VALORISATION

1. RELEVANCE

The small relevance of a developing country such as Ecuador in the geopolitical arena contrasts with its high exposure to investment disputes and its bold proposals to react to the regime of foreign investment protection.

From the perspective of International Investment Law, the overview of the Ecuadorian experience regarding the process of construction, deployment and resistance to the system allows to understand the whole picture of how the regime functions both at the international and domestic levels. Paying due attention to the complex web of links that constructs the relations of foreign investors through treaty, statutory and contract-based obligations, improves the dispute prevention process and also decision-making quality.

While the focus of the legitimacy concerns have been mainly devoted to the system of dispute settlement, the interplay between Domestic and International Law in order to set this regime into motion has been overlooked. In this regard, the integral legal assessment undertaken in this research attempts to bridge Domestic Law standards with International Law standards by grasping the way they interact and are interpreted. Such understanding contributes for better tailoring mechanisms of facilitation, regulation and protection of the investment that properly fits to the common interest and intention of a State, either as treaty signatory, regulator or contractor.

From an economic perspective, the legal categorization of international investment agreements—as instruments aimed to enforce regulatory standards of good governance instead of vehicles of attraction of investment flows—allows to look for further mechanisms of investment facilitation, regulation and protection capable of better distributing the risks among stakeholders.

In sum, a thorough legal confrontation of the intermingled narratives, concepts, rules and standards—as applied in the Ecuadorian context—contributes to current discussions surrounding reform of the system and development of new relationship mechanisms between the State, foreign investors and further stakeholders.
2. TARGET GROUPS

Academics. Scholars from different legal disciplines such as International Investment Law, Public International Law, International Economic Law, International Dispute Settlement, Constitutional Law and Administrative Law may benefit from this research. In the same way, political scientists and public administration scholars may deem the complex chain of policy choices—undertaken to set the architecture of the international investment regime in a particular country—of interest.

Adjudicators. National judges increasingly engaged with the interpretation of International Law.

Policy makers. The integral legal assessment undertaken—which covers all the stages of the system’s articulation and performance—draws lessons regarding the kind of issues and considerations that should be taken into consideration when dealing with key aspects like the negotiation of treaties, the emergence of disputes and the reaction to changed circumstances. They may also benefit from the analysis concerning the distinction and interplay between treaty, statutory and contract-based obligations in order to make thoughtful policy choices, either to participate, reform or pull out from the system.

Students and citizens- This research addresses the evolution of the State’s regulatory space and its shaping through the interaction between Domestic and International Law, as well as the historical influence of different actors to define a particular model of State.

3. ACTIVITIES/PRODUCTS

This research may guide countries, agencies and other organizations devoted to recalibrating their investment instruments. It provides policy recommendations covering the entire system of foreign investment engagement.

Due to the focus of this thesis on the Ecuadorian context, this book may become an scholarly source that may: 1) clarify the scope of international treaties within the domestic framework; 2) shed light concerning the conditions under which arbitration State-
investors may be permitted and; 3) elucidate the scope of investment agreements and further instruments capable to suit the national framework.

4. INNOVATION

This research provides a detailed account of legal history from the perspective of the evolution of protection mechanisms for foreign investors in light of regulatory space. This issue was most likely not discussed earlier in English.

It also addresses the articulation and deployment of International Investment Law standards from the prism of Domestic Law. Evaluating the role of Domestic Law on enabling and substantiating International Investment Law standards—from a historical examination that blends legal and policy assessment—departs from the common focus from researches undertaken in this area.

5. DISSEMINATION

Being Ecuador a paradigmatic country on the field of investment policy and arbitration, it would be easy to present the main findings of this research in any academic forum worldwide dealing with matters of investment. Additionally, the mechanisms used to articulate and set the system in motion, as well as the kind of disputes arisen, do not differ drastically among developing countries. Multilateral forums like UNCTAD and UNCITRAL and international non-governmental organizations—such as the International Institute of Sustainable Investment—may be interested in using the entire or part of the assessment as working material.

It may also contribute to the policy and judicial debates that may arise in the immediate future in Ecuador, regarding the possibility of adopting new investment treaties and the proposal for new tools of investment facilitation and regulation, including the prevention of disputes through mechanisms like mediation. During the course of the research, several findings were presented in forums such as the meeting of the Latin-American Society of International Economic Law (2017) and the 12th Forum of Country Investment Negotiators convened by UNCTAD (2019).
Agencies from developing countries embarked on the renegotiation of their investment agreements may be approached, stressing the necessity to look beyond treaties by fostering, in parallel, comprehensive reforms from inwards.