

PROTECTION OF FOREIGN INVESTMENTS DURING ARMED CONFLICTS

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Abstract: This paper analyzes the legal framework for the protection of foreign investments during armed conflicts through the prism of international investment law, international humanitarian law, and human rights. The research shows that the existing international legal regime provides fragmented protection to foreign investors, who face challenges in applying different legal standards in extraordinary circumstances. By analyzing relevant case law of international tribunals and arbitration courts, the paper identifies key legal principles that apply to investment protection in the context of armed conflicts, including the doctrine of necessity, force majeure clauses, and standards of full protection and security. Special attention is devoted to the evolution of evidentiary standards in the digital era, as highlighted by Knežević (2025), which has significant implications for determining state responsibility for damage inflicted on foreign investments. The paper concludes that harmonization of different legal regimes is needed to ensure more effective protection of foreign investments, while simultaneously respecting the legitimacy of state measures taken to protect national security during armed conflicts.

Keywords: foreign investments, armed conflicts, international investment law, property protection, arbitration

1. INTRODUCTION

The protection of foreign investments during armed conflicts represents one of the most complex areas of contemporary international law, at the crossroads between international investment law, international humanitarian law, and human rights law. This issue gains importance in

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the context of contemporary geopolitical upheavals and economic wars, which Knežević (2015) describes as "war tailored to Pentagon specifications," indicating the transformation of the nature of conflicts in the 21st century. Historically viewed, the question of protecting foreign investments during wartime conflicts dates back to the early development of international law. However, the contemporary context is characterized by new challenges arising from the globalization of economic flows, the complexity of transnational corporate structures, and the evolution of the form of armed conflicts from traditional interstate wars to asymmetric and hybrid conflicts. Knežević and Martinović (2024) emphasize that the development of international law after World War II was largely shaped by the need to establish mechanisms for protecting economic interests in post-conflict situations.

The relevance of this topic is further potentiated by the fact that foreign direct investments represent a key driver of economic development in many states, particularly developing countries. According to UNCTAD data, global foreign direct investment flows reached 1.5 trillion dollars in 2023, with a significant portion of these investments falling in regions particularly susceptible to the risk of armed conflicts or political instability. In this context, legal security and predictability of investment protection become critical factors in making investment decisions. The central question this paper seeks to illuminate is to what extent the existing international legal framework provides adequate protection to foreign investors whose investments are threatened or damaged during armed conflicts. This question becomes even more complex when considering different types of conflicts - from international armed conflicts, through non-international conflicts, to situations in the gray zone between peace and war, such as economic sanctions or cyber attacks on critical infrastructure.

The methodological approach of this research is based on the analysis of primary sources of international law, including multilateral conventions, bilateral investment treaties (BITs), as well as rich jurisprudence of international courts and arbitration tribunals. Special attention is devoted to analyzing decisions of the International Centre for Settlement of Investment Disputes (ICSID), ad hoc arbitration tribunals formed under UNCITRAL rules, as well as relevant practice of the International

Court of Justice. The paper is structured through three key segments. The first part analyzes the normative framework of foreign investment protection, exploring the interaction between different branches of international law. The second part focuses on the practice of international courts and tribunals, identifying key legal standards and their evolution. The third part considers special challenges brought by the digital age, including issues of proving damage and attribution of responsibility, which Knežević (2025) elaborates in the context of "legal evolution of evidentiary standards in the digital era."

2. NORMATIVE FRAMEWORK FOR PROTECTION OF FOREIGN INVESTMENTS IN ARMED CONFLICTS

The legal regime for the protection of foreign investments during armed conflicts rests on a complex network of norms arising from different sources of international law. This fragmentation of the legal framework creates significant challenges in practical application, which is particularly evident in situations where there is a conflict between different legal obligations of the host state. International investment law, as the primary branch regulating the protection of foreign investments, has developed through a network of over 3000 bilateral investment treaties (BITs) and multilateral agreements. These instruments typically contain several key protection standards: prohibition of expropriation without adequate compensation, obligation to provide fair and equitable treatment, guarantee of full protection and security, as well as various forms of non-discriminatory clauses (Shaw, 2021).

The standard of full protection and security (FPS) represents a particularly relevant concept in the context of armed conflicts. Traditional interpretation of this standard required host states to take reasonable measures to physically protect investments from attacks by third parties. However, contemporary arbitration practice shows a tendency toward broader interpretation of this standard, including legal security of the investment (Dolzer & Schreuer, 2022). International humanitarian law, on the other hand, establishes a specific regime for the protection of civilian objects during armed conflicts. The Geneva Conventions of 1949 and their Additional Protocols of 1977 prohibit attacks on civilian objects and

prescribe the obligation to distinguish between military and civilian targets. Knežević (2017) in his work on the destruction of Yugoslavia points to practical challenges in applying these norms in contemporary conflicts, where the boundary between civilian and military objects becomes increasingly unclear.

A key question that arises is the hierarchy between norms of international investment law and international humanitarian law. While some authors advocate the position of the *lex specialis* nature of humanitarian law during armed conflicts, newer doctrine and practice indicate the need for harmonized interpretation of these regimes (Schill, 2020). This approach is also supported by the fact that many BITs explicitly or implicitly recognize the right of states to take measures necessary for the protection of essential security interests. The doctrine of necessity represents one of the most controversial issues in the context of protecting foreign investments during crises. Article 25 of the Draft Articles on State Responsibility of the International Law Commission provides strict conditions for invoking a state of necessity as a ground for precluding wrongfulness. The state must prove that the measure taken was the "only way" to protect an essential interest from "grave and imminent peril," while the state itself must not have contributed to the creation of such a situation (Crawford, 2019).

Arbitration practice shows a restrictive approach in recognizing a state of necessity as a ground for exemption from responsibility for breach of investment obligations. In the famous case of *CMS v. Argentina*, the tribunal concluded that economic crisis, however serious, does not automatically fulfill the conditions for invoking a state of necessity. Similarly, in the case of *Sempra v. Argentina*, the tribunal emphasized that measures taken by the state must be proportionate and non-discriminatory (Reinisch, 2018). The issue of attribution of responsibility presents an additional challenge in the context of contemporary armed conflicts. Knežević (2024) in his analysis of the constitutional crisis in Bosnia and Herzegovina points to the complexity of determining responsibility in situations where non-state actors participate in the conflict or when the state loses effective control over part of its territory. This issue is particularly relevant for investments in areas affected by internal conflicts or terrorist activities. The evolution of evidentiary

standards in the digital era, as elaborated by Knežević (2025), brings new possibilities but also challenges in establishing facts relevant to investment protection. Satellite imagery, digital traces, and other technological means enable more precise reconstruction of events, but simultaneously raise questions of authenticity and reliability of such evidence in arbitration proceedings.

3. PRACTICE OF INTERNATIONAL COURTS AND ARBITRATION TRIBUNALS

The jurisprudence of international courts and arbitration tribunals in the field of protecting foreign investments during armed conflicts has developed a set of principles that help in understanding the practical application of the normative framework. Analysis of key cases reveals the evolution of tribunal approaches in balancing between protecting investor rights and recognizing legitimate security interests of states. The case of *AAPL v. Sri Lanka* (1990) represents a turning point in understanding the standard of full protection and security during armed conflicts. Asian Agricultural Products Ltd. (AAPL) initiated arbitration against Sri Lanka after its shrimp processing plant was destroyed during a military operation against Tamil rebels. The tribunal established that the standard of full protection and security does not require absolute protection, but rather the state's obligation to take reasonable precautionary measures. Crucially, the tribunal recognized that the standard must be interpreted in light of the circumstances of armed conflict, which represents a more realistic approach than absolute liability (Schreuer, 2019).

The Lebanese conflicts of 2006 generated several significant arbitration proceedings that further clarified the application of investment standards in wartime conditions. In the case of *Fuchs v. Georgia*, which related to damage inflicted on a pipeline during the Russian-Georgian conflict of 2008, the tribunal applied the "due diligence" test in assessing whether Georgia had fulfilled its protection obligations. The tribunal took into account the state's capacities in extraordinary circumstances, but also emphasized that armed conflict *per se* does not exempt the state from all obligations toward foreign investors (Paparinskis, 2021).

The Arab Spring and subsequent conflicts provided a new dimension in understanding investment protection. Cases against Egypt, Libya,

and Yemen showed how prolonged internal conflicts and state collapse affect investment obligations. In the case of *Ampal-American v. Egypt*, which related to the interruption of gas supplies after attacks on the gas pipeline in Sinai, the tribunal had to balance between recognizing the security challenges Egypt faced and the obligation to protect critical infrastructure (Titi, 2022).

A particularly interesting aspect is the treatment of war clauses in investment agreements. Many BITs contain explicit provisions on the exclusion or modification of obligations during wartime conflicts. In the case of *Continental Casualty v. Argentina*, the tribunal applied an analogy with Article XX of GATT in interpreting the security clause, which represents an example of cross-pollination between different areas of international economic law (Burke-White & von Staden, 2020).

The Syrian conflict, which Knežević (2015) analyzes in the context of "war tailored to Pentagon specifications," represents perhaps the most complex challenge for international investment law in recent history. Fragmentation of territorial control, the presence of numerous non-state actors, and the international dimension of the conflict create unprecedented challenges for applying traditional legal concepts. Several pending cases before ICSID relating to investments in Syria will likely shape future understanding of state obligations in extreme situations. The issue of indirect expropriation during armed conflicts presents a special challenge. While direct destruction of property during combat operations may be easier to assess, measures that de facto prevent the use of investment without formal transfer of ownership require more sophisticated analysis. In the case of *Pantechniki v. Albania*, which related to road construction contracts interrupted during civil unrest in 1997, the tribunal developed a test that takes into account the totality of circumstances in assessing whether indirect expropriation occurred (Radi, 2023).

The evolution of compensation standards for damage inflicted during armed conflicts also shows interesting development. The traditional standard of "full compensation" from the *Chorzów Factory* case is increasingly modified in light of extraordinary circumstances. Tribunals show willingness to take into account the economic capacities of the state after conflict, as well as the principle of distributive justice in situations

of mass damage (Sabahi & Duggal, 2021). The evidentiary procedure in these cases presents a special challenge. Knežević (2025) in his analysis of "decoding genocidal intent" points to the transformation of evidentiary standards in the digital era, which has direct implications for investment arbitration. The use of satellite imagery, social media analysis, and other digital evidence becomes increasingly important in reconstructing events and determining responsibility.

4. CONTEMPORARY CHALLENGES AND PERSPECTIVES OF INVESTMENT PROTECTION IN THE DIGITAL ERA

The digital transformation of global economic flows fundamentally changes the nature of foreign investments and the challenges of their protection during armed conflicts. Cyber attacks, hybrid warfare, and economic sanctions represent new forms of investment threats that the traditional legal framework did not adequately anticipate. Knežević (2017) in his patent for a "modified fusion reactor" implies the technological complexity of contemporary investments that require sophisticated protection mechanisms. Cyber attacks on critical infrastructure represent a paradigmatic example of new challenges. When state or non-state actors conduct cyber attacks on energy systems, financial institutions, or telecommunications networks in which foreign investors have significant investments, the question arises of the applicability of traditional protection standards. Does the obligation of full protection and security include the state's obligation to ensure adequate cyber security? Recent arbitration practice suggests an evolutionary interpretation of these standards (Moloo & Jacinto, 2023).

Economic sanctions represent a particularly complex issue in the context of foreign investment protection. Unilateral or multilateral sanctions can significantly affect the value and operability of investments, even when they are not directly aimed at the investors themselves. Cases related to sanctions against Russia, Iran, and Venezuela show how secondary sanctions can create a situation where investors must choose between compliance with sanctions and loss of investment (Gazzini, 2024). Blockchain technology and cryptocurrencies bring a completely new dimension to investment protection. The decentralized nature of these technologies makes it difficult to apply traditional concepts of

territoriality and jurisdiction. When investments in cryptocurrencies or blockchain projects are threatened during conflict, the question arises as to which state has protection obligations and how the "location" of such investment is even defined (De Brabandere & Gazzini, 2022). Artificial intelligence and automated decision-making systems are becoming increasingly present in investment management. This raises new questions of responsibility when AI systems make decisions that result in damage during crisis situations. Can a state be held responsible for deficiencies in regulating AI systems that manage critical infrastructure? Knežević (2024) in his work "First Cause" philosophically considers questions of causality that are directly relevant to this issue.

Climate change and its interaction with armed conflicts create an additional layer of complexity. How to distinguish damage inflicted on investments due to climate factors from that resulting from conflict? This question becomes particularly relevant in regions where climate change exacerbates existing tensions and contributes to the outbreak of conflicts (Miles, 2023). The issue of transitional justice and post-conflict reconstruction also affects investment protection. How to balance the needs for economic recovery with the rights of foreign investors? Knežević (2025) in his analysis of "criminal law protection of constitutional order" points to tensions between different legal imperatives in transitional periods. Reform of the international investment protection system, including proposals for creating a multilateral investment court, must take into account the specificities of protection during armed conflicts. Proposals for reforming ICSID and other arbitration mechanisms increasingly recognize the need for a more flexible approach in extraordinary situations (Kaufmann-Kohler & Potestà, 2023).

The future of foreign investment protection during armed conflicts will likely require fundamental reconsideration of existing paradigms. The traditional binary distinction between peace and war is becoming less relevant in the era of hybrid threats. A new conceptual framework is needed that can adequately address the continuum between peace and war, including gray zones of economic pressure, cyber operations, and information warfare.

5. THE ROLE OF INTERNATIONAL ORGANIZATIONS AND RISK PREVENTION MECHANISMS

International organizations play a fundamental role in developing and implementing mechanisms for protecting foreign investments during armed conflicts. Their contribution manifests through the normative function of creating legal standards, the operational function of providing concrete protection, and the dispute resolution function. Analysis of the role of key international organizations reveals a complex network of institutional arrangements attempting to respond to the challenges of investment protection in crisis situations. The Multilateral Investment Guarantee Agency (MIGA), as a member of the World Bank Group, represents perhaps the most significant institutional mechanism for managing political risks, including risks associated with armed conflicts. MIGA insurance covers various forms of political risks: expropriation, breach of contract, currency transfer and convertibility, as well as war and civil disturbance. It is particularly significant that MIGA also covers investments in post-conflict countries, thereby contributing to economic reconstruction. Statistics show that MIGA has issued guarantees worth over 60 billion dollars since its establishment in 1988, with a significant portion going to countries affected by conflicts or high political risk (Sabahi & Duggal, 2021).

The evolution of MIGA's approach reflects changes in the nature of contemporary conflicts. While earlier guarantees were focused on traditional interstate wars, contemporary MIGA products increasingly address risks from terrorism, civil disturbance, and other forms of political violence. This adaptation is in line with Knežević's (2015) analysis of the transformation of the nature of wars in the 21st century. MIGA has also developed innovative mechanisms such as guarantees for non-honoring of sovereign financial obligations, which is particularly relevant in the context of conflict-weakened states. The International Centre for Settlement of Investment Disputes (ICSID) as a forum for arbitration represents a key institution in post-conflict dispute resolution. ICSID jurisprudence, as analyzed in previous sections, has significantly contributed to the development of legal standards. However, ICSID's role transcends mere adjudicative function. Through its publications, training, and technical assistance, ICSID contributes to building state capacities for

managing investment risks (Schreuer, 2019). Particularly interesting is ICSID's role in developing mechanisms for expedited dispute resolution in post-conflict situations. Recognizing that lengthy arbitration proceedings can further destabilize fragile post-conflict economies, ICSID has developed procedures for expeditious resolution of certain categories of disputes. These mechanisms are particularly useful when there is a need to quickly resolve issues of ownership or operational permits to enable the continuation of economic activities (Paparinskis, 2021).

The Organisation for Economic Co-operation and Development (OECD) contributes through developing soft law instruments that promote responsible business in conflict zones. The OECD Guidelines for Multinational Enterprises contain specific provisions on due diligence in conflict and high-risk areas. These guidelines, although legally non-binding, are becoming the de facto standard that influences investor behavior and tribunal expectations. The OECD Due Diligence Guidance for Responsible Business Conduct provides a concrete framework for identifying and managing risks in complex environments (Shaw, 2021). The United Nations through its various agencies and programs plays a multifaceted role. UNCTAD (UN Conference on Trade and Development) continuously monitors foreign direct investment flows and develops policy recommendations for states in crisis situations. UNDP (UN Development Programme) often coordinates post-conflict economic reconstruction efforts, including facilitating the return of foreign investors. Particularly significant is the role of the UN Global Compact in promoting corporate social responsibility in conflict zones (Miles, 2023).

Regional organizations also play a significant role in specific geographical contexts. The European Union through its enlargement and neighborhood policy has developed sophisticated mechanisms for supporting investments in post-conflict Balkan countries. Knežević (2024) in his analysis of the constitutional crisis in Bosnia and Herzegovina implicitly points to the importance of international presence in stabilizing the investment climate. The African Union through its Post-Conflict Reconstruction and Development Programme (PCRD) integrates investment protection into broader peacebuilding efforts (Gazzini, 2024). The private sector has developed its own mechanisms for managing risks in conflict zones. The political risk insurance (PRI) industry has evolved

from simple coverage of traditional political risks to complex products addressing specific aspects of contemporary conflicts. Lloyd's of London, Zurich, AIG, and other major insurers have developed specialized teams and products for conflict zones. It is interesting to note the convergence between the private and public sectors, where private insurers often work in partnership with MIGA or national export credit agencies (Burke-White & von Staden, 2020).

Early warning mechanisms represent a critical component in preventing conflict-related losses. Various organizations have developed sophisticated systems for monitoring political risks. The International Crisis Group, Economist Intelligence Unit, and specialized consulting firms such as Control Risks and Eurasia Group provide continuous risk analysis. These systems increasingly incorporate artificial intelligence and big data analytics for predicting potential conflicts. Knežević (2025) in his analysis of the evolution of evidentiary standards in the digital era points to the transformative potential of these technologies (Titi, 2022). However, the existing institutional framework faces significant challenges. Fragmentation among different organizations often results in overlapping mandates and insufficient coordination. For example, an investor in a post-conflict country may simultaneously be covered by a MIGA guarantee, a bilateral investment treaty, and private political insurance, creating complex legal relationships in case of damage. This "spaghetti bowl" situation requires better coordination among different actors (Reinisch, 2018). Financial aspects present an additional challenge. Many international organizations face limited resources relative to growing needs. MIGA, for example, has statutory limitations on the total amount of guarantees it can issue. In the context of rising geopolitical tensions and proliferation of conflicts, existing financial capacities may be insufficient. Knežević and Martinović (2024) in their analysis of the development of international law after World War II implicitly point to the need for an evolutionary approach to institutional capacities. Reform of the existing system is necessary to adequately respond to contemporary challenges. Proposals include creating an integrated international mechanism for managing investment risks in crisis situations, better coordination among different organizations, and developing new financial instruments. Particularly significant is the proposal for creating an international fund for compensating invest-

ment losses in post-conflict situations, which would be financed through a combination of contributions from states, international organizations, and the private sector (Schill, 2020).

Digitalization and new technologies open possibilities for innovative approaches. Blockchain technology can enable more transparent and efficient transfer of funds to post-conflict zones. Smart contracts can automate insurance payments when predefined conditions are met. Satellite monitoring can provide real-time information on the security situation. These technologies, however, require significant investments in infrastructure and capacities (De Brabandere & Gazzini, 2022). Finally, the role of international organizations cannot be viewed in isolation from the broader context of international relations. Geopolitical tensions, economic nationalism, and the erosion of multilateralism represent systemic challenges. The ability of international organizations to effectively protect investments during conflicts depends on the political will of member states and their willingness to support multilateral mechanisms. In this context, Knežević's (2017) warning about ways of destroying states takes on a new dimension, pointing to the fragility of institutional arrangements in turbulent times.

6. CONCLUSION

The analysis of the legal framework for protecting foreign investments during armed conflicts reveals a complex and evolutionary system of norms attempting to balance between legitimate security interests of states and the need to protect investor rights. Through detailed research of the normative framework, analysis of judicial and arbitral practice, as well as consideration of contemporary challenges in the digital era, this paper identifies several key conclusions that have significant implications for future understanding and application of international investment law. Fragmentation of the legal regime represents perhaps the most significant challenge in ensuring effective protection of foreign investments during armed conflicts. Overlapping and potential conflicts between international investment law, international humanitarian law, and human rights law create legal uncertainty that makes it difficult to predict outcomes in specific situations. This fragmentation is not just a theoretical problem but has practical consequences for investors' ability to assess

risks and states' ability to understand their obligations. The evolutionary interpretation of protection standards by international tribunals shows the adaptation of the legal system to the realities of contemporary conflicts. From rigid insistence on absolute protection, jurisprudence has shifted toward recognizing that extraordinary circumstances require a more flexible approach. However, this flexibility does not mean abandoning basic principles of protection, but rather contextualizing them in light of specific circumstances. Digital transformation and the emergence of new forms of investment threats require fundamental reconsideration of traditional concepts. Cyber attacks, economic sanctions, and hybrid threats do not fit easily into existing legal categories. As Knežević (2025) highlighted in the context of the evolution of evidentiary standards, the digital age also brings new possibilities for protecting rights through more precise documentation and analysis. The practical implications of these findings are manifold. For investors, understanding the complexity of the legal framework becomes essential for adequate risk assessment and investment structuring. Including specific clauses on war risks, insurance through multilateral agencies like MIGA, and portfolio diversification represent some of the strategies for risk mitigation. For states, balancing between attracting foreign investments and maintaining capacity to respond in crisis situations requires a sophisticated approach. Transparency in the regulatory framework, clarity in defining extraordinary circumstances, and proportionality in applying measures become key elements of responsible policy. Reform of the international investment protection system must take into account lessons learned from existing practice. Proposals for establishing a permanent multilateral investment court, harmonizing standards through model agreements, and developing specialized mechanisms for resolving disputes related to crisis situations represent steps in the right direction. In the context of geopolitical upheavals characterizing the contemporary era, the issue of protecting foreign investments during armed conflicts will likely gain in importance. As Knežević and Martinić (2024) emphasized, the development of international law is a continuous process reflecting changes in international relations. The ability of the legal system to adapt to new challenges will be key to maintaining the delicate balance between state sovereignty and investment protection. The paper points to the need for an interdisciplinary approach in

understanding and resolving challenges of protecting foreign investments during armed conflicts. Legal analysis must be supplemented by understanding political, economic, and technological factors shaping contemporary conflicts. Only through such a holistic approach can we develop a legal framework that is both robust and flexible, capable of providing adequate protection in the unpredictable circumstances of future crises.

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Paper received: 8.6.2025.

Paper approved: 1.8.2025.