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The topic of our conference, "International trade, Investments and Human Rights," is a broad one.[1] It is also a bit of a moving target, and this is of course because the sphere of activity that we call "international" is essentially about the movement of people, goods, services and capital across borders, from one country to another, on a global scale.[2] International law in turn is, in the simplest terms, about the regulation of these activities and about the settlement of disputes that arise in this cross-border context.

Depending on the historical context, cross-border movement of people, goods, services and capital may be more or less dynamic, or more or less static – the process of globalization may accelerate, and it may also slow down (which, technically speaking, is also form of acceleration), as most of us now recognize.[3] Cross-border movement of people, goods, services and capital may also be more or less free or voluntary, and it may also amount to mass displacements which in practice are only rarely, if ever, voluntary. However, as such mass movements may not only be involuntary, but also deliberately intended or even forced by those behind them, further reflection on these issues would quickly take us well beyond our limited agenda today, to the unruly realm of international politics.[4] We will therefore

[1] Presentation made on 24 November 2016 at the 70th Anniversary Seminar of the Finnish Branch of the International Law Association on "International Trade, Investments and Human Rights."

[2] *See* V. Heiskanen, The Artifact of International Jurisdiction: Concept, History and Reality, TDM (ISSN 1875-4120), November 2016, www.transnational-dispute-management.com. This is not to suggest that such movement is always free or even voluntary; *see* notes 4 and 5 below.

[3] In other words, the process of globalization over time tends to come to a standstill and reverse itself into its opposite – a process of localization. However, just as the process of globalization may not be able to reach the escape velocity that would allow it to leave behind the gravitational attraction of the State (which in turn tends to slow it down and bring to a standstill), the process of localization may eventually accelerate beyond control and face a hard landing on the face of the real economy – which in turn will bring the cycle to an end and, depending on how hard the landing has been, may sooner or later propel a re-emergence of the process globalization. Such socio-economic cycles may be going on simultaneously at different speeds, and in different phases of rotation, in different locations, depending on the degree of globalization of the relevant local economy. In other words, globalization in this conventional sense is always ultimately local; there is no "global" globalization. *See* V. Heiskanen, Book review: Yuval Shany: Questions of Jurisdiction and Admissibility before International Courts, 18 J. WORLD TRADE & INVESTMENT (forthcoming 2017).

[4] This is because cross-border movement of people, goods, services and capital is not only a socio-economic phenomenon, i.e., a matter of microeconomics; it also captures macroeconomic events. Mass movement of people, for instance, may be a consequence of a socio-economic or political crisis in a neighboring (or a third country), or it may constitute deliberate political action and amount to an act of aggression: a planned and considered movement, or mobilization, of human and other resources from one public realm to another, in one fell swoop, without the consent of the target State, for the very purpose of a temporary if not permanent effacement, or at least change, of the boundary between the two realms. In other words, when free, or relatively free (i.e., not forced), movement of people, goods, services and capital across borders is essentially a socio-economic phenomenon, mobilization of human and other resources for the very purpose of temporarily or permanently changing or effacing an existing boundary between States is essentially a matter of international politics. The distinction between international politics and international policy-making is thus fundamentally about boundaries: while international politics is about affirmatively defending, challenging, changing, moving or effacing existing boundaries between States, international policy-making operates within and respects the existing boundaries, taking them as given (*es gibt*, in Heideggerian terms). International politics is in this – also Heideggerian – sense *ontological* – it seeks to openly, or directly, defend or challenge the existing foundations of the system – whereas international policy-making is *ontical* – it operates on the basis of those foundations, without questioning or challenging them (and in this sense is political only indirectly, i.e., insofar as it respects

limit our focus on the existing regulatory framework, including the legal framework for resolution of disputes.

Very generally speaking – and I stress here the term "very" – international human rights, in the broad sense of this term (that is, also covering refugee protection), is about the movement of people across borders; international trade is about the movement goods and services; and international investment is about the cross-border movement of capital. Note that I am not saying "free" movement, but merely movement, since human rights for instance, in the broad sense of this term, is not about free movement of people, and not even primarily about the movement of people across borders – although, as we will see in a moment, they do also provide protection to people who have moved from one country to another, whether freely or involuntarily.[5]

There is no gapless international regulatory system, nor comprehensive legal framework for the resolution of disputes, governing all of these regimes – international trade, investment and human rights. The international legal regimes that actually exist are historically contingent in the sense that they tend to be either broader or narrower than the underlying activity they seek to regulate. They also are less than coherent from the policy perspective in the sense that some of them are specifically designed to promote and protect free movement, for instance, but some are not, and instead take the existing State boundaries as the legal boundaries of the system. Thus, while there is a comprehensive international regulatory regime governing free movement of goods – the GATT/WTO system – there is no system in place to promote or

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and operates within the existing boundaries, it by implication accepts them as a basis of international policy-making). The distinction between the ontological and the ontical is thus both conceptual and historical: while the existing boundaries between States are relatively stable, or static, and as such may be said to constitute the ontological foundation of the current international system as a system of States, they are also historically contingent – they have not fallen from heaven, but are the end result of dynamic historical developments that are at their root socio-economic.

A more philosophical reflection on the relationship between the current international system as a system of States and the (socio-economic) process of globalization would thus have to focus simultaneously on both the statics of the system and the dynamics of the underlying socio-economic reality. This is a challenging but not an impossible task – but it does require a more concrete understanding of the complex relationship between the logic of the system and the dynamics of its history, i.e., the relationship of logic and time. While the suggestion that a system can simultaneously be both in motion and at rest sounds paradoxical (as this is what it in fact is), it is not illogical since there is one phenomenon that can be at the same time both without a logical contradiction and this is of course, by definition, the chronological measure of history, i.e., the time, itself. Assuming Aristotle, Hegel and Einstein were collectively correct, i.e., that time rotates around its own axis (and is therefore curved, just as space is), then it will by definition be in motion and at rest at the same time, the sphere around the axis being in motion and the axis at absolute rest. Consequently, if time is by definition the number that counts how many times time has rotated around itself, it can conversely (or rather reversely) be defined as the ratio between the two, momentum and absolute rest, i.e. $T = a/r$, and since $r = 0$, it follows that $T= \infty$; but at the same time, from the rotating movement it follows that $\infty = i$. In other words, time rotates around itself, *ad infinitum,* in *perpetuum mobile*. The same applies to the history of the international system – the process of globalization tends (but is not necessarily bound) to turn into a process of localization, and *vice versa*. *See* note 3 above.

[5] The concept of free movement of people, goods, services and capital is the core legal concept of a full-fledged market; *see, e.g.*, Article 26(2) of the Treaty on the Functioning of the European Union ("The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties."). However, while the ambition of the European single market extends beyond free movement and also aims at harmonizing the governing regulatory framework, this is not necessary for a market to exist in a legal sense (as it may allow or even encourage regulatory competition between different parts of the overall market). For further discussion see V. Heiskanen, The Regulatory Philosophy of International Trade Law, 38(1) J. WORLD TRADE 1 (2004).

protect free movement of people – except within the limited regional context of the European Union.[6]

This is not to say that international human rights conventions have no impact whatsoever on cross-border movement of people. They do, and this is because they generally do not make any distinction between nationals and non-nationals and thus protect not only the nationals of a given jurisdiction, but also foreigners residing or being present in that jurisdiction. International refugee conventions obviously deal with cross-border movement, by definition, and indeed create an indirect and limited right to cross a border, or at least a right not to be returned to a country where the refugee would be subject to persecution.[7]

Because international human rights conventions do not make a difference between nationals and foreigners, they also protect foreigners, and one can therefore say that the activity that they indirectly regulate – and thus promote and facilitate – is cross-border movement of people.

What they do not do is to open borders for free cross-border movement.

However, this is the very purpose of international trade agreements, in particular the GATT, which is designed to promote free movement of goods by gradually reducing tariffs and by eliminating discrimination between foreign and domestic products. Nonetheless, the legal regime governing international trade is neither coherent nor comprehensive from a policy perspective. Thus the WTO Agreement and the many other trade agreements that form part of the WTO legal framework deal with the trade in goods in a much more comprehensive and detailed manner than they do with trade in services.[8] While there is a multilateral agreement on trade in services – the General Agreement on Trade in Services (GATS) – this agreement is quite embryonic compared to the GATT and the many other WTO Agreements regulating trade in goods.[9]

The international regulation of the movement of capital is even more fragmented – and when I say "fragmented," I do not mean that it has disintegrated from some previously existing or originally integrated whole; it was born that way, fragmented.[10] On the one hand, there is the IMF Articles of Agreement, which has a couple of provisions dealing with the movement of capital, and on the other hand, there are multilateral investment agreements such as NAFTA (which, as noted above, also covers trade in goods and services) and the Energy Charter Treaty, and then there are, of course, the approximately 3,000 bilateral investment agreements.

However, the ambition of the IMF Agreement, for instance, is much more limited than that of the WTO Agreements, which aim to promote free movement of goods and services across borders on a global basis. While the IMF Agreement does prohibit, without the approval of

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[6] Thus the North American Free Trade Agreement (NAFTA), for instance, establishes a free trade area for goods and services, it does not cover movement of capital or people (labor). *See* Article 102(2)(a) of NAFTA.

[7] By way of the principle *non-refoulement*; see Article 33 ("Prohibition of Expulsion or Return ('*Refoulement*'") of the 1951 Convention on the Status of Refugees ("No Contracting States shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.")

[8] *See* Annex 1A ("Multilateral Agreements on Trade in Goods") to the Agreement Establishing the World Trade Organization, https://www.wto.org/english/docs_e/legal_e/legal_e.htm.

[9] *See* General Agreement on Trade in Services, https://www.wto.org/english/docs_e/legal_e/26-gats.pdf.

[10] *See* Lady Gaga, Born This Way ("Oh there ain't no other way Baby I was born this way.")

the Fund, any restrictions on the making of payments and transfers for current international transactions, i.e., transactions that relate to trade in goods and services,[11] it specifically allows the member States to exercise capital controls, or controls on capital transfers – "[m]embers may exercise such controls as are necessary to regulate international capital movements."[12] In other words, the IMF Agreement is not designed to, and does not operate so as to, open the capital account and liberalize international capital movements.[13]

Multilateral and bilateral investment protection agreements do not change this. They are limited in their scope and regulatory ambition – they generally protect investments only after they have been admitted, but do not require the State parties to open their borders for foreign investments.[14] In other words, investment protection agreements generally do not create any obligation on the host State to open their capital account for inward capital flows – although they often do so for outward capital flows.[15]

We have finally begun to answer the question that has been put to us – is there a difference between the protection of property and protection of investment?

Protection of property is typically regulated in international human rights conventions.

Thus, for instance, Article 1 of Protocol No. 1 of the European Convention on Human Rights ("Protection of property") provides that "[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in

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[11] Article VIII(2)(a) of the Articles of Agreement of the International Monetary Fund ("[N]o member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions."), https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf.

[12] *See* Article VI(3) of the Articles of Agreement of the International Monetary Fund.

[13] A proposal made in 1997 to amend the IMF Articles of Agreement in order to make the liberalization of capital movements one of the purposes of the Fund and by extending the Fund's jurisdiction for this purpose was never adopted. For discussion see, e.g., IMF: The Fund's Mandate – The Legal Framework, 22 Feb. 2010, http://www.imf.org/external/np/pp/eng/2010/022210.pdf. For discussion on more recent developments see, e.g., Adam Feibelman, The IMF and Regulation of Cross-Border Capital Flows, 15 CHI. J. INT'L LAW 409 (2015).

See also the OECD Code of Liberalization of Capital Movements, http://www.oecd.org/daf/inv/investment-policy/CapitalMovements_WebEnglish.pdf (containing the members' undertaking to progressively take "measures of liberalization" to abolish, between them, restrictions on movements capital "to the extent necessary for effective economic co-operation.")

[14] There appear to be only a handful of investment treaties that do create a "right to invest;" *see, e.g.,* Article II(2) of the Agreement between the Government of the Republic of Nicaragua and the Government of the Italian Republic on the Promotion and Protection of Investments ("Investors of either Contracting Party shall have the right of access to investments activities in the territory of the other Contracting Party, which shall be not less favourable than that under Article III, paragraph 1.")

Numerous investment treaties also create the more limited right to "establishment" of an investment on a national treatment and/or most-favored nation ("MFN") treatment basis. While such provisions do not, without more, amount to a right to make a cross-border investment, i.e., a right of "access," they are bound to have this function if or when investment treaties creating such a right become more common – MFN clauses in the other treaties of the parties to such treaties are likely to relatively quickly result in the opening up of the borders of the parties to such treaties to cross-border investment and, consequently, to liberalization of international capital movements between them.

[15] Free transfer provisions, which are commonly included in such treaties, tend to liberalize outward capital flows, although they are far from uniform. For discussion of such "patchwork liberalization of the capital account" see Michael Waibel, BIT by BIT: The Silent Liberalization of the Capital Account, in INTERNATIONAL INVESTMENT LAW FOR THE 21ST CENTURY: ESSAYS IN HONOUR OF CHRISTOPH SCHREUER (C. BINDER, U. KRIEBAUM, A. REINISCH & S. WITTICH, EDS.) 497-518 (2009),

the public interest and subject to the conditions provided for by law and by the general principles of international law."[16]

There are no provisions on protection of property in the International Covenant on Civil and Political Rights, however, Article 17 of the Universal Declaration of Human Rights does confirm that "[e]veryone has the right to own property alone as well as in association with others," and that "[n]o one shall be arbitrarily deprived of his property."[17]

The concept of property or "possessions" is not defined in the European Convention on Human Rights, but it has been broadly understood in the practice of the European Court of Human Rights to cover various types of "assets" that have "economic value," including claims.[18] This is a very broad understanding of what is being protected: Any possession having economic value, that is, any asset, qualifies as a protected form of property.

What is, then, an "investment"?

As is well known, the leading multilateral investment treaty, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention") does not provide any definition; it merely provides that the jurisdiction of the Centre extends to "any legal dispute arising directly out of an investment."[19]

This is intentional. When the ICSID Convention was negotiated, various proposals were made to define an investment, but none of these was ultimately adopted.[20] The negotiators preferred to leave it for the parties to investment contracts and investment treaties (although there were not many in effect at the time the ICSID Convention was negotiated, and it is therefore not clear whether the drafters had investment treaties in mind when drafting the Convention; indications are that they did not, at least predominantly) to define what they meant by "investment."[21]

However, what was clear at the time the ICSID Convention was negotiated was that ordinary commercial transactions for sale of goods and services would not qualify as an investment, and indeed, in the one known case in which the ICSID Secretariat decided not to register the

[16] Article, Protocol No. 1 to the European Convention on Human Rights, http://www.echr.coe.int/Documents/Convention_ENG.pdf.
[17] Universal of Declaration of Human Rights, http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations /eng.pdf.
[18] For discussion see, e.g., Ursula Kriebaum & Christoph Schreuer, The Concept of Property in Human Rights Law and International Investment Law, in S. BREITENMOSER ET AL (EDS.), HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW: STUDIES IN HONOUR OF LUZIUS WILDHABER 1 (2015).
[19] Article 25(1) of the ICSID Convention.
[20] *See* Report of the Executive Directors of the International Bank for Reconstruction and Development on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 18 March 1965, para. 27 ("No attempt was made to define the term 'investment given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre (Article 25(4)).")
[21] For discussion of the State contract paradigm dominant at the time of the negotiation of the ICSID Convention see V. Heiskanen, Forbidding Dépeçage: Law Governing Investment Treaty Arbitration, 32 SUFFOLK TRANSNAT'L L. REV. 367, 398 (2009).

case because it was manifestly outside the jurisdiction of the Centre, the claim involved a transaction for sale of goods.[22]

On the other hand, multilateral and bilateral investment agreements do usually contain a definition of investments covered by the treaty. These definitions often have a very similar structure, consisting of two parts: a chapeau clause, followed by a list of assets that may qualify as an investment under the treaty. The text of the chapeau in investment treaties varies, the simple ones merely saying that an investment under the treaty means every kind of asset, including those listed, but the list is not meant to be exhaustive. The more complex chapeaux require that, in order to qualify as an investment, the assets in question must have been "invested," or must be associated with an "investment" – which is somewhat circular, if the very purpose of the definition is to define an "investment."

Perhaps the most comprehensive version of the chapeau can be found in the 2012 United States Model BIT, which provides that "investment" means every kind of asset "that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk;" and then provides a non-exhaustive list of forms that an investment may take.[23] The language of the chapeau of course comes from the famous *Salini* decision, which sought to define the characteristics of an investment under Article 25 of the ICSID Convention.[24]

Although the matter remains somewhat controversial, some investment treaty tribunals have taken the view that the *Salini* criteria apply also outside ICSID arbitration, where the sole basis of jurisdiction is the applicable BIT. In other words, even if the BIT in question does not mention the *Salini* criteria, according to this view, they should be read into the definition of "investment."[25]

So what do the *Salini* criteria mean, in plain English?

They simply mean that investment treaties do not protect any kind of assets – or any kind of property. Investment treaties are not human rights treaties; they only protect a sub-category of property, that is, property or assets that have been "invested." An asset is "invested" if it is contributed as capital to a business venture, whether incorporated or unincorporated. Capital provides the cushion that allows the business to operate, even if it may initially be loss-making, as the expectation is that the venture will eventually start making profit – although the risk of course always exists that this does not happen, and that the asset or assets invested as capital in the venture will be lost for good. An asset contributed as capital in a business venture thus by definition constitutes an investment – in other words, it effectively defines itself.[26] A capital contribution entails automatically, *ipso facto*, an expectation of profit and a

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[22] For discussion see Ibrahim Shihata & Antonio Parra, The Experience of the International Centre for Settlement of Investment Disputes. In ICSID REV. FOREIGN INV. L.J. 299, 308 (1999). Article 36(3) of the ICSID Convention provides that "[t]he Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre."

[23] *See* the United States Model Bilateral Investment Treaty, 2012, https://ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf.

[24] *Salini Construttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction of 23 July 2001, http://www.italaw.com/sites/default/files/case-documents/ita0738.pdf.

[25] *See, e.g.*, *Romak S.A. v. Republic of Uzbekistan*, Award, 26 Nov. 2009, http://www.italaw.com/sites/default/files/case-documents/ita0716.pdf.

[26] A dictionary definition of "by definition" is "by its very nature, intrinsically." *See, e.g.,* https://en.oxforddictionaries.com/definition/by_definition.

certain duration (it is not a one-off transaction), and it also involves a risk of the venture losing money – including the risk that the contribution itself will eventually be lost, in its entirety.[27]

Investment treaties usually do not make a distinction between foreign direct investment and indirect or portfolio investment. Investment treaty tribunals have taken the view that both are covered, at least insofar as the asset in question consists of indirect investment in a corporate entity. Whether purchases of sovereign bonds constitute an investment is a more controversial issue.[28] Investment treaties thus protect a particular category of property, that is, income-producing property. They therefore tend to be narrower in scope than human rights treaties, which protect any kind of property, including and in particular personal property and belongings of individuals – so long as they have economic value. But in order to be protected under a human rights convention, the protected property need not be income-producing – although it can be. There is therefore a certain overlap between the scope of application of human rights conventions and investment protection treaties – they both govern income-producing property. In other words, investment claims can in principle be made under both types of treaties, human rights conventions and investment treaties.

In this connection, it is instructive to recall that the 1967 OECD draft Convention on the Protection of Foreign Property – the mother of all bilateral of investment treaties and the model on which most of them are based – did not define its scope of application in terms of "investment," but in terms of "property" – by its very name, it was a draft convention on protection of foreign "property" and not "investment."[29] The terminology adopted in the draft Convention was not a coincidence, and indeed the notes and comments to Article 1 of the draft stressed that "[i]n international law the rules contained in the Convention … apply to property in the widest sense of the term which includes, but is not limited to, investments." The broad scope of application of the draft Convention was also made clear in the definition of the term "property" in Article 9(c), which provided that the term "property" meant "all property, rights and interests, whether held directly or indirectly, including the interest which a member of a company is deemed to have in the property of the company."[30]

[27] For further discussion see V. Heiskanen, Of Capital Import: The Definition of Investment in International Investment Law, in ANNE K. HOFFMANN (ED.), PROTECTION OF FOREIGN INVESTMENT THROUGH MODERN TREATY ARBITRATION 51 (2010).

[28] *Cf. Abaclat and Others v. The Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility of 4 Aug. 2011), http://www.italaw.com/sites/default/files/case-documents/ita0236.pdf and *Postova Banka AS and Istrokapital SE v. the Hellenic Republic,* ICSID Case No. ARB/13/8, Award of 9 Apr. 2015), http://www.italaw.com/sites/default/files/case-documents/italaw4238.pdf.

It is arguable that purchases of sovereign bonds are a form of "financing" rather than a form of "investment," in the proper sense of this term (i.e., as a form of capital contribution to a business venture). While there is an expectation of return in both forms of transactions, financing does not amount to a contribution of risk capital – the debtor is expected, and is under a legal obligation, to repay the loan; consequently, the loan capital is not "invested;" it is "loaned," i.e., given for use only, against an agreed fee for the service. This also applies to capital loans – except when this form of financing is provided by the owner of the venture in question; in such circumstances it effectively constitutes, or is comparable to, owner's equity. For scholarly discussion of sovereign bonds as a form of "investment" see, e.g., Michael Waibel, Opening Pandora's Box: Sovereign Bonds in International Arbitration, 101 AM. J. INT'L L. 711 (2007).

[29] OECD draft Convention on the Protection of Foreign Property, 12 Oct. 1967, http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=242. For further discussion see, e.g., G.W. Haight, O.E.C.D. Resolution on the Protection of Foreign Property, 2 INT'L LAW. 326 (1967-68).

[30] OECD draft Convention on the Protection of Foreign Property, 12 Oct. 1967, http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=242.

However, while the draft Convention covered protection of foreign property more broadly, there is no question that it was meant primarily to promote movement of capital across borders – foreign investment. According to its preamble, the draft Convention was based, among other things, on "[r]ecognising the importance of promoting the flow of capital for economic activity and development,"[31] and the OECD Council resolution which adopted the draft Convention also stressed that "a wider application of these principles in domestic legislation and in international agreements would encourage foreign investment."[32]

But even if modern investment treaties generally protect foreign "investments" rather than foreign "property," there may well be circumstances in which investment protection treaties may also apply to property that is not income-producing. This may be the case, for instance, when there is no question that there has been an investment – contribution of capital to a business venture – but where the governmental measures that the investor argues are incompatible with the investment treaty have also adversely affected the personal property – non-income producing property – of its owner or employees. In such circumstances it is possible to argue that a claim may be made for compensation of loss of non-income producing property that was associated with the investment, if such associated property was indeed lost or damaged as a result of the measures out of which the claim arises. Exercise of jurisdiction over such associated property could be considered as falling under an investment treaty tribunal's "incidental" jurisdiction – a form of jurisdiction that international courts and tribunals are generally considered to have.

There has been very little analysis or commentary on this issue, but it is not excluded that there are already arbitral awards out there that have in fact, but without saying so, awarded compensation for loss of, or damage to, associated non-income producing property.

In conclusion, it is fair to say that, while progress has been made in arbitral jurisprudence and scholarly commentary to develop a more robust definition of investment, its precise boundaries remain open to debate.

[31] OECD draft Convention on the Protection of Foreign Property, Preamble.
[32] OECD Council, Resolution of the Council on the draft Convention on the Protection of Foreign Property, 12 Oct. 1967, https://www.oecd.org/investment/internationalinvestmentagreements/39286571.pdf.