



# DIPLOMATIC PROTECTION AND INVESTMENT PROTECTION TREATIES

**Introduction into International Law**



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# DIPLOMATIC PROTECTION

- Area of international law under which a State can take diplomatic or other action against another State if the former's national's rights or interests have been injured by the latter
- ***The Mavrommatis formula*** asserts that the individual has not direct rights in the international legal system, but that a state can invoke its own international rights to protect a national's interest
- **Preconditions**
  - **Person must be national of the state bringing the claim**
    - Effective nationality → ***Nottebohm Case*** (second phase), Judgment of April 6th 1955, ICJ Reports 1955
    - *Barcelona Traction, Light and Power Company, Limited*, Judgment of 5 February 1970
  - **Person must have exhausted all available local remedies in the defendant state**

# BILATERAL INVESTMENT TREATIES AND INVESTMENT TREATY ARBITRATION

- 1778 - First Treaty of Friendship, Commerce and Navigation → the USA and France
- After WWII → a new concept of treaties, called bilateral investment treaties (**BITs**)

# PROCEDURAL ISSUES UNDER BITs

- Framework of modern BITs provides direct rights of private parties (natural or legal persons) to arbitrate against sovereign states
- **Different arbitral fora**
  - ICSID – International Centre for Settlement of Investment Disputes
  - Permanent Court of Arbitration
  - Chambers' of Commerce: LCIA, SCC,...
- 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards

# MATERIAL ISSUES UNDER BIT'S – STANDARDS OF PROTECTION

- Definition of investors, investment and standard of protection to the investors and their investment
- **Investors** - a natural person or legal entity always from one of the states parties to the BIT vis-à-vis the other state
- **Investment** - what investor from one state party brings to the other state party
- **Standards of treatment**
  - ***National treatment***
  - ***Prohibition of expropriation***
  - ***Fair and equitable treatment (FET)*** → Occidental Exploration and Production Co. v. Republic of Ecuador. Award of 1 July 2004. LCIA, UNCITRAL ca NO. 3467
  - ***Full protection and security*** → Azurix Corp. v. The Argentine Republic. Decision on Jurisdiction. ICSID Case No. ARB/01/12
  - ***Most-Favoured-Nation Treatment (MFN)***