

INTERNATIONAL INVESTMENT, OVER-THE-COUNTER DERIVATIVES & RESOLUTION OF ECONOMIC DISPUTES

Article



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Bilateral Investment Treaties in the Russian Federation and the State of Qatar in the wake of Maritime Investment. Part 2: BMIT as a Coherent Solution

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Abstract: Bilateral Investment Treaties (BITs) serve as a crucial foundation for investment protection; however, the rapid expansion of maritime investments presents a complex challenge to this established framework. When investors choose to engage in maritime ventures, a thorough understanding of existing investment protection mechanisms — particularly through relevant BITs — is imperative. It raises a fundamental inquiry: do current BITs effectively establish a coherent and robust protective regime for maritime investments? On the one hand, the current system exhibits a fragmented structure that necessitates examination across four distinct branches of public international law: international investment law, the law of the sea, international environmental law, and international energy law. On the other hand, it is essential to recognize that investment protection must be pursued with due regard for the public interests of the sea. In this study, we conduct a qualitative and quantitative analysis of all BITs concluded by the Rus-

sian Federation and Qatar. Our findings indicate that the existing BIT framework is insufficient to address the unique and dual nature of maritime investments that are characterized by both their scattered legal foundations and the necessity for mutual respect between investment interests and maritime benefits. To address these limitations, current paper proposes the creation of a new category of agreements, termed Bilateral Maritime Investment Treaties (BMITs). These treaties would be designed specifically to cater to the intricate dynamics of maritime investments, thereby providing a more comprehensive protective system.

Keywords: BIT; BMIT; maritime investment; Qatar; Russian Federation

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I. Introduction

Bilateral investment treaties (BITs)¹ serve as primary instruments for safeguarding foreign investments. According to the Morocco — Russian Federation BIT of 2016, “The Contracting Parties make favorable conditions for foreign investors within their territories.”² In the contemporary context, BITs can be understood as a framework aimed at addressing the complex challenges faced by host States and investors, functioning as a conduit for mutual interests and benefits (Aak-en, 2008, p. 1). To date, a total of 2,834 BITs have been concluded globally, with this number continuing to rise annually.³ Recent statistics from the United Nations Conference on Trade and Development (UNCTAD) indicate that maritime States such as the Russian Federation and Qatar have shown a notable propensity for entering into BITs.⁴ The Russian Federation has concluded 84 treaties, while Qatar has established 63, collectively accounting for approximately 6 % of all existing BITs (Abadikhah and Nigmatullin, 2024). This focus on BITs underscores the strategic importance that these nations place on establishing legal frameworks to protect their investors abroad while simultaneously

¹ BITs are one of the types of international investment agreements. As 2007 has stated, international investment agreements include both the bilateral investment treaties (BITs) and the Treaties with Investment Provisions (TIPs). A BIT is an agreement between two countries regarding promotion and protection of investments made by investors from respective countries in each other’s territory. The great majority of International Investment Agreements (IIAs) are BITs. Also, the TIPs bring together various types of investment treaties that are not BITs. Three main types of TIPs can be distinguished: 1. broad economic treaties that include obligations commonly found in BITs (e.g., a free trade agreement with an investment chapter); 2. treaties with limited investment-related provisions (e.g., only those concerning establishment of investments or free transfer of investment-related funds); and 3. treaties that only contain “framework” clauses such as the ones on cooperation in the area of investment and/or for a mandate for future negotiations on investment issues. UNCTAD, Investment Policy Hub, International Investment Agreements Navigator, Terminology. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/by-economy> [Accessed 28.09.2024].

² Morocco — Russian Federation BIT, Art. 3, date of signature: 15.03.2016, not in force.

³ UNCTAD, Investment policy Hub, 2024. Available at: <https://investmentpolicy.unctad.org> [Accessed 07.06.2026].

⁴ UNCTAD, Investment policy Hub, 2024.

attracting foreign investments to their domestic markets. The preamble to the Russian Federation — Palestine BIT further elucidates this commitment, stating, “Considering the necessity to create favorable terms for investments, and realizing that the enhancement and mutual sustenance of investments under the current BIT will facilitate the attraction of investments and contribute to the growth of mutually beneficial economic and commercial relations, the States have declared their consent to this BIT.”⁵ Thus, BITs are regarded as significant protective measures for investors, offering various safeguards that foster a stable investment climate (Freeman and Bartels, 2004, p. 213). Moreover, the International Centre for Settlement of Investment Disputes (ICSID) posits that “today, dispute settlement mechanisms are inextricably linked to the protection of foreign investors, as they are also associated with the protection of merchant rights under commercial treaties.”⁶ This assertion shows the significant role of dispute resolution frameworks in improving investor confidence in the complex landscape of investment law.

While it is authenticated that the current BITs serve as useful instruments to protect the investments in general, it is important to recognize that these agreements face major challenges when addressing investments at sea. The framework of existing BITs is predominantly focused on investments protection and does not sufficiently contain the main requirements of investment protection at sea. Maritime investments operate in a multifaceted legal landscape. On the one hand, the landscape is characterized by a fragmented system, which requires consideration across four branches of public international law including law of the sea, investment law, environmental law, and energy law. Each of the branches presents distinct regimes that must be addressed to ensure useful investment protection at sea. On the other hand, the regulations governing investment protection at sea are intrinsically mutual; for example, it is important to recognize that the investment protection at sea should be done with due respect for the public order of the maritime zones. This basic principle confirms the necessity of bal-

⁵ Palestine — Russian Federation BIT, date of signature: 11.11.2016, date of entry into force: 08.11.2017.

⁶ ICSID. *Wintershall Aktiengesellschaft v. Argentine Republic*, Para. 80, case No. ARB/04/14, 08.12.2008.

ancing the responsibilities and rights of investors with the interests of public governance and maritime ecological preservation.

This study serves as the second part of our previously published article in the “Kutafin Law Review” titled “Bilateral Investment Treaties in the Russian Federation and the State of Qatar in the wake of Maritime Investment. Part 1: Gaps in Regulation” (2024). In this continuation, we show the current legal gaps regarding maritime investments, by focusing on three main areas: (1) the exact delineation of maritime zones, (2) the classifications of investments at sea, and (3) the characterization of maritime investors. The current paper aims to highlight the complex and fragmented nature of the investment protection system at sea. In addition, we present a comprehensive solution designed to address the existing challenges within the BITs by introducing a precise framework, for which we offer a term of *Bilateral Maritime Investment Treaties (BMITs)*. In this context, there are three central hypotheses: first, the BITs do not sufficiently address the fragmented nature of the investment protection system at sea that covers four branches of international law including investment law, law of the sea, environmental law, and energy law. Second, the BITs fail to recognize the dual-faceted aspect of investment protection at sea, which requires that investment preservation be aligned with the public order of the seas and oceans. Third, to effectively bridge the gaps and establish a clear maritime investment protection framework, the useful solution is to establish BMITs. To substantiate the hypotheses, the present article is structured the following way. In the part “Legal System Governing Investment Protection System at Sea”, we analyze the legal framework governing the investment protection system at sea (sections II.1.1, II.1.2). Then we highlight two groups of regulations: the first one pertains to investment protection (section II.2.1), while the second goes through the public interests at sea (section II.2.2). In the part “BMIT as a Novel Solution”, we show a new draft for a good BMIT, outlining the challenging issues related to maritime investment, aligned with a set of regulations, designed to preserve maritime investments. Finally, the paper concludes and recommends for the advancement of investment protections at sea.

II. Legal System Governing Investment Protection System at Sea

The regulatory system governing maritime investments is characterized by its complexity and fragmentation. On the one hand, investors intending to engage in ventures within maritime zones must navigate multiple domains of international law, encompassing international investment law, environmental law, the law of the sea, and energy law. This multifaceted landscape arises from the absence of a coherent and integrated system of protective rules specifically tailored to maritime investments. On the other hand, these branches of international law embody a dualistic nature, wherein they serve two fundamental purposes: (1) the protection of the investor and (2) the safeguarding of public interests. The successful execution of an investment in maritime contexts hinges on the effective interplay between these two sets of regulatory frameworks. In the absence of such interaction, investors may encounter significant challenges that could impede their operations. In this part, we will examine the degree of interrelation between these two sets of rules within the governing system of maritime investment. Our analysis contains both the preamble and the substantive regulations of relevant documents, highlighting how the peaceful coexistence of investment protections at sea and public interest can lead to promote a conducive investment environment.

II.1. Preamble

II.1.1. BITs of the Russian Federation and Qatar

One of the primary instruments, which investors consult to see the dimensions of protection is a BIT. Significantly, several BITs of Qatar and Russia pay attention to the consideration of two categories of investment protection, namely investment protection and the preservation of public interests. Given that the preamble of a BIT articulates its overarching objectives, it is essential to undertake an analysis of this introductory section. For instance, in the preamble of the BIT between Finland and the Russian Federation, one can discern an indirect acknowledgment of the interaction between these two categories. The

preamble States that the contracting parties are “desirous of further developing and strengthening mutual ties in the field of commercial, economic, industrial, technical and scientific coordination and cooperation within the other contracting State’s territory,” while also taking into account the principles set forth in the Final Act of the Helsinki Conference on Cooperation and Security of 1 August 1975.⁷ This treaty does not explicitly foreground public interests; however, it emphasizes bilateral cooperation concerning investment in alignment with the principles of the Helsinki Conference that advocates for cooperation in the interest of humanity and acknowledges the common interest in fostering collaboration across Europe.⁸ Thus, the BIT implicitly necessitates that the States engage in cooperative efforts while respecting the public interests that underpin Europe’s stability and security. By highlighting these principles, the treaty reflects a commitment not only to investor protection, but also to the broader objectives of public interest, emphasizing the necessity for harmonization between the two facets within the maritime investment protection framework.⁹

The acknowledgment of public interests pertaining to the international community is notably reflected in the preamble of one of the Qatari BITs. Specifically, the preamble of the BIT between Ethiopia and Qatar articulates that “the contracting parties are willing to increase and encourage reciprocal useful investment opportunities and to cooperate for the purposes of compliance with the common rights and responsibilities under international law.”¹⁰ This preamble implicitly shows the importance of two branches of international law: law of the sea and environmental law. The invocation of public international law

⁷ Finland — Russian Federation BIT, preamble, date of signature: 08.02.1989, date of entry into force: 13.05.1999.

⁸ Organization for Security and Co-operation in Europe (OSCE), Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki, 1 August 1975. Available at: <https://www.refworld.org/docid/3dde4f9b4.html> [Accessed 21.02.2025].

⁹ The same goes for the Russian Federation — United States of America BIT (1992), which proclaims public rights by pointing to the internationally recognized rights of working people. See the preamble to the BIT. In the preamble of other Russian BITs, the interaction or existence of two different types of interests in the investment process is not considered.

¹⁰ Ethiopia — Qatar BIT, preamble, 2017.

in the preamble highlights the necessity for investments to accompany by the relevant responsibilities and rights, including those concerning the public benefits of marine environments and sustainable management of maritime resources. Failure to observe these obligations could result in substantial challenges in the way of investment. Therefore, the preamble plays great role as a vital reminder of the interconnectedness of investment operations and the imperative to reinforce international responsibilities, thus bolstering a balanced approach which preserves both investor and public interests.

To a certain extent, the preambles of various BITs of the Russian Federation and Qatar offer an implicit acknowledgment of the interplay between public interests and investor interests. However, such treaties necessitate careful interpretation. For example, the BIT between Morocco and the Russian Federation states that “the contracting parties intend to create and maintain favorable conditions for investments made by investors of the State of one Contracting Party in the territory of the State of the other Contracting Party.”¹¹ Similarly, the Qatar — Argentina BIT articulates a parallel intention, asserting that “the parties intend to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party.”¹² Within these preambles, two fundamental phrases emerge: “to create and maintain favorable conditions” and “within the territory of the other Contracting Party.”¹³ In the context of maritime investment protection, the phrase “to create and maintain favorable conditions” suggests that a successful investment process necessitates a cooperative relationship between investor protection and the safeguarding of public interests. Moreover, when considering this interaction in the realm of maritime investment, it is imperative to acknowledge public interests related to marine areas, including concepts such as innocent passage, the installation of submarine cables, traditional fishing rights, and the

¹¹ Morocco — Russian Federation BIT, Art. 3, date of signature: 15.03.2016, not in force.

¹² Argentina — Qatar BIT, Preamble, date of signature: 06.11.2016, not in force.

¹³ For more information on BITs of Qatar, see UNCTAD, investment policy Hub. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/171/qatar> [Accessed 16.02.2025].

overall marine environment. The United Nations Conference on Trade and Development (UNCTAD) has concluded in its studies on investment treaties that an increasing number of States emphasize, within their preambles, the fundamental objective of protecting investments. However, this goal must also encompass other vital policy considerations and public interests, such as health, safety, environmental protection, and the promotion of internationally accepted labor standards.¹⁴ Therefore, the evolving narrative within BITs underscores the necessity of integrating both investor interests and public benefits into the foundational principles governing international investment.

The agreements, like the Russia — Morocco BIT and the Qatar — Argentina BIT, which refer to the public interests in an indirect manner, necessitate precise clarification. On the one hand, the used phrasing, such as “to create and preserve favorable conditions,” may be understood by investors as basically aimed at protecting their interests, potentially overlooking the wider context of public interests. Consequently, it becomes imperative for public international law experts to interpret such terms. These interpretations must aim to inform investors about the intrinsic balance between their rights and the obligations concerning public interests incorporated within these agreements.

II.1.2. UNCLOS

The preamble to the United Nations Convention on the Law of the Sea (UNCLOS)¹⁵ underscores the mutual impacts of the economic operations and public interests at sea. The main goal of UNCLOS is to regulate activities at sea and oceans, including a wide spectrum of economic concerns incorporated in its provisions. For instance, phrases such as “contribution to the growth of the people of the globe,” “fair and effective utilization of the reserves of the oceans and seas to conserve their living resources and protect the marine environment,” “international

¹⁴ Bilateral Investment Treaties 1995–2006: Trends in Investment Rulemaking, UNCTAD, pp. 3, 31 January 2007. Available at: <https://unctad.org/webflyer/bilateral-investment-treaties-1995-2006-trends-investment-rulemaking> [Accessed 16.02.2025].

¹⁵ United Nations Convention on the Law of the Sea, Preamble, 10 Dec. 1982, 1833 U.N.T.S. 397.

economic order,” “exploitation and exploration of the seabed and ocean floor,” and the notion of the “common heritage of humankind” underscore the convention’s commitment to both economic development and environmental stewardship. These expressions reflect the overarching objective of UNCLOS: to protect and facilitate investment and the sustainable exploitation of ocean resources while aligning these activities with the public interests of the international community. Thus, UNCLOS may be viewed as a complementary framework to the Bilateral Investment Treaties (BITs) of the Russian Federation and Qatar. Additionally, for any investment operations in maritime zones, it is vital to observe the mechanisms considered by UNCLOS, as the mechanisms serve as the exclusive way to obtain the relevant licenses for investment at sea and oceans. This framework not only presents a legal base for investment, but also upholds the imperative of balancing investment aspirations with the imperative of the maritime environment protection for the interests of future generations.¹⁶

II.1.3. Environmental Agreements

The goals of environmental agreements may vary notably in accordance with the specific circumstances and ecological issues related to a geographical area. While the primary attention of such agreements is not centered on the investment protection, it is important to note that, they may indirectly support investment initiatives relating to environmental protection. In this regard, we scrutinize the interplay between implicit investment protection at sea and the public interests accompanied with marine environments, as encompassed within the preambles of main treaties concerning protection of marine environment. For example, the preamble to the Convention on the Prevention of Marine

¹⁶ The preamble to UNCLOS takes into account two terms: “protection of the marine environment” and “promotion of the marine environment”. These two terms are different from each other. In protecting the environment, the investor in line with his investment only takes care not to harm the environment, but the promotion of the marine environment goes beyond this and not only does it take care not to cause any damage, but it also helps to improve the infrastructure to protect the environment or to improve the protection dimensions.

Pollution by Dumping of Wastes and Other Matter¹⁷ highlights the necessity for States to consider the public interests when exploiting maritime resources. It expresses that while States keep their sovereign rights to exploit maritime resources, such rights should be implemented in a way which does not adversely affect other States or the oceans at large. This statement upholds the notion that investments at sea should be undertaken with a precise awareness of the public benefits of the international community, especially in connection with the sustainable management of seas and oceans.¹⁸

The preamble to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties¹⁹ implicitly highlights the relationship between the investment protection and the preservation of public interests at seas. In accordance with the preamble, it is acknowledged that oil contamination in the high seas can adversely impact the interests of nations within “the Area.” Since this Area is recognized as the common heritage of humankind, there exists an inherent obligation to preserve it for the benefit of humanity. Consequently, the preamble articulates that protective measures are essential to safeguard both public interests and the integrity of the high seas. It is evident that the preservation of these interests is aimed not only at environmental stewardship, but also to create an atmosphere conducive to favorable investments in the future. Thus, the interplay between environmental protection and investment viability is central to the objectives delineated in this convention.

The preamble to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990 highlights a critical rationale for international cooperation in combating oil pollution: the associated benefits to governments operating within maritime areas. It posits that oil pollution poses a significant threat to the interests of States in these areas. These interests encompass both public and economic dimensions, including safety, environmental integrity, public health, international navigation, and the sustainable exploita-

¹⁷ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1046 UNTS 120, [ATS] 1985 16, 11 ILM 1294 (1972), UKTS 43 (1976).

¹⁸ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

¹⁹ International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention), adoption: 29.11.1969.

tion of both living and non-living resources. Furthermore, the preamble underscores the importance of UNCLOS, illustrating the complementary role of international regulations that govern maritime investment.²⁰ This connection signifies that the endorsement and facilitation of investment activities at sea are inextricably linked to the protection and promotion of public interests. Consequently, effective safeguarding of these interests not only enhances environmental and public safety, but also create an atmosphere conducive to favorable future investment in maritime realms. Therefore, environmental treaties do not focus on the protection of specific investments; rather, they underscore that all forms of investment must be executed in alignment with environmental preservation. Principles such as sustainable development and cooperation can be applied within the framework of the categories of maritime investment. These environmental treaties serve to promote the application of these principles and regulations across all forms of maritime investments, ensuring that environmental considerations are integral to investment practices in these sectors.

II.1.4. Energy Agreements

The preamble to the International Energy Charter²¹ calls upon member States to collaborate with the objective of promoting economic progress while adhering to the principle of sustainable development. Sustainable development is framed as a foundational principle within the preamble, aligning with its acknowledged role in both environmental law and the law of the sea as it pertains to public interests. This preamble implies that States involved in investments at maritime energy sector are required to act in a manner that preserves the public interests, acknowledging that such operations do not result in adverse social or environmental consequences.²²

²⁰ For instance, here the preamble to the International Convention on Oil Pollution Preparedness, Response and Co-operation refers to UNCLOS.

²¹ Available at <https://www.energycharter.org/process/international-energy-charter-2015/overview/> [Accessed 03.04.2025].

²² Directly, the preamble to the International Energy Charter requires states to pursue economic development while taking into account the protection and preservation of the environment, as well as the states should consider environmental dimensions and its protection in cooperation for energy development.

The preamble to the European Energy Charter²³ asks States to uphold investments and economic operations in the energy sector while taking into consideration the sustainable development and the economic pros for the international community. It requests for the removal of any hurdles impeding the advancement of energy economic operation. Based on the charter, sustainable development is not only authenticated as a vital principle, but the necessity of removing impediments to investment is also considered. The text explicitly pays attention to the significance of coordination and cooperation between public interests and relevant investment. Neglecting public interests that govern maritime activities, such as international navigation, can result in significant impediments to maritime energy investment. Consequently, to prevent the creation of obstacles to investment, it is essential that the principles governing both public interests and investment frameworks interact effectively and play a complementary role.

In addition, the preamble to the Energy Charter Treaty²⁴ not only urges States to support and protect the environment, but also explicitly references a range of other environmental treaties, notably the United Nations Framework Convention on Climate Change, the Convention on Long-Range Transboundary Air Pollution, and various other international environmental agreements pertinent to energy, all of which align with the objectives of the Energy Charter treaty. This agreement shows the significance of addressing the public interests, like environmental considerations, as neglecting such interests may result in significant challenges to investment in the energy sector. Consequently, it stresses the necessity of adhering to uphold environmental regulations to ease sustainable investment operations.

II.2. Main Texts of Relevant Documents

The interplay of related legal frameworks regarding investment protection at sea requires a detailed examination of several instruments, like UNCLOS. This convention is important for clarifying the scope of public interests pertinent to the investments at maritime zones, as investment treaties often stay silent on such issues. In line with the BITs,

²³ European Energy Charter. Date of adoption: 17.12.1991.

²⁴ Energy Charter Treaty. Date of signature: 17.12.1994.

it is imperative to consider the preservation of public interests, such as environmental protection. Nevertheless, many BITs do not explicitly pay attention to environmental protection, which requires a reference to relevant environmental agreements for a comprehensive awareness of the legal system. Given environmental matters, agreements such as the Convention on Oil Pollution Preparedness, Response and Co-operation highlights the need of addressing UNCLOS terms to guarantee environmental protection. Therefore, while provisions directing investments at sea may be scattered across various instruments, they collectively play a supplementary role, operating as interrelated links in a broader legal chain. This part pays attention to the main topics of interdependence among four basic categories of sources related to this field: 1. the BITs of the Russian Federation and Qatar, 2. UNCLOS, 3. environmental agreements, and 4. energy agreements.

II.2.1. BITs of the Russian Federation and Qatar

Investment treaties clearly underscore the main clauses and terms concerning investment protection in the main body texts. Once investors decide to involve in economic operations at maritime zones, they have to carefully consider the relevant BITs to see the special protections available to them. In the cases where investments pertain to maritime energy sector, investors should also take the energy charter into consideration.²⁵ To obtain precise information regarding maritime zones, as well as to see the responsibilities and rights of States containing the preservation of public interests at sea, it is important to consult UNCLOS. The marine environment protection should be guaranteed through adherence to environmental provisions. Consequently, the set of regulations governing the maritime investment protection system complements one another, forming a comprehensive framework which addresses the issues regarding maritime investment. This integrated approach is critical for fostering both sustainable investment operations and effective governance of marine resources.

²⁵ Of course, the investor's home country must be a member of the Energy Charter treaty.

BITs of the Russian Federation and Qatar reflect various rules and principles pertaining to investor protection, though it is notable that the majority of these agreements lack explicit consideration for public interest. The substantive provisions for investor protection within these treaties may encompass concepts such as national treatment and the most-favored-nation clause,²⁶ as well as stipulations regarding the admission of investments and compensation.²⁷ However, this part will not focus on these substantive rules; instead, it seeks to explore the scope of public interest protection within the context of these BITs. Among the eighty two BITs entered into by Russia, only three treaties explicitly acknowledge public interests.²⁸ For instance, the USA — Russia BI states that the agreement “will not detract from... international obligations.”²⁹ This provision indicates that the protection of investments under this treaty cannot undermine the fulfillment of other international obligations, which may include environmental treaties, UNCLOS, and customary international law. Many provisions of UNCLOS are established as customary international law, encompassing the responsibilities and rights of third States in archipelagic waters and maritime zones.

²⁶ See, Italy — Qatar BIT, Art. 3, date of signature: 22.03.2000, date of entry into force: 01.08.2004. Also see, Iran — Russian Federation BIT, Art. 3, date of signature: 23.12.2015, date of entry into force: 06.04.2017. Some cases also have been raised regarding the violation of national behavior, such as: ICSID. *Marvin Roy Feldman Karpa v. United Mexican States*, case No. ARB(AF)/99/1 (also known as *Marvin Feldman v. Mexico*). Available at: <https://www.italaw.com/cases/435> [Accessed 07.06.2026]. See also ICSID. *United Parcel Service of America Inc. v. Government of Canada*, Case No. UNCT/02/1. Available at: <https://www.italaw.com/cases/1138> [Accessed 04.06.2026]. See also on most favored nation clause: ICSID. *Señor Tza Yap Shum v. The Republic of Peru*, case No. ARB/07/6, *International Investment Agreement*, decision on Jurisdiction and Competence, 2011. Available at: <https://www.italaw.com/cases/1126> [Accessed 04.06.2026].

²⁷ For more information about the rules under the BITs see also Kong, Q., (2013). See also, ICSID. *Marvin Roy Feldman Karpa v. United Mexican States*, case No. ARB(AF)/99/1 (also known as *Marvin Feldman v. Mexico*), 2002, award, Para. 136. Available at: <https://www.italaw.com/cases/435> [Accessed 04.06.2026].

²⁸ All three of these treaties were signed in the 20th century; Russian Federation — United States of America BIT (1992), Republic of Korea — Russian Federation BIT (1990), and Canada — Russian Federation BIT (1989).

²⁹ Russian Federation — United States of America BIT, Art. IX, date of signature: 17.06.1992, not in force.

Approximately ten bilateral investment treaties (BITs) between Qatar and other States have explicitly addressed public interests. These treaties generally adopt two distinct approaches. First, all ten treaties underscore the necessity of compliance with other international obligations.³⁰ Second, two of these agreements specifically highlight adherence to environmental obligations and labor rights.³¹ For example, the Qatar — Cyprus BIT states that “this BIT will not detract...from obligations of public international law.”³² Article 12 urges the investors to consider law of the sea, environmental laws and other relevant obligations, like energy law, when deciding to invest at sea. In addition, the Qatar — Ethiopia BIT expressly directs environmental regulations stating that “Investors will adhere to the environment and labor regulations...”. This article illuminates that the investment protection is not the only objective of such BITs; rather, it highlights that preserving investors should not come at the expense of human rights or environmental considerations.³³ Some BITs of Qatar and the Russian Federation reflect the balance between investment protection and the public interests. Obviously, these two sets of regulations play complementary roles to one another. For example, the Qatar — Ethiopia BIT (2017) incorporated investment protection clauses, such as “national treatment” and the “most-favored-nation” clause within the Art. 5 and 6, while Art. 14 significantly underscores the preservation of public interests, especially concerning environmental law. This dual focus indicates that the overarching aim of the BIT is to promote and preserve both sets of provisions, reinforcing the importance of aligning investment interests with broader societal and environmental responsibilities.

³⁰ Mongolia — Qatar BIT (2007), Art. 12; Gambia — Qatar BIT (2002), Art. 12; Armenia — Qatar BIT (2002), Art. 12; Qatar — Turkey BIT (2001), Art. 6; Croatia — Qatar BIT (2001), Art. 9; Cuba — Qatar BIT (2001), Art. 6; India — Qatar BIT (1999), Art. 12; Cyprus — Qatar BIT (2008), Art. 12.

³¹ Ethiopia — Qatar BIT (2017), Art. 14; BLEU (Belgium — Luxembourg Economic Union) — Qatar BIT (2007), Art. 5–6.

³² Cyprus — Qatar BIT, Art. 12, date of signature: 11.11.2008.

³³ Bilateral Investment Treaties of Qatar, International Investment Agreements Navigator, UNCTAD, 2024. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/171/qatar> [Accessed 04.06.2026].

II.2.2. UNCLOS

UNCLOS can be regarded as a comprehensive legal framework governing all maritime activities. As Tulio Treves articulates, “UNCLOS is considered the constitution of the oceans” (Treves, 2024). This treaty delineates various maritime areas, each characterized by distinct public interests in relation to their governance. UNCLOS categorizes the maritime realm into several areas, containing the territorial sea, the exclusive economic zone (EEZ), and the continental shelf. In these zones, coastal States have a wide range of sovereign rights to explore and exploit maritime resources and make necessary infrastructure in this way. Specifically, within the territorial sea, which extends up to twelve nautical miles from the baseline, coastal States retain the exclusive right to exploit marine resources. However, they must also uphold the principle of innocent passage for foreign vessels.³⁴ In addition to these recognized maritime zones, UNCLOS introduces the concept of archipelagic waters, wherein specific rights are conferred upon third States. These rights include traditional fishing rights, the right of innocent passage, and the rights to install submarine pipelines and cables.³⁵ Consequently, investors operating within archipelagic waters are required to respect these established rights, thereby balancing their interests with those of other States.

As one moves from the coast toward the high seas, the sovereignty of coastal States progressively diminishes (Gavouneli, 2015, p. 187). Beyond the territorial sea, coastal States retain only sovereign rights over their continental shelf, specifically for the exploration and exploitation of natural resources (Lauterpacht, 1950, p. 423). These rights are deemed “exclusive,” meaning that no party may utilize the resources without the explicit and unequivocal consent of the coastal State (Tanaka, 2019, p. 147). Consequently, UNCLOS confers exclusive rights to coastal States to issue permits for exploitation and drilling within this zone.³⁶ When a nation designates its exclusive economic zone (EEZ), which is outlined in UNCLOS Art. 77(3), it acquires sovereign rights

³⁴ UNCLOS, Art. 2, 19, and 27.

³⁵ UNCLOS, Art. 51.

³⁶ UNCLOS, Art. 81.

concerning the exploration, exploitation, management, and maintenance of non-renewable resources, as well as activities related to renewable energy production (UNCLOS, Art. 56(1)). In both the continental shelf and the EEZ,³⁷ coastal States possess the exclusive right to develop and utilize structures and installations necessary for the extraction of non-renewable resources and for achieving other economic objectives.³⁸ While UNCLOS does not explicitly define the terms “structure” and “installation,” it can be inferred that relevant States possess the exclusive authority to construct various forms of infrastructure to harness marine energy resources, both renewable and non-renewable, within these areas (Oude Elferink, 2013). This framework underscores the delineation of rights and responsibilities within maritime zones, facilitating effective resource management while respecting the legal entitlements of coastal States.

Under UNCLOS, the ocean floor is designated as the “Area” recognized as the “Common Heritage of Mankind.” Consequently, this Area has been entrusted to the International Seabed Authority for its governance and management (Rothwell and Stephens, 2016, p. 127). The international regime governing the Area specifically encompasses “all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules.”³⁹ However, this regime does not extend to the exploitation of other non-living resources in the high seas, such as wave, wind, or solar energy (Zedalis, 2016, p. 114); all States are free to explore and exploit these energy resources, subject to the principles governing freedom in the high seas. Additionally, UNCLOS grants all States the right to construct “artificial islands and other facilities” in accordance with international law.⁴⁰ This provision signifies that States are afforded the freedom to utilize the high seas for new economic initiatives, including the exploitation of renewable ocean energies (Zedalis, 2016, p. 26). Furthermore, while the establishment of renewable energy installations and structures within the

³⁷ Normally the exclusive economic zone and the continental shelf overlap in a maritime zone up to 200 nautical miles.

³⁸ UNCLOS, Art. 60(1) and 80.

³⁹ UNCLOS, Art. 133(1).

⁴⁰ UNCLOS, Art. 87(d).

Area is permissible, it is contingent upon compliance with the activities regulated under the international deep seabed regime.⁴¹ Although there have been discussions regarding the formation of an international institution, such as the International Seabed Authority, specifically for the exploitation of marine renewable energy, such an initiative has yet to materialize (Castelos, 2013, p. 230). This underscores the current opportunities and challenges concerning the maritime resource management and the necessity for legal frameworks to deal with the emerging economic operation within the high seas.

UNCLOS presents a comprehensive legal framework managing economic operations at maritime zones, requiring that investors perform within the legal framework adopted by third and coastal States, and the Seabed Authority. Investors should be aware of whether the coastal States have the authority to give permission for investment within a specified maritime realm. It is important for investors to know whether the coastal States may halt the “innocent passage” right, consequently restricting or permitting investment operations in the realm. Moreover, they need to consider whether the coastal States have the authority to halt the rights of traditional fishing in archipelagic waters. In this way, it is crucial for investors to fully figure the regulative dynamics out; otherwise, they risk dealing with the investments which may disagree with public interests. Awareness of the legal landscape and the rights of various stakeholders is critical to ensuring compliance and mitigating potential liabilities associated with maritime investments.

II.2.3. Environmental Agreements

The present study has conducted a comprehensive analysis of treaties pertaining to the maritime environment; however, it is noteworthy that there is a lack of explicit regulations regarding investor support within their primary texts. Nevertheless, it is possible to interpret the principles and provisions governing environmental protection in a manner that implicitly protects investment. According to the United Nations Framework Convention on Climate Change (1992), Art. 4,

⁴¹ UNCLOS, Art. 47(3) and 60.

Para. 5, developed States are obligated to “supply new, reasonable, and appropriate technologies to developing States.” Indirectly, this provision indicates that reach to sustainable and novel technologies in developing States can uphold the investment protection. Although this influence is indirect, considering that the primary goal of the convention is to reduce pollution, it is obvious that new technologies result in less ecological damages compared to old ones. Therefore, while the direct effect of the provisions concentrates on ecological protection, they simultaneously facilitate an environment beneficial to the maritime investment. Additionally, this dual impact underscores the interdependence of ecological preservation and investment protection, emphasizing that efforts to maintain the environment may inadvertently uphold investment benefits.

In addition, principles like sustainable development and cooperation do play a big role in encouraging investors to stick to ecological considerations. States are obligated to give priority to the cooperation principle when considering investments or issuing licenses. Within the *MOX Plant case*, the tribunal indicated that “the principle of cooperation is a fundamental principle in avoiding pollution of the marine environment in accordance with the UNCLOS.”⁴² Similarly, in the *Southern Bluefin Tuna cases*, the tribunal underscored the importance of cooperation in reaching mutually beneficial agreements.⁴³ In this context, Japan’s overfishing operations prompted neighboring States to perceive their interests as being jeopardized. Given that fishing constitutes a significant form of maritime investment, it is imperative that States refrain from actions that could compromise the environment or the public interests of other States, thus emphasizing the necessity for cooperation. Such collaboration fosters respect for each state’s interests, particularly in areas such as the high seas, where the principle of the common heritage of mankind prevails, and all States possess the freedom to exploit the living resources found therein. This collective approach not only

⁴² ITLOS. *MOX Plant case* (Ireland v. United Kingdom), Provisional Measures, 3 December 2001, Para. 82. Available at: <https://www.itlos.org/en/main/cases/list-of-cases/case-no-10/> [Accessed 25.06.2025].

⁴³ ITLOS. *Southern Bluefin Tuna case* (New Zealand v. Japan; Australia v. Japan), Order of 16 August 1999, ITLOS Reports 1999, Para. 90.

safeguards the marine environment, but also ensures that investment activities align with broader ecological and communal objectives.⁴⁴

Another principle closely associated with offshore investment is sustainable development, that posits that the economic potential of the seas must be harnessed in a manner that protects the marine environment. The Convention on Biological Diversity articulates that sustainable and continuous use entails “use based on a manner and level that does not lead to a long-term reduction of biological diversity.”⁴⁵ In alignment with Art. 2 of the United Nations Fish Stock Agreement, the treaty aims to ensure the long-term preservation and sustainable use of migratory fish stocks through the effective implementation of relevant provisions outlined within the agreement (Fish Stock Agreement, 1995, Art. 2). Moreover, concepts related to rational and sustainable use are implicitly reflected in terminology such as “sustainable management,” “protection,” and “effective use.” Article 61 of UNCLOS emphasizes the necessity of safeguarding living resources, stating that “the coastal State must ensure through appropriate protective and management measures that the reserves of living organisms in the EEZ are not endangered by overfishing” (UNCLOS, Art. 61(2–3)). Considering the stipulations, investments in fisheries should be organized in a way that does not endanger fish stocks over an extended period. The incorporation of sustainability principle into investment process is essential for maintaining marine biodiversity, and ultimately advantaging both environmental integrity and economic effectiveness.

⁴⁴ UNCLOS has also dealt with this issue in some of its provisions. As stated in Art. 197, “States will cooperate with each other to preserve and protect the marine environment.” In addition, see, Art. 117 concerning Living Resources of the High Sea, Art. 199 regarding preparedness plans against pollution; Para. 4 Art. 208 regarding pollution from seabed activities subject to national jurisdiction; Para. 4 Art. 210 regarding pollution caused by waste; Para. 1 Art. 211 regarding pollution caused by ships, Para. 3 Art. 212 regarding pollution through the atmosphere, Para. 2 Art. 226 regarding the inspection of foreign ships and Para. 3 Art. 235 in line with responsibility for environmental damage, to the cooperation of States in line with the marine environment protection has been mentioned.

⁴⁵ Convention on Biological Diversity of 5 June 1992 (1760 U.N.T.S. 69). Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mt_dsg_no=XXVIII&chapter=27 [Accessed 25.06.2025].

II.2.4. Energy Agreements

Several agreements explicitly focus on the necessity of making a balance between investment protection, and the preservation of public interests. The International Energy Charter indicates that States should “pay attention to the three challenging international areas, including economic development, energy security and ecological protection, and work for sustainable development and make a balance between them.”⁴⁶ The charter highlights the significance of “sustainable development” and the necessity of a “balance between various ecological and investment interests” within the maritime investments, underscoring that access to the sustainable development is intrinsically subject to finding a harmony among multiple investment interests. Additionally, the Charter articulates that “with the intention of protection and amplify the flow of international investment, the member States shall try to nationally set a sustainable legal framework based on the related international provisions.” This wording aptly illuminates the interdependence between public interests of the maritime zones and investments at sea. It is imperative to recognize that any investment activities within maritime areas must adhere to two primary categories of international regulations: maritime environmental law and the law of the sea.⁴⁷

Furthermore, the Energy Charter Treaty represents a comprehensive framework that addresses the interaction between energy investment and public interests. The treaty mandates that its parties refrain from undertaking unreasonable and prejudicial actions that could adversely affect investment and its operating conditions, thereby requiring the establishment of stable and favorable conditions for investors.⁴⁸ However, States may occasionally resort to extreme measures aimed at advancing public interests, which can inadvertently undermine investment. In certain instances, it may be necessary to amend existing laws

⁴⁶ International Energy Charter. Agreed text for adoption in The Hague at the Ministerial Conference on the International Energy Charter on 20 May 2015.

⁴⁷ Exactly the same regulation is also mentioned in the European Energy Charter. This charter was signed in 1991. Therefore, it is clear that the approach of this Charter has influenced the International Energy Charter.

⁴⁸ Energy Charter Treaty, 1994, Art. 10(1), Part 3.

to safeguard and promote public interests within maritime areas subject to national jurisdiction and sovereignty. The Energy Charter acknowledges the potential for such adjustments, stipulating that any modifications must be implemented in a rational and non-discriminatory manner. This approach is essential for achieving a balance between the protection of investor rights and the preservation of public benefits.

II.3. Comparison between Qatari and Russian BITs

The marine investment protection system can be likened to a chain composed of interrelated links, wherein various mechanisms work in concert to safeguard both public interests and investor rights. BITs of the Russian Federation and Qatar exemplify efforts to balance these interests, although the extent of their commitment to public interests is variable. UNCLOS emphasizes the importance of economic interests, public interests, and environmental protection, establishing a multifaceted framework that may also reference relevant environmental conventions. Furthermore, energy agreements simultaneously maintain both public interests and investment interests, indicating the interdependence of these legal frameworks. In addition, investors attempting to involve in investments at seas should manage this complex view, which incorporates a various array of ecological, economic and legal considerations. While investment agreements often function as the key source for investors, an in-depth examination of the BITs of the Qatar and Russian Federation discloses a relevant deficiency concerning the public interests. Most of these treaties fail to provide a robust approach to safeguarding public interests, with a notable number neglecting this critical aspect entirely. Upon examining the preambles of these BITs, two predominant perspectives emerge regarding the interaction between investment interests and public interests. Some treaties explicitly reference public interests, advocating for their recognition and protection, while others emphasize the establishment and maintenance of favorable conditions for investors and investment, often at the expense of public concerns (Table 1). This dichotomy suggests a need for greater

alignment between investment frameworks and the imperative of public interest preservation, thus advocating for a more cohesive approach to marine investment regulation.

Table 1

STATE	BITs		
	Total	Noticed	Not noticed
Preamble: Attention to public interests in general			
Russia	82	2 ⁴⁹	80
Qatar	50	0	50
Preamble: Paying attention to favorable conditions for investment			
Russia	82	82	0
Qatar	50	50	0

Source: of Russia and Qatar uploaded on the UNCTAD website

The observation that all treaties illustrated in Table 1 emphasize the maintenance of favorable conditions does not necessarily indicate robust performance in their application. Rather, it suggests a predominant focus on investment protection; however, the notion of favorable conditions encompasses more than just the safeguarding of investments. Favorable conditions should be understood as involving a dual consideration of both investor interests and public interests. Consequently, the phrase “making and preserving favorable conditions” warrants nuanced interpretation by an expert in public international law. Also, an examination of the substantive BITs reveals two predominant approaches. The first approach underscores the importance of adherence to international obligations, thereby establishing a framework within which investors must operate. The second approach places particular emphasis on environmental law, acknowledging the critical interplay between investment activity and environmental stewardship (Table 2).

⁴⁹ Finland — Russian Federation BIT (1989) and Russian Federation — USA BIT (1992).

Table 2

STATE	BITs		
	Total	Noticed	Not noticed
Main texts: attention to the international obligations			
Russia	82	3 ⁵⁰	79
Qatar	50	10 ⁵¹	40
Main texts: special attention to the environment and labor rights			
Russia	82	0	82
Qatar	50	2 ⁵²	48

Source: of Russia and Qatar uploaded on the UNCTAD website

BITs of the Russian Federation and Qatar have demonstrated notable shortcomings in their implementation as outlined in the main text. Investors must possess a comprehensive understanding of the marine investment protection framework due to the fragmented nature of the applicable regulations. On the one hand, numerous BITs, as illustrated in Table 2, fail to address public interests entirely, thereby neglecting an essential component of responsible investment operations. On the other hand, those BITs that do incorporate references to public interests require further examination.

III. BMIT as a Novel Solution

To engage in maritime investment effectively, investors must possess a comprehensive understanding of the multifaceted dimensions inherent to such investments. The primary source of protection for an investor is the investment agreement. A thorough analysis of BITs reveals significant deficiencies regarding maritime investment, particu-

⁵⁰ Russian Federation — United States of America BIT (1992), Korea, Republic of — Russian Federation BIT (1990) and Canada — Russian Federation BIT (1989).

⁵¹ Mongolia — Qatar BIT (2007), Gambia — Qatar BIT (2002), Armenia — Qatar BIT (2002), Qatar — Turkey BIT (2001), Croatia — Qatar BIT (2001), Cuba — Qatar BIT (2001), India — Qatar BIT (1999), Cyprus — Qatar BIT (2008), Ethiopia — Qatar BIT (2017), BLEU — Qatar BIT (2007).

⁵² Ethiopia — Qatar BIT (2017), BLEU — Qatar BIT (2007).

larly in their failure to address critical issues such as the definitions of a maritime investor and investment, various types of maritime investments, and the dual categories of interests that govern these investments. Additionally, the fragmented nature of the existing regulatory framework for maritime investment protection exacerbates these gaps. Current landscape of international law governing maritime investment is characterized by a lack of cohesion and comprehensiveness, particularly in the BITs of the Russian Federation and Qatar. This situation necessitates the establishment of a coherent regulatory system that would bolster investor confidence and ensure more robust engagement in maritime ventures. Maritime investments encompass a wide array of activities, including investments in both renewable and non-renewable resources, living marine resources, offshore mining activities, the establishment of cables and pipelines, and the construction of artificial islands. Consequently, various branches of international law are implicated in these investments, complicating the investor's navigation of pertinent legal frameworks. In this regard, four main legal branches are particularly pertinent: law of the sea, investment law, energy law, and environmental law. Considering the interrelation and complexity of these branches of law, it is not a plain task for investors to get all the related regulations and rules effectively. Thus, the present article indicates that a comprehensive legal framework is necessary to ease investor perception. To tackle the specified deficiencies and to uphold the legal framework in this regard, the current study supports a new or revised version of existing BITs, which we suggest to determine as "Bilateral Maritime Investment Treaties" (BMITs).⁵³ Such agreements would intend to clarify and consolidate the regulations governing investments at sea, in turn filling current gaps and improving a more predictable and stable investment process. Below, the study presents a precise draft for a BMIT. This treaty would be structured into three parts:

1. Part I: Preamble

The preamble to the BMIT highlights the basic objectives concerning investments at sea. It underscores the mutual obligations of the parties to uphold sustainable development through impact-driven in-

⁵³ Of course, since this plan is new, at first this agreement can be presented in the form of a declaration or a political charter, such as the International Energy Charter.

vestments at sea. The preamble should also assert the importance of protecting investments while guaranteeing compliance with international legal system governing activities at sea.

2. Part II: Protective Legal Framework for Investments and Investors

This part illustrates the rules and regulations which protect investments in the maritime investment process. It includes regulations absent in existing BITs, containing:

- In-depth Determination of Maritime realms: A comprehensive framework that precisely categorizes and defines different maritime areas, including internal waters, territorial sea, EEZ, and continental shelf, according to UNCLOS.

- Description of Maritime Investment and investor: precise and clear definitions of a “maritime investment” and “maritime investor” are needed, considering the framework within which investors may act.

- To consider the types of investments at sea, a precise classification of investments should be offered, incorporating operations like renewable energy generation, offshore mining, fishing and the installment of maritime facilities like ports and artificial islands.

- Coastal States’ rights in maritime zones: an illumination of the coastal States’ rights over their maritime areas should be given, as considered by UNCLOS, guaranteeing compliance with the international standards while determining the authority of coastal States.

3. Part III: Rules and Principles Governing Public Interests in Maritime Zones

The last part deals with the regulations and principles determined to preserve public interests of the seas and oceans. This part relies on the provisions utilized by UNCLOS, investment agreements, energy agreements, and marine environmental treaties. It contains the following main aspects.

- Ecological preservation: it requires to establishment of frameworks that improve exact operations to protect marine biodiversity while easing investment operations.

- Public interests in maritime zones: they necessitate the affirmation of third States’ rights in maritime zones, focusing on the significance of cooperative management and respect for law of the sea.

— Coastal States' duties: it requires clear wording concerning the coastal States' obligation towards the rights of third States in maritime areas, containing responsibilities pertinent to the freedoms governing the high seas and the Seabed Authority. It encompasses obligations to reinforce principles of sustainability, accessibility and fair treatment in the exploration and exploitation of maritime resources.

III.1. Preamble to a BMIT

The preamble to a BMIT should focus on the dual goals of improving maritime investment while preserving the environment and public interests. Toward this aim, we present the preamble as follows:

The Member States to the BMIT:

1. Considering the importance of reinforcing economic cooperation to increase the benefits originated from maritime operations for the member States;
2. Given that investments at sea are essential for upholding global cooperations in tackling existing challenges concerning maritime investments at various levels including national, regional, and global;
3. Obligated to using their economic and financial resources to ease investment processes in maritime zones;
4. Trying to establish and preserve conducive conditions for investors of the contracting parties to act in each other's maritime realms;
5. Considering the need to support and encourage the investments of maritime investors of the contracting parties in each other's maritime jurisdictions;
6. Considering the principles incorporated within the Charter of the United Nation, as well as the regulations used by agreements governing investments at sea, containing documents presented by different international and regional conferences in this regard;
7. Affirming each State's sovereignty over its maritime resources;
8. Acknowledging the coastal States' rights to make domestic regulations governing maritime investments, based on their international responsibilities;
9. Recognizing the challenges of investments at sea and their potential disagreements with public interests, especially concerning the ecological protection;

10. Upholding the principles of cooperation and sustainable development in the context of maritime investments;

11. Striving to maintain a balance between policies promoting the exploitation of marine resources and those governing public and environmental interests;

12. Focusing on the reciprocal benefits to the states and the public interests of society, which are recognized as the “common heritage of humankind”

Hereby agree as follows:⁵⁴

III.2. Main Text of the Bilateral Maritime Investment Treaty

III.2.1. Investment and Investor Protection

Here, only the issues that do not exist in the current BITs of Qatar and Russian Federation and are related to maritime investment are raised.

1. Terminology

We describe three terms relevant to maritime investment, including: 1. definition and types of maritime investments, 2. the definition of maritime investor, 3. the exact scope of maritime areas.

1.1. Definition and Types of Maritime Investments

The term “maritime investment” refers to any property investment made by an investor from a contracting State engaged in marine economic activities within maritime areas, whether inside or outside the jurisdiction of the State. This definition encompasses investments that are governed by the laws and regulations of another contracting state that is recognized as a coastal State, as well as those that adhere to the

⁵⁴ This preamble is the result of the review of 132 preambles of the BITs of Qatar and Russian Federation, and then the issues considered in the present article are included in accordance with the investor’s interests and public interests and the environment in general. See, *Bilateral Investment Treaties of Qatar*, International Investment Agreements Navigator, UNCTAD. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/171/qatar> [Accessed 28.09.2025]. See also *Bilateral Investment Treaties of the Russian Federation*, International Investment Agreements Navigator, UNCTAD. Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation> [Accessed 28.09.2025].

legal framework applicable to the high seas in areas beyond national jurisdiction. Furthermore, maritime investments are categorized based on the prevailing legal freedoms governing activities in the high seas (Abadikhah and Nigmatullin, 2024).

“Types of marine investment” include: 1. Investment in non-renewable marine energies, including oil and gas, 2. investment in renewable energies, including wind, wave and solar energy, 3. investment in exploitation of living resources, including fish and other biological diversity, 4. Investment in the construction of artificial islands for use in energy production or platforms used for fishing or living and recreation, 5. investment in the installation of pipelines and cables, 6. investment in marine mining. It is necessary to specify the exact concepts of marine investment types under the BMIT (Abadikhah and Nigmatullin, 2024, p. 81).

1.2. The Definition of a Maritime Investor

“Maritime investor” refers to a natural person or legal entity from the contracting States that has made an investment in the maritime zones under the jurisdiction of another State, or in maritime zones beyond the jurisdiction of both States. Such investments are guided by the types of maritime investment recognized under UNCLOS and must adhere to the rights and obligations established for States therein. Additionally, it is essential that these investments maintain a balance among public interests, environmental considerations, and the interests of the investors (Abadikhah and Nigmatullin, 2024, p. 76).

1.3. The Exact Scope of Maritime Zones

The consideration of maritime zones within the framework of the BMIT is deemed a fundamental pillar. Accordingly, the term “maritime zones” is defined as follows.

“Maritime zones” refer to areas of the sea that fall either within or outside the sovereignty or jurisdiction of the contracting States. UNCLOS classifies these areas into eight distinct zones: Internal Waters, Archipelagic Waters, Territorial Sea, Contiguous Zone, Exclusive Economic Zone, Continental Shelf, High Seas, and the Area. According to the principles outlined in the law of the sea, contracting States may exercise sovereign rights and jurisdiction within the zones that are under

their authority. In contrast, for areas that lie outside the jurisdiction of States, the relevant legal regime established by UNCLOS shall apply.

2. Investors' Rights in Maritime Areas

— *Internal waters*: according to UNCLOS, States possess absolute sovereignty over marine resources within their internal waters.⁵⁵ This sovereignty allows States to exploit their own resources in these areas or to grant licenses for exploitation to third parties wishing to invest in the marine environment. However, it is imperative that, despite this absolute sovereignty, governments refrain from utilizing these regions in ways that could harm the interests of the international community or the integrity of the global environment.

— *Archipelagic waters*: according to UNCLOS, there is the innocent passage right within archipelagic waters, which contains the duty to observe installed submarine cables of other states, as well as respecting the traditional fishing rights of third States.⁵⁶ Consequently, any investment activities within these waters must be conducted in alignment with these public interests, while also ensuring the protection of the environment.

— *Territorial sea*: Contracting parties in this zone also exercise sovereignty and can undertake investments similar to those conducted in internal waters. However, given that the right of innocent passage prevails in this part, States are obligated to respect this public right in accordance with UNCLOS.⁵⁷ Furthermore, it is essential that any investment related to drilling and exploitation within the zone does not adversely impact the international environment or the public interests of the international community like navigation.

— *Exclusive Economic Zone*: According to UNCLOS, States within this area are entitled to freedoms of flight, navigation, and the installation of submarine pipelines and cables, as well as other global legal activities pertinent to these freedoms.⁵⁸ States operating within a coastal State's zone are required to exercise these freedoms while respect-

⁵⁵ As established in the 1958 Convention on the Territorial Sea, Art. 5(1), and in the 1982 UNCLOS, Art. 8.

⁵⁶ UNCLOS, Art. 46 and 51.

⁵⁷ UNCLOS, Art. 2(1).

⁵⁸ UNCLOS, Art. 55.

ing the rights and responsibilities of the coastal States (Patuzi, 2015, p. 150). In light of the rights that pertain to this zone, several important considerations must be observed. First, investments made by contracting States, which are also coastal States, in this zone — whether on the continental shelf, in fisheries, or for the construction of artificial islands — must not disrupt the freedom of navigation and flight, nor the investments of third States that have established pipelines or submarine cables in other regions. Second, given the exclusive right to invest in this zone, contracting States may grant such rights to investors from third countries. In accordance with the licenses obtained, these investors are required to fulfill their obligations and responsibilities towards the coastal States, as well as to uphold the rights of third States within the zone, as stipulated by UNCLOS.

— *Continental shelf*: Contracting States possess the exclusive right to issue drilling and investment permits within their continental shelves. However, this right must be exercised in compliance with regulations aimed at preventing, reducing, and controlling marine environmental pollution resulting from seabed activities. Furthermore, investments in this zone should not be conducted in a manner that obstructs the public interests of governments in utilizing the waters situated above this zone.⁵⁹

— *High sea*: Contracting States engaged in the exploitation of the high seas and oceans must act in accordance with the nature of maritime investments (Abadikhah and Nigmatullin, 2024). First, investments in non-renewable energy resources in the area require contracting States to obtain the necessary permits from the Seabed Authority before commencing exploitation, as stipulated by UNCLOS. Second, investments in other types of maritime activities under UNCLOS do not necessitate a special license from a specific authority or institution. However, it is essential that these investments align with the protection of public interests, which include maintaining public order at sea, ensuring freedom of navigation, and safeguarding the marine environment and biodiversity within that zone.⁶⁰

⁵⁹ The waters located above this zone are called contiguous zone or exclusive economic zone.

⁶⁰ UNCLOS, 1982, Art. 86.

III.2.2. Preserving Marine Environment and Public Interests

Contracting States should apply this part in two different categories: first, the maritime public interests in general and second, the marine environment.

1. Public interests

It is essential to analyze the third States' rights in maritime zones. For example, investors need to be mindful of traditional fishing rights or the right of innocent passage in archipelagic waters which belongs to third States. In addition, investors must know that third States have the innocent passage right within the territorial sea. Moreover, it is vital for investors to know about the rights of third States within the EEZ. Hence, the member States to the BMIT should fully illuminate all the third States' rights in maritime zones to guarantee compliance and clarity.

Furthermore, as indicated in a limited number of BITs involving Qatar and the Russian Federation, there is a need to comply with other international obligations (Abadikhah and Nigmatullin, 2024). Such provisions should also be incorporated into the BMIT. Specifically, the BMIT should explicitly outline additional international obligations pertinent to maritime investment, including the law of the sea, environmental law, and energy law, and require contracting States to operate in accordance with these international obligations.⁶¹

2. Marine environment

Out of the 132 BITs involving the Russian Federation and Qatar, only two Qatari agreements specifically reference environmental considerations and mandate that contracting States protect and preserve the environment. These agreements can serve as model frameworks for the BMIT. In other words, the negotiating States should clearly articulate the environmental principles and regulations pertinent to invest-

⁶¹ For example, in accordance with the Russian Federation — United States of America BIT, “this treaty shall not derogate from... international obligations...” (17.06.1992). Available at: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/2862/russian-federation---united-states-of-america-bit-1992-> [Accessed 25.06.2025].

ment within the BMIT to ensure that investors are adequately informed. Such principles may include cooperation and the sustainable use and development of resources. It is evident that the environment represents one of the most significant public interests and should be addressed explicitly. Additionally, it is essential to separately outline all marine environmental aspects related to investment in marine zones within the treaty.

IV. Conclusion

The system governing maritime investment protection is inherently complex due to the incorporation of two sets of often conflicting interests and regulations. While this system aims to safeguard investors' interests, it also seeks to preserve and promote public benefits at sea. Consequently, a successful maritime investment must consider both sets of interests; otherwise, it may encounter significant challenges. For example, if an investor decides to invest in the territorial sea, it is important to know about the innocent passage right in this area, acknowledging that their investment does not hinder this right. In addition, investors need to know that traditional fishing rights incorporated within archipelagic waters; hence, any fishing investment in this zone should observe such rights. Moreover, investors need to guarantee that their operations do not damage the maritime environment. Notably, among the 132 Bilateral Investment Treaties (BITs) of the Russian Federation and Qatar, only 13 agreements have explicitly addressed public interests and environmental concerns, either generally or specifically.

Furthermore, various branches of public international law should be integrated into the maritime investment protection system, including investment law, the law of the sea, environmental law, and energy law. It is evident that, to facilitate favorable investments, all these branches must be considered as interconnected elements, akin to links in a chain. However, the BITs of the Russian Federation and Qatar fail to acknowledge these interconnected links, both in the main provisions and in the preamble. As a result, the existing gaps in the BITs, coupled with the lack of attention to the regulatory framework governing mari-

time investment, necessitate the development of a new type of agreement: the Bilateral Maritime Investment Treaties (BMIT). The primary objective of the BMIT is to establish a coherent system for the protection of maritime investments. Currently, existing investment protections are both general in nature and insufficiently detailed regarding maritime investments. Moreover, they do not adequately account for the public interests associated with the seas and the marine environment, as outlined in the United Nations Convention on the Law of the Sea. Thus, the BMIT presents a new solution that intends to fill the gaps and establish a cohesive system of principles and regulations governing investments at sea.

The BMIT must be organized into three key parts. The first part, as a preamble, would illuminate the specific goals behind investment in maritime zones and the rationale for concluding the BMIT. The second part designates a set of protective regulations governing the investors' rights and their investments in the maritime investment protection system. This section includes provisions that are presently absent from current BITs. Vital regulations in this part include: 1. an in-depth illumination of maritime area; 2. a clear definition of maritime investments and investor; 3. a precise categorization of investments at sea; and 4. coastal States' rights in maritime zones, based on the UNCLOS. The third part deals with the rules and principles pertinent to ecological protection and the preservation of public interests within maritime realms. This segment would draw upon regulations found in investment agreements, UNCLOS, energy law treaties, and agreements related to the maritime environment. It is imperative that this section encompasses environmental protection efforts and public interests governing maritime zones, which include the rights of third States in these areas, as well as the obligations of coastal States concerning third States' rights, the responsibilities of coastal States regarding the Seabed Authority, and the freedoms currently enjoyed on the high seas. Undoubtedly, the BMIT, as a coherent framework, has the potential to significantly aid investors by clarifying all facets of maritime investment within a comprehensive and singular text.

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