Trends in Investment Treaty Making

Finding Balance between National Sovereignty and Investment Protection

Martin Karas

The debate over the prevalence of nation states as the main actors in the international arena has been going on for the past 40 years. This article focuses on a single aspect of the debate, namely the national sovereignty of states within the neoliberal investment regimes. The argument I make in this article is that while investment treaty-making in the past contributed to limiting the sovereign powers of governments in the domain of investment regulation, recent trends suggest that the states are actively seeking to increase their regulatory space. In order to demonstrate this, I develop a theoretical framework bases on the competing concepts of "right to regulate" and "investment protection". This framework is subsequently used to compare investment treaties signed in the 1990s with some of the most significant recently signed investment agreements. The analysis shows the way in which the more recent investment treaties increase the regulatory space of the states, which strengthens their national sovereignty.

Keywords: sovereignty, investment protection, right to regulate, investment treaties, regulatory space.

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Investment protection and right to regulate as part of the discussion on national sovereignty in a globalized world

A lot has been made in the past decades of the perceived waning of national sovereignty in the globalized world. Competing theoretical conceptions argue over the degree to which the nation state remains the most powerful actor in world affairs in light of the growing influence of international organizations and transnational corporations. This article examines one aspect of the modern investment regimes that can be seen within this framework, foreign investment. Investment has been the main order of the day since the neoliberal turn in the global economy in the 1980s. Proliferation of investment treaties reached its peak in the 1990s. These investment regimes characterized by an accent on investment protection have since come under increased criticism from different angles. Countries importing capital have recently been reevaluating their position towards foreign investment in reaction to a significant amount of irresponsible foreign investment and the ever-growing number of costly investment arbitration cases[1] that have plagued countries that have tried to regulate their investment environment. The main reaction came on the level of treaty-making with states radically changing the language and provisions of their newly signed investment treaties in the last decade.

This article argues that the most recent trends in investment treaty-making go against the current of marginalization of the nation state by enlarging the regulatory space of governments and thus limiting the effects of investment protection regimes on national sovereignty. From the other point of view, my argument is that the ability of investors to invest abroad and initiate arbitration against foreign governments is being limited to a greater degree than was the case in the past.

In order to conceptualize the evolution sketched out in the previous paragraph, I will be making use of the concepts of "right to regulate" and "investment protection". These concepts are related to the space that states enjoy regulating without outside interference. International investment regimes limit this space by making regulation either impossible, or extremely costly. I will perform a content analysis of treaties signed in the 1990s and compare the results with the same analysis for some of the most important recently signed investment treaties. I will be tracking the evolution of the provisions related to the concepts to the right to regulate and investment protection in order to show that the current treaties increase regulatory space of the government, thus extending their sovereignty. The traditional theory of national sovereignty affirms the supreme authority of the state on the level of government regulation that is free from outside forces. Investment protection and arbitration is an infringement on national sovereignty in so far as it represents an outside influence on governmental decision-making. At this point, I would like to stress that the use of words as "infringement" or "negative impact" on sovereignty are not used in a normative sense. They simply refer to a particular state of affairs elucidated in the article.

Right to regulate and investment protection in scholarly literature

In this section, I will define the key concepts and develop the theoretical framework for my analysis. The framework that is elucidated below can be visualized as a spectrum with investment protection and arbitration provisions on the one side (limiting national sovereignty) and the right to regulate provisions (extending sovereignty) on the other.

There are three main concepts that need to be clearly defined in order to achieve the goals set out in the previous chapter: investment protection, national sovereignty, and the right to regulate. For the purposes of this paper, we will be using a common-sense, purposeful and tailored definition of national sovereignty. National sovereignty of a state will be regarded as the ability of a legitimate government to regulate investment environment within its borders. This definition is derived from the Westphalian conception of sovereignty as defined by Krasner, which assumes that full sovereignty means a distinct lack of other authority over the state than the domestic authority.[2]

The first instance where the sovereignty of the state defined in this way is infringed upon in the system of international arbitration is the general property of arbitration taking place on an international level, leaving the state without juridical competence in the cases of investor-state dispute settlement (ISDS). This, however, is not going to be part of the subject of this article. This article is interested in the sovereignty of the state in relation to the concept of right to regulate[3], whose evolution in the investment treaties will be used to track the evolving understanding of the nations of the preferred balance between national sovereignty and investor protection.

Right to regulate refers to the ability of a sovereign state to enact policies and adopt regulatory measures. If we look at the literature that deals with investment arbitration, we find that this concept is one the most discussed topics in the field. For this article, I will be using a wide conception of the "right to regulate", which means that I will not only be talking about the *ability* of the states to regulate their investment environment, but I will also be interested in the ways in which investment arbitration as set out in international investment treaties affects the *willingness* of states to regulate in public interest. For example, while an investment treaty might enable the states to expropriate an investment for a fair compensation, this compensation might deter the states from such regulatory measures, thus representing an outside influence on their decision-making. This is sometimes referred to as the *regulatory chill*[4] phenomenon, and it represents a research topic for international investment arbitration scholars. To elucidate the concept further, we can use the oft-cited example of the Phillip Morris campaign against plain packaging laws in Uruguay, when some of the ministers indicated that government might reverse parts of the legislation to avoid the claim from the foreign investors.[5] Under my definition of national sovereignty this represents an instance where the sovereignty is being infringed upon.

This wider conception that includes the influence of investment arbitration on the willingness of the government to regulate is consistent with scholarly literature. It can be seen as early as 2004 in an OECD paper, which states: "The question that arises is to what extent a government may affect the value of property by regulation, either general in nature or by specific actions in the context of general regulations, for a legitimate public purpose without effecting a 'taking' and having to compensate for this act".[6]

Arbitral tribunals also recognized the issue of whether the investment regimes ought to provide space for regulatory measures affecting the value of investment without necessitating compensation, as in the case of *Feldman vs Mexico,* when the tribunal asserted: "Reasonable governmental regulation of this type (environmental protection, tax regimes, zoning restrictions,…) cannot be achieved if any business that is adversely affected may seek compensation…".[7]

Finally, Dolzer and Stephens, prominent investment arbitration scholars, also identify the issue by pointing out that: "… for the host state, the definition (of indirect expropriation for which no compensation is needed) determines the scope of the state's power to enact legislation that regulates the rights and obligations of owners in instances where compensation may fall due. It may be argued that the state is prevented from taking any such measures where these cannot be covered by public financial resources".[8] This passage is key to understand how the question of regulatory chill relates to the issue of national sovereignty. By using the expression *prevented* in the last sentence, Dolzer and Stephens explain most clearly how the issue of indirect expropriation with or without compensation is an issue that falls within the conception of the "right to regulate". What this means for this article is that provisions that enable states to regulate without needing to compensate affected foreign investors are situated on the side of the spectrum that has at its limit a full sovereignty of the state over its investment environment.

On the other side of the theoretical spectrum, we have the investor protection provisions, representing the side of the spectrum where the state is not able to regulate at all whenever such regulation would affect the value of a foreign investment. These provisions include most importantly fair and equitable treatment, but also national treatment, most favored nation treatment and market access provisions. Additionally, investment protection includes arbitration provisions that enable investors to sue governments in instances of treaty breach. It is obvious that both ends of the spectrum are not parts of the real world and are mentioned here only for theoretical purposes.

This brief overview of the "right to regulate" sets the theoretical background against which the investment treaties will be analyzed. In practice, this means that specific provisions of the analyzed investment treaties will be evaluated based on their effects in relation to the ability of the states to regulate their investment environment without outside influence. I will take full investment protection as the basis, and I will first analyze the patterns of provisions that carve out some regulatory space for the states in the investment treaties from the 1990s. In the second part of the analysis, I will do the same for the most important newly signed treaties and then I will evaluate the results against the discussion of national sovereignty in the globalized world. The goal is not simply to come to an answer to whether the newly signed treaties increase the sovereignty of the state over its investment environment, but also to identify the specific ways in which this is done.

Methodology for comparing investment treaties based on the amount of regulatory space afforded to the State

For this article, I used qualitative content analysis in order to trace the evolution of the concepts of right to regulate and investment protection in international investment treaties. Qualitative content analysis is a flexible methodology usable for analyzing text data[9]. It defers from traditional content analysis by not simply counting the words in the text, thus losing a certain degree of objectivity, but creating, refining or comparing categories in the text with similar meanings through the process of coding, thus gaining analytical depth. For the purposes of this article, we can define qualitative content analysis as a research method for interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns.[10] I will be using this methodology to identify patterns of development of the concept of "right to regulate" in investment treaties from the 1990s until today. I will use deductive logic for my content analysis, which means that I will be importing existing theoretical categories, more specifically, the concept of the "right to regulate", which is well-defined within the theoretical framework of investor protection and investment arbitration which was presented in the previous chapter.

The sample of the text for the content analysis contains two groups. First is a convenience sample of investment treaties from the 1990s. The concept of the right to regulate in these treaties will be contrasted against the conception of right to regulate in the most important recent investment treaties: The Comprehensive Economic and Trade Agreement (CETA) and the China-Australia Free Trade Agreement (CHAFTA)[11], which together represent the second group. The convenience sample for analysis of the conceptualization of the right to regulate in the investment treaties from the 1990s will be represented by 20 bilateral investment treaties. The sampling process consisted of selecting the most varied investment treaties with the goal to get a sample relevant for the purposes of this article. Therefore, the sample includes treaties signed between countries from different geographical areas and with different development status, as well as treaties between countries from the same geographical areas and with the same development status. Also, I selected treaties between capital exporting and capital importing countries as well as between two capital exporters. The complete sample of the BITs from the 1990s analyzed in this article is as follows: Nigeria – United Kingdom (1990), Argentina – USA (1991), Australia – Indonesia (1992), China Uruguay (1993), Poland – Singapore (1993), Bulgaria – Netherlands (1994), Netherlands – Peru (1994), China – Indonesia (1994), Cuba – South Africa (1995), Slovenia – Switzerland (1995), India – Italy (1995), Israel – Kazachstan (1995), Hungary – Slovenia (1996), Turkey – Iran (1996), Chile – Korea (1996), Morocco – Spain (1997), Austria – India (1999), Czech Republic – Paraguay (1998), Egypt – Slovenia (1998), Czech Republic – El Salvador (1999).[12]

As for the analysis itself, I will be selecting parts of the sampled text that refer to the preestablished categories of "right to regulate" and "investment protection" and based on the analysis of these parts of the sampled text, I will identify main patterns of conceptualization of these two concepts in the investment treaties from the 1990s on one hand, and in the CETA and the CHAFTA on the other. The relevant parts of the text referring to the concepts of right to regulate and investment protection will be evaluated within the theoretical framework which puts national sovereignty on the one side, and investor protection on the other side of a spectrum. This ought to enable me to make some relevant observations about how the investment treaties relate to the wider discussion on national sovereignty in a globalized world.

Right to regulate and investment protection in bilateral investment treaties signed in the 1990s

In this part of the article, I present the results of content analysis of a convenience sample of twenty investment treaties signed in the 1990s. Content analysis of the selected bilateral investment treaties shows a remarkable level of homogeneity in terms of wording in relation to the preestablished concept of the right to regulate. The analysis shows that the regulatory space of the states entering investment treaties between 1990 and 1999 is limited. With almost no exception, the only provision that grants countries the ability to regulate their investment environment is the expropriation clause, which grants the states the right to expropriate a foreign investment under certain conditions. These conditions vary slightly between the treaties, but generally, two conditions must be met: 1) the investment is expropriated for a legitimate public purpose, 2) and against a fair compensation equivalent to the fair value of the expropriated investment immediately before the expropriation measures were taken.[13] Other treaties include one or two more conditions for expropriation, namely: 3) the measures are neither discriminatory nor in contradiction with any obligation which the Contracting Party that takes such measures may have entered into by virtue of an agreement, and 4) measures are taken under due process of law[14].

One interesting deviation to the homogeneity of investment treaties signed in the 1990s is a provision explicitly prohibiting the contracting party (state) to exercise their immunity in ISDS cases. The provision states: "The Contracting Party which is part of a dispute, at no time during the proceedings, shall be able to make use of its immunity for its defense."[15] Even though this provision is interesting in the context of this paper, investment arbitrators generally don´t take into account arguments based on sovereignty or immunity of the state (unless explicitly allowed by the treaty, see further below), thus making this provision superfluous.

The China – Uruguay (1993) treaty also represents a deviation from the other treaties, by limiting the access to investor-state dispute resolution mechanisms to matters related to determination of the amount of compensation for expropriation.[16] This increases the regulatory space for the states in that the regulatory measures cannot be reversed by an international ad hoc tribunal, only by a domestic court (where investor-state dispute resolution is permitted by this treaty). The sovereignty of the state is therefore only limited by the compensation necessary for direct or indirect expropriation. Additional research into this type of an investment treaty shows that these provisions are typical for Chinese investment treaties signed in the 1990s. This makes sense from the point of view of China as a capital importer keen to protect their sovereignty in the matters of government regulation.

On the other side of the theoretical spectrum presented previously, we have the investment protection provisions. All the treaties that were analyzed contain the fair and equitable treatment provision. All the treaties also contain the most favored nation treatment provision (or an equivalent provision). There are some treaties that do not contain the national treatment provisions.[17] What is interesting in the context of comparison with the recently signed treaties analyzed in the next chapter, treaties signed in the 1990s do not contain market access provisions and therefore do not deal with the pre-establishment phase of investment. This represents a factor increasing sovereignty of the state, since the state thus retains the ability to reject foreign investments on their own account.

We can therefore conclude that bilateral investment treaties signed in the 1990s are characterized by their conformity in relation to provisions affecting the right to regulate of governments. The main provisions guaranteeing this right are the expropriation provisions which enable states to expropriate foreign investment for appropriate compensation. This is a very limited conception of the right to regulate, which only affords a limited regulatory space to government in the post-establishment phase of investment. On the other hand, these treaties lack market access provisions, which is an area where governments retain their sovereign powers.

Right to regulate and investment protection in recent investment agreements

In this part of the paper, I present the results of a content analysis of two of the most significant recently signed investment treaties, namely the CHAFTA and CETA. CHAFTA is a free trade agreement between China and Australia, signed in 2015, which eliminates most of the tariffs for exports and liberalizes market access for Chinese investors. The importance of CHAFTA for the global economy lies not only in the sheer volume of trade and investment between the two countries, but also in what it says about investment treaty-making of China, as the emerging global investment player. It is worth noting that the deal leaves a significant amount of provisions open for further negotiation and subject to a review process. Fortunately, the chapters relevant for this paper are virtually all closed. CETA is a free trade agreement between the European Union and Canada, which was signed in 2016, and which is currently provisionally applied until the ratification process is completed. Its stated purpose is to liberalize trade and investment between the EU and Canada. Its importance for this article rests on the fact that it is often touted as one of the most progressive treaties regarding investment, and investment arbitration in particular. What we can observe in both of these treaties is a definitive move towards increasing the regulatory space for states. At the same time however, market access provisions limit sovereignty to a certain degree in the pre-establishment phase of investment.

What these two treaties have in common when it comes to provisions related to the concept of the right to regulate, they both contain provisions on expropriation very similar to provisions that we were able to see in the "older" treaties from the 1990s.[18] However, these treaties are much more expansive when it comes to clarifying the relationship between investor protection and regulatory space afforded to governments.

First, both treaties contain explicit affirmations of the right of states to regulate in public interest. The respective provisions are formulated as follows: "the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity"[19] for CETA, and "...nothing in this agreement shall be construed to prevent a Party from adopting or enforcing measures: a) necessary to protect human, animal or plant life or health; b) necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement; c) imposed for the protection of national treasures of artistic, historic or archaeological value; or d) relating to the conservation of living or non-living exhaustible natural resources".[20] These provisions are more or less in line with the conception of the right to regulate that we could see in the "older" treaties. The only difference is that this explicit affirmation of the right of states to regulate leaves less room for interpretation on the part of the tribunals.

Second, and most importantly, when it comes to expropriation, both CETA and CHAFTA include a provision which specifies the conditions under which a breach of treaty cannot be claimed by an investor, thus limiting the access of investors to investment arbitration. The respective provision are very similar and read as follows: "...the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Section,"[21] for CETA, and, "...measures of a Party that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order shall not be the subject of a claim under this Section" for CHAFTA.[22] These provisions represent the most modern approach to treaty-making, and at the same time significantly increase the sovereignty of the state in the field of investment regulation, by allowing the state to take investment regulation measures without having to compensate foreign investors for their losses in cases where the government is able to demonstrate that a non-discriminatory measure that affected the value of a foreign investment is in legitimate public interest.

The provision in CETA, which is not as deliberate and specific as the one in CHAFTA is further clarified in the annexes, where the signatories elaborate their position on what constitutes indirect expropriation, once again limiting the access of investors to arbitration in cases where legitimate public interests come into play. The annex specifies that: "...non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations".[23]

On the other side of the theoretical spectrum defined previously, when it comes to investment protection, both treaties contain all the usual provisions (FET, MFN, NT). The area in which the treaties differ are the market access provisions, which are present in CETA, but are largely absent in CHAFTA and the treaties from the 1990s. In this area, CETA prohibits the countries from adopting specific measures limiting market access, although it also makes sure to identify areas, such as zoning and planning, or conservation and protection of natural resources and the environment, where market access measures remain available to states[24]. In CHAFTA, market access provisions are present, but limited and disproportionate. This has to do with the fact that the investment chapter of CHAFTA is pending review, based on which a comprehensive investment chapter ought to be signed, presumably containing more extensive market access provisions. At this point in time, CHAFTA´s market access provisions are limited to the commitment of Australia to increase their limits for investment screening mechanism[25].

We can therefore conclude that the regulatory space for governments is significantly improved in the recently signed treaties as compared with the treaties signed in the 1990s, which can be seen most clearly on the post-establishment phase of investment, where the space for regulation in legitimate public interest has been increased by limiting the access of investors to investment arbitration in these cases. The analysis brings a different outcome for the pre-establishment phase, where the sovereignty of states is limited in the new treaties by market access provisions. On the other hand, the provisions in CETA (and CHAFTA) still enable countries to regulate market access to a large degree through screening mechanisms.

Conclusion

This article was interested in regimes of investment arbitration in the context of the debate on national sovereignty in a globalized world economy. It has used qualitative content analysis in order to identify the main patterns in investment treaty making by comparing a sample of 20 investment treaties from the 1990s with two of the most important treaties signed in recent years: CETA and CHAFTA. These two samples were scanned for provisions related to the concepts of right to regulate and investment protection, and the relevant parts of the text were evaluated in terms of their implications for the national sovereignty of the states in relation to their ability to regulate their investment environment. The results of the analysis show that the more recent treaties deal with the issue of regulatory space much more extensively and in more detail. Although the new treaties extend investment protection to the pre-establishment phase of investment, these provisions still leave the governments with significant powers in relation to market access through screening mechanisms. Furthermore, the regulatory space is significantly increased in the most recent treaties, especially through introduction of provisions making it possible for states to indirectly expropriate investments without compensation for a legitimate public purpose. In the context of the discussion over the importance of the nation states as actors in the international system, this analysis shows that in the domain of investment arbitration, states have recently been able to wrangle a certain level of sovereignty back from the transnational arena represented in this case by corporations and investment tribunals, by extending their regulatory space through more careful and detailed drafting of investment treaties.

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Notes

1 For more on controversial cases of investor-state dispute settlement, see for example Katarína Brocková (2016) *Conflicting Decisions in International Investment Arbitration*, Polihrafsentr „Lira", Uzhhorod, ISBN 978-617-596-227-5.

2 Stephen Krasner (Ed.) (2001), *Problematic Sovereignty: Contested Rules and Political Possibilities*. New York: Columbia University Press. Retrieved from http://www.jstor.org/stable/10.7312/kras12178, p. 11-12.

3 For a more detailed analysis of the right to regulate, see V. Korzun (2016), *The Right to Regulate in Investor- State Arbitration: Slicing and Dicing Regulatory Carve-Out*, The Fordham Law Archive of Scholarship and History, S.J.D. Dissertations.

4 For more on regulatory chill, see Christian Tietje and Freya Baetens (2014), *The Impact of Investor-State-Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership*, Study prepared for the Minister of Foreign Trade and Development Cooperation, Ministry of Foreign affairs, The Netherlands, or Kyla Tienhaara (2011) *Regulatory chill and the threat of arbitration: a view from political science, Evolution In Investment Treaty Law And Arbitration*, Chester Brown, Kate Miles, Eds., Cambridge University Press.

5 As cited in A. Ross (2010), Uruguay Urged to Fight on in Cigarette Claim, Global Arbitration Review, available at http://globalarbitrationreview.com/article/1029513/, (accessed 13 May 2018).

6 See OECD (2004), "Indirect Expropriation" and the "Right to Regulate" in International Investment Law. In *OECD Working Papers on International Investment,* 2004/04, OECD Publishing. http://dx.doi.org/10.1787/780155872321, p. 2.

7 Feldman v. Mexico (2002) CASE No. ARB(AF)/99/1, Award.

8 Rudolf Dolzer and Margrete Stevens (1995), *Bilateral Investment Treaties*, Martinus Nijhoff Publishers.

9 Cavanagh, S. (1997), Content analysis: concepts, methods and applications. *Nurse Researcher*, *4*(3), 5-16.

10 H. Hsieh and S. Shannon, (2005), Three Approaches to Qualitative Content Analysis, in *Qualitative Health Research*, 15(9), P. 1278. Also see for a more detailed description of approaches towards the qualitative content analysis.

11 Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China, Aus.-Chin., (2015), Australian Treaty Series ATS 15, Comprehensive Economic and Trade Agreement, EU-Can., (2017), OJ L 11, p. 23–1079.

12 Agreement between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland for the Promotion and Protection of Investments, Nig.-UK., (signed 1990), UK Treaty Series No. 66. Treaty between United States of America and the Argentine Republic Concerning the Reciprocal Encouragement and Protection of Investment, USA-Arg., (signed 1991), Senate Treaty Documents. Agreement Between The Government Of The Peoples´ Republic Of China And The Government Of The Oriental Republic Of Uruguay Concerning The Encouragement Of Reciprocal Protection Of Investments, Chin.-Ur., (1993). Agreement Between The Government Of The Republic Of Singapore And The Government Of The Republic Of Poland On The Promotion And Protection Of Investments, Sin.-Pol., (1993), Republic Of Singapore Government Gazette Treaties Supplement No. 1. Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning the Promotion and Protection of Investments, Aus.-Indo., (1992), Australian Treaty

Series No. 19. Agreement Between The Government Of The Republic Of Indonesia And The Government Of The People's Republic Of China On The Promotion And Protection Of Investments, Chin.-Indo., (1994). Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Republic of Peru, Neth.-Per., (1994). Agreement between the Government of the State of Israel and the Government of the Republic of Kazakhstan for the promotion and reciprocal protection of investments, Isr.-Kaz., (1995), No. 35866. Agreement Between The Government Of The Italian Republic And The Government Of The Republic Of India On The Promotion And Protection Of Investments, It.-Ind., (1995). Agreement between the Republic of Slovenia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments, Slo.-Swi., (1995). Agreement between the Republic of South Africa and the Republic of Cuba for the promotion and reciprocal protection of investments, SA-Cub., (1995), Volume 2596, I-46178. Agreement Between The Government Of The Republic Of Korea And The Government Of The Republic Of Chile On The Reciprocal Promotion And Protection Of Investments, Kor.-Chil., (1996). Agreement On The Mutual Protection And Promotion Of Investments Between The Republic Of Hungary And The Republic Of Slovenia, Hun.-Slo., (1996). Agreement On Reciprocal Promotion And Protection Of Investments Between The Government Of The Republic Of Turkey And The Government Of The Republic Of Iran, Tur.-Ir., (1996). Agreement on the promotion and mutual protection of investments, Sp.-Mor., (1997), No. 28725. Agreement between the Government of the Arab Republic of Egypt and the Government of the Republic of Slovenia on the Mutual Promotion and Protection of Investment, Eg.-Slo., (1998). Agreement Between The Czech Republic And The Republic Of Paraguay On Promotion And Reciprocal Protection Of Investments, Cz.-Par., (1998). Agreement between the Czech Republic and the Republic of El Salvador for Promotion and Reciprocal Protection of Investments, Cz.-Sal., (1999). Agreement between the Government of the Republic of Austria and the Government of the Republic of India for the Promotion and Protection of Investments, Aus.-Ind., 8 November 1999, BGBl. III, Nr. 27.

13 See for example China – Indonesia BIT (1994), art. VI.
14 See for example Hungary – Slovenia BIT (1996), art. 5.
15 See Czech Republic – El Salvador BIT., (1999), art. 4.
16 China – Uruguay BIT (1993), art. 9(3).
17 See for example Indonesia – China BIT (1994).
18 See Comprehensive Economic and Trade Agreement (CETA), (signed 30 October 2016), Can.-EU, available at http://ec.europa.eu/trade/policy/in-focus/ceta/, art 8.12(1), CHAFTA has provisions on expropriation as part of the future work program, but it can be assumed that it will contain these general provisions.
19 CETA, (2016), art. 8.9(1).
20 Free Trade Agreement Between The Government Of Australia And The Government Of The People's Republic. Of China (CHAFTA), (signed 2015), Aus.-China, available at http://dfat.gov.au/trade/agreements/in-force/chafta/official-documents/Pages/official-documents.aspx, art. 9.8(1).
21 CETA, (2016), art.
22 CHAFTA (2015), art. 9.11(4).

23 CETA, (2016), annex 8-A, art. 3.
24 CETA (2016), art. 8.4.
25 CHAFTA (2015), annex III.

Martin Karas