What is International Investment Law?

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What is International Investment Law?

- The Notion of Investment
- Investment Law
- International Investment Law

Bottom Up: What is an Investment?

- "[T]he notion of investment implies the presence of the following elements:
- (a) a contribution of money or other assets of economic value,
- (b) a certain duration,
- (c) an element of risk, and
- (d) a contribution to the host State's development."
- *Saipem S.p.A.* v. *The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Decision on Jurisdiction and Recommendation on Provisional Measures, 21 March 2007, para. 99.

Saipem v. *Bangladesh*

- Dispute arising from a 1990 pipeline construction agreement between an Italian investor and a Bangladeshi State entity for roughly 35 Mio US $ financed by IBDR and IDA.
- 2007 ICSID Decision on Jurisdiction addressed the question whether dispute concerned an investment

Saipem v. *Bangladesh*

- "Bangladesh's objection relates to the duration of the project. While it agrees that two years are generally considered as a sufficient period of time under the Salini test, Bangladesh insists on the fact that the period during which works were actually performed was less than one year (Tr. J. II 84:10 et seq.). [102] The Tribunal cannot follow this line of argument. Bangladesh did not put forward any particular reason why the actual duration of the work should be considered as the applicable criterion, nor did it point to any authority supporting that position. The time of the project during which the works are interrupted or suspended entails risks that may even be higher than those incurred while the works are being performed."
- *Saipem* v. *Bangladesh*, para. 101-102.

Saipem v. *Bangladesh*

- “Bangladesh mainly disputed the existence of an investment on the ground that throughout the project Saipem never “was a net creditor vis-à-vis Petrobangla in respect of the Pipeline Contract having actually put its own money into the project.” […]
- investments made by foreign investors from local funds or from loans raised in the host State are treated in the same manner as investments funded with imported capital. In other words, the origin of the funds is irrelevant. ”
- *Saipem* v. *Bangladesh*, para. 103, 106.

Saipem v. *Bangladesh*

- "Bangladesh's argument appears to refer more to the second issue identified above, *i.e.*, to the fact that the investor did not incur any commercial risk because it received an advance payment. The Tribunal cannot agree with this argument. In the present case, the undisputed stopping of the works which took place in 1991 and the necessity to renegotiate the completion date constitute examples of inherent risks in long-term contracts. Moreover, the contractual mechanism providing for Retention Money created an obvious risk for Saipem, which in fact materialised."
- *Saipem* v. *Bangladesh*, para. 109.

Saipem v. *Bangladesh*

- “Finally, the Tribunal wishes to emphasize that for the purpose of determining whether there is an investment under Article 25 of the ICSID Convention, it will consider the entire operation. In the present case, the entire or overall operation includes the Contract, the construction itself, the Retention Money, the warranty and the related ICC Arbitration.”
- *Saipem* v. *Bangladesh*, para. 110.

Saipem v. *Bangladesh*

- “Applying the Salini test to this comprehensive operation, the Tribunal comes to the conclusion that Saipem has made an investment within the meaning of Article 25 of the ICSID Convention.”
- *Saipem* v. *Bangladesh*, para. 111.

Schreuer, ICSID Commentary

- “The first such feature is that the projects have a certain *duration*
- The second feature is a certain *regularity of profit and return*. A one-time lump sum agreement, while not impossible, would be untypical. Even where no profits are ever made, the expectation of return is present.
- The third feature is the assumption of *risk* usually by both sides. Risk is in part a function of duration and expectation of profit.
- The fourth typical feature is that the commitment is *substantial*.
- The fifth feature is the operation’s significance for the host State’s *development*.”
- Christoph Schreuer, The ICSID Convention: A Commentary (2001), Art 25, para 122.

Schreuer, ICSID Commentary

- “But it seems possible to identify certain features that are typical to most of the operations in question:
- […]
- These features should not necessarily be understood as jurisdictional requirements but merely as typical characteristics of investments under the Convention.”
- Christoph Schreuer, The ICSID Convention: A Commentary (2001), Art 25, para 122.

Salini Test

- "[…] the project in question should have
- a certain duration,
- (a regularity of profit and return,)
- an element of risk,
- a substantial commitment and that it should constitute
- a significant contribution to the host State's development."
- *Joy Mining Machinery Limited* v. *Egypt*, ICSID Case No. ARB/03/11, 2004, para. 53. based on
- *Salini Construttori S.p.A. and Italstrade S.p.A.* v. *Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001.

The Origin of the Problem: ICSID's Jurisdiction

- Article 25 ICSID Convention:
- "(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an *investment*, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre."

Lack of an Investment Definition

- “27. No attempt was made to define the term ‘investment’ given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of dispute which they would or would not consider submitting to the Centre (Article 25(4)).”
- World Bank Executive Directors’ Report

The Notion of Investment defined by Arbitral Tribunals

- A majority seems to adhere to the *Salini* test
- BUT there are dissenting tribunals
  - most recently:
  - *Mitchell*
  - *Malaysian Historical Salvors*

Mitchell v. *Congo*

- The *Mitchell ad hoc* Committee placed particular emphasis on the last aspect, the "contribution to the economic development of the host country". In its view, the services of "Mitchell & Associates", a law-firm operating in the host State, did not constitute an investment within the meaning of the ICSID Convention.
- *Patrick Mitchell* v. *Democratic Republic of the Congo*, ICSID Case No. ARB/99/7, Decision on the Application for Annulment of the Award, 1 November 2006.

Mitchell v. *Congo*

- "The *ad hoc* Committee wishes nevertheless to specify that […] the existence of a contribution to the economic development of the host State as an essential – although not sufficient – characteristic or unquestionable criterion of the investment, does not mean that this contribution must always be sizable or successful; and, of course, ICSID tribunals do not have to evaluate the real contribution of the operation in question. It suffices for the operation to contribute in one way or another to the economic development of the host State, and this concept of economic development is, in any event, extremely broad but also variable depending on the case."

  Patrick Mitchell v. Democratic Republic of the Congo, para. 33

Malaysian Historical Salvors v. *Malaysia*

- "The Tribunal finds that […] the Contract did not make any significant contributions to the economic development of Malaysia. The Tribunal considers that these factors indicate that, while the Contract did provide some benefit to Malaysia, they did not make a sufficient contribution to Malaysia's economic development to qualify as an "investment" for the purposes of Article 25(1) or Article 1(a) of the BIT."
- *Malaysian Historical Salvors, SDN, BHD* v. *Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction, 17 May 2007, para. 143.

Malaysian Historical Salvors v. *Malaysia*

- "While the Jurisdictional Approach, strictly defined, requires that all the established hallmarks of "investment" must be present before a contract can even be considered as an "investment," the Typical Characteristics Approach does not necessarily mean that a tribunal would find that there is an "investment," even if one or more of the established hallmarks of "investment" were missing."
- *Malaysian Historical Salvors* v. *Malaysia*, para. 70.

Malaysian Historical Salvors v. *Malaysia*

- According to *Malaysian Historical Salvors* v. *Malaysia,* ICSID tribunals "tend to adopt an empirical rather than a doctrinaire approach in determining whether there is an "investment" within Article 25(1)" and the Tribunal would adopt a "a fact-specific and holistic assessment."

  Malaysian Historical Salvors v. *Malaysia*, para. 106.

Malaysian Historical Salvors v. *Malaysia* – Annulment 2009

- "The Committee fully appreciates that the ground for annulment set forth in Article 52(1)(b) of the ICSID Convention specifies that "the Tribunal has manifestly exceeded its powers." It is its considered conclusion that the Tribunal exceeded its powers by failing to exercise the jurisdiction with which it was endowed by the terms of the Agreement and the Convention, and that it "manifestly" did so, for these reasons:
- (a) it altogether failed to take account of and apply the Agreement between Malaysia and the United Kingdom defining "investment" in broad and encompassing terms but rather limited itself to its analysis of criteria which it found to bear upon the interpretation of Article 25(1) of the ICSID Convention; […]"

Malaysian Historical Salvors v. *Malaysia* – Annulment 2009

- "[…] (b) its analysis of these criteria elevated them to jurisdictional conditions, and exigently interpreted the alleged condition of a contribution to the economic development of the host State so as to exclude small contributions, and contributions of a cultural and historical nature;
- (c) it failed to take account of the preparatory work of the ICSID Convention and, in particular, reached conclusions not consonant with the *travaux* in key respects, notably the decisions of the drafters of the ICSID Convention to reject a monetary floor in the amount of an investment, to reject specification of its duration, to leave 'investment' undefined, and to accord great weight to the definition of investment agreed by the Parties in the instrument providing for recourse to ICSID."
- *Malaysian Historical Salvors, SDN, BHD* v. *Malaysia*, ICSID Case No. ARB/05/10, Annulment Decision, 16 April 2009, para. 80.

Phoenix 2009

- “1 – a contribution in money or other assets;
- 2 – a certain duration;
- 3 – an element of risk;
- 4 – an operation made in order to develop an economic activity in the host State;
- 5 – assets invested in accordance with the laws of the host State;
- 6 – assets invested *bona fide*.“
- *Phoenix Action, Ltd. v. Czech Republic, ICSID Case No. ARB/06/5, Award, 15 April 2009*, para. 114.

Phoenix 2009

- "[…] the Claimant made an "investment" not for the purpose of engaging in economic activity, but for the sole purpose of bringing international litigation […]. This alleged investment was not made in order to engage in national economic activity, it was made solely for the purpose of getting involved with international legal activity. The unique goal of the "investment" was to transform a pre-existing domestic dispute into an international dispute subject to ICSID arbitration under a bilateral investment treaty. This kind of transaction is not a *bona fide* transaction and cannot be a protected investment under the ICSID system."
- *Phoenix v. Czech Republic*, para. 142.

Fakes v. *Turkey* 2010

- "[…] the principles of good faith and legality cannot be incorporated into the definition of Article 25(1) of the ICSID Convention without doing violence to the language of the ICSID Convention: an investment might be "legal" or "illegal," made in "good faith" or not, it nonetheless remains an investment. The expressions "legal investment" or "investment made in good faith" are not pleonasms, and the expressions "illegal investment" or "investment made in bad faith" are not oxymorons."
- *Saba Fakes* v. *Republic of Turkey*, ICSID Case No. ARB/07/20, Award (July 14, 2010), para. 112.

Fakes v. *Turkey* 2010

- "[…] that the criteria of (i) a contribution, (ii) a certain duration, and (iii) an element of risk, are both necessary and sufficient to define an investment within the framework of the ICSID Convention. In the Tribunal's opinion, this approach reflects an objective definition of „investment" that embodies specific criteria corresponding to the ordinary meaning of the term „investment", without doing violence either to the text or the object and purpose of the ICSID Convention."
- *Saba Fakes* v. *Republic of Turkey*, ICSID Case No. ARB/07/20, Award (July 14, 2010), para. 110.

Fakes v. *Turkey* 2010

- "[…] that while the preamble refers to the "*need for international cooperation for economic development*," it would be excessive to attribute to this reference a meaning and function that is not obviously apparent from its wording. In the Tribunal's opinion, while the economic development of a host State is one of the proclaimed objectives of the ICSID Convention, this objective is not in and of itself an independent criterion for the definition of an investment."
- *Saba Fakes* v. *Republic of Turkey*, ICSID Case No. ARB/07/20, Award (July 14, 2010), para. 111.

Abaclat v. Argentina 2011

"If Claimants' contributions were to fail the *Salini* test, those contributions – according to the followers of this test – would not qualify as investment under Article 25 ICSID Convention, which would in turn mean that Claimants' contributions would not be given the procedural protection afforded by the ICSID Convention. …"

- *Abaclat and ors v. Argentina*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, para. 364.

Abaclat v. Argentina 2011

- "… The Tribunal finds that such a result would be contradictory to the ICSID Convention's aim, which is to encourage private investment while giving the Parties the tools to further define what kind of investment they want to promote. It would further make no sense in view of Argentina's and Italy's express agreement to protect the value generated by these kinds of contributions."

Abaclat v. Argentina 2011

- “The other approach consists in verifying that Claimants made contributions, which led to the creation of the value that Argentina and Italy intended to protect under the BIT. Thus the only requirement regarding the contribution is that it be apt to create the value that is protected under the BIT.”
- *Abaclat and ors v. Argentina*, para. 365.

What is an Investment?

- Do we know what an “investment” is? –
- No, we may have a better idea what is required by Article 25 of the ICSID Convention for jurisdictional purposes
- BUT there remains
- Uncertainty concerning the notion of “investment” under Article 25 of the ICSID Convention as a result of partly divergent case-law

Examples of investments identified by ICSID tribunals

- building and operation of hotels and tourism resort projects
- the production of fibres and textiles,
- the mining of minerals,
- the exploration, exploitation and distribution of petroleum products,
- the manufacture of plastic bottles,
- the construction and operation of a fertilizer factory,
- aluminium smelter,
- the conversion, equipping and operation of fishing vessels,
- maritime transport of minerals,
- shrimp farming,
- banking, the provision of loans, etc.

Additional Issue: “Investment” according to BITs

- “A two-fold test must therefore be applied in determining whether this Tribunal has the competence to consider the merits of the claim: whether the dispute arises out of an investment within the meaning of the Convention and, if so, whether the dispute relates to an investment as defined in the Parties’ consent to ICSID arbitration, in their reference to the BIT and the pertinent definitions contained in Article 1 of the BIT.”
- *Ceskoslovenska Obchodni Banka, a.s.* v. *The Slovak Republic*, ICSID Case No. ARB/97/4, Decision on Jurisdiction, 24 May 1999, para. 68.

Additional Issue: “Investment” according to BITs

- “It is the established practice of ICSID tribunals to assess whether a specific transaction qualifies as an “investment” under the ICSID Convention, independently of the definition of investment in a BIT or other applicable investment instrument, in order to fulfill the *ratione materiae* prerequisite of Article 25 of the Convention.”
- *Mytilineos Holdings SA v. 1. The State Union of Serbia & Montenegro, 2. Republic of Serbia*, UNCITRAL Partial Award on Jurisdiction, 8 September 2006, para. 112.

Investment Definitions in BITs

The term ‘investments’ comprises every kind of asset, in particular: (a) movable and immovable property as well as other rights *in rem*, such as mortgages, liens and pledges; (b) shares of companies and other kinds of interest in companies; (c) claims to money which has been used to create an economic value or claims to any performance having an economic value; (d) copyrights, industrial property rights, technical processes, trade-marks, trade-names, know-how, and good-will; (e) business concessions under public law, including concessions to search for, extract and exploit natural resources […]

Germany-Guyana BIT 1989

Investment Definitions in BITs

- **“Investment”** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;…
- 2004 US Model BIT

Arbitral Practice

"[…] the restrictive notion of property as a material "thing" is obsolete and has ceded its place to a contemporary conception which includes managerial control over components of a process that is wealth producing."

Methanex Corporation v. *United States of America*, *NAFTA Arbitral Tribunal, Final Award on Jurisdiction and Merits, 3 August 2005,* at IV D para. 17.

Arbitral Practice

"[…] the reference to 'every kind of asset' is '[p]ossibly the broadest' among similar general definitions contained in BIT's."

Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan, Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, para. 113.

Arbitral Practice

- “[R]ights under judicial decisions are protected property that can be the object of an expropriation.”
- *Saipem* v. *Bangladesh*, para. 130.

Forms of Investment

- **Portfolio**
- **Direct (FDI)**
- “An investment is considered direct when the investor’s share of ownership is sufficient to allow control of the company, while investment that provides the investor with a return, but not control over the company, generally is considered portfolio investment.”
- UNCTAD Series on issues in international investment agreements, Scope and Definition, p. 8.

What is an Investment?

- Notion becomes clearer through cases
- BIT and other IIA definitions

- … addition problems:
- investment “in accordance with host State law”

Example 1

"[I]nvestment" defined as "any kind of asset accepted in accordance with the respective laws and regulations of either Contracting State."

Article 1(1) Germany/Philippines BIT

Example 2

- “This Agreement shall apply only to investments brought into, derived from or directly connected with investments brought into the territory of any Contracting Party by nationals or companies of any other Contracting Party and *which are specifically approved in writing and registered* by the host country and upon such conditions as it deems fit for the purposes of this Agreement.”
- Article II of the 1987 ASEAN Agreement for the Promotion and Protection of Investments

Arbitral Practice I

- “This provision refers to the validity of the investment and not to its definition. More specifically it seeks to prevent the Bilateral Treaty from protecting investments that should not be protected, particularly because they would be illegal.”
- *Salini Costruttori S.p.A and Italstrade S.p.A v. Kingdom of Morocco,* Decision on Jurisdiction, Case No. ARB/00/4, 23 July 2001, 42 ILM 609 (2003), para. 46.

Arbitral Practice II

" […] express requirement of approval in writing and registration of a foreign investment if it is to be covered by the Agreement. Such a requirement is not universal in investment protection agreements. […] In this respect Article II goes beyond the general rule that for a foreign investment to enjoy treaty protection it must be lawful under the law of the host State."

- *Yaung Chi Oo Trading Pte Ltd v Government of the Union of Myanmar*, ASEAN Case No ARB/01/1 31 March 2003, 42 ILM 540 (2003), para. 58.

Recent Problems – *Inceysa*

- "[T]he foreign investor cannot seek to benefit from an investment effectuated by means of one or several illegal acts and, consequently, enjoy the protection granted by the host State, such as access to international arbitration to resolve disputes, because it is evident that its act had a fraudulent origin and, as provided by the legal maxim, 'nobody can benefit from his own fraud'."
- *Inceysa Vallisoletana S.L.* v. *Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, para. 242.

Recent Problems – *Fraport*

- “In this case, the comportment of the foreign investor, as is clear from its own records, was egregious and cannot benefit from presumptions which might ordinarily operate in favour of the investor.” “[T]he BIT explicitly and reiteratedly required that an investment, in order to qualify for BIT protection, had to be in accordance with the host state’s law.”
- *Fraport AG Frankfurt Airport Services Worldwide* v. *Philippines*, ICSID Case No. ARB/03/25, Award, 16 August 2007, paras. 397-398.

Recent Problems – *Kardassopoulus*

- "A State thus retains a degree of control over foreign investments by denying BIT protection to those investments that do not comply with its laws. […] This control, however, relates to the investor's actions in making the investment. It does not allow a State to preclude an investor from seeking protection under the BIT on the ground that its own actions are illegal under its own laws."
- *Ioannis Kardassopoulus* v. *Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007, para. 182.

Arbitral Practice – *Desert Line*

- "As far as concerns the issue of the certificate, the threshold inquiry is whether Article 1(1) corresponds to mere formalism or to some material objective. The Arbitral Tribunal has no hesitation in opting for the second alternative. A purely formal requirement would by definition advance no real interest of either signatory State; to the contrary, it would constitute an artificial trap depriving investors of the very protection the BIT was intended to provide. […]"
- *Desert Line Projects LLC* v. *Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, para 106.

Hamester v. *Ghana* 2010

- "The Tribunal considers that a distinction has to be drawn between (1) legality as at the *initiation* of the investment ("made") and (2) legality *during the performance* of the investment. Article 10 legislates for the scope of application of the BIT, but conditions this only by reference to legality at the initiation of the investment. Hence, only this issue bears upon this Tribunal's jurisdiction. Legality in the subsequent life or performance of the investment is not addressed in Article 10."
- *Gustav F W Hamester GmbH & Co KG* v. *Republic of Ghana*, ICSID Case No. ARB/07/24, Award (June 18, 2010), para. 127.

What is an Investment?

- The notion of “investment” is relevant for
- a) jurisdictional purposes
- b) substantive protection
  - only “investments” are protected under BITs or other IIAs

What is Investment Law?

- investment agreements, contracts between investors and States
- national law, e.g. investment codes and other legislation
- bilateral investment treaties (BITs)
- multilateral attempts (MAI, ECT, NAFTA, etc.)

What is applied by investment tribunals?

- “The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.”
- Article 42(1) ICSID Convention

Applicable Law

- See e.g. Art. 10 (7) Argentina-Netherlands BIT:

  “The arbitration tribunal addressed in accordance with paragraph (5) of this Article shall decide on the basis of the law of the Contracting Party which is a party to the dispute (including its rules on the conflict of law), the provisions of the present Agreement, special Agreements concluded in relation to the investment concerned as well as such rules of international law as may be applicable.”

Applicable Law

- “A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.”
- Article 26(6) ECT.

Applicable Law

- “1. Subject to paragraph 3, when a claim is submitted under Article 24(1)(a)(i)(A) or Article 24(1)(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Treaty and applicable rules of international law.”
- Article 30 US Model BIT 2004

Absence of a chosen law

- "[The Tribunal] must respect the provisions of the second part of Article 42(1) of the ICSID Convention, i.e., in the absence of an agreement, the Tribunal shall apply Ecuadorian law, including its rules of private international law and such rules of international law as may be applicable."
- *MCI* v. *Ecuador*, Award, 31 July 2007, para. 217.

International law's role

- "This Tribunal notes that Article 42(1) refers to the application of host-state law and international law. If there are no relevant host-state laws on a particular matter, a search must be made for the relevant international laws. And, where there are applicable host-state laws, they must be checked against international laws, which will prevail in case of conflict. Thus international law is fully applicable and to classify its role as "only" "supplemental and corrective" seems a distinction without a difference."
- *Amco* v. *Indonesia*, Resubmitted Case: Award, 5 June 1990, 1 ICSID Reports 580.

International law's role

- "What is clear is that the sense and meaning of the negotiations leading to the second sentence of Article 42(1) allowed for both legal orders to have a role. The law of the host State can indeed be applied in conjunction with international law if this is justified. So too international law can be applied by itself if the appropriate rule is found in this other ambit."
- *Wena Hotels* v. *Egypt*, Decision on Annulment, 5 February 2002, 6 ICSID Reports 129, para. 40.

What is International Investment Law?

- “Applying the rules of international law is to be understood as comprising the general international law, including customary international law […].”
- *LG&E* v. *Argentina*, Decision on Liability, 3 October 2006, para. 89.

What is International Investment Law?

- Treaty law
  - mainly bilateral and multilateral agreements
- Custom
- General Principles
- Soft-law instruments
- Case-law and scholarly writings

Customary International Law of Foreign Investment

- The problem of the international minimum standard:
- customary standard protects foreigners where national treatment is lower;
- calls for recognition of legal personality, inviolability/duty to protect, access to courts, fair trials, etc.

UN GA Resolutions

- Permanent Sovereignty Over Natural Resources, General Assembly Resolution 1803 (XVII) of 14 December 1962,
- Charter of Economic Rights and Duties of States, GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50.

Soft-law Instruments

- 1992 World Bank Guidelines on the Treatment of Foreign Direct Investment
- 1976 OECD Guidelines for Multinational Enterprises, revised 2000
- 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
- 1999 UN Global Compact

Investment-specific national law

- Investment codes frequently contain performance requirements, such as:
  - local employment requirements,
  - local content requirements,
  - export requirements,
  - capitalisation requirements.

Investment agreements

- Concessions
- Production sharing agreements
- Joint venture agreements
- Turnkey contracts
- BOT (build, operate and transfer)-contracts

Internationalization clauses

- Libyan oil concessions:
- “This concession shall be governed by and interpreted in accordance with the principles of law of Libya common to the principles of international law and in the absence of such common principles then by and in accordance with the general principles of law, including such of those principles as may have been applied by international tribunals.”

Stabilization clauses

- "contract language which freezes the provisions of a national system of law chosen as the law of the contract as of the date of the contract, in order to prevent the application to the contract of any future alterations of this system." *Amoco International Finance v. Iran*, 15 Iran-US CTR 189, at 239.

Stabilization clauses

- Libyan oil concessions:
- “Any amendment to or repeal of [the Regulations in force on the date of execution of the agreement]…shall NOT affect the rights of the Company without its consent.”

What is Investment Law?

- National and international law addressing issues of investments
- similar to the notion of “transnational law”