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GLAWCAL COMMENT #198

**Reform of international investment law
as a response to arbitrations initiated
against Argentina**

Based on

Catharine Titi “Economic Crises, Sovereign Debt Restructurings and the Shifting Landscape of International Investment Law”



gLAWcal
Global Law Initiatives for Sustainable Development

A gLAWcal comment on Catharine Titi "Economic Crises, Sovereign Debt Restructurings and the Shifting Landscape of International Investment Law" in Antonio Segura Serrano (Ed.) "The Reform of International Economic Governance".

bilateral investment treaties. Various attempts to dismantle intra-EU bilateral investment treaties resulted in the Achmea judgment of the Court of Justice of the European Union. On 6 March 2018, the Court ruled that the arbitration clause contained in Article 8 of the 1991 Netherlands-Slovakia bilateral investment treaty has an adverse effect on the autonomy of EU law, and therefore it is incompatible with EU law.

For about half a century, international investment law has been providing investors with broad safeguards such as fair and equitable treatment, full protection and security, protection in case of expropriation, most-favoured-nation treatment, and guarantees of free capital transfers. In addition, instead of relying on their home states to espouse their claims through diplomatic protection, investors have been provided with a direct and effective dispute settlement mechanism. However, arbitrations initiated against Argentina concerning measures taken by the South American state in order to tackle its economic and financial crisis of 2001 revealed system's limitations. Argentinian disputes raised the question of the necessity of drafting an essential security interests exception in order to safeguard a modicum of the state's regulatory flexibility in dealing with a crisis situation. Economic crises are in principle considered to affect a state's essential security interests, however, bilateral investment agreements concluded between Argentina and France or the UK did not contain any essential security interests clause. The author traces rising criticism of the current system of investment law and a trajectory of reform especially in the last decade. Criticism of investment law encouraged the drafting of new exceptions in bilateral investment treaties relating to measures taken in situations of economic crisis without violating an investment agreement. Chapter 14 becomes even more relevant against the backdrop of the EU debt crisis as well as criticism and distrust towards intra-EU

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To collaborate with Government, Civil society and business community to balance the excess of globalization with Non Trade Concerns.



OUR GOALS

To influence policymakers, to raise awareness over Non Trade Concerns, to encourage stakeholder participation, and to disseminate gLAWcal's publication results.

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