

The regulation of international capital movement under bilateral investment treat...

Law



The Regulation of International Capital Movement Under Bilateral Investment Treaties: A Critical Analysis This thesis investigates and analyses the customary international law regulating the movement of capital via bilateral investment treaties (BITs). The main research question is whether or not there is a clear and cohesive body of customary international law regulating the movement of capital under BITs. This research question is answered by examining the current body of case law and the literature relative to the resolution of investor/state disputes and the manner in which the principle of fair and equitable treatment as provided for in BITs is interpreted and applied by adjudicators. This thesis seeks to determine whether or not the doctrine of fair and equitable treatment represents a separate and cohesive standard for regulating the movement of international capital under BITs or is merely incidental to the minimum standard treatment at customary international law.

Ultimately it will be argued that the doctrine of fair and equitable treatment does not provide a clear and cohesive standard of customary international law for the movement of international capital under BITs. This argument will be supported by an analysis of the literature in which the doctrine of fair and equitable treatment is discussed. The practical difficulty attending the establishment of a clear and cohesive standard of customary international law via the doctrine of fair and equitable treatment under BITs is demonstrated by reference to two case studies. The two case studies will focus on BITs and the movement of international capital in the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE). The local laws, the implementation of international laws and the construction of BITs in KSA and

UAE will be analysed and compared. Further studies are conducted by reference to cases such as *United Mexican States v Metaclad Corporation*, *The Loewen Group, Inc and Raymond L. Loewen v United States of America*, *S. D. Myers Inc. v Canada*, *Pope and Talbot Inc and The Government of Canada*, *Noble Ventures, Inc. v Romania*, and *Neer Claim United States v Mexico General Claims Commission*.

This thesis will also examine critical analyses of the doctrine of fair and equitable treatment and its relationship to the standard of minimum treatment under customary international law. The critical analyses will be taken from textbooks, articles and journals. The clauses and other relevant provisions contained in BITs will be examined for the purpose of supporting the argument that the interpretation and application of the doctrine of fair and equitable treatment presents a difficulty for the establishment of a clear and cohesive standard of international law for regulating the international movement of capital under BITs.