



Research Article

CREEPING EXPROPRIATION: DEFINITION, MAIN ELEMENTS AND DETERMINATION CHALLENGES

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ABSTRACT

Creeping expropriation becomes more and more common reason to initiate the investment dispute. Nevertheless, due to the complexity, the process of its determination is challenging. This article will try to clarify the definition of creeping expropriation, its components, and the two theories that are used to establish it. The reasoning will be based on academic research and case law.

KEYWORDS

Creeping expropriation, effects-only doctrine, police power doctrine.

INTRODUCTION

Expropriation is one of the political risks which may face foreign investors. Its prohibition is one of the most common clauses of bilateral

investment treaties (BIT) and multinational agreements. Scientists divide expropriation into two categories: direct and indirect



Sloane,¹⁰ Kinnear, Bjorklund, and Hannaford¹¹ notice that in the case of creeping expropriation, it occurs progressively or in phases through actions that, taken separately, may not constitute a taking. In the case of *Generation Ukraine v. Ukraine* para 20.22, arbitrators defined CE as "a form of indirect expropriation with a distinctive temporal quality in the sense that it encapsulates the situation whereby a series of acts attributable to the State over a period of time culminate in the expropriatory taking of such property."¹² The legal approach is represented in the bilateral and multilateral investment agreements. The international investment agreements rarely mention the creeping expropriation explicitly. Nevertheless, some bilateral investment agreements specify the prohibition of creeping

expropriation.¹³ Article III of Honduras - United States of America BIT refers to creeping expropriations as "a series of measures that effectively amounts to an expropriation of a covered investment without taking title."¹⁴

Based on the research, we can define creeping expropriation as complex individual indirect expropriation acts, each of which does not have the signs of expropriation but, taken together, create similar results. The main difference between direct and indirect expropriation is the status of legal title to the property. Usually, in the case of direct expropriation, the state force investor to transfer legal rights and physical control of the property.¹⁵ In the case of indirect expropriation, the investor's legal title to the investment is unaffected, and it may still be in

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¹⁰ R. Sloane, Indirect Expropriation and its Valuation in the BIT Generation, 74 British Yearbook of International Law, 115 (2004), pp. 115-150 https://scholarship.law.bu.edu/faculty_scholarship/554?utm_source=scholarship.law.bu.edu%2Ffaculty_scholarship%2F554&utm_medium=PDF&utm_campaign=PDFCoverPages

¹¹ M. Kinnear, A. Bjorklund, J. Hannaford, Investment Disputes under NAFTA: An Annotated Guide to NAFTA Chapter 11, Oxford University Press, 2006 <https://www.semanticscholar.org/paper/Investment-disputes-under-NAFTA-%3A-an-annotated-to-Kinnear-Bjorklund/d84503bb993ff6cf9e35c1f63615e1e351e2f3b2>

¹² *Generation Ukraine Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, para.20.22 <https://jsumundi.com/en/document/decision/en-generation-ukraine-inc-v-ukraine-award-tuesday-16th-september-2003>

generation-ukraine-inc-v-ukraine-award-tuesday-16th-september-2003

¹³ Mongolia - United States of America BIT (1994) Adopted on 6 October 1994 <https://jsumundi.com/en/document/treaty/en-mongolia-united-states-of-america-bit-1994-mongolia-united-states-of-america-bit-1994-thursday-6th-october-1994>

¹⁴ Honduras - United States of America BIT (1995) Adopted on 1 July 1995 http://www.sice.oas.org/Investment/BITSbyCountry/BITS/US_Honduras_e.asp

¹⁵ LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, para.187 <https://jsumundi.com/en/document/decision/en-lg-e-energy-corp-lg-e-capital-corp-and-lg-e-international-inc-v-argentine-republic-decision-on-liability-tuesday-3rd-october-2006>



physical control of the asset. Still, the investment will no longer be set to any beneficial use.¹⁶ It should be noticed that indirect expropriation can occur before direct expropriation and that the lack of direct expropriation does not preclude the existence of creeping expropriation.¹⁷¹⁸

There are two approaches which can take tribunal in determining the existence of creeping expropriation: effects-only and police power.

Under the effect-only doctrine, a holding on indirect expropriation should be founded, in large part or even entirely, on how the action would affect the investor's economic value or significant property interests.¹⁹ This approach was developed in *Metalclad v. Mexico*²⁰ and *Pope and*

*Talbot v. Canada*²¹ and is widely used by numerous tribunals.

According to this approach, indirect expropriation, like direct expropriation, necessitates a significant or irreversible deprivation. Therefore, there are three main elements:

- The approaching total impairment of the economic use and enjoyment of the rights to the investment, or identifiable, distinct parts thereof.
- The irreversibility and permanence of the contested measures (i.e., not ephemeral or temporary)
- The extent of the loss of economic value experienced by the investor.²²

¹⁶ Bank Melli and Bank Saderat v. Bahrain PCA, Final Award, 9 November 2021, para.748 <https://jsumundi.com/en/document/decision/en-bank-melli-iran-iran-and-bank-saderat-iran-iran-v-the-kingdom-of-bahrain-final-award-tuesday-9th-november-2021>

¹⁷ Griffin Group v. Poland GPF GP S.à.r.l v. Poland, SCC Case No. 2014/168 Judgment of the UK High Court on the Set Aside Application [2018] EWHC 409 - 2 Mar 2018 para 115-117 <https://jsumundi.com/en/document/decision/en-gpf-gp-s-a-r-l-v-poland-judgment-of-the-uk-high-court-on-the-set-aside-application-friday-2nd-march-2018>

¹⁸ Burlington v. Ecuador Burlington Resources, Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5 Dissenting Opinion of Arbitrator Orrego Vicuña (Decision on Liability) para 32 <https://jsumundi.com/en/document/opinion/en-burlington-resources-inc-v-republic-of-ecuador-dissenting-opinion-of-arbitrator-orrego-vicuana-decision-on-liability-thursday-8th-november-2012>

¹⁹ J. Bonnitca, Substantive protection under investment treaties: A legal and economic analysis. (2014) 10.1017/CBO9781107326361

https://www.researchgate.net/publication/292913639_Substantive_protection_under_investment_treaties_A_legal_and_economic_analysis

²⁰ Metalclad Corporation v. The United Mexican States, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para.103, para.108, para.111 <https://jsumundi.com/en/document/decision/en-metalclad-corporation-v-the-united-mexican-states-award-wednesday-30th-august-2000>

²¹ Pope & Talbot v. Canada Ad hoc Arbitration, Interim Award, 26 June 2000, para.100 – 102 <https://jsumundi.com/en/document/decision/en-pope-talbot-v-government-of-canada-interim-award-monday-26th-june-2000>

²² Hydro S.r.l., Costruzioni S.r.l., Francesco Becchetti, Mauro De Renzis, Stefania Grigolon, Liliana Condomitti v. Republic of Albania, ICSID Case No. ARB/15/28, Award, 24 April



Tribunals frequently ruled that a simple decrease in the investment's value is insufficient to qualify as expropriation when evaluating the effects of the policy. The loss of value, deprivation or government interference with the investor's rights and property must be substantial, significant, or important, having the effect of neutralising or annihilating the investor's control or property rights ("substantial deprivation test") in order to qualify as indirect expropriation.²³ It is crucial to notice that for state actions to be considered an expropriation, their effects on the investment must be of a sufficient magnitude or severity. There is no clear "red line" defining what is significant. The question is whether the interference is sufficiently onerous to justify the claim that the owner's property has been "stolen."²⁴

Diminution of an entire investment's value is typically adopted in the case of expropriation of commercial opportunities, not the traditional

property rights. One of the examples is the case of Muhammet Çap & Sehil v. Turkmenistan. The plaintiff claimed creeping expropriation based on several purported government activities. These actions included alleged contract violations and unauthorised investigations that allegedly reduced the value of the claimant's company.²⁵ In para 810 tribunal mentioned that it will take into account the actual impact of the measures on the investor's property, not the state's intent or whether it benefited from the taking. Tribunal concluded that the claimants failed to demonstrate that the respondent organised a coordinated scheme for the Contractual Counterparties to withhold, postpone, or refuse to make payments owed to Sehil under the various Contracts, which would have seriously harmed the claimants' business. Additionally, the claimants have been unable to demonstrate how

2019, para.686
<https://jsumundi.com/en/document/decision/en-hydro-s-r-l-and-others-v-republic-of-albania-award-wednesday-24th-april-2019>

²³ Alejandro Diego Diaz Gaspar v. Costa Rica, ICSID Case No. ARB/19/13, Award, 29 June 2022, para.532
<https://jsumundi.com/en/document/decision/es-alejandro-diego-diaz-gaspar-v-costa-rica-laudo-wednesday-29th-june-2022>

²⁴ D. Soller, R. T Boza, K. Fridman and R. Reimers Substantive Protections: Expropriation Pillsbury Winthrop

Shaw Pittman 14 January 2022
<https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/substantive-protections-expropriation#footnote-064>

²⁵ Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan, ICSID Case No. ARB/12/6, Award 4 May 2021 para.597-599
<https://jsumundi.com/en/document/decision/en-muhammet-cap-sehil-insaat-endustri-ve-ticaret-ltd-sti-v-turkmenistan-award-tuesday-4th-may-2021>



the late and delayed payments deprived their investment of value, usage, and benefits.²⁶

Another case is *ADM v. Mexico*²⁷, where the plaintiffs claimed that the government's four-year imposition of a sizable tax was discriminatory and constituted expropriation. The tribunal ruled that the tax did not impose enough restrictions to qualify as expropriation.

The proof of creeping expropriation is a complex and complicated process. The claimant has to prove that the actions are organised, directed against him and have a deprivation impact on his investment (totally or partially). It's important to stress that the alleged measures should specifically affect the claimant's property in order to be valid, rather than being a broad measure that just so happened to have an impact on the claimant. In such cases, the tribunal solely

considers the results of an action or set of acts taken against a specific piece of property to decide whether the state had engaged in an indirect expropriation.²⁸

According to the police power approach, the tribunal considers the consequences of the state's actions and the purpose of such measures. This helps to provide complex analysis and understand if a state was acting within its power or abusing it. Even if the investor is significantly deprived of a property right, the state will not be responsible for expropriation if the measure is proportional, non-discriminatory, pursues public interests and is adopted in due process.²⁹ The context within which the questionable measures were adopted and applied is critical in determining its validity.³⁰

²⁶ Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan, ICSID Case No. ARB/12/6, Award 4 May 2021 para.834

<https://jsumundi.com/en/document/decision/en-muhammet-cap-sehil-insaat-endustri-ve-ticaret-ltd-sti-v-turkmenistan-award-tuesday-4th-may-2021>

²⁷ Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States, ICSID Case No. ARB(AF)/04/5, Award 21 November 2007, <https://jsumundi.com/en/document/decision/en-archer-daniels-midland-and-tate-lyle-ingredients-americas-inc-v-united-mexican-states-award-wednesday-21st-november-2007>

²⁸ D. Soller, R. T Boza, K. Fridman and R. Reimers Substantive Protections: Expropriation Pillsbury Winthrop Shaw Pittman 14 January 2022

<https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/substantive-protections-expropriation#footnote-064>

²⁹ S.D. Myers, Inc. v. Government of Canada Partial Award (Merits) - 13 Nov 2000 para. 279-288 <https://jsumundi.com/en/document/decision/en-s-d-myers-inc-v-government-of-canada-partial-award-merits-monday-13th-november-2000>

³⁰ Naturgy Energy Group, S.A. and Naturgy Electricidad Colombia, S.L. (formerly Gas Natural SDG, S.A. and Gas Natural Fenosa Electricidad Colombia, S.L.) v. Republic of Colombia, ICSID Case No. UNCT/18/1, Award, 12 March 2021, para.526-528

<https://jsumundi.com/en/document/decision/es-naturgy-energy-group-s-a-and-naturgy-electricidad>



The existence of all four elements is crucial in the establishment of the police powers doctrine.

First, applied only to the actions taken to further specific kinds of public welfare purposes. In the *Magyar Farming Company Ltd v. Hungary* case, the tribunal established two categories of such measures: enforcing existing regulations against the investor's wrongdoings and abating threats that the investor's activities may pose to public health, the environment or public order.³¹

Second, measures must be non-discriminatory. This means that all the investors should be treated similarly, and the cases of different treatments must be justified and legitimate.³²

The third is the proportionality of the measures. In the opinion of certain tribunals, the police powers concept only applies to interventions

whose effects on investors are proportionate to the targeted policy objectives.³³

Fourth, for a regulatory action to be considered a legal use of police power, it must be implemented in line with due process.³⁴

However, analysis of the latest cases shows that tribunals give states more credit when it comes to protecting the public's health or other highly specialised areas involving scientific and public policy considerations.³⁵ One of such areas is environmental protection. Following fulfilling their international obligations and preventing climate change, states must implement more eco-centric legislation. Nevertheless, such measures can curtail investments in fossil fuel projects and create a dispute with investors. For example, the

colombia-s-l-formerly-gas-natural-sdg-s-a-and-gas-natural-fenosa-electricidad-colombia-s-l-v-republic-of-colombia-laudo-friday-12th-march-2021

³¹ *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No. ARB/17/27, 13 November 2019, para.366

<https://jsumundi.com/en/document/decision/en-magyar-farming-company-ltd-kintyre-kft-and-inicia-zrt-v-hungary-none-currently-available-tuesday-1st-august-2017>

³² *Bank Melli Iran and Bank Saderat Iran v. The Kingdom of Bahrain*, PCA Case No. 2017-25 para. 631 <https://jsumundi.com/en/document/decision/en-bank-melli-iran-iran-and-bank-saderat-iran-iran-v-the-kingdom-of-bahrain-final-award-tuesday-9th-november-2021>

³³ *Olympic Entertainment Group AS v. Ukraine*, PCA Case No. 2019-18 PCA, Award, 15 April 2021, para.89-90

https://jsumundi.com/en/document/decision/en-olympic-entertainment-group-as-v-ukraine-award-thursday-15th-april-2021#decision_16018

³⁴ *Muhammet Çap & Sehil İnşaat Endüstri ve Ticaret Ltd. Sti. v. Turkmenistan*, ICSID Case No. ARB/12/6, Award 4 May 2021 para.959-960

<https://jsumundi.com/en/document/decision/en-muhammet-cap-sehil-insaat-endustri-ve-ticaret-ltd-sti-v-turkmenistan-award-tuesday-4th-may-2021>

³⁵ *Philip Morris Brand SARL, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7 Award, 8 July 2016, para.399 <https://jsumundi.com/fr/document/decision/en-philip-morris-brand-sarl-switzerland-philip-morris-products-s-a-switzerland-and-abal-hermanos-s-a-uruguay-v-oriental-republic-of-uruguay-decision-on-jurisdiction-tuesday-2nd-july-2013>

cases *TransCanada v. USA*³⁶ or *Vattenfall v. Germany*.³⁷ In such cases, states have to pay investors if they want to move to green energy. These and other examples have led some academics to show concern that the state's ability to successfully address the issue of climate change through environmental legislation may be hindered by the safeguards provided to international investors.³⁸ One of the ways to address this issue is to limit the investor's protection in the case of environmental regulations. Usually, such limitations are included in the state investment treaties or BIT. The wording typically falls into one of three categories: acknowledging environmental protection as a goal of the treaty, separating environmental regulation from actions that may amount to an indirect expropriation and preventing a race to the bottom by forbidding the contracting states from forgoing environmental

regulation in order to entice foreign investment.³⁹ Treaty clauses which include such limitations are still new, but with the years become more and more common.

CONCLUSIONS

Analysis of the relevant case law shows that the tribunals have developed a sound basis for determining the existence of creeping expropriation. Even though it is widely acknowledged as illegal, there are only a few examples that have found a breach of this sort of banned expropriation, which requires compensation. It can be explained by the complexity of the factors which have to be proven by claimants. There are two approaches to determining the existence of creeping expropriation. The effects-only approach will help to establish the significant matters of the

³⁶ *TransCanada Corporation & TransCanada PipeLines Limited v. United States of America*, ICSID Case No. ARB/16/21, Request for Arbitration, 24 June 2016 <https://jsumundi.com/en/document/other/en-transcanada-corporation-and-transcanada-pipelines-limited-v-united-states-of-america-request-for-arbitration-friday-24th-june-2016>

³⁷ *Vattenfall AB and Others v. Federal Republic of Germany (II)*, ICSID Case No. ARB/12/12 <https://jsumundi.com/en/document/other/en-vattenfall-ab-and-others-v-federal-republic-of-germany-ii-order-of-the-tribunal-taking-note-of-the-discontinuance-of-the-proceeding-tuesday-2nd-november-2021>

³⁸ D. Soller, R. T. Boza, K. Fridman and R. Reimers Substantive Protections: Expropriation Pillsbury Winthrop Shaw Pittman 14 January 2022 <https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/substantive-protections-expropriation#footnote-064>

³⁹ C.L. Beharry, M. E. Kuritzky. *Going Green: Managing the Environment Through International Investment Arbitration*. American University International Law Review 30 no. 3 (2015): 383-429 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1847&context=auilr>

case and find out if the complex of actions meant the unique idea of expropriation. Following this approach, the tribunal is primarily directed by the existence of losses and their relevance to the state's actions. The state's intentions under the establishment of the regulation do not have weight in this situation. The second doctrine - police power - is more complex. It presumes that in some cases the state has a legitimate right to implement socially useful initiatives, despite the possible violation of the investor's rights. Its legitimization presumes the existence of four criteria: proportionality, non-discriminatory character, the pursuit of public interests and due process of implementation. The problem with this approach - is the existence of potential challenges with the implementation of environmental and health protection initiatives. That is why these concepts have to be used together in order to balance the protection of the investor's rights and the implementation of socially significant initiatives.

REFERENCES

1. J. Nascimbene ed J. Sharpe Creeping expropriation JusMundi 24th May 2022 <https://jusmundi.com/en/document/wiki/en-creeping-expropriation>
2. Crystallex International Corporation v. Bolivarian Republic of Venezuela, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, para.667 <https://jusmundi.com/en/document/other/en-crystallex-international-corporation-v-bolivarian-republic-of-venezuela-venezuelas-memorandum-in-opposition-to-crystallexs-motion-tuesday-9th-may-2017>
3. C.H. Schreuer, The Concept of Expropriation under the ETC and other Investment Protection Treaties, 2005 https://www.researchgate.net/publication/265012552_The_Concept_of_Expropriation_under_the_ETC_and_other_Investment_Protection_Treaties
4. I. San Martin ed A. Willcocks Expropriation JusMundi 3rd June 2022 [https://jusmundi.com/en/document/wiki/en-expropriation?su=%2Fen%2Fsearch%3Fquery%3Dcreeping%2520expropriation%26page%3D1%26lang%3Den%26document-types%5B0%5D%3Dwiki&contents\[0\]=en](https://jusmundi.com/en/document/wiki/en-expropriation?su=%2Fen%2Fsearch%3Fquery%3Dcreeping%2520expropriation%26page%3D1%26lang%3Den%26document-types%5B0%5D%3Dwiki&contents[0]=en)
5. Infinito Gold Ltd. v. Republic of Costa Rica, ICSID Case No. ARB/14/5, Award, 3 June

- 2021, para.699
<https://jusmundi.com/en/document/decision/en-infinito-gold-ltd-v-republic-of-costa-rica-award-thursday-3rd-june-2021>
6. Telenor Mobile Communications AS v. Republic of Hungary, ICSID Case No. ARB/04/15, Award, 13 September 2006, para.63
<https://jusmundi.com/en/document/decision/en-telenor-mobile-communications-as-v-republic-of-hungary-award-wednesday-13th-september-2006>
7. Telenor Mobile Communications AS v. Republic of Hungary, ICSID Case No. ARB/04/15, Award, 13 September 2006, para.69
<https://jusmundi.com/en/document/decision/en-telenor-mobile-communications-as-v-republic-of-hungary-award-wednesday-13th-september-2006>
8. Infinito Gold Ltd. v. Republic of Costa Rica, ICSID Case No. ARB/14/5, Award, 3 June 2021, para.699
<https://jusmundi.com/en/document/decision/en-infinito-gold-ltd-v-republic-of-costa-rica-award-thursday-3rd-june-2021>
9. C.H. Schreuer, The Concept of Expropriation under the ETC and other Investment Protection Treaties, 2005, p.36
https://www.researchgate.net/publication/265012552_The_Concept_of_Expropriation_under_the_ETC_and_other_Investment_Protection_Treaties
10. R. Sloane, Indirect Expropriation and its Valuation in the BIT Generation, 74 British Yearbook of International Law, 115 (2004), pp. 115-150
https://scholarship.law.bu.edu/faculty_scholarship/554?utm_source=scholarship.law.bu.edu%2Ffaculty_scholarship%2F554&utm_medium=PDF&utm_campaign=PDFCoverPages
11. M. Kinnear, A. Bjorklund, J. Hannaford, Investment Disputes under NAFTA: An Annotated Guide to NAFTA Chapter 11, Oxford University Press, 2006
<https://www.semanticscholar.org/paper/Investment-disputes-under-NAFTA-%3A-an-annotated-to-Kinnear-Bjorklund/d84503bb993ff6cf9e35c1f63615e1e351e2f3b2>
12. Generation Ukraine Inc. v. Ukraine, ICSID Case No. ARB/00/9, Award, 16 September 2003, para.20.22
<https://jusmundi.com/en/document/decision/en-generation-ukraine-inc-v-ukraine-award-16-september-2003>



- on/en-generation-ukraine-inc-v-ukraine-award-tuesday-16th-september-2003
13. Mongolia - United States of America BIT (1994) Adopted on 6 October 1994 <https://jusmundi.com/en/document/treaty/en-mongolia-united-states-of-america-bit-1994-mongolia-united-states-of-america-bit-1994-thursday-6th-october-1994>
14. Honduras - United States of America BIT (1995) Adopted on 1 July 1995 http://www.sice.oas.org/Investment/BITSbyCountry/BITs/US_Honduras_e.asp
15. LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, para.187 <https://jusmundi.com/en/document/decision/en-lg-e-energy-corp-lg-e-capital-corp-and-lg-e-international-inc-v-argentine-republic-decision-on-liability-tuesday-3rd-october-2006>
16. Bank Melli and Bank Saderat v. Bahrain PCA, Final Award, 9 November 2021, para.748 <https://jusmundi.com/en/document/decision/en-bank-melli-iran-iran-and-bank-saderat-iran-iran-v-the-kingdom-of-bahrain-final-award-tuesday-9th-november-2021>
17. Griffin Group v. Poland GPF GP S.à.r.l v. Poland, SCC Case No. 2014/168 Judgment of the UK High Court on the Set Aside Application [2018] EWHC 409 - 2 Mar 2018 para 115-117 <https://jusmundi.com/en/document/decision/en-gpf-gp-s-a-r-l-v-poland-judgment-of-the-uk-high-court-on-the-set-aside-application-friday-2nd-march-2018>
18. Burlington v. Ecuador Burlington Resources, Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5 Dissenting Opinion of Arbitrator Orrego Vicuña (Decision on Liability) para 32 <https://jusmundi.com/en/document/opinion/en-burlington-resources-inc-v-republic-of-ecuador-dissenting-opinion-of-arbitrator-orrego-vicuna-decision-on-liability-thursday-8th-november-2012>
19. J. Bonnitcha, Substantive protection under investment treaties: A legal and economic analysis. (2014) 10.1017/CBO9781107326361 https://www.researchgate.net/publication/292913639_Substantive_protection_under_investment_treaties_A_legal_and_economic_analysis
20. Metalclad Corporation v. The United Mexican States, ICSID Case No. ARB(AF)/97/1, Award,

- 30 August 2000, para.103, para.108, para.111
<https://jusmundi.com/en/document/decision/en-metalclad-corporation-v-the-united-mexican-states-award-wednesday-30th-august-2000>
- 21.** Pope & Talbot v. Canada Ad hoc Arbitration, Interim Award, 26 June 2000, para.100 – 102
<https://jusmundi.com/en/document/decision/en-pope-talbot-v-government-of-canada-interim-award-monday-26th-june-2000>
- 22.** Hydro S.r.l., Costruzioni S.r.l., Francesco Becchetti, Mauro De Renzis, Stefania Grigolon, Liliana Condomitti v. Republic of Albania, ICSID Case No. ARB/15/28, Award, 24 April 2019, para.686
<https://jusmundi.com/en/document/decision/en-hydro-s-r-l-and-others-v-republic-of-albania-award-wednesday-24th-april-2019>
- 23.** Alejandro Diego Diaz Gaspar v. Costa Rica, ICSID Case No. ARB/19/13, Award, 29 June 2022, para.532
<https://jusmundi.com/en/document/decision/en-es-alejandro-diego-diaz-gaspar-v-costa-rica-laudo-wednesday-29th-june-2022>
- 24.** D. Soller, R. T Boza, K. Fridman and R. Reimers Substantive Protections: Expropriation Pillsbury Winthrop Shaw Pittman 14 January 2022
<https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/substantive-protections-expropriation#footnote-064>
- 25.** Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan, ICSID Case No. ARB/12/6, Award 4 May 2021 para.597-599
<https://jusmundi.com/en/document/decision/en-muhammet-cap-sehil-insaat-endustri-ve-ticaret-ltd-sti-v-turkmenistan-award-tuesday-4th-may-2021>
- 26.** Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan, ICSID Case No. ARB/12/6, Award 4 May 2021 para.834
<https://jusmundi.com/en/document/decision/en-muhammet-cap-sehil-insaat-endustri-ve-ticaret-ltd-sti-v-turkmenistan-award-tuesday-4th-may-2021>
- 27.** Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States, ICSID Case No. ARB(AF)/04/5, Award 21 November 2007,
<https://jusmundi.com/en/document/decision/en-archer-daniels-midland-and-tate-lyle-ingredients-americas-inc-v-united-mexican->

states-award-wednesday-21st-november-
2007

28.D. Soller, R. T Boza, K. Fridman and R. Reimers Substantive Protections: Expropriation Pillsbury Winthrop Shaw Pittman 14 January 2022 <https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/substantive-protections-expropriation#footnote-064>

29.S.D. Myers, Inc. v. Government of Canada Partial Award (Merits) - 13 Nov 2000 para. 279-288 <https://jusmundi.com/en/document/decision/en-s-d-myers-inc-v-government-of-canada-partial-award-merits-monday-13th-november-2000>

30.Naturgy Energy Group, S.A. and Naturgy Electricidad Colombia, S.L. (formerly Gas Natural SDG, S.A. and Gas Natural Fenosa Electricidad Colombia, S.L.) v. Republic of Colombia, ICSID Case No. UNCT/18/1, Award, 12 March 2021, para.526-528 <https://jusmundi.com/en/document/decision/es-naturgy-energy-group-s-a-and-naturgy-electricidad-colombia-s-l-formerly-gas-natural-sdg-s-a-and-gas-natural-fenosa>

electricidad-colombia-s-l-v-republic-of-colombia-laudo-friday-12th-march-2021

31.Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary, ICSID Case No. ARB/17/27, 13 November 2019, para.366 <https://jusmundi.com/en/document/decision/en-magyar-farming-company-ltd-kintyre-kft-and-inicia-zrt-v-hungary-none-currently-available-tuesday-1st-august-2017>

32.Bank Melli Iran and Bank Saderat Iran v. The Kingdom of Bahrain, PCA Case No. 2017-25 para. 631 <https://jusmundi.com/en/document/decision/en-bank-melli-iran-iran-and-bank-saderat-iran-iran-v-the-kingdom-of-bahrain-final-award-tuesday-9th-november-2021>

33.Olympic Entertainment Group AS v. Ukraine, PCA Case No. 2019-18 PCA, Award, 15 April 2021, para.89-90 https://jusmundi.com/en/document/decision/en-olympic-entertainment-group-as-v-ukraine-award-thursday-15th-april-2021#decision_16018

34.Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan, ICSID Case No. ARB/12/6, Award 4 May 2021 para.959-960

- <https://jusmundi.com/en/document/decision/en-muhammet-cap-sehil-insaat-endustri-ve-ticaret-ltd-sti-v-turkmenistan-award-tuesday-4th-may-2021>
35. Philip Morris Brand SARL, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7 Award, 8 July 2016, para.399 <https://jusmundi.com/fr/document/decision/en-philip-morris-brand-sarl-switzerland-philip-morris-products-s-a-switzerland-and-abal-hermanos-s-a-uruguay-v-oriental-republic-of-uruguay-decision-on-jurisdiction-tuesday-2nd-july-2013>
36. TransCanada Corporation & TransCanada PipeLines Limited v. United States of America, ICSID Case No. ARB/16/21, Request for Arbitration, 24 June 2016 <https://jusmundi.com/en/document/other/en-transcanada-corporation-and-transcanada-pipelines-limited-v-united-states-of-america-request-for-arbitration-friday-24th-june-2016>
37. Vattenfall AB and Others v. Federal Republic of Germany (II), ICSID Case No. ARB/12/12 [tribunal-taking-note-of-the-discontinuance-of-the-proceeding-tuesday-2nd-november-2021](https://jusmundi.com/en/document/other/en-vattenfall-ab-and-others-v-federal-republic-of-germany-ii-order-of-the-tribunal-taking-note-of-the-discontinuance-of-the-proceeding-tuesday-2nd-november-2021)
38. D. Soller, R. T. Boza, K. Fridman and R. Reimers Substantive Protections: Expropriation Pillsbury Winthrop Shaw Pittman 14 January 2022 <https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/substantive-protections-expropriation#footnote-064>
39. C.L. Beharry, M. E. Kuritzky. Going Green: Managing the Environment Through International Investment Arbitration. American University International Law Review 30 no. 3 (2015): 383-429 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1847&context=auilr>