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International Trade

Session 10

This teaching material has been made at the University of Szeged, and supported by the European Union. Project identity number: EFOP-3.4.3-16-2016-00014.



Welcome to the course on International Trade.

The tenth and final session of the course provides an introduction into **bilateral investment treaties**.

Bilateral investment treaties **protect foreign investors via various means**. They contain various substantive protective provisions. An important protection is that the host state may **expropriate the foreign investment if that is justified by the public interest, however, it has to pay full compensation immediately and unconditionally**. Furthermore, BITs contain various treatment standards, which also prohibit non-expropriatory state acts. For instance, host states are expected to provide **fair and equitable treatment** to foreign investors (FET) and accord to them **full security and protection**. The host also state has to provide **MFN and NT treatment to foreign investors**. Furthermore, BITs provide for **arbitration** as a mechanism of dispute settlement. This mechanism authorizes the investor to **sue the host state directly**. There are various arbitral institution which are usually stipulated in these BITs, the most popular and prestigious being the **ICSID: the International Centre for Settlement of Investment Disputes**.

Please watch my video on the **standard content of bilateral investment treaties (BITs)**: the rules on **expropriation and compensation for expropriation**, the various “**treatment**” standards, such as the requirement of **fair and equitable treatment**, and **dispute settlement mechanism (investor-state arbitration)**.

Please read the **Hungary-Turkey BIT**, which provides a good example for and representative of the standard content of BITs. It is available at

<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/1554/download>

Please read paragraphs 31-116 of Christoph Schreuer: Investments, International Protection. It is a **concise summary about international investment law and investment protection**. It is available at https://www.univie.ac.at/intlaw/wordpress/pdf/investments_Int_Protection.pdf

Please read Csongor István Nagy, 'There is Nothing in a Caterpillar That Tells You It Is Going to Be a Butterfly': Proposal for a Reconceptualization of International Investment Protection Law. 51(4) Georgetown Journal of International Law 897-917 (2020). It is available at <https://ssrn.com/abstract=3729175>

The paper demonstrates that **the initial rationale of bilateral investment treaties (BITs) was not to grant some privileged protection to foreign investors but to guarantee a reasonable level of protection that pertains to rule-of-law states (minimum standard of economic constitutionalism)**. The practice of investor-state dispute settlement (ISDS) detached from this original rationale and took on a life of its own. This deviation may be explained mainly by the fact that ISDS “privatized” disputes of public law.

The paper proposes to **treat investment protection as an example of a non-trade value protected in international trade: the same as intellectual property, environmental protection, and labor standards**. While such non-trade values have clear links to trade and trade interests, they also have a normative value, which shapes their doctrinal conceptualization.

At the end of the session, please answer the following questions:

- What is the substantive legal protection provided by BITs?

- What dispute settlement mechanism is available to foreign investors under the BITs?
- Can domestic investors make use of the protection provided by BITs?
- What treatment standards apply for host states and foreign investors?