Special Economic Zones in International Economic Law: Towards Unilateral Economic Law

Julien Chaisse and Georgios Dimitropoulos

ABSTRACT

The international economic regime has entered a new phase of reassertion of sovereignty by States. While States continue to show respect for the values of international (economic) law, the institutionalization of these values has devolved from the international (to the regional) to the domestic level of governance. A new form of ‘unilateral economic law’ is thus gaining importance in the development of international and domestic laws and institutions. However, it remains largely understudied. This article discusses the development and proliferation as well as the importance of special economic zones as a new form of unilateral economic law in the overall system of international economic law. This article identifies four types of economic unilateralism: classical unilateralism, embedded unilateralism, sustainability unilateralism, and national security unilateralism. The new special economic zone unilateralism represents a middle ground between the two extremes of unilateral liberalization and aggressive unilateralism. Accordingly, special economic zone unilateralism introduces a new layer in the overall system of international economic law. First, special economic zones embody a new compromise between the State and the market. The State-controlled promotion of trade and investment taking place through special economic zones represents a complex compromise between the liberalization and protection of economic sovereignty. Second, the spatiality of trade and investment promotion through special economic zones is different from that of international economic law. The liberalization of trade and investment does not take place for the whole country but for an isolated jurisdiction within the broader national jurisdiction, while the focus is on the supply side rather than the traditional input factors of production. Overall, the new special economic zone unilateralism provides insights into the future of international economic law as envisaged by States. Special economic zones have been employed by States both as an alternative and as a complement to trade and investment promotion through the instruments of international economic law.

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I. INTRODUCTION

International economic law (IEL) is rapidly changing. The relative stagnation of the World Trade Organization (WTO) has led to a multiplicity of regional trade agreements (RTAs) outside of the WTO framework. The new mega-regional agreements (MegaRegs) have now become increasingly relevant in multilateral international trade law.\(^1\) This has only recently led to a productive discussion regarding the reform of the WTO: it took the unilateral action of some governments to start thinking about the institutional reform of the WTO, with a focus on its dispute settlement system enshrined in the Dispute Settlement Understanding.\(^2\)

Even though the starting points of the two subdisciplines of IEL are different, international investment law finds itself in a similar situation. International investment law (and arbitration) has been facing a backlash.\(^3\) Given the different historical roots as well as the development of international investment law, the backlash and debates surrounding the reform of the field started taking place earlier; the backlash-related discussion in international investment law has been very productively transformed into a reform debate.\(^4\) The proposals for reform include the establishment of a Multilateral

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1. See generally Joost Pauwelyn, ‘Not as Preferential as You May Think: How Mega-Regionals Can Benefit Third Countries’, in Thilo Rensmann (ed.), Mega-Regional Trade Agreements and the Future of International Trade and Investment Law (New York: Springer, 2017), 61; Tania Voon, ‘Consolidating International Investment Law: The Mega-Regionals as a Pathway towards Multilateral Rules’, 17 World Trade Review 33 (2018); see also Harlan Grant Cohen, ‘Multilateralism’s Life-Cycle’, 112 American Journal of International Law 47 (2018).
2. See the ‘Special Issue: Solving the WTO Dispute Settlement System Crisis’ with the following contributions: Giorgio Sacerdoti, ‘Solving the WTO Dispute Settlement System Crisis: An Introduction’, 20 (6) Journal of World Investment & Trade (2019); Yuka Fukunaga, ‘The Appellate Body’s Power to Interpret the WTO Agreements and WTO Members’ Power to Disagree with the Appellate Body’, 20 (6) Journal of World Investment & Trade (2019); Joshua Paine, ‘The WTO’s Dispute Settlement Body as a Voice Mechanism’, 20 (6) Journal of World Investment & Trade (2019); Geraldo Vidigal, ‘Living without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis’, 20 (6) Journal of World Investment & Trade (2019); see also Chad Bown, ‘The 2018 Trade War and the End of Dispute Settlement as We Knew It’, VoxEU.org (2019); Matteo Fiorini et al., ‘WTO Dispute Settlement and the Appellate Body Crisis: Insider Perceptions and Members’ Revealed Preferences’, Bertelsmann Stiftung Working Paper (2019a); Matteo Fiorini et al., ‘WTO Dispute Settlement and the Appellate Body Crisis: Detailed Survey Results’, Bertelsmann Stiftung Working Paper (2019b); Bernard Hoekman and Petros C. Mavroidis, ‘Party Like It’s 1995: Necessary but Not Sufficient to Resolve WTO Appellate Body Crisis’, VoxEU.org (2019); Robert McDougall, ‘The Crisis in WTO Dispute Settlement: Fixing Birth Defects to Restore Balance’, 52 (6) Journal of World Trade 867 (2018); Ernst-Ulrich Petersmann, ‘How Should WTO Members React to Their WTO Crises?’, 18 (3) World Trade Review 503 (2019).
3. See Michael Waibel et al. (eds), The Backlash against Investment Arbitration. Perceptions and Reality (Alphen aan den Rijn: Wolters Kluwer, 2012); Malcolm Langford, Daniel Behn, and Ole Kristian Fauchald, ‘Backlash and State Strategies in International Investment Law’, in Tanja Aalberts and Thomas Gammeltoft-Hansen (eds), The Changing Practices of International Law (Cambridge: Cambridge University Press, 2018), 70; W. Michael Reisman, ‘The Empire Strikes Back: The Struggle to Reshape ISDS’, White & Case International Arbitration Lecture (The Lamm Lecture) (16 February 2017), https://ssrn.com/abstract=2943514 (accessed 15 October 2020) (on the role of the originally capital-exporting countries in this reaction, see especially Ibid, at 12–16; on the broader socioeconomic reasons for the reaction, see Ibid, at 16–21). This backlash derives from mounting tension in recent years due mostly to certain historical path dependencies in the field; see generally Georgios Dimitropoulos, ‘The Conditions for Reform: A Typology of “Backlash” and Lessons for Reform in International Investment Law and Arbitration’, 18 The Law and Practice of International Courts and Tribunals 413 (2019).
4. The reform discussion process is prominently taking place within Working Group III (WGIII): Investor-State Dispute Settlement Reform of the United Nations Commission on
Investment Court along the lines of the WTO Appellate Body (WTO AB)\(^5\) and an increasing interest for investment facilitation.\(^6\) Also very importantly, investment chapters are nowadays invariably included in the MegaRegs.

One trend that has been unaccounted for in legal scholarship so far, despite its increasing importance in policy, is the development of institutions of "unilateral economic law."\(^7\) IEL seems to have recently entered a new phase of reassertion of sovereignty by States, after a long period during which its predominance over national sovereignty was often taken for granted in mainstream international politics and legal engineering.\(^8\) More recently, States have started exercising greater control over the international economic regime according to their domestic needs, as well as eventually resorting to domestic law. While the majority of States accept the values and benefits of a globalized world, i.e. accept IEL as a "belief system,"\(^9\) the main disagreement comes from the degree or intensity of integration, as well as over the forms or areas in which it is progressing. While any act of State may be characterized as unilateral in international law, the unilateral economic law discussed here means the institutionalization of the values and principles of IEL, such as international trade and investment promotion through National Treatment and Most Favored Nation, using the means of domestic law.\(^10\) The economic unilateralism identified here is also different from the unilateralism discussed in opposition to ‘exceptionalism’ in international law.\(^11\)

International Trade Law (UNCITRAL), the workings of which are made available online at [http://www.uncitral.org/uncitrал/en/commission/working_groups/3Investor_State.html](http://www.uncitral.org/uncitrал/en/commission/working_groups/3Investor_State.html) (visited 22 October 2020). On the academic side, the Academic Forum on ISDS has the purpose of providing a venue for academics to exchange views, explore issues and options, test ideas and solutions, and make a constructive contribution to the ongoing discussions on possible reform of ISDS—in particular to discussions in the context of UNCITRAL’s WGIII; see Academic Forum on ISDS, ‘Statement of Purpose’ (CIDS—Geneva Center for International Dispute Settlement, 12 March 2018), [https://www.cids.ch/images/Documents/ISDS-AcademicForum/Academic_Forum_ISDS_Statement_of_Purpose.pdf](https://www.cids.ch/images/Documents/ISDS-AcademicForum/Academic_Forum_ISDS_Statement_of_Purpose.pdf) (visited 22 October 2020).

\(^5\) See Nikos Lavranos, ‘The ICS and MIC Projects: A Critical Review of the Issues of Arbitrator Selection, Control Mechanisms, and Recognition and Enforcement’; in Julien Chaise, Leila Choukroune, and Sufian Jusoh (eds), *Handbook of International Investment Law and Policy* (Singapore: Springer, 2020).

\(^6\) See, e.g., Felipe Hees and Pedro Mendonça Cavalcante, ‘Focusing on Investment Facilitation—Is It That Difficult?’, Columbia FDI Perspectives No. 202 (2017), [http://cssi.columbia.edu/files/2016/10/No-202-Hees-and-Cavalcante-FINAL.pdf](http://cssi.columbia.edu/files/2016/10/No-202-Hees-and-Cavalcante-FINAL.pdf) (visited 13 April 2021); Karl P. Sauvant, ‘Five Key Considerations for the WTO Investment-Facilitation Discussions, Going Forward’, Columbia FDI Perspectives No. 243 (2019), [http://cssi.columbia.edu/files/2018/10/No-243-Sauvant-FINAL.pdf](http://cssi.columbia.edu/files/2018/10/No-243-Sauvant-FINAL.pdf) (visited 13 April 2021).

\(^7\) See generally Georgios Dimitropoulos, ‘National Sovereignty and International Investment Law: Sovereignty Reassertion and Prospects of Reform’, 21 Journal of World Investment & Trade 71 (2020), at 90; Dimitropoulos, above n 3.

\(^8\) See Dimitropoulos, above n 7.

\(^9\) Jean D’Aspremont, *International Law as a Belief System* (Cambridge: Cambridge University Press, 2017).

\(^10\) See also section II.A.

\(^11\) The exceptionalism/unilateralism discussion in international law tries to understand to what extent international law is influenced by ‘exceptionalist’ nations that try to propel their own ‘values and interests’; see Anu Bradford and Eric Posner, ‘Universal Exceptionalism in International Law’, 52 Harvard International Law Journal 1 (2011). On exceptionalism during the times of the pandemic, see Julian Arato, Kathleen Clausen, and J. Benton Heath, ‘The Perils of Pandemic Exceptionalism’, 114 American Journal of International Law 627 (2020). The economic unilateralism identified here is also different from the work of Anthea Roberts, who conceptualizes different ‘national’ versions of international law—not the role of domestic law as a layer of international law; see Anthea Roberts, *Is International Law International?* (London: Oxford University Press, 2017).
article and the special issue, we conceptualize the relationship between the domestic and the international as different layers of IEL and the role of domestic law as unilateral economic law.

The present article and special issue discuss the development and proliferation of one of the most notable institutions of unilateral economic law: special economic zones (SEZs) and their importance for the international economic system. SEZs are carved out jurisdictions within the overall jurisdiction of a State for the purposes of introducing different laws and regulations that are usually more trade and investment friendly. SEZs are proliferating at an unprecedented pace. The zones coexist with the ordinary domestic legal system and international instruments offered by IEL to attract foreign direct investment (FDI), such as Free Trade Agreements and Bilateral Investment Treaties (BITs). SEZs are a strategy in the competition among States to promote foreign trade and attract foreign investment with the use of domestic law. As a result, they often complicate the choice of forum to do business for foreign companies. SEZ unilateralism creates a complicated relationship between domestic law and IEL and invites a careful consideration of the legal status of SEZs from an IEL viewpoint.

The article is structured as follows. Section II analyzes the contemporary devolution process in IEL from the international to the regional and eventually to the domestic level of governance. It then proceeds to elaborate a typology of unilateralism in IEL. Section III analyzes SEZs as unilateral economic law; it discusses the historical development of SEZs and provides a typology of SEZs. This is followed by an analysis of the relationship between the law of SEZs and IEL. Section IV concludes and outlines the special issue.

II. NEW UNILATERALISM IN IEL

Trade and investment law have a domestic life that remains largely understudied. The domestic life has led to the development of new legislative and regulatory measures that aim at substituting or complementing IEL. The exhaustiveness and intrusiveness of multilateralism (as well as the ‘constitutionalization’ of international law) has led to the backlash against legal globalization (and consequently, international trade policy).

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12 See Teresa Cheng, ‘Special Economic Zones: A Catalyst for International Trade and Investment in Unsettling Times?’, 20 Journal of World Investment & Trade 34 (2019).
13 See generally Michael D. Wong and Johanne Buba (CIIP), Special Economic Zones: An Operational Review of Their Impacts (Washington, DC: World Bank Group, 2017); Lotta Moberg, ‘The Political Economy of Special Economic Zones: Lessons for the United States’, 21 Chapman Law Review 408 (2018); Marc Proksch, ‘Success Factors and Required Policies for SEZs’, in Julien Chaisse and Jiaxiang Hu (eds), International Economic Law and the Challenges of the Free Zones—Global Regulatory Issues and Trends (The Hague: Kluwer Law International, Global Trade Law Series, 2019), at 17; see also section III.A.
14 This is all the more the case with newer types of zones that may be seen in some respects as trade- and investment-promoting, and in some others as problematic under traditional IEL; see, e.g., Finbarr Berrym- ham, ‘China’s Massive Hainan Free-Trade Port Plan Raises Questions over Global Trading Rules Compliance, Experts Say’, South China Morning Post (11 June 2020), https://www.scmp.com/economy/china-economy/article/3088593/chinas-massive-hainan-free-trade-port-plan-raises-questions (accessed 15 October 2020).
15 But see Dimitropoulos, above n 7; Kathleen Claussen, ‘Trade Administration’, 107 Virginia Law Review (forthcoming, 2021).
16 Ernst Ulrich Petersmann, Multilevel Constitutionalism for Multilevel Governance of Public Goods—Methodology Problems in International Law (London: Hart, 2017), at 416; see also Jan Klabbers, Anne Peters, and Geir Ulfstein, The Constitutionalization of International Law (London: Oxford University Press, 2009), at 414; Marise
SEZs represent a strategy of applying domestic law instead of or in parallel with IEL as a way to promote foreign trade and attract foreign investment as well as provide safeguards to foreign investors.\footnote{Cremona et al. (eds), Reflections on the Constitutionalisation of International Economic Law—Liber Amicorum for Ernst-Ulrich Petersmann (Boston: Brill, 2013), at 700; Pierre-Marie Dupuy, ‘2000–2020: Twenty Years Later, Where Are We in Terms of the Unity of International Law?’, 9 (1) Cambridge International Law Journal 6–23 (2020), at 22.}

This section first discusses the ways in which countries use their domestic laws as an alternative or complement to IEL. It then presents a typology of unilateralism in IEL.

A. From international to regional to domestic?

Multilateral negotiations in international trade have long reached a deadlock. International investment law and arbitration have experienced a huge backlash from government and scholars alike. States around the world have been resorting to regional strategies for the promotion of trade and investment.\footnote{Georgios Dimitropoulos, ‘The Viability of the Alternatives to International Investment Law and Arbitration: International and Domestic Perspectives’, in Michael Reisman and Nigel Blackaby (eds), Arbitration Beyond Borders: Essays in Memory of Guillermo Aguilar Álvarez (Kluwer, forthcoming, 2021).} Recently concluded agreements such as the Regional Comprehensive Economic Partnership,\footnote{A summary of the Regional Comprehensive Economic Partnership Agreement, https://asean.org/storage/2020/11/Summary-of-the-RCEP-Agreement.pdf (visited 13 April 2021).} the Comprehensive and Progressive Agreement for Trans-Pacific Partnership,\footnote{Christopher F. Corret al., ‘The CPTPP Enters into Force: What Does It Mean for Global Trade?’, White & Case (21 January 2019), https://www.whitecase.com/publications/alert/cptpp-enters-force-what-does-it-mean-global-trade (visited 13 April 2021).} and the EU–China Comprehensive Agreement on Investment\footnote{Institute for International Law and Justice, ‘Comprehensive and Progressive Agreement for Trans-Pacific Partnership’, https://www.iilj.org/wp-content/uploads/2018/03/CPTPP-consolidated.pdf (visited 13 April 2021).} are a testament to the shift from multilateral negotiations to regional strategies to advance trade and development.

A complementary and sometimes alternative approach to promote trade and investment has been to focus on domestic strategies; States have enacted new domestic legislative frameworks to manage economic globalization, including investment laws, arbitration laws, and new regimes of SEZs.\footnote{Lotta Moberg, The Political Economy of Special Economic Zones: Concentrating Economic Development (New York: Routledge, 2017), at 126.} The ways in which countries use their domestic law as an alternative or complement to IEL have been subject to less attention in the relevant scholarship and reform practice.\footnote{But see Sergio Puig and Gregory Shaffer, ‘Imperfect Alternatives: Institutional Choice and the Reform of Investment Law’, 112 American Journal of International Law 361 (2018); Georgios Dimitropoulos, ‘National Security: The Role of Investment Screening Mechanisms’, in Julien Chaisse, Leïla Choukroune, and Suﬁan Jusoh (eds), Handbook of International Investment Law and Policy—Volume I (Springer, forthcoming, 2020); Dimitropoulos, above n 17.} The domestic side of trade, investment, and investor protection and management deserves a closer look, as countries in the North and the South and the West and the East have started rediscovering the power of domestic law for the promotion of trade and investment.\footnote{In modern times, domestic law has been the main body of law regulating foreign trade and investment. This only started changing in the last quarter of the 20th century.}
International law as developed since the end of World War II (WWII) is historically layered. Four layers of development of international law may be identified that have resulted in a ‘legal geology’ in international regimes: bilateral, multilateral, constitutional layers of law-making, as well as a regulatory layer.\(^{25}\) International trade law transitioned in the second half of the 20th century from a bilateral into a multilateral discipline. Multilateralism in international trade is enhanced by the ‘single-undertaking’ approach of the WTO.\(^{26}\) Moreover, international trade law has developed a constitutional layer with the constitutionalization of certain principles within the WTO system.\(^{27}\) A peculiarity of the WTO system is the lack of a regulator as in other international organizations of the economic sphere such as the International Monetary Fund and the World Bank. The WTO operates more as a forum for the adoption of trade agreements among the members rather than as a day-to-day regulator of international trade matters. However, the WTO framework has institutionalized an ex-post regulator: the WTO AB. The WTO AB, a vital component of the dispute resolution system, is vested with great powers as the last decision-maker in the WTO system.\(^{28}\)

The contractual structure of international investment law is different in comparison to other areas of international law, where multilateral treaties and strong law-making and regulatory bodies dominate. While international investment law and arbitration rely on the traditional contractual sources like any other field of international law, international investment law has mostly developed the bilateral layer of the typical geology of international law in the form of BITs.\(^{29}\) International investment law—mostly of the last quarter of the 20th century—has been bilateral law with countries in the North and West entering into contractual agreements for the protection of investors in the South and East. Despite the extensive trend toward multilateralism in the post-WWII era, the idea of a multilateral investment law has been rejected by the international community repeatedly.

The recent developments in the discipline of IEL thus reveal the following trends: first, a trend of contestation of the IEL subdisciplines. This does not necessarily involve a broader contestation of the values reflected in the relevant subdisciplines—at least in principle; second, a trend to debate the reform of the IEL subdisciplines. Reform discussion revolves around both redesigning existing institutions and developing new international institutions; finally, there is a certain trend toward regionalization both in trade and in investment law.

\(^{25}\) See Joseph H. H. Weiler, ‘The Geology of International Law—Governance, Democracy and Legitimacy’, 64 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 547 (2004); see also Dimitropoulos, above n 3.

\(^{26}\) See generally Robert Wolfe, ‘The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor’, 12 Journal of International Economic Law 835 (2009).

\(^{27}\) Deborah Z. Cass, The Constitutionalization of the World Trade Organization: Legitimacy, Democracy, and Community in the International Trading System (Oxford: Oxford University Press, 2005).

\(^{28}\) See generally Ernst-Ulrich Petersmann, ‘Between “Member-Driven Governance” and “Judicialization”: Constitutional and Judicial Dilemmas in the World Trading System’, in Chang-fa Lo, Junji Nakagawa, and Tsai-fang Chen (eds), The Appellate Body of the WTO and Its Reform (Singapore: Springer, 2020).

\(^{29}\) Multilateral investment protection treaties—as well as constitutional law-making and regulatory organs—remain rather the exception in this field of international law; see generally Stephan W. Schill, The Multilateralization of International Investment Law (Cambridge: Cambridge University Press, 2010).
A brief analysis of the development of IEL reveals the following paradox: the backlash against international trade law is directed against an intensive process of multilateralization and constitutionalization. On the other hand, the backlash against international investment law seems to be directed at insufficient multilateralization. The opposite directions of development of the two regimes have still led to a certain convergence: the over-constitutionalization, on the one side, and the incomplete multilateralization, on the other, have led to the increase in importance of domestic law for the promotion and control of foreign trade and investment.

The focus on multilateral, regional, and bilateral contractualism sometimes does not allow policy reformers and legal scholars alike to look at the actual locus of change and reform in IEL, namely within the States, at the domestic policy level, and through domestic trade and investment laws. Domestic level reform and movements for a new unilateralism in IEL open up opportunities for the comparative study of domestic laws beyond bilateral and multilateral treaties; at the same time, such study may provide insights into whether IEL as envisaged by States will remain truly international. Even contemporary regionalism may be viewed in the same light. RTAs and other forms of Preferential Trade Agreements have been reduced in the policy and theoretical debates among lawyers and economists down to either virtues or vices from the point of view of multilateralism. Some view regionalism as a threat to the integrity of multilateralism and the multilateral trading system—the ‘spaghetti bowl effect’. In the eyes of others, regionalism is yet another possibility toward multilateralism—the ‘domino effect’. In the current stage of development of IEL, regionalism may be viewed rather as a step toward unilateralism or just another variety of unilateral economic law.

The following section discusses a typology of unilateralism in IEL.

### B. A typology of unilateralism in IEL

The practice of unilateralism in IEL is as old as modern foreign trade. This article identifies four types of unilateralism in State practice: classical unilateralism, embedded unilateralism, sustainability unilateralism, and national security unilateralism.

#### 1. Classical unilateralism

International trade law started as a discipline in the form of unilateral liberalization of trade policy by the British Empire. During the first half of the 18th century, trade...
policy in Britain was predominantly mercantilist. The shift from a mercantilist to liberal trade policy began in 1760, with the rise of Physiocracy in France and the liberal economic ideas of Adam Smith and his successors. Following what is now identified as Classical Trade theory, the British Empire unilaterally opened its borders for international trade during the 18th and 19th centuries.

The most interesting case study of unilateral trade opening was the series of events that led to the repeal of the ‘Corn Laws’. The Corn Laws were a set of tariffs and trade restrictions on imported food and grain enforced in the UK between 1815 and 1846. The Corn Laws, an example of British mercantilist trade policies, aimed to keep grain prices high to favor domestic producers. They achieved this by blocking the import of cheap grain, initially by simply forbidding importation below a set price, and later by imposing steep import duties, making it too expensive to import grain from abroad, even when food supplies were short. The Sliding Scale Corn Law was passed in 1828. In 1842, the then Prime Minister Robert Peel introduced a liberal tariff reform that drastically reduced the duties on imported corn and had lifted the ban on imported cattle. He carried, in the following year, the Canadian Corn Bill that admitted Canadian corn at a fixed small duty and then went on to introduce another series of liberal tariff reform. Import duties on raw cotton and wool were abolished. Duties on tropical foodstuffs, meat, and dairy products were greatly reduced.

2. Embedded unilateralism

A different paradigm of unilateralism emerged in the post-WWII era. What John Ruggie termed ‘embedded liberalism’ was a concept that brings to expression a political economy compromise of the postwar era, whereby the promotion of free trade was accompanied with some leeway given to the States to adopt protectionist measures. While ‘embeddedness’ and ‘liberalism’ may be viewed as two antithetical concepts, the broad idea behind embedded liberalism was that the Keynesian welfare state was accepted as an ‘assumed normative benchmark’ for international trade. Steinberg understands embedded liberalism as a concept that captures the coexistence of both liberal and protectionist elements in the WTO rather than as a concept different.

35 See generally Laura LaHaye, ‘Mercantilism,’ The Library of Economics and Liberty, https://www.econlib.org/library/Enc/Mercantilism.html (accessed 15 October 2020).
36 The sliding scale mechanism of the Sliding Scale Corn Law was a customs mechanism whereby the import duties on corn varied in inverse relation to the level of grain prices on the home market and thus tended to reduce imports to the minimum without provoking famines. On the other hand, when home prices passed a certain threshold, exports of grain were prohibited so as not to reduce the local supplies. Given the fact that the lower limits of import duties were distinctly below the general level of the period before the Corn Laws, this was seen as the first step toward reducing the trade protections on agriculture in England; see Bernard Semmel, The Rise of Free Trade Imperialism (Cambridge: Cambridge University Press, 1970).
37 Mary Lawson-Tancred, ‘The Anti-League and the Corn Law Crisis of 1846’, 3 The Historical Journal 162 (1960).
38 Grain imports, however, were still liable to a duty high enough to keep them at a relatively low level; Lawson-Tancred, above n 37.
39 John Gerard Ruggie, ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’, 36 International Organization 379 (1982).
40 Robert Howse, ‘From Politics to Technocracy and Back Again: The Fate of the Multilateral Trading System’, 96 American Journal of International Law 94, 113 (2002).
from liberalism.\textsuperscript{41} Lang suggests that embedded liberalism is not about constraining the openness of trade but rather about maintaining an appropriate balance between free trade and the protection of ‘social purpose’ in the international trade regime.\textsuperscript{42} Winickoff et al. analyze the SPS Agreement through the theoretical lens of embedded liberalism, to argue that the SPS Agreement equally embodies the protection of free trade and other goals.\textsuperscript{43} Overall, embedded liberalism differs from the orthodox liberal school of thought because of its greater support for the pursuit of certain protectionist national policies.\textsuperscript{44} Embedded liberalism therefore leaves more room for States to pursue unilateral measures for the promotion of social policies.

This type of embedded unilateralism developed in international investment law under the brand of the ‘New International Economic Order’ (NIEO).\textsuperscript{45} The broader goal was similar; this time asserted by the newly decolonized countries of the developing world. The NIEO led to the development of Foreign Investment Laws (FILs) that later started proliferating in various countries around the world. FILs may be viewed as a case of embedded unilateralism.\textsuperscript{46}

3. Sustainability unilateralism

Unilateralism was given a bad name in the field of international trade law during the 1990s, namely the age of uncontested economic globalization. When value judgments had to be made between trade liberalization and protection of domestic interests, liberalization became the default. International trade law is a multilateral discipline that favors State interaction within the frame of the multilateral institution of the WTO. At the same time, the WTO allows unilateralism to some extent. The exceptions contained in Article XX GATT, for example, are instances of unilateralism in international trade law. The interplay between multilateralism and unilateralism in international trade has been mostly adjudicated in the context of the exceptions for the protection of the

\textsuperscript{41} Richard H. Steinberg, ‘Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints’, 98 (2) American Journal of International Law 262 (2004).
\textsuperscript{42} Andrew TF Lang, ‘Reconstructing Embedded Liberalism: John Gerard Ruggie and Constructivist Approaches to the Study of the International Trade Regime’, 9 (1) Journal of International Economic Law 81 (2006).
\textsuperscript{43} David Winickoff et al., ‘Adjudicating the GM Food Wars: Science, Risk, and Democracy in World Trade Law’, 30 Yale Journal of International Law 107 (2005).
\textsuperscript{44} Howse thinks there are two adequate responses in order to re-introduce embedded liberalism that are appropriate to the current conditions of globalization: the first response is at the structural level, where a greater leeway should be left to the States to experiment with domestically appropriate regulations. Second, inclusiveness and participation should not only take place at the domestic level but should also be perceived as a task for the international level; see Howse, above n 40, at 113 (with reference to Dani Rodrik, ‘The Global Governance of Trade—As If Development Really Mattered’ (2001), http://wcfia.harvard.edu/publications/global-governance-trade-if-development-really-matteredbra-undp-background-paper); see also Roberto M. Unger, Democracy Realized: The Progressive Alternative (Verso, 1998).
\textsuperscript{45} See UN General Assembly Resolution 3201(S-VI) Declaration on the Establishment of a New International Economic Order (1 May 1974) and the Programme of Action on the Establishment of a New International Economic Order. This was preceded by the UN GA Resolution 1803 (XVII) Permanent Sovereignty over Natural Resources (14 December 1962). On 12 December 1974, the UN General Assembly adopted Resolution 3281 (XXIX) containing the ‘Charter of Economic Rights and Duties of States.
\textsuperscript{46} On FILs, see section III.B.
environment. The two main cases discussing unilateral environmental measures are the Shrimp-Turtle and Tuna-Dolphin cases. The major issue addressed in these cases is to what extent a country may unilaterally impose measures and standards on environmental protection on foreign countries. The development of the case law shows a gradual transition of the WTO AB and WTO law toward a position of more deference to domestic environmental policies and the acceptance of domestic unilateral environmental measures. This type of unilateralism in international trade was gradually extended to cover other aspects of social policy such as labor and human rights more broadly, as well as has taken a similar shape in international investment law.

One may today speak of sustainability unilateralism in IEL.

4. National security unilateralism

Under the foreign trade policy of the Trump administration, the world witnessed a new era of trade wars. The Trump administration imposed a series of tariff increases vis-à-vis many of its WTO trade partners without following the processes prescribed in the GATT and elsewhere in the WTO agreements. The justification for this type of unilateralism is the protection of national security interests of the USA. Similarly, a number of States have developed doctrines largely (and explicitly) shaped by national security unilateralism. China's Belt and Road Initiative is also fundamentally driven

47 See generally Article XX(b) and (g) GATT. See Philip Bentley, ‘Re-assessment of Article XX, Paragraphs (b) and (g) of GATT 1994 in the Light of Growing Consumer and Environmental Concern about Biotechnology’, 24 Fordham International Law Journal 107 (2000); Bradly J. Condon, ‘GATT Article XX and Proximity-of-Interest: Determining the Subject Matter of Paragraphs B and G’, 9 UCLA Journal of International Law and Foreign Affairs 137 (2004).

48 United States—Import Prohibition of Certain Shrimp and Shrimp Products (Shrimp-Turtle).

49 See United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (US—Tuna II (Mexico)).

50 See Appellate Body Report, United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (Recourse to Article 21.5 of the DSU by the US and second Recourse by Mexico), WT/DS381/AB/RW/USA, WT/DS381/AB/RW2.

51 See, e.g., Rachel Harris and Gillian Moon, ‘GATT Article XX and Human Rights: What Do We Know from the First Twenty Years?’, 16 Melbourne Journal of International Law 432 (2015).

52 See Christina L. Beharry and Melinda E. Kuritzky, ‘Going Green: Managing the Environment Through International Investment Arbitration’, 30 American University International Law Review 383 (2015).

53 See generally Anne van Aaken, Chad P. Bown, and Andrew Lang, 22 (4) Journal of International Economic Law (Special Issue on Trade Wars) 529 (2019). According to one account, ‘[a] trade war is when a nation imposes tariffs or quotas on imports and foreign countries retaliate with similar forms of trade protectionism’. See also Kimberly Amadeo, ‘Trade Wars and How They Affect You’, The Balance, 25 September 2020, https://www.thebalance.com/trade-wars-definition-how-it-affects-you-4159973 (accessed 15 October 2020).

54 The imposition and raising of tariffs by the Trump administration have been discussed in terms of unilateralism as well and referred to as ‘Trump unilateralism’. See generally Harold Hongju Koh, ‘Trump Change: Unilateralism and the “Disruption Myth” in International Trade: Epilogue to the Yale Symposium on Trade Law under the Trump Administration’, 44 Yale Journal of International Law Online 96 (2019).

55 See generally Anthea Roberts, Henrique Choer Moraes, and Victor Ferguson, ‘Toward a Geoeconomic Order’, 22(4) Journal of International Economic Law 655 (2019); Kathleen Clausen, ‘Trade’s Security Exceptionalism’, 72 (5) Stanford Law Review 1097 (2020). See also a leading figure of the Trump administration, Robert E. Lighthizer, ‘Trump’s Trade Policy Is Making America Stronger’, 99 (4) Foreign Affairs (2020), https://www.foreignaffairs.com/articles/china/2020-07-20/trumps-trade-policy-making-america-stronger.

56 See United Kingdom, Department for Business, Energy and Industrial Strategy, ‘National Security and Infrastructure Investment Review (Green Paper)’ (2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652505/2017_10_16_NSII_Green__Paper_final.pdf.
by similar motives as China is developing this strategy, in part, to address potential external threats to its own national security.  

National security has experienced a meteoric rise from a hypothetical excuse under international law to a widely asserted notion before both investment tribunals and the WTO Dispute Settlement Body. The WTO’s first ruling on national security under the exception of Article XXI GATT was rendered in a dispute between Russia and Ukraine in 2019. Despite the relatively rare use of national security exceptions in investment treaties, arbitral tribunals have increasingly discussed the necessity defense under customary international law, for instance, in *Ampal-American v Egypt* in 2017. However, international disputes are only the tip of the iceberg as many domestic laws have recently been amended to tighten entry rules for foreign investment, as well as expand the grounds for review of Investment Screening Mechanisms and similar foreign investment control procedures. Several foreign takeovers have also been reportedly withdrawn for national security reasons. Overall, national security has been used both in trade and in investment and both domestically and internationally as an exception from the application of the disciplines of IEL.

The preceding analysis sheds light on the fact that various types of unilateralism now constitute a defining feature of contemporary international trade and investment (law). If one were to view economic unilateralism on a liberalization continuum, unilateral liberalization of trade and investment—as in the classical era—stands on the one side, while ‘aggressive unilateralism’—as in the case of national security unilateralism—stands on the other.

The new unilateralism discussed in this article brings to expression the variety of policies that lie in the middle between the two extremes of unilateral liberalization and

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57 See Joel Slawotsky, ‘The National Security Exception in US-China FDI and Trade: Lessons from Delaware Corporate Law’, 6 (2) The Chinese Journal of Comparative Law 228 (2018); see also Julien Chaisse and Mitsuo Matsushita, ‘China’s “Belt and Road” Initiative: Mapping the World’s Normative and Strategic Implications’, 52 (1) Journal of World Trade 163–85 (2018) and Mher D. Sahakyan, ‘The Security Dimension of China’s Belt and Road Initiative’, Asia Global Online (2019), https://www.asiaglobalonline.hku.hk/the-security-dimension-of-chinas-belt-and-road-initiative (accessed 15 October 2020).

58 Simon Lester and Inu Manak, ‘A Proposal for a Committee on National Security at the WTO’, 30 Duke Journal of Comparative and International Law 267 (2020).

59 Russia—Measures Concerning Traffic in Transit—Panel report, WT/DS512/7, 29 April 2019. For general analysis of WTO security exceptions, see Ji Yeong Yoo and Dukgeun Ahn, ‘Security Exceptions in the WTO System: Bridge or Bottle-Neck for Trade and Security?’, 19 Journal of International Economic Law 417 (2016), at 428.

60 Compared to old-generation treaties, public policy and national security exceptions are more prevalent in recently concluded IIAs. See UNCTAD, ‘Recent Developments in the International Investment Regime, Issue 1’ (2018), https://unctad.org/en/PublicationsLibrary/diaepcbinf2018d1_en.pdf (accessed 15 October 2020).

61 *Ampal-American Israel Corporation and others v Arab Republic of Egypt*, ICSID Case No. ARB/12/11, 21 February 2017.

62 See generally Dimitropoulos, above n 23.

63 UNCTAD, *World Investment Report—Investment and Industrial Policies* (Geneva/New York: UN Press), at 85, 86, 147, 160–61.

64 See also for this differentiation Jagdish Bhagwati, ‘Introduction: The Unilateral Freeing of Trade versus Reciprocity’, in *Going Alone: The Case for Relaxed Reciprocity in Freeing Trade* (Cambridge, MA: MIT Press, 2002).
aggressive unilateralism. Globalization as a descriptive and normative category is now also heavily contested in international law.\textsuperscript{65} IEL has been one of the first disciplines where this reaction has been observed both in scholarly debate and in State practice. For example, States have begun withdrawing from international agreements and resorting to regional cooperation strategies. More recently, there has been a rise in the use of domestic legal instruments such as domestic investment laws.\textsuperscript{66} The trend toward unilateralizing IEL is broader and is reflected in the simultaneous effort of States to withdraw from international agreements, while at the same time controlling how much, to what extent, and what areas are to become globalized. The unilateral economic law identified in this article means the institutionalization of the values and principles of IEL, such as international trade and investment promotion through National Treatment and Most Favored Nation, using the means of domestic law. SEZs are to be viewed in this light.

Economic deglobalization combined with the proliferation of domestic strategies for the management of the global economy have led to the increasing significance of SEZs and their laws and have added them as a unilateral layer to the overall framework of IEL. These issues will be taken up in the next section that discusses SEZs and traces their development within the broader context of unilateral economic law.

III. SPECIAL ECONOMIC ZONE AND UNILATERAL ECONOMIC LAW
SEZs represent another strategy adopted by States to apply domestic law instead of or in parallel with international trade and investment law to promote trade and foreign investment and provide safeguards to foreign investors. The difference between this and other strategies of foreign trade and investment promotion is two-fold. First, SEZs are unilaterally established by States, which means that they can be modified at will without having to engage in any bilateral or multilateral negotiations with other States. This also means that the life span of SEZs is exclusively under State control—while the termination and withdrawal of international treaties and concessions are subject to the scrutiny of international rules. Second, SEZs are different from international trade and investment norms because of the carving out of a ‘special’ jurisdiction for the application of a separate economic regime within the country—hence the term ‘special economic zone’.\textsuperscript{67} While international treaties require implementation of international rules to the entire national territory, SEZs allow States to test and develop new policies on a smaller scale. While SEZs stress the increasing reliance by States on domestic laws to unilaterally encourage trade and foreign investment, they also form the bedrock of a new layer of IEL. In line with the above discussion, this section of the article explores the evolution and typology of SEZs; it then makes an assessment of SEZs as

\textsuperscript{65} Cf James Crawford, ‘The Current Political Discourse Concerning International Law’, 81 Modern Law Review 1 (2018); David S Grewal, ‘Three Theses on the Current Crisis of International Liberalism’, Indiana Journal of Global Legal Studies 595 (2018).

\textsuperscript{66} See section II.A as well as section III.

\textsuperscript{67} See generally FIAS, \textit{Special Economic Zone: Performance, Lessons Learned, and Implication for Zone Development} (Washington, DC: World Bank, 2008); Thomas Farole and Gokhan Akinci (eds), \textit{Special Economic Zones: Progress, Emerging Challenges, and Future Directions} (Washington, DC: World Bank, 2011).
unilateral acts under IEL and concludes with a conceptualization of SEZs as unilateral economic law.

A. Past, present, and future: SEZs’ evolution and types

The idea of carving out a piece of land for the purposes of trade promotion goes back to the Roman Empire. The first SEZ in the form of a free trade zone (FTZ) may be said to be the Greek island of Delos from 166 BC until about 69 BC. The model of the civitas libera was developed in the Hellenistic and Roman imperial eras; ‘free cities’ could coin money, had the power to establish their own laws, and were not required to pay an annual tribute to the Roman Emperor. In the 12th century, the Hanseatic League appeared as a confederation of port cities dominating trade in Northern Europe. They moreover had established trading posts (Kontore) all over Europe that formed part of the trading network but did not belong to the core of the Hansa, including Steelyard in London. They were separate walled communities with their own warehouses, weighing house, chapel, counting houses, as well as residential quarters.

An immediate forerunner of contemporary SEZs were ‘treaty ports’. Treaty ports were established through bilateral international treaties initially between the British Empire and the Qing Dynasty on the soil of China. The model of treaty ports expanded both geographically and politically as treaty ports were established outside China, and the model was adopted by all Western powers of the time. Treaty ports were open to foreign trade and enjoyed favorable customs regulations. Moreover, foreigners were allowed to live within the bounds of treaty ports using newly built infrastructure and enjoyed legal extraterritoriality as per the treaties. The last treaty ports of China were abolished at the end of WWII.

In the aftermath of WWII, SEZs in the form of export processing zones (EPZs) were developed to further the then newly developed economic strategy of ‘export-led...
growth. The first EPZ of the postwar period was developed in Puerto Rico. Some consider Shannon Free Zone in Ireland, which was established in 1959 adjacent to the city airport, as the first economic zone of the contemporary type. SEZs were later used by the Chinese government—using for the first time the term ‘special economic zone’—to bring about limited liberalization, as well as other governments in order to achieve multiple economic and social goals. China has been a forerunner in post-WWII economic zone development with the establishment of the Shenzhen SEZ and several other zones that have been created in the last decades.

The number of trade and investment zones where the applicable rules were different in comparison to the rest of the country multiplied in the 1980s and continues to rise exponentially in the 21st century. The term ‘EPZ’ was coined to describe these areas in the 1970s by the United Nations Industrial Development Organization. The term ‘SEZ’ has been used in China for the zones that have been developed since the 1980s, a term that was later adopted by the World Bank in the FIAS Report. SEZ is now used as a generic term to describe geographic areas that are designated as zones for promotion of trade and attraction of foreign investment. According to a definition by the World Bank, ‘SEZs are generally defined as geographically delimited areas administered by a single body, offering certain incentives (generally duty-free importing and streamlined customs procedures, for instance) to businesses which physically locate within the zone.’

While SEZs have been around for a long time, they have in their long history undergone different stages, and each stage has had different economic policy meanings and implications. In more recent years, SEZs have seen both an exponential quantitative growth and a qualitative transformation. SEZs have entered a new era of great development policies as opposed to the theory of import substitution and the role of SEZs in the transition from the former policy to the latter, see Patrick Neveling, ‘Export Processing Zones, Special Economic Zones, and the Long March of Capitalist Development Policies during the Cold War’, in Leslie James and Elisabeth Leake (eds), Negotiating Independence: New Directions in the Histories of the Cold War & Decolonisation (London: Bloomsbury, 2015), 63–84. The term ‘SEZ’ has been used in China for the zones that have been developed since the 1980s, a term that was later adopted by the World Bank in the FIAS Report. SEZ is now used as a generic term to describe geographic areas that are designated as zones for promotion of trade and attraction of foreign investment. According to a definition by the World Bank, ‘SEZs are generally defined as geographically delimited areas administered by a single body, offering certain incentives (generally duty-free importing and streamlined customs procedures, for instance) to businesses which physically locate within the zone.’

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74 On export-oriented development policies as opposed to the theory of import substitution and the role of SEZs in the transition from the former policy to the latter, see Patrick Neveling, ‘Export Processing Zones, Special Economic Zones, and the Long March of Capitalist Development Policies during the Cold War’, in Leslie James and Elisabeth Leake (eds), Negotiating Independence: New Directions in the Histories of the Cold War & Decolonisation (London: Bloomsbury, 2015), 63–84.

75 See generally, as well as on the influence of the USA in the development of the SEZ policies, Patrick Neveling, ‘Export Processing Zones, Special Economic Zones and the Long March of Capitalist Development Policies during the Cold War’, in Leslie James and Elisabeth Leake (eds), Decolonization and the Cold War: Negotiating Independence (London: Bloomsbury, 2015), at 63.

76 See Susanne A. Frick et al., ‘Toward Economically Dynamic Special Economic Zones in Emerging Countries’, 95 Economic Geography 3 (2019); Proksch, above n 13, at 17.

77 Jie Huang, ‘Challenges and Solutions for the China-US BIT Negotiations: Insights from the Recent Developments of FTZs in China’, 18 Journal of International Economic Law 308 (2015); see also Jeffrey F. Fitzpatrick and Jian Zhang, ‘Using China’s Experience to Speculate upon the Future Possibility of Special Economic Zones (SEZs) within the Planned Development of Northern Australia’, 18 Flinders Law Journal 51 (2016); Jiaxiang Hu, ‘From SEZ to FTZ: An Evolutionary Change toward FDI in China’, in Julien Chaisse, Leila Choukroune, and Sufian Jusoh (eds), Handbook of International Investment Law and Policy (Singapore: Springer, 2020).

78 See also Connie Carter and Andrew Harding, Special Economic Zones in Asian Market Economies (London: Routledge, 2010).
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significance, which has legal and policy implications for IEL. The last five years show a spike in the usage of SEZs, as they have never before experienced such a rapid rate of expansion—namely of approximately 20%—as well as increase in importance for countries' trade and investment policies. Beyond the geographic expansion of SEZs, they have also expanded thematically.

Globalization, a given of the world at the end of the 20th century, became a contested issue after a series of economic, financial, political, and health crises that have plagued the globe over the last 15 years. Particularly, economic globalization has been in decline in the aftermath of the global financial crisis of 2008. The process of recess of economic globalization has been described as 'de-globalization'. Global trade has declined significantly since 2012, and this seems to be a lasting trend. According to United Nations Conference on Trade and Development (UNCTAD), global FDI began its pre-COVID decline since at least 2016. As an immediate consequence of the global pandemic, world FDI flows collapsed in 2020.

Under these strong underlying conditions of diminishing supply of capital—while demand remains constant, or maybe even increasing—the marketplace for foreign investment becomes even more competitive, and the need for export-led growth becomes even more imperative. It is thus no coincidence that UNCTAD's World Investment Report 2019 is dedicated to SEZs and their impact on global investment and trade. According to Mukhisa Kituyi, Secretary-General of UNCTAD:

It is in this context [described above] that we are seeing explosive growth in the use of special economic zones (SEZs) as key policy instruments for the attraction of investment for industrial development (UNCTAD, WIR, at Foreword).

There are approximately 5400 zones across 147 economies today. More than 1000 zones were created in the last five years, and at least 500 more are in the process of being developed in the next couple of years. Figure 1 showcases the recent dramatic increase of SEZs.

This boom can be explained as a response to the increasing competition to attract foreign investment.

82 See further down in the text.
83 Walden Bello, Deglobalization: Ideas for a New World Economy (London, New York: Zed Books, 2008).
84 See IRC Trade Task Force, 'Understanding the Weakness in Global Trade What is the New Normal?', Occasional Paper Series No. 178 (September 2016), https://www.ecb.europa.eu/pub/pdf/scpops/ecbop178.en.pdf (accessed 15 October 2020). According to the WTO, international trade is 'set to plunge as COVID-19 pandemic upends global economy'; see https://www.wto.org/english/news_e/pres20_e/pr855_e.htm.
85 See UNCTAD, Global Investment Trends Monitor, Issue No. 33 (January 2020); UNCTAD, World Investment Report 2019—Special Economic Zones (Geneva: UNCTAD, 2019).
86 UNCTAD, Global Investment Trend Monitor, No. 38 (UNCTAD/DIAE/IA/INF/2021/1), 24 January 2021.
87 Naoko Otobe, 'Export-Led Development, Employment and Gender in the era of Globalization', Employment Working Paper No. 197 (ILO, Geneva, 2015).
88 UNCTAD, WIR, 2019, 128.
89 Ibid, at 128.
90 Ibid, at 195.
There are many different types of SEZs such as FTZs, EPZs, industrial parks, and bonded logistics parks. SEZs may be used for storage, re-export and trans-shipment operations, and/or for manufacturing operations. The different types of zones signal different degrees of willingness to promote foreign investment, as well as openness in areas of economic activity. SEZs can be classified based on the nature of commercial activities undertaken inside the zone: SEZs that are used exclusively for trans-shipment and international trade, which are often referred to as free ports, and SEZs that are used for manufacturing and processing to attract foreign investment, which are usually referred to as EPZs.

There is one further reason for the increasing importance of SEZs: the qualitative transformation of SEZs. Under conditions of extreme competition for the scarce resource of capital, the scope of activities captured under SEZs is expanding. This is also why it is commonly believed that SEZs have entered a new stage of development (and sophistication). Beyond the two traditional forms of SEZs, free ports and the EPZs, that historically have been used for trade in products, special zones are nowadays used for the promotion of foreign investment in services, predominantly financial services. Countries in the Gulf Region have truly pioneered this type of zone with the

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91 Julien Chaisse and Xueliang Ji, ‘The Pervasive Problem of Special Economic Zones for International Economic Law: Tax, Investment, and Trade’, 19(4) World Trade Review (2020) 567, at 569–70.

92 See D. L. U. Jayawardena, ‘Free Trade Zones’, 17 Journal of World Trade Law 427 (1983), at 427–28; Robert J. McCalla, ‘The Geographic Spread of Free Zones Associated with Ports’, 21 Geoforum 121 (1990). The operations within special economic zones developed from the tertiary to secondary and primary industries, namely from trade to manufacturing; this is in a way the opposite type of development in comparison to regular economic development; see Guang-wen Meng, ‘Evolutionary Model of Free Economic Zones: Different Generations and Structural Features’, 15 Chinese Geographical Science 103 (2005), at 108.
Dubai International Financial Centre (DIFC) that has operated since 2004 and Abu Dhabi Global Market established in 2015, both in the United Arab Emirates, as well as the Qatar Financial Centre (QFC) in the State of Qatar, which has been operating since 2005. These latest developments represent a new benchmark for SEZs that many counties will try to duplicate and foreshadow the further transformation of many SEZs worldwide. For instance, Kazakhstan established the Astana International Financial Centre that was officially launched in 2018 and that is largely inspired from the DIFC and the QFC. This is characteristic of an even broader trend of moving away from trans-shipment and manufacturing toward the creation of free spaces for the flourishing of various economic and social activities. The establishment of China (Shanghai) Pilot FTZ announced this even broader shift in 2015 and is an example for the increasing economic and social importance of SEZs. SEZs are nowadays used as test beds for broader economic as well as social reform.

SEZs are usually fenced-in areas and are traditionally located in or near seaports or airports. They are said to create an ‘offshore’ jurisdiction on the soil of the countries that establish them. The QFC is one of the rare cases of zones that may be characterized as ‘on shore’, meaning that QFC registered entities are allowed to operate and offer services everywhere within the borders of the State of Qatar—not exclusively within the geographical borders of the zone. In these geographically and legally circumscribed areas, domestic laws are partly different from the rest of the domestic jurisdiction, with the aim of increasing foreign trade and investment. Laws that may be different are investment and trade laws, tax laws, labor laws, customs laws, and so on. Financial incentives in the form of duty-free import, tax exemptions, and/or tax holidays usually accompany the creation of the zones in order to promote investment in the zone.

The laws are usually not only more investor-friendly but very often also designed to be more familiar to foreign investors, being based on common law principles. In addition, they are also governed by Free Zone Authorities that have broad regulatory and operational powers within the relevant zones.

B. Special economic zones as unilateral acts in IEL

International treaties and custom are not the only means by which States assume international obligations. A strictly unilateral act can also impose a binding obligation on the author State. This principle was recognized by the International Court of Justice in the Nuclear Tests case, in which the Court held:

93 See Federal Law No. 8 of 2004: Regarding the Financial Free Zones in the United Arab Emirates.
94 Daqing Yao and John Whalley, ‘The China (Shanghai) Pilot Free Trade Zone: Background, Developments and Preliminary Assessment of Initial Impacts’, 39 The World Economy 2 (2016). See also Ting Han and Andrew D. Mitchell, ‘China’s Free Trade Zones in Its Post-WTO Accession ERA: A Case Study of Shanghai FTZ’, in Julien Chaisse and Jiaxiang Hu (eds), International Economic Law and the Challenges of the Free Zones—Global Regulatory Issues and Trends (The Hague: Kluwer Law International, Global Trade Law Series, 2019), at 236; Gonzalo Villalta Puig and Sabrina Leung Tsam Tai, ‘China (Shanghai) Pilot Free Trade Zone Investor-State Dispute Settlement: An Uncertain Experiment’, 18 Journal of World Investment & Trade 706 (2017).
95 María Cristina Gritón Salias, ‘Part V: Substantive Investment Law, “Do Umbrella Clauses Apply to Unilateral Undertakings?”’, in Christina Bender et al. (eds), International Investment Law for the Twenty-First Century: Essays in Honour of Christoph Schreuer (Oxford: Oxford University Press, 2009).
96 Nuclear Tests (Australia v France), Judgment, I.C.J. Reports 1974, at 267, para 43 (20 December 1974).
declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations [...]. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiation, is binding.

Unilateral acts are one of the most contentious issues in contemporary international law, largely because of the difficulty of defining them. Certain scholars have adopted a broad definition, treating any act other than negotiations and treaties as a unilateral act.\(^{97}\) According to the definition propounded by E. Suy,\(^ {98}\) a unilateral act would contain three precise attributes: first, it would be performed by one subject of law; second, such an act would be autonomous and not dependent on any other act; and finally, the act must not give rise to obligations on third-party States. Therefore, unilateral acts must necessarily be autonomous and independent of any obligation derived from a bilateral or multilateral framework. The International Law Commission has followed the same conceptualization in formulating the Guiding Principles applicable to unilateral acts.\(^ {99}\)

This raises the question which actions in practice can be categorized as unilateral acts. According to Dupuy,\(^ {100}\) a unilateral act can include any act by which States declare their views, ‘confirm or waive their rights’, and ‘enact domestic law’. While some scholars have entirely excluded domestic actions from the definition of a unilateral act,\(^ {101}\) such a view has been dismissed as formalistic.\(^ {102}\) It is widely accepted that a unilateral act even if it takes the form of a domestic statute or resolution is an act of international law and can create international obligations for the author State.\(^ {103}\)

Unilateral acts are considered to be binding on the author State based on the principle of good faith.\(^ {104}\) Unilateral acts often feature in international investment law and IEL more broadly, when host States offer rights and protections to foreign investors through domestic legislation, to attract foreign investment.\(^ {105}\) According to Reisman and Arsanjani, States are bound by such unilateral acts if they create a legitimate expectation in foreign investors.\(^ {106}\)

The characterization of FILs as either unilateral acts creating international obligations or ordinary domestic statutes has consequences for investment arbitration. If FILs

\(^{97}\) Robert Jennings and Arthur Watts, *Oppenheim’s International Law* (Oxford: Oxford University Press, 1996) vol. 1, t.2, at 1187–88.

\(^{98}\) Eric Suy, *Les actes juridiques unilatéraux en droit international public* (Paris: Librarie générale de droit et de jurisprudence, 1962), at 33 and 44.

\(^{99}\) See UN ILC, ‘Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations’, 58th Session (2006), at 369.

\(^{100}\) See Pierre-Marie Dupuy, *Droit International Public* (Paris: Dalloz, 2000), at 322.

\(^{101}\) See Władysław Czapliński, ‘Akty jednostronne w prawie międzynarodowym, Sprawy Międzynarodowe’, mentioned in Saganek, *Unilateral Acts of States in Public International Law* (Brill, 2006), at 48.

\(^{102}\) See Przemysław Saganek, ‘Unilateral Acts of States in Public International Law’, in Malgosia Fitzmaurice and Phoebe Okowa (eds), *Queen Mary Studies in International Law* (Leiden: Brill, 2006) vol. 22, at 72.

\(^{103}\) Ibid, at 72.

\(^{104}\) See Guiding Principle No. 1, UN ILC, above n 99.

\(^{105}\) See Gritón Salias, above n 95, at 490.

\(^{106}\) See W. Michael Reisman and Mahnounsh H. Arsanjani, ‘The Question of Unilateral Governmental Statements as Applicable Law in Investment Disputes’, 19 ICSID Review–Foreign Investment Law Journal, 328 (2004), at 342.
are construed as unilateral acts under international law, the respondent can take certain defenses that are not available under a domestic law characterization. Under the unilateral view, compensation may be higher and cost-shifting less likely, and investors might be held to have waived their FIL rights. This also has an effect on investment treaty cases: umbrella clauses under BITs are unlikely to be breached. Both characterizations, whether unilateral or purely domestic, will lead to the same results, but for different reasons. As a result, States do not have any reason to prefer one characterization over the other. The characterization adopted by a tribunal still matters irrespective of the same consequences. Treating FILs as purely domestic instruments allows the State to retain greater control over issues such as interpretation and termination, which international tribunals must then apply more or less faithfully.\footnote{Payment in Gold of Brazilian Federal Loans Contracted in France (Fr. v Braz.), Series A No. 21, at 124 (Perm. Ct. Int’l Just. 1929) [hereinafter Brazilian Loans]; Eletronica Sicula S.p.A. (ELSI) (U.S. v It.) Judgment, 1989 ICJ Rep. 15, 47 (July 20); Hepburn, above n 30, at 108–11.} If FILs are treated as international instruments, a tribunal can take substantial authority over the interpretive process. To avoid such matters, States make their objective clearer in a FIL. To illustrate, certain FILs contain provisions that declare them to be an ‘international instrument’,\footnote{Cf Egypt’s 1957 declaration on the Suez Canal, which indicated that it ‘constitutes an international instrument’. The declaration was one instance of State practice discussed by the ILC.} whereas certain international instruments declare themselves to be FILs. Hepburn demonstrates that claims under FILs are not merely treaty claims, as several tribunals have suggested,\footnote{See Getma Int’l v Guinea, ICSID Case No. ARB/11/29, Decision on Jurisdiction, para 106 (29 December 2012); AES Corp. v Kazakhstan, ICSID Case No. ARB/10/16, Award, para 219 (1 November 2013) [hereinafter AES]. See also Caratube Int’l Oil Co. LLP v Kazakhstan, ICSID Case No. ARB/13/13, Award, para 419 (27 September 2017); and Interocean Oil Dev. Co. v Nigeria, ICSID Case No. ARB/13/20, Decision on Preliminary Objections, para 124 (29 October 2014), describing FIL claims as ‘International Law’ claims.} nor contract claims, but have a separate and distinct nature raising unique questions of general international law, particularly the law of State responsibility and unilateral acts. Certain kinds of promises outside the FILs are identified by scholars that could be characterized as unilateral acts.\footnote{Paparinskis, for instance, has suggested that the protection of investors’ legitimate expectations by BIT tribunals might be explained by reference to unilateral acts; see Martins Paparinskis, The International Minimum Standard and Fair and Equitable Treatment (Oxford: OUP, 2013), at 252.} Further, FILs provide guidance to identify other statutes (including laws on nationality, neutrality, and maritime zones) that can be characterized as unilateral acts. These statutes are often substantially similar to FILs—they are specifically applicable to foreign nationals; they contain references to international law principles; they encompass consent to international adjudication and address questions of State responsibility and termination, among other questions, that may arise.\footnote{Antoine Lahoud v Democratic Republic of the Congo, ICSID Case No. ARB/10/4, Award, para 281 (7 February 2014) [hereinafter Lahoud]; Société Resort Company Invest Abidjan v Ivory Coast, ICSID Case No. ARB/16/11, Decision on the Respondent’s Preliminary Objection to Jurisdiction, para 157 (1 August 2017) [Société Resort] (the 2012 Code is a unilateral act on the part of the Côte d’Ivoire); Venoklim Holding B. V. v Venezuela, ICSID Case No. ARB/12/22, Award, para 87 (3 April 2015) (‘in this case the unilateral act (the promulgation of the Investment Law) is allegedly the act by which the Venezuelan state expressed its consent to submit itself to an international jurisdiction’).}
investment treaties may push claimants into fora other than international arbitration, giving domestic courts an opportunity to interpret these rules. Investment protection might appear more mundane, but domestic interpretations of FILs would not necessarily draw any closer parallels with international law than domestic interpretations of human rights treaties.112

SEZ regimes can be classified as unilateral acts because they are, in essence, a unilateral promise or declaration made by a State.113 This promise may be enforceable both under the domestic law of the host State or under international law. It is important to remember that even as unilateral acts, SEZs do not give rise to binding obligations toward other States but toward foreign private parties. Therefore, SEZs are not ‘international’ in the traditional sense but are reflective of the complex and hybrid nature of IEL.

A distinctive feature of SEZs is their narrow territorial scope. By enacting a SEZ framework, States intend to regulate proposed actions within their own territory; these unilateral acts are not intended to have an effect beyond the territory of the host State. In fact, SEZs are parallel regimes with their own investor-friendly laws and regulations and are outside the control of the State’s ordinary rules on trade, tax, and investment. As a result, the unilateral acts underlying the SEZ model revolve around absorption and attraction (i.e. the host State creates a new space ‘within’ its own territory to establish a new law and attract foreign entities) as opposed to projection (i.e. where traditionally unilateral acts have the ambition to create an effect ‘beyond’ the national territory).

Interestingly, where States have unilaterally modified the existing conditions in a SEZ or closed SEZs, foreign investors have successfully pressed a case of breach of the relevant trade or investment treaties before international tribunals.114 In similar cases involving unilateral undertakings, tribunals have relied on the principles of ‘good faith’ and ‘legitimate expectations’ to find in favor of the investors.115 In many of such cases, legitimate expectations were found to be created where the State made explicit undertakings through contracts.116 In a few disputes, it was found that the legitimate expectations were not necessarily created by a contract but through executive assurances made by the State, which were relied upon by the investor while making the investment.117

C. Conceptualizing special economic zones as unilateral economic law
The zones coexist with the ordinary domestic legal system but also with other ways of promoting trade and attracting FDI that are offered by IEL, such as the signing of Free Trade Agreements and BITs. The zones may not only be viewed as unilateral acts in international law; SEZs introduce a new layer in the overall system of IEL. They are

112 Hepburn, above n 30, at 658–706.
113 See Guiding Principle No. 1, UN ILC, above n 99; Nuclear Tests Case, above n 96.
114 Jacopo Dettoni, ‘SEZs Play Catch-up on Investment Treaties’, FDI Intelligence (15 February 2018), https://www.fdiintelligence.com/article/70771 (accessed 15 October 2020).
115 See Reisman and Arsanjani, above n 106, at 328.
116 Ibid, at 328.
117 See Grítón Salias, above n 95, at 492; Ibid, at 341 and 342.
established to promote free trade and investment in a way that comes closer to the liberalization preferences of each and every country that introduces them.

Legal deglobalization does not necessarily suggest a retreat from IEL; it rather suggests its transformation. With the use of this new type of unilateral economic law, countries do not necessarily strictly apply international trade and investment law but rather invite foreign trade and investment by using modified versions of their domestic laws. Employing domestic law, these countries are developing geographical spaces within their territory in which international trade and investment promotion values are at work but remain under the sovereign control of the relevant country.\textsuperscript{118}

The unilateralism promoted by SEZs is conceptually much closer to what has been described here as classical unilateralism. SEZ unilateralism is still different as unilateral liberalization of trade and investment does not take place for the whole country but for an isolated jurisdiction within the broader national jurisdiction. SEZs thus represent a complex compromise mainly between liberalization and protection of economic sovereignty as well as other structural elements of the interaction between the State and the market. For some countries, SEZ unilateralism is an alternative strategy to liberalization alongside the regular instruments of IEL. For some others, SEZ unilateralism is a complement. This may be exemplified by discussing the different mix between State and the market, as well as the different understanding of spatiality that SEZs are founded on.

1. State and market

SEZs operate based on a relatively different economic paradigm in comparison to what is assumed by IEL. IEL assumes the market as the driving force of liberalization, whereby the State holds the backseat.\textsuperscript{119} This is already brought to expression in the structure of international trade and investment agreements. In the WTO context, the principles of Most Favored Nation and National Treatment are framed as the rules, and State intervention for the protection of the environment and so on are expressed as the exceptions to the rules of the various WTO agreements.\textsuperscript{120} In BITs, the same principles are established as substantive standards of protection, while derogations are again allowed under exceptions such as the defense of necessity under customary international law,\textsuperscript{121} as codified under Article 25 of the 2001 Articles on

\textsuperscript{118} A strand of social science views SEZs as an 'encasement' of global capitalism within the territorial borders of the State; see Quinn Slobodian, Globalists: The End of Empire and the Birth of Neoliberalism (Cambridge, MA: HUP, 2018); see also Keller Easterling, Extrastatecraft: The Power of Infrastructure Space (London, New York: Verso, 2014).

\textsuperscript{119} See generally Dani Rodrik, Straight Talk on Trade: Ideas for a Sane World Economy (Princeton and Oxford: Princeton University Press, 2018); Gregory Shaffer, 'How Do We Get Along? International Economic Law and the Nation-State', 117 Michigan Law Review 1229 (2019).

\textsuperscript{120} See, e.g., Articles I and III GATT, on the one side, and Articles XX and XXI GATT, on the other; see also section II.B.3. on sustainability unilateralism.

\textsuperscript{121} See, e.g., Sempra Energy International v Argentina, ICSID Case No. ARB/02/16, Award (18 September 2007), para 344, but see Sempra Energy International v Argentina, ICSID Case No. ARB/02/16, Decision on Annulment (10 June 2010), paras 159, 168, 177, 200, 223. See also Enron Corporation v Argentina, ICSID Case No. ARB/01/3, Award (22 May 2007), paras 303, 333, 339, but see Enron Corporation v Argentina, ICSID Case No. ARB/01/3, Decision on Annulment (30 July 2010), paras 368, 378, 384, 395, 407.
State Responsibility of the ILC, and the ‘essential security’ exception clauses under BITs.

On the other side, SEZs rely on proactive government intervention. SEZs are almost invariably governed by very powerful government entities, usually referred to as Free Zone Authorities, which are separate from ordinary domestic agencies. These may have different degrees of independence from the central and local governments and enjoy different degrees of power reaching from construction and operation to regulation in the SEZ.

The prevalence of the market and the retreat of government in IEL assume an ideology that may be described as capitalist or liberal. This is not of course an ideology that all members of the WTO would necessarily subscribe to. The interplay between the State and the market is even more complex in the case of the SEZs. SEZs have historically been created for a variety of reasons and in countries with very different political systems, as well as stages of economic development. According to some accounts, economic zones are universal concepts that spread independent of geography and ideology. The USA developed foreign trade zones during the interwar period at the same time as the Smoot–Hawley Tariff Act was introduced; China developed its own SEZs in the 1980s; the Gulf States have adopted the concept, given it new forms and

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122 Responsibility of States for Internationally Wrongful Acts, GA Res 56/83, UN GAOR, 56th sess, 85th plen mtg, Supp No. 49, UN Doc A/RES/56/83 (28 January 2002, adopted 12 December 2001) annex.
123 Most international investment law cases under this head have arisen in the context of Article XI of the Argentina-US BIT (Treaty between United States of America and the Argentine Republic Concerning the Reciprocal Encouragement and Protection of Investment (signed 14 November 1991, entered into force 20 October 1994)), Art XI: ‘This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests’. See also section II.B.3. on sustainability unilateralism.
124 According to Ginsburg, ‘Paradoxically, [...] SEZs may be most effective in an environment in which a strong central government is seeking to gather information about the policy effects of liberalization’; Tom Ginsburg, ‘Special Economic Zones: A Constitutional Political Economy Perspective’, in Jürgen Basedow and Toshizuki Kono (eds), Special Economic Zones: Law and Policy Perspectives (Tübingen: Mohr Siebeck, 2015), at 119, 127.
125 See, e.g., Jayawardena, above n 92, at 428.
126 The operation of countries that do not subscribe to the capitalist ideology within the WTO has led to the development of new forms of capitalism, such as ‘state capitalism’. See Ian Bremmer, ‘State Capitalism Comes of Age: The End of the Free Market’, 88 Foreign Affairs 40 (2009). See also Niall Ferguson, ‘We’re All State Capitalists Now’, 9 Foreign Policy (2012); Li-Wen Lin and Curtis J. Milhaupt, ‘We are the (National) Champions: Understanding the Mechanisms of State Capitalism in China’, 65 Stanford Law Review 697 (2013), at 699; Ming Du, ‘China’s State Capitalism and World Trade Law’, 63 International and Comparative Law Quarterly 409 (2014); Julien Chaisse, ‘State Capitalism on the Ascent: Stress, Shock, and Adaptation of The International Law on Foreign Investment’ 27 (2) Minnesota Journal of International Law 339 (2018).
127 See Jürgen Basedow, ‘Boosting the Economy—Special Economic Zone or Nationwide Deregulation’, Max Planck Private Law Research Paper 17/3 (2016), at 4.
128 See, e.g., on the status of SEZs in the European Union, Cemal Karakas, Carla Stamegna, and Ioannis Zacharadis, Public Economic Support in the EU: State Aid and Special Economic Zones (European Parliamentary Research Service, PE 646.164, 2020).
129 ‘The fact that the zones had spread to Yugoslavia, a communist nation, meant that the concept was universal. It did not belong to one ideology, nor was it the preserve of the developed or the developing world’; see McCalla, above n 92, at 121, 130. But see Cheng, above n 12, at 32, 52 and passim (‘The experience of Hong Kong discussed above has illustrated the importance of having in place efficient and liberal regulatory regimes for business activities in SEZs’).
expanded it to all spheres of the economy; North Korea and Iran have their own long history of SEZs; the UK is now also considering introducing SEZs to boost trade in the post-Brexit era.

SEZs represent a new (unilateral) compromise between the State and the market. While SEZs may be viewed as promoters of trade and investment liberalization, they only allow this within the confines of a limited jurisdiction and under the strict supervision of powerful government agencies for a given period of time. States have the right of life and death over SEZs. SEZs remain under the full control of States that can decide unilaterally to put an end to them when they do not work well—or when they work too well.

2. Space

Public international law has been developed as the law of the coordination of sovereign States and the protection of their coordinated existence. The field of international trade law follows this understanding of Westphalian international law as it regulates the coexistence of States; the classical understanding is updated as the coordinated coexistence takes place in the frame of an intergovernmental organization, the WTO. International investment law deviates from the original understanding of international law by providing access for individuals to international institutions in the form of international investment tribunals. Still, the applicable law and procedural law for these institutions are based on an international treaty usually in the form of a BIT. The basis for these two areas of IEL is thus State consent—as is the foundation for the whole of international law. IEL relies thus on the division of the world into sovereign States that engage with each other at the international level by signing international economic treaties. While promoting globalization through liberalization as was shown above, IEL relies on the traditional separation of the world into sovereign States.

SEZs still contribute toward economic globalization. SEZs have been brought to life by sovereign States to address barriers to trade and promote foreign investment. They are a cause and an effect of the increase in world trade and investment. The spatiality of trade and investment promotion through SEZs is different than that of IEL. The SEZ model both converges and diverges from the Westphalian model of a spatial world order. It converges in that it relies on the sovereign powers of the State for the

130 Cheng, above n 12, at 34.
131 Ilona Serwicka and Peter Holmes, ‘What Is the Extra Mileage in the Reintroduction of “Free Zones” in the UK?’, UK Trade Policy Observatory Briefing Paper (February 2019), 28, https://blogs.sussex.ac.uk/uktpo/publications/what-is-the-extra-mileage-in-the-reintroduction-of-free-zones-in-the-uk/ (accessed 15 October 2020).
132 Of course, as more States adopt SEZs, the world economy will be increasingly become liberal; see Moberg, above n 22, at 128.
133 SEZs that attract more investors than originally anticipated and planned can eventually become costly in terms of tax exemptions, as in the case of the Sverdlovsk Oblast SEZ; see Alexey Kuznetsov and Olga Kuznetsova, ‘The Success and Failure of Russian SEZs: Some Policy Lessons’, 26 (2) Transnational Corporations 117 (2019).
134 S.S. Lotus (France v Turkey), 1927 P.C.I.J. 12 (ser. A.) No. 10, at 18 (September 7).
135 Ibid.
136 Meng, above n 92, at 103, 111.
137 McCalla, above n 92, at 121, 132–33.
promotion of trade and investment—rather than the model of economic globalization as this was developed in the course of the 20th century. Yet, it assumes a different type of spatiality.

The creation of SEZs relies on the sovereign power of the State. The State is instrumental in setting the objective and influencing the macro, meso, and micro layers of investment climate through its policies. It chooses the site, develops infrastructure within the zone, offers a package of incentives, and develops the legal framework of SEZs.\(^\text{138}\) India, for example, enacted the SEZ Act in 2005 through which the very existence of an SEZ is governed by the State. Section 5f of the Indian SEZ Act provides that ‘the maintenance of sovereignty and integrity of India and security of the State’ shall guide the notification of areas as SEZs.\(^\text{139}\) Also, in China, SEZs are established by the State, while the government can decide to add more cities to the list of SEZs, as was showcased by the decision of the government to add 14 more cities to the list in 1986.\(^\text{140}\)

In the meantime, the success of SEZs is determined by the ability of the State to adapt to the changing economic realities.\(^\text{141}\) There are seldom any restrictions placed on the kind of economic activities that can be pursued in the SEZs—from manufacturing to services to primary agricultural production; however, this leeway is provided as long as the activity assures export revenues. State insertions are largely due to the recognition that border SEZs provide important means for national economies to be favorably inserted into the emerging subregional and global economy but that very insertion can fragment economies and societies and create alternative foci of political legitimacy.\(^\text{142}\) The rationale behind the growing rate at which SEZs are being established is that they are a by-product of State sovereignty. This suggests that SEZs converge with the Westphalian model of a spatial world order.

On the other side, SEZs are ‘specially tailored spatial instruments’.\(^\text{143}\) They have an ‘enclavistic nature’\(^\text{144}\) in their EPZ form and operate as ‘corporate enclaves’ in their more contemporary revivals.\(^\text{145}\) Movements of products between an FTZ and domestic tariff areas constitute movements between two countries.\(^\text{146}\) The same applies to the offering of services out of the SEZ to the ordinary jurisdiction of the State.\(^\text{147}\) Moreover,
SEZ laws only apply within the borders of the SEZ.148 The State is thus not taken as a unity for the purposes of trade and investment but as fragmented into multiple internal pieces. This changes the original paradigm of international law, and thus IEL, and creates uncertainties for the purposes of the treatment of SEZs from an IEL perspective.

The economic focus of SEZs is also to some extent different in comparison to IEL, as it is not focused on the factors of production that IEL has traditionally focused on, namely labor and capital, but on land. One of the major objectives of SEZs is to provide an infrastructure for the facilitation of trade and investment. During the Doha Round for Development, concerns were raised about the supply-side constraints to trade, particularly by developing countries. Supply-side constraints such as poor infrastructure have been considered as impediments to international trade as well as an obstacle to the implementation of the WTO commitments by WTO members.149 According to the Hong Kong Ministerial Declaration:

Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade.150

This has remained largely aspirational at the international level, and national governments have taken up the role of covering this gap. The alternative route that has been followed by developing countries, emerging economies, as well as more mature markets is to develop high-quality infrastructure in the enclosed space of the SEZs. Given that this enclosed type of infrastructure development is relatively inexpensive to build and develop, SEZs have been generally successful in the developing world. For emerging markets, SEZs have presented themselves as actual alternatives to international treaties.

IV. CONCLUSION AND OUTLINE OF THE SPECIAL ISSUE
SEZs constitute a novel mechanism for promoting trade and attracting FDI and are comparable to IEL institutions. Recently, a quantitative as well as qualitative transformation of SEZs has been taking place. This is a reaction to the economic, political, and legal deglobalization trend. Legal deglobalization does not necessarily suggest a retreat from IEL; as we are trying to showcase with this special issue, it rather suggests its transformation. Both the quantitative and qualitative development of SEZs warrant a re-assessment of IEL, especially as the current global trade and investment scenario suggests unilateral IEL is here to stay. Let us close by comparing unilateral IEL to a
customs supervision and will not leave this specific location once consumers have placed an order. See Zoey Zhang, ‘An Introduction to China’s Cross-Border E-Commerce Pilot Zones and Pilot Cities’, China Briefing (1 July 2020), https://www.china-briefing.com/news/cross-border-e-commerce-china-introduction-cbec-pilot-zones-pilot-cities.

148 Borders are meant here as geographical borders. The only exception remains the QFC, with its unique legal status in the State of Qatar.
149 Doha Development Agenda and Aid for Trade—Prepared by the Staffs of the IMF and World Bank (19 September 2005), https://www.imf.org/external/np/pp/eng/2005/091905.pdf (accessed 15 October 2020); see also ‘Recommendations of the Task Force on Aid for Trade’ (Fifth Draft, 2006).
150 Hong Kong Ministerial Declaration, 18 December 2005, para 57.
muscle that is called to further augment (in scope and forms): SEZs will innervate the muscle and make it (as well as unilateral law more broadly) a potential line of fracture in IEL that this issue will be the first to comprehensively investigate using a robust conceptual framework. Overall, SEZ unilateralism presents itself as an alternative or complementary approach to trade and investment promotion in addition to the instruments of IEL. While some countries choose to pursue a trade and investment strategy exclusively based on the use of SEZs, other countries continue adopting (multilateral, regional, or bilateral) trade and investment treaties in addition to developing SEZs.

The various interplays among these diverse jurisdictions with international (economic) law raise very important and novel questions that remain unresolved. The focus of this special issue is on the relationship between SEZs and IEL by looking into the nature of the coexistence between the new jurisdictions and IEL broadly defined, as well as dispute resolution in the zones.¹⁵¹

The first part of the special issue is dedicated to ‘SEZs’ Evolution and Purpose: Diversifying Economic Unilateralism’, with contributions discussing the origins of the SEZs as well as their historical development and transformation. The second part is entitled ‘The Internal Life of SEZ Unilateralism: Rights, Obligations, Adjudication’ and addresses issues of internal organization, rights, and obligations of investors, as well as issues of dispute resolution. The third part on ‘SEZs and the WTO: Between Conflict and Convergence’ is dedicated to the complex interplay between the law of SEZs and International Trade Law. The fourth part is on ‘SEZ Unilateralism in the Face of RTAs, IIAs and International Taxation: Between Conflict and Convergence’ and opens up the scope of the special issue to the sometimes harmonious, sometimes discordant relationship between SEZs and other areas of IEL such as RTAs, international investment agreements (IIAs), and soft tax law instruments.

Douglas Zhihua Zeng in the article entitled ‘The Past, Present and Future of Special Economic Zones and Their Impact’ presents the ways in which SEZs have evolved from ‘enclaves’ toward the model of an ‘Economic Zone 5.0’, which are built on emerging digital technologies and are well-integrated within their urban environment. The author shows that despite the worldwide proliferation of SEZs, their impact on the national economy is not necessarily always clear. Zeng continues by discussing the key elements making an SEZ successful, including strategic location, integration of zone strategy with an overall national development strategy, understanding the market and leveraging comparative advantages, and, most importantly, making sure that zones are really ‘special’ in terms of a business-friendly environment—especially a sound legal and regulatory framework in the position to cope with external shocks such as the COVID-19 pandemic.

¹⁵¹ Instead of case studies of individual zones, all articles rely on a wide range of countries and experiences in SEZ design and implementation and their comparison, with the aim of covering a variety of jurisdictions. The special issue covers a very large variety of diverse SEZs in Africa, the Americas, Central Asia, East Asia, with a focus on China, as well as the Middle East, which—in addition to being the home of an historically large number of zones—have witnessed the emergence of the latest generation of SEZs.
In a contribution entitled ‘Financial Services Trade in Special Economic Zones’, Panagiotis Delimatsis focuses on services-only SEZs as a new phenomenon that showcases the increasing importance of trade in services as well as the ‘servicification trend’ driving global economic activity. The author studies the patterns, traits, and limits of trade in financial services within SEZs and discusses the relevance of the General Agreement on Trade in Services for the regulation of services in SEZs. The article concludes with an assessment of potential development-related benefits of SEZ unilateralism in financial services.

Jeanne Huang’s article is dedicated to ‘The Latest Generation of SEZs: Consumer-Oriented Unilateralism in China’s E-commerce Trade’ and presents how Cross-border E-commerce Retail Import (CERI) within China’s National Cross-Border E-commerce Pilot Cities has spearheaded a novel type of consumer-oriented trade unilateralism, satisfying the growing demand for high-quality foreign products. CERI unilateralism goes beyond the typical concessions made in SEZs by re-conceptualizing consumer protection, highlighting the position of consumers as diverse individuals rather than a homothetic group. At the same time, it turns consumers into ‘importers’ to minimize behind-the-border trade barriers. This type of unilateralism has a great potential to complement WTO multilateralism.

Joanna Lam and Rui Guo, in a contribution entitled ‘Investor Obligations in Special Economic Zones: Legal Status, Typology and Functional Analysis’, examine the obligations of investors in SEZs, as well as how they can be used to promote development. The article distinguishes between two different types of investor obligations in SEZs: commitments focused on quantifiable aspects of economic performance of investors in the host country and commitments based on qualitative goals contributing to the host country’s developmental objectives. The two different types of obligations, existing regulatory practices, and their historical development are discussed drawing on examples from SEZs in Shenzhen, Poland, and Tanzania.

In their article on ‘Labour Rights and Special Economic Zones: Between Unilateralism, Law Diffusion and Social Struggles’, Lorenzo Cotula and Liliane Mouan focus on issues over land expropriations, poor labor conditions, and environmental degradation in SEZs. Drawing on case studies from different generations of SEZ legislation, the authors discuss the legal regimes governing labor rights in SEZs, exploring the complex interplay of different ‘unilateral’ and international legal regimes, as well as the structural issues that affect labor rights within SEZs, and the way forward for research and practice in this important field of study.

The article of Georgios Dimitropoulos entitled ‘International Commercial Courts in the “Modern Law of Nature”: Adjudicatory Unilateralism in Special Economic Zones’ showcases the ways in which International Commercial Courts (ICommCs) are currently proliferating from the last generation SEZs of the Gulf Region to the whole of Asia and Europe. ICommCs, alongside zone arbitration, may be viewed as the adjudicatory counterpart of the move toward unilateralism in IEL. The idea is to move cases from the international to the domestic realm and overall domesticate IEL and adjudication. The strategy to achieve this is the introduction of new courts that sit between the national and the international, and are based on English (common) law tradition.
The new system does not oblige the transferal of cases; rather, SEZ-driven unilateralism adds an investment attraction to the repertoire of States, as well as choices to parties. This brings to life a new form of plural unilateralism.

Sherzod Shadikhodjaev’s article on ‘The WTO Agreement on Subsidies and Countervailing Measures and Unilateralism of Special Economic Zones’ suggests that the incentives offered in SEZs have an impact on competition in international markets and thus fall within the scope of the WTO’s Agreement on Subsidies and Countervailing Measures. The author discusses the legal status of incentives in SEZs under the multilateral subsidy regime and distinguishes between ‘risky’ and ‘safe’ types of support measures constituting part of SEZ unilateralism in promoting economic activities.

James J. Nedumpara, Manya Gupta, and Leïla Choukroune in their article on ‘WTO Litigation and SEZs: Determining the Scope of Exceptional Trade Unilateralism’ classify the incentives available to SEZ-based business into three categories: first, fiscal incentives in the nature of tax incentives and exemption of duties; second, non-fiscal incentives in the form of infrastructural and developmental facilities; and, third, regulatory incentives in the nature of lenient and flexible compliance requirements. According to the authors, fiscal incentives in SEZs are largely regulated under the law of the WTO—curtailing, thus, the scope of economic unilateralism available to the subsidizing members. This was showcased in India—Export Related Measures, which requested the removal or phasing out of various fiscal incentives in SEZs. The authors study the permissible limits of trade unilateralism in SEZs, discussing the relevant WTO disciplines and cases and focusing, more specifically, on the contours of the permissible trade unilateralism of WTO members when granting fiscal incentives.

Manjiao Chi in his article on the ‘Regulation of Special Economic Zones through Regional Trade Agreements: Confronting the Synergy Issue’ shows that SEZs and RTAs display a considerable potential for synergies. For now, however, very few RTAs address SEZs in a comprehensive and detailed manner. The author argues that the SEZ–RTA synergy issue can only be adequately addressed if (and when) States develop both SEZ and RTA policymaking in a coordinated way, in particular by embracing regional (or even multilateral) approaches in SEZ regulation.

The article by Julien Chaisse entitled ‘Dangerous Liaisons: The Story of Special Economic Zones, International Investment Agreements, and Investor–State Dispute Settlement’ focuses on the regulatory triangle formed by SEZs, IIAs, and investor–state dispute settlement. The article shows that a rich body of investment awards has emerged over the last years, which reminds that despite SEZ (unilateral) regulatory diversity, foreign investors can challenge host States before investment tribunals with respect to SEZ-related rules and policies. These unfolding dangerous liaisons between SEZs and investment law and arbitration also call for more effective coordination mechanisms among government agencies that are involved in the manifold dimension of zone development.

Finally, Frederik Heitmüller and Irma Mosquera, in a contribution entitled ‘SEZs Facing the Challenges of International Taxation: BEPS Action 5, EU Code of Conduct, and the Future’, examine the interactions between the Organization for Economic Co-operation and Development (OECD) base erosion and profit shifting action plan.
and the EU Code of Conduct for Business Taxation with the practice of corporate
tax incentives in SEZs. The article reviews empirical evidence from Latin American
and Caribbean jurisdictions to demonstrate that the emerging international taxation
regime has begun to exercise some influence on SEZs. In this connection, SEZ unilat-
eralism in corporate taxation is slowly receding, while it can be expected that SEZs will
increasingly become subject to international tax law restrictions.