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## International Trade

### Session 10

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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 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 institutions 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](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?

