the former instrument is based on the principle of treaty arbitration while the latter option envisions a different mode of dispute settlement.⁸⁰ Nevertheless, as noted above, the two approaches are not necessarily incompatible, as the 2016 Model BIT only restricts access to arbitration whereas the standing mechanism under consideration by UNCITRAL reforms does not prevent the use of traditional dispute settlement methods.⁸¹

Compatibility or Contradiction?

The analysis presented above demonstrates that the 2016 Model BIT and the UNCITRAL

⁷⁶ *ibid* arts 16–17.

⁷⁷ UNCITRAL, *Code of Conduct for Arbitrators in International Investment Dispute Resolution and Commentary* (2023) (n 50).

⁷⁸ *ibid*.

⁷⁹ UNCITRAL, ‘Working Group III: Investor-State Dispute Settlement Reform’ (n 43).

⁸⁰ UNCITRAL, ‘Possible Reform of Investor-State Dispute Settlement (ISDS): Draft Statute of a Standing Mechanism for the Resolution of International Investment Disputes’ UN Doc A/CN.9/WG.III/WP.239 (2024).

⁸¹ UNCITRAL, ‘Working Group III: Investor-State Dispute Settlement Reform’ (n 43).

reforms do not contradict each other but rather pursue partially overlapping objectives. Both instruments respond to concerns regarding the legitimacy of arbitration and the need for procedural discipline, although the 2016 Model BIT introduces stricter limitations for arbitration use.⁸² Additionally, the 2016 Model BIT and the UNCITRAL reforms promote the principles of dispute prevention and settlement, albeit through different procedural measures.⁸³ At the same time, the 2016 Model BIT incorporates substantive restrictions that are not included in the procedural reforms of the UNCITRAL Working Group III.⁸⁴

The comparison thus illustrates the partial compatibility of the 2016 Model BIT with the UNCITRAL reforms, which pursue similar but not identical objectives and address different aspects of the ISDS regime. The two instruments can therefore be regarded as complementary rather than contradictory, with the UNCITRAL reforms expanding upon the 2016 Model BIT by introducing additional procedural and institutional measures.

India and the UNCITRAL Reform Process: Influence or Convergence?

The existence of similarities between India's 2016 Model BIT and the UNCITRAL ISDS reform agenda raises the further question of whether India's approach influenced the development of the multilateral reform process or merely mirrored concerns independently being explored elsewhere. The former involves compatibility, in which the ability of two approaches to coexist or pursue similar goals is established; the latter requires direct evidence of an influence, as its development is based on an influence. Chronology of the two processes that is India's engagement with Working Group III and the lack of a clear attribution – must thus be considered together.⁸⁵

India as a Participant in the Reform Process

India has been a participant in UNCITRAL Working Group III throughout its reform process. Reports record Indian participation in successive sessions held, including the thirty-eighth to fifty-fourth and the fifty-third and fifty-fourth sessions in 2026. India's engagement is therefore not that of an external observer to a reform process affecting its treaty policy. Indian government representatives have also participated in UNCITRAL-related discussions on

⁸² UNCITRAL, 'Procedural Rules Reform and Cross-cutting Issues' (n 46).

⁸³ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15.4; UNCITRAL, *Guidelines on Mediation for International Investment Disputes* (2023) (n 53).

⁸⁴ UNCITRAL, 'Working Group III: Investor-State Dispute Settlement Reform' (n 43).

⁸⁵ UNCITRAL, 'Working Group III: Investor-State Dispute Settlement Reform' (n 43).

investment treaty reform and ISDS. This establishes that India has had the opportunity to present and defend its experience and regulatory preferences within the multilateral process.⁸⁶

Participation, however, should not be equated with demonstrated influence. Working Group III is a multilateral process involving numerous States with differing experiences and preferences and its mandate expressly permits States to choose whether and to what extent to adopt the reform solutions developed by the Working Group. The reform texts are consequently the product of multilateral deliberation rather than the transplantation of any single State's model.⁸⁷

Areas of Observable Convergence

Certain parallels nevertheless deserve attention. India's 2016 Model BIT had already included domestic-remedy requirements, waiver provisions and mechanisms encouraging consultation before arbitration. UNCITRAL subsequently examined exhaustion of local remedies, multiple proceedings and other procedural safeguards as possible systemic reforms. Similarly, India's emphasis on consultation before arbitration corresponds to UNCITRAL's later work on mediation and dispute prevention.⁸⁸

There are also examples of Indian treaty practice intersecting with subjects subsequently examined by Working Group III. UNCITRAL's compilation of treaty provisions on procedural and cross-cutting issues, for instance, identifies the Belarus–India BIT (2018) as containing a mechanism under which subsequent interpretations of the treaty by its Parties are binding on tribunals constituted under it. Such examples demonstrate that elements associated with treaty-Party control and procedural discipline have appeared in Indian treaty practice alongside their consideration in the UNCITRAL process.⁸⁹

Why Similarity Does Not Establish Influence

The chronology nevertheless cautions against a causal conclusion. Several of the concerns addressed by India's Model BIT – regulatory autonomy, domestic remedies, limits on arbitral

⁸⁶ *ibid.*

⁸⁷ UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Reform Options' UN Doc A/CN.9/WG.III/WP.166 (2019) paras 1 – 2.

⁸⁸ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) art 15.2 – 15.5.; UNCITRAL, 'Procedural Rules Reform and Cross-cutting Issues' (n 46); UNCITRAL, 'Investment Mediation and Dispute Prevention' (n 8).

⁸⁹ UNCITRAL, *Compilation of IIA Provisions and Arbitration Rules Related to Procedural and Cross-cutting Issues* (2025) <https://uncitral.un.org/sites/default/files/media-documents/uncitral/compilation_of_provisions_on_dp_and_ndtp_for_website.pdf> accessed 24 September 2026.

access and procedural control – were also being raised by other States and actors within the international investment regime. UNCITRAL itself pursued multiple reform solutions simultaneously rather than selecting a pre-existing national model as the basis of reform.⁹⁰

Consequently, the available evidence supports a conclusion of convergence more readily than direct influence. India's treaty practice illustrates one State-level response to structural concerns associated with ISDS, while UNCITRAL provides a multilateral forum in which similar concerns have been translated into reforms capable of application across different treaty systems. Demonstrating actual Indian influence would require more specific evidence – such as an Indian submission advancing a particular proposal, references by the Working Group to that proposal or negotiation records showing that an Indian position materially shaped the final text.⁹¹

India's Significance in the Reform Debate

This does not diminish the significance of India's approach. The 2016 Model BIT demonstrates that reform can occur through unilateral or bilateral treaty redesign, while UNCITRAL demonstrates the possibility of developing common procedural and institutional solutions at the multilateral level. India's experience consequently forms part of the broader evidence base from which States can assess different methods of recalibrating ISDS.⁹²

The more defensible conclusion, therefore, is that India has been an active participant in and parallel contributor to the wider reform environment, but the proposition that the 2016 Model BIT directly influenced specific UNCITRAL reforms requires a stronger documentary record than textual similarities alone can provide. This distinction also explains why India's post-2016 treaty practice is relevant: it demonstrates that India's own approach has continued to evolve alongside the international reform process rather than remaining fixed in the 2016 Model BIT.⁹³

Evolution of India's Approach After 2016

While the 2016 Model BIT represents India's approach to limiting treaty arbitration and regulating access to international dispute settlement, its actual practice demonstrates the

⁹⁰ UNCITRAL, 'Possible Reform of Investor-State Dispute Settlement (ISDS): Reform Options' UN Doc A/CN.9/WG.III/WP.166 (2019) paras 1–2.

⁹¹ UNCITRAL, 'Working Group III: Investor-State Dispute Settlement Reform' (n 43).

⁹² *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17); *ibid*.

⁹³ *ibid*.

flexibility of the principles it establishes. The conclusion of the India–UAE BIT in 2024 and the India–Israel BIA in 2025 indicates that the Indian government has gradually adjusted its policy in response to regional dynamics, as well as the overall trend toward investor-friendly measures.⁹⁴

The India–UAE BIT 2024 contains several similarities with the 2016 Model BIT, including investor obligations, regulatory safeguards and the local remedies exhaustion requirement.⁹⁵ However, it also differs from the Model BIT in several significant respects, including the duration of the local remedy’s exhaustion period and the scope of portfolio investments. Notably, the India–UAE BIT adopts a shorter three-year local remedies exhaustion period. It also refers to portfolio investments, suggesting that the restrictions of the 2016 Model BIT were modified to accommodate the needs of foreign portfolio investors.⁹⁶

The India–Uzbekistan BIT 2024, by contrast, adheres more closely to the principles of the 2016 Model BIT. This BIT contains an enterprise-based definition of investment, a right-to-regulate provision and investor obligations, as well as the five-year local remedies exhaustion requirement. At the same time, the India–Uzbekistan BIT also contains more detailed provisions pertaining to third-party funding, frivolous claims, arbitrator conflicts, transparency, costs and appeals. This illustrates the flexibility of the 2016 Model BIT and the adaptability of India’s investment treaty practice.⁹⁷

The India–Israel BIA 2025, which has come into force on 4 July 2026, also contains several similarities with the 2016 Model BIT, including the regulatory safeguards and the local remedies exhaustion requirement. These similarities, however, are accompanied by modifications to the investment protection regime. Most importantly, the India–Israel BIA refers to portfolio investments and stipulates a three-year local remedies exhaustion period.⁹⁸

⁹⁴ Department of Economic Affairs, Ministry of Finance, Government of India, ‘Bilateral Investment Promotion and Protection Agreement (BIPA)’ <<https://www.dea.gov.in/documents-bilateral-investment-treaties?page=0>> accessed 24 September 2026.

⁹⁵ Agreement between the Government of the Republic of India and the Government of the United Arab Emirates for the Promotion and Protection of Investments (2024) arts 1, 17.

⁹⁶ Department of Economic Affairs, Ministry of Finance, Government of India, ‘Bilateral Investment Promotion and Protection Agreement (BIPA)’ (n 93).

⁹⁷ Agreement between the Government of the Republic of India and the Government of the Republic of Uzbekistan for the Promotion and Protection of Investments (2024) arts 1, 2, 17, 23–25, 31; *ibid*.

⁹⁸ Agreement between the Government of the Republic of India and the Government of the State of Israel concerning the Promotion and Protection of Investments (2025) arts 1, 17; Department of Economic Affairs, Ministry of Finance, Government of India, ‘Bilateral Investment Promotion and Protection Agreement (BIPA)’ (n 93).

Moreover, in the 2025 Union Budget, the Government announced that the Model BIT would be revamped and made more attractive to investors; the most recent implementation statement confirms that this undertaking has been undertaken.

Conclusion

The evolution of investor-State dispute settlement is a process of reconciling two seemingly contradictory aims: the protection of foreign investment and the authority of the State to regulate in the public interest. India's 2016 Model BIT represents one significant contribution to this debate by limiting the substantive protections offered, increasing the safeguards for regulation and placing procedural conditions on the access to international adjudication. The result is a framework which ties international investment protection more closely to domestic law, remedies and the regulatory responsibilities of the State.⁹⁹

A comparison with the UNCITRAL Working Group III process demonstrates that there is considerable functional compatibility between the Indian approach to reform and several elements of the reform agenda more widely. Both place greater emphasis on procedural discipline, dispute prevention and the legitimacy of international adjudication. India's requirement to pursue domestic remedies, its consultation mechanism and restrictions on parallel proceedings mirror concerns that have also been explored by the UNCITRAL process. However, the comparison also highlights the limits of this convergence. Whereas India has largely addressed regulatory autonomy through the drafting of substantive treaty standards and restrictions on investor claims, UNCITRAL's reform process has focused primarily on the procedural and institutional functioning of ISDS. Moreover, India has retained existing arbitral mechanisms whereas UNCITRAL has been considering more fundamental institutional alternatives, including standing and appellate mechanisms.¹⁰⁰

As such the analysis serves to suggest that sovereignty and investment protection should not be framed solely as mutually exclusive principles. The more pressing question is how international investment agreements distribute regulatory and adjudicatory authority between the host State, its domestic institutions and international tribunals. India's 2016 Model BIT responds to this question by attaching greater weight to domestic processes and regulatory autonomy and retaining access to international adjudication. Whether that balance is

⁹⁹ *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17) arts 3, 5, 11, 15 – 17.

¹⁰⁰ UNCITRAL, 'Working Group III: Investor-State Dispute Settlement Reform' (n 43); *ibid*.

appropriate will depend to an extent on the particular treaty relationship, the nature of the investment and the effectiveness of domestic institutions. The evolution of India's later treaty practice reinforces that this balance is not being permanently fixed in the 2016 formulation.

Finally, the evidence does not permit an inference that similarity equals influence. Whereas India's Model BIT predates developments within the UNCITRAL reform process, India's experience and participation are an element of the international debate on ISDS reform. However, such parallel provisions or objectives are insufficient to demonstrate that UNCITRAL adopted them because of India's approach.¹⁰¹ Influence requires positive evidence from submissions, negotiations or documentary material which would demonstrate causality. On the evidence examined, the relationship is better characterised as convergence accompanying participation, rather than established unilateral influence.

The significance of India's 2016 Model BIT consequently lies not in that it provides a universal template for ISDS reform, but that it demonstrates one State's response to the tensions within the investment-treaty system. The continuing evolution of UNCITRAL's reform process demonstrates that those tensions are being addressed through a broad multilateral search for procedural, institutional and legitimacy-based solutions. Together, the two developments illustrate that the future of investment law is likely to depend not on choosing between investor protection and State sovereignty, but developing legal mechanisms to accommodate both in a more predictable, balanced and legitimate system.¹⁰²

¹⁰¹ *ibid.*

¹⁰² *Model Text for the Indian Bilateral Investment Treaty* (2016) (n 17); UNCITRAL, 'Working Group III: Investor-State Dispute Settlement Reform' (n 43).