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**| RESEARCH ARTICLE**

**Intellectual Property Rights and Expropriation in Investment Arbitration**

**Irina Iacovleva**

*Doctoral Candidate, Department of Private International Law and Law of Economic Relations, Doctoral School of Law and Political Science, University of Szeged; ORCID 0000-0001-7103-1750*

**Corresponding Author:** Irina Iacovleva, **E-mail:** [iacovleva379@gmail.com](mailto:iacovleva379@gmail.com)

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**| ABSTRACT**

This article examines the legal meaning of expropriation of foreign investment in international investment law, with specific attention to the distinction between direct, indirect and creeping forms of state interference. The purpose of the research is to clarify how expropriation is understood in doctrine, treaty practice and investment arbitration, and to identify the conditions under which state measures may be treated as lawful or unlawful. The research is based on doctrinal legal analysis, comparative examination of investment treaties, and analysis of selected arbitral awards dealing with expropriation, nationalization, regulatory measures and compensation. The article shows that modern investment law usually treats nationalization and expropriation as related or functionally equivalent concepts, even though doctrinal writings sometimes distinguish them by purpose, scale or legal form. It also demonstrates that the definition of expropriation has moved beyond formal transfer of title and now includes measures which, without open seizure, deprive the investor of control, use or substantial economic benefit. The findings confirm that direct expropriation is generally easier to identify, while indirect and creeping expropriation require a fact-specific assessment of the cumulative effect of state conduct. The article further argues that the legality of expropriation depends on cumulative requirements: public purpose, non-discrimination, due process and compensation. Failure to satisfy even one of these requirements may be sufficient for a tribunal to treat the measure as unlawful. At the same time, the line between compensable expropriation and non-compensable regulation remains difficult, especially where public health, environmental protection, taxation or economic policy are involved. The article concludes that expropriation should be understood not only as an act of state seizure, but also as a legal mechanism through which the balance between state sovereignty and investor protection is tested.

**| KEYWORDS**

Expropriation; nationalization; foreign investment; indirect expropriation; investment arbitration; compensation

**| ARTICLE INFORMATION**

**ACCEPTED:** 10 May 2026

**PUBLISHED:** 14 June 2026

**DOI:** 10.32996/ijlps.2026.8.6.1

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**1. Introduction**

Expropriation of foreign investment remains one of the central questions of international investment law. It is the point at which the sovereign authority of the state directly meets the private property rights of the foreign investor. A state has the power to regulate economic activity on its territory and, in exceptional circumstances, to take private property for a public purpose. At the same time, this power cannot be treated as unlimited. International investment law accepts the possibility of expropriation, but it connects that possibility with legal conditions and with the duty to provide compensation.

The problem is not limited to the regular situation in which the state formally transfers ownership of a factory, mine, concession or other asset to itself. In modern investment disputes, the investor is often not deprived of formal title and instead, the investor may lose the real possibility to use the investment, manage it, receive income from it, or preserve its economic value. This explains why contemporary treaties and arbitral awards refer not only to expropriation and nationalization, but also to indirect expropriation and measures equivalent to expropriation.

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The relevance of this issue is strengthened by the fact that the same state measure may be described in different legal terms. From the state's point of view, it may be a lawful act of regulation, adopted for environmental protection, public health, taxation, economic reform or national security, but from the investor's point of view, the same act may destroy the value of the investment and therefore operate as expropriation. For that reason, the legal qualification of state conduct is rarely abstract and mostly depends on the concrete effect of the measure, the procedure followed by the state, the purpose pursued, and the presence or absence of compensation.

This article reworks the doctrinal and case-law material on expropriation into a research article format. It first addresses the concept of expropriation and its relation to nationalization. It then analyzes direct, indirect and creeping expropriation, with reference to treaty practice and investment arbitration. Finally, it discusses the conditions of lawful expropriation, namely public purpose, non-discrimination, due process and compensation. The article argues that the present understanding of expropriation is broad, functional and strongly dependent on the practical consequences of state action.

## **2. Literature Review**

The literature on expropriation shows that there is no single generally accepted definition of this concept. In legal doctrine, national legislation and international treaties, the terms "expropriation" and "nationalization" are often used together, but not always with identical meaning. The right of a state to forcibly expropriate property is an integral part of its sovereignty and is usually recognized by both national and international law. The very fact of expropriation does not contradict legal norms if it is carried out within the framework of internationally established requirements. International and national legal practice allows such measures, subject to a number of criteria: the presence of a public interest, the procedure being carried out without discrimination, compliance with procedural guarantees, and the provision of prompt, fair and effective compensation to the investor.

Most multilateral and bilateral agreements on the procedure for foreign investment contain provisions in their articles on expropriation, the procedure for protection and guarantees of fair compensation in the event of a forced seizure of the property of a foreign investor. For a deeper understanding of the phenomenon of expropriation in international law, a more in-depth study of its concept and types will be provided below.

Doronina and Semilyutina [1] place the issue within the broader field of foreign investment and international private law, observing that the nationalization of foreign property was historically connected with the proclamation of sovereignty and independence in newly formed states. At the same time, they note that *"the proclamation of sovereignty and independence in new states was often accompanied by the adoption of acts on the nationalization of foreign property on their territories."* Their work is important because it shows the historical link between nationalization, state sovereignty and compensation for damage caused to foreign investors.

Classical legal writing also treats expropriation as a form of forced alienation of property. Friedman [2] considered expropriation as a legal form of deprivation of property rights which may be applied within the jurisdiction of the state. Wortley [3] distinguished several categories of forced taking, including expropriation in the public interest, requisition in emergency situations, and nationalization of sectors of the economy. These early works remain relevant because many modern debates still return to the same basic question: when does the state's taking of property remain lawful and when does it become internationally wrongful?

Russian-language doctrine also reflects differences in terminology. Borisov [4] defines nationalization as a general state measure through which private property is transferred into state ownership in order to implement socio-economic changes. Vilkov [5] similarly understood nationalization as a forced transfer of property from private to state ownership. Farkhutdinov [6], however, points to the need to use the term "confiscation" for illegal expropriation or nationalization, especially where property rights are restored or protected through international law. Danelyan [7] notes that in the Western legal tradition various forms of forced taking are often placed under the broader concept of expropriation.

Sornarajah [8] proposes the general term "taking" and distinguishes confiscation, expropriation and nationalization. This classification is useful because it shows the different forms through which state interference may appear. At the same time, it may also be criticized because it relies on different criteria at once: confiscation is distinguished by the absence of compensation, while nationalization is usually distinguished by scale and economic or political purpose. Such mixed criteria make the classification less convenient for practical legal analysis.

The modern investment law approach is developed in the works of Dolzer and Schreuer [9], Kriebaum, Schreuer and Dolzer [10], Comeaux and Kinsella [12], Rubins and Kinsella [11], and UNCTAD [13]. These sources treat expropriation not only as formal seizure, but also as conduct which has an equivalent economic effect. They are especially important for understanding indirect and creeping expropriation. Dolzer [14] explained that indirect and creeping expropriation were developed to describe a process by which the owner is gradually deprived of fundamental property rights, even where there is no single act of outright taking. Schreuer [15] also emphasized that creeping expropriation may arise through a series of state actions which, taken separately, may not amount to expropriation, but together destroy the value of the investment.

The arbitral practice adds another layer to the literature because it shows how these doctrinal categories operate in disputes. Cases such as *Metalclad v. Mexico* [16], *Tecmed v. Mexico* [17], *Feldman v. Mexico* [18], *Generation Ukraine v. Ukraine* [19], *Siemens v. Argentina* [20], *Biwater Gauff v. Tanzania* [21], *ADC v. Hungary* [22], *Vestey v. Venezuela* [23] *Spyridon Roussalis v. Romania* [24], *Pope & Talbot v. Canada* [25] and others have developed the practical criteria for identifying direct, indirect and creeping expropriation. The literature and case law therefore must be read together as the doctrine provides the general concepts, while arbitral awards show how tribunals apply them to actual state conduct.

### 3. Methodology

This research uses doctrinal legal methodology. The main object of analysis is the legal content of expropriation as it appears in international investment treaties, scholarly writings and arbitral awards. The article does not rely on empirical data, interviews or quantitative methods. Its purpose is not to measure the frequency of expropriation claims, but to clarify the legal structure of the concept and the reasoning used by tribunals.

The first method used is textual legal analysis. The article examines treaty provisions on expropriation, including the Energy Charter Treaty [26], CUSMA [27], the ASEAN Comprehensive Investment Agreement [28], CETA [29], the EU–Vietnam Investment Protection Agreement [30], RCEP [31] and the MIGA Convention [32]. These texts are compared in order to identify common wording and legal requirements. Especial attention is given to the repeated treaty formula under which expropriation is permitted only for a public purpose, in a non-discriminatory manner, in accordance with due process and against prompt, adequate and effective compensation.

The second method is doctrinal analysis. The article compares different scholarly definitions of expropriation, nationalization, confiscation and taking. This allows the research to show that legal doctrine has not always used these concepts consistently, while modern treaty practice tends to combine them under the wider heading of expropriation or measures equivalent to expropriation.

The third method is case-law analysis. Selected investment arbitration awards are used not as statistical data, but as legal examples that clarify the operation of doctrinal categories. The awards are grouped by issue: direct expropriation, indirect expropriation, creeping expropriation and legality of expropriation. This method is suitable because international investment law develops not only through treaty texts, but also through arbitral interpretation of those texts.

### 4. Results and Findings

#### 4.1 Expropriation and Nationalization as Related Concepts

The first finding is that modern investment law generally treats expropriation and nationalization as related legal concepts. Historically, nationalization was often associated with large-scale state policy, especially the transfer of whole sectors of the economy into public ownership. Expropriation, by contrast, was more often understood as the taking of a specific asset or investment. However, this distinction has become less important in modern treaty language.

Many investment treaties refer to “expropriation or nationalization” and then place both terms under the same legal standard. The Energy Charter Treaty [26], for example, refers to investments which shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation, except where the requirements of public interest, non-discrimination, due process and compensation are satisfied. Similar wording is used in CUSMA [27], the ASEAN Comprehensive Investment Agreement [28], CETA [29], the EU–Vietnam Investment Protection Agreement [30] and RCEP [31].

This drafting practice confirms that the legal analysis usually does not depend on the label chosen by the state. The decisive question is whether the investor has been deprived of ownership, control, use or substantial economic benefit. For that reason,

nationalization can be treated as a form of expropriation, especially where it leads to the same result: the loss of the investor's protected property rights or the substantial value of the investment.

At the same time, the distinction should not be ignored completely. Nationalization often reflects a wider policy decision and may affect an entire industry. Expropriation may be more selective and may concern a specific investor, license, concession, plant or other asset. This difference may be relevant when assessing discrimination, public purpose and compensation. However, at the level of general treaty protection, both concepts are usually covered by the same standard.

#### **4.2 Treaty Practice and the Broad Formula of Expropriation**

The second finding is that contemporary investment treaties use a broad formula of expropriation. The formula does not only prohibit direct taking. It also covers indirect taking and measures having an equivalent effect. This wording is important because it prevents states from avoiding responsibility simply by leaving formal title with the investor while destroying the economic substance of the investment.

The MIGA Convention [32] is illustrative in this respect. It treats expropriation and similar measures as legislative or administrative action or omission attributable to the host government which deprives the guarantee holder of ownership, control or a substantial benefit from the investment. At the same time, it excludes non-discriminatory measures of general application which governments normally adopt for economic regulation. This balance is important: the treaty recognizes that state regulation may harm an investment, but not every regulatory measure is expropriation.

The Inter-Arab Investment Guarantee Corporation Convention [33] follows a similar logic by referring to measures taken by public authorities which deprive the investor of substantial rights with respect to the investment, including confiscatory measures, nationalization, sequestration, expropriation, compulsory seizure and unreasonable moratoria. The wording is broader than the formal concept of taking, and it focuses on the practical loss of rights.

The same tendency appears in modern regional agreements. CUSMA [27] and CETA [29] refer to direct and indirect expropriation and to measures equivalent to expropriation or nationalization. These provisions show that the treaty standard is functional. The tribunal must look not only at the form of the measure, but also at its effect. If the investor continues to hold title but no longer has meaningful use or benefit, the measure may still fall within the expropriation clause.

#### **4.3 Direct Expropriation**

Direct expropriation is the most visible form of taking. It usually exists where the state formally transfers title, nationalizes the investment, seizes the property outright, or physically takes control of the asset. This form is easier to identify because the legal act of taking is open and usually documented. The 2012 U.S. Model BIT [34] describes direct expropriation as the situation where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

Arbitral practice confirms this understanding. In *Metalclad v. Mexico* [16], the tribunal stated that expropriation includes open, deliberate and acknowledged takings, such as outright seizure or formal transfer of title in favor of the host state. Although *Metalclad* is often discussed in the context of indirect expropriation, the award is also useful because it distinguishes the classical direct taking from more covert or incidental interference.

*Feldman v. Mexico* [18] also drew a clear line between direct expropriation and regulation. The tribunal noted that direct expropriation is relatively easy to recognize, for example when governmental authorities take over a mine or factory and deprive the investor of all meaningful benefits of ownership and control. In that case, however, the refusal to grant tax benefits was not treated as expropriation, even though the tribunal found a violation of national treatment.

Direct expropriation continues to arise in modern disputes, especially where states carry out nationalization campaigns or physically take assets. In *Tidewater v. Venezuela* [35], the adoption of the Reservation Law and the physical taking of vessels led the tribunal to find that the measures resulted in the expropriation in fact of the whole investment in the Venezuelan subsidiary. In *Venezuela Holdings v. Venezuela* [36], the transfer of Mobil's assets to PDVSA structures after failed joint venture negotiations also raised issues of direct taking. In these situations, the parties often do not dispute that a taking occurred; the main dispute concerns its lawfulness and the amount of compensation.

The case of *Crystallex v. Venezuela* [37] also confirms the classical definition. The tribunal observed that direct expropriation occurs where the investor's investment is taken through formal transfer of title or outright seizure. This definition remains important because it provides the starting point from which indirect expropriation is distinguished.

#### **4.4 Indirect Expropriation**

Indirect expropriation is more difficult. It exists where the state does not formally take title or physically seize the asset, but its measure or series of measures has an effect equivalent to direct expropriation. The investor remains the legal owner, but the investment is no longer capable of being used, managed or economically exploited in a meaningful way.

UNCTAD [13] describes indirect expropriation as a situation in which state measures have an effect equivalent to direct expropriation without formal transfer of title or outright seizure. This approach is also reflected in several modern treaty annexes on expropriation. The analysis is therefore not limited to ownership in the formal sense. It also includes control, use, economic benefit and the reasonable expectations attached to the investment.

*Metalclad v. Mexico* [16] is a leading example. The investor had obtained federal permits for a hazardous waste landfill, but local authorities prevented the project from operating. The tribunal found that the measures deprived the investor of the economic benefit of its investment. It was not necessary for the state to acquire the property or to benefit directly from it. The decisive element was the substantial interference with the use and expected economic value of the investment.

*Tecmed v. Mexico* [17] is another important award. The refusal to renew a license for the operation of a hazardous waste facility was found to deprive the investor of the possibility to use the investment economically. The tribunal treated the measure as expropriatory because the investor could no longer continue the activity for which the investment had been made. This award shows that licenses and permits may be central to the value of an investment. Their withdrawal or non-renewal may therefore have the same effect as taking the asset itself.

The main difficulty is to separate indirect expropriation from lawful regulation. Not every loss caused by a state measure is expropriation. Tax measures, environmental rules, licensing requirements and public health measures may reduce profitability without amounting to taking. For indirect expropriation to exist, the deprivation must normally be substantial. In many awards, tribunals require the investor to show loss of all or almost all economic value, or at least a serious and lasting deprivation of control or benefit.

This explains why the so-called sole effects approach has been influential but also controversial. Under that approach, the decisive question is the effect of the measure on the investment. If the effect is equivalent to taking, the purpose of the measure does not automatically prevent a finding of expropriation. At the same time, modern treaty practice often requires tribunals to consider not only the economic effect, but also the character of the measure, its purpose, its proportionality and the investor's expectations.

#### **4.5 Creeping Expropriation**

Creeping expropriation is usually treated as a form of indirect expropriation, but it has its own temporal character. It does not arise from one clearly identifiable act. Instead, it results from a series of acts or omissions which, taken together, deprive the investor of the investment or destroy its value. The legal difficulty is that each individual measure may appear lawful or insufficient on its own. The expropriatory effect becomes visible only when the measures are assessed cumulatively.

Dolzer [14] explained that the concepts of indirect and creeping expropriation were developed to describe a process, not necessarily a single act, through which the investor is gradually deprived of fundamental property rights. Schreuer (2006) similarly noted that creeping expropriation takes place through a series of actions, none of which may qualify as expropriation separately, but the aggregate effect of which destroys the value of the investment.

*Generation Ukraine v. Ukraine* [19] gives one of the clearest formulations. The tribunal described creeping expropriation as a form of indirect expropriation with a distinctive temporal quality, where a series of acts attributable to the state over time culminate in the taking of property. This definition is useful because it combines two elements: cumulative conduct and eventual deprivation.

*Siemens v. Argentina* [20] developed the same idea through the image of the last step that finally tilts the balance. The tribunal noted that the last act in a creeping expropriation may be like the straw that breaks the camel's back. The earlier measures may

not have had a visible effect by themselves, but they formed part of the process that led to the final deprivation. *Biwater Gauff v. Tanzania* [21] also relied on the cumulative-effect approach.

The practical importance of creeping expropriation is connected with timing and valuation. If the taking is gradual, it becomes difficult to identify the exact date of expropriation. This question matters because compensation is usually calculated by reference to the value of the investment immediately before the expropriation became known or occurred. *Azurix v. Argentina* [38] recognized this difficulty, noting that in cases of indirect or creeping expropriation it may be much more difficult to determine the exact time of the taking.

Creeping expropriation should not be used too broadly. A series of inconvenient or burdensome regulatory measures does not automatically become expropriation. The cumulative conduct must reach the level of substantial deprivation. The investor must show that, as a result of the state's conduct, it lost control, use or economic value in a serious and lasting manner.

#### **4.6 Conditions of Lawful Expropriation**

The third main finding is that the legality of expropriation depends on cumulative conditions. Most investment treaties permit expropriation only if it is carried out for a public purpose, in a non-discriminatory manner, under due process of law, and against prompt, adequate and effective compensation. These conditions are not alternative. They operate together, and failure to satisfy one of them may be sufficient to make the expropriation unlawful.

The public purpose requirement is broad. It may include urban development, environmental protection, national security, public health, economic reform and other public policy objectives. In practice, tribunals often show deference to the state's assessment of public purpose. Investors therefore rarely succeed by challenging the purpose alone. However, the requirement is not empty. In *ADC v. Hungary* [22], the tribunal stated that a treaty requirement of public interest requires a genuine public interest and cannot be satisfied by a mere formal reference to public interest. Otherwise, the requirement would lose its meaning.

The non-discrimination requirement prohibits the state from targeting foreign investors or treating comparable investors differently without justification. It is necessary to distinguish discrimination as a general treaty violation from discriminatory expropriation as a condition of lawfulness. In *RosInvestCo v. Russia* [39], the tribunal rejected a narrow view under which discrimination would exist only if based on foreign nationality. The tribunal treated unfavorable and disproportionate treatment compared with competitors as relevant in assessing discriminatory treatment. *Fireman's Fund v. Mexico* [40] also recognized discrimination as a factor used to determine whether an expropriation is unlawful and to distinguish compensable expropriation from non-compensable regulation.

Due process requires more than formal legality. The state must provide the investor with a meaningful legal procedure, including reasonable notice, the possibility to be heard, and access to an impartial decision-maker. In *ADC v. Hungary* [22], the tribunal stated that due process in the expropriation context requires an actual and substantive legal procedure through which the investor can raise claims against the depriving measures. *Kardassopoulos v. Georgia* [41] followed the same approach and found that the taking had been carried out in an opaque manner. *Loewen v. United States* [42], although not an expropriation case in the narrow sense, remains important because it describes conduct contrary to due process as the antithesis of fair procedure.

Compensation is the most disputed condition. The traditional formula requires compensation to be prompt, adequate and effective. In treaty practice, this is usually linked to the fair market value of the investment immediately before the expropriation or before the impending expropriation became known. Compensation also has to be effectively realizable, transferable and not merely symbolic. The absence of compensation, or the offer of a clearly inadequate amount, will usually weigh strongly in favor of unlawfulness.

At the same time, arbitral practice is not always uniform on the exact legal consequence of delayed compensation. Some tribunals consider that expropriation may be lawful in principle if the state recognizes the duty to compensate and the amount is later determined by a tribunal. Others treat the failure to pay or offer compensation as a breach of the expropriation clause. In both approaches, however, compensation remains central. It is the main mechanism through which international law seeks to reconcile the state's right to take property with the investor's right not to bear an individual and excessive burden without reparation.

#### **4.7 Intellectual Property Rights as Investments in Expropriation Claims**

Intellectual property rights add a more specific dimension to the general rules on expropriation. Many bilateral investment treaties expressly include patents, trademarks and other intellectual property rights within the definition of protected investment. This allows disputes which would traditionally be treated as questions of national intellectual property policy to be brought before investment tribunals. The main concern, discussed in the literature, is that the transformation of intellectual property from an incentive mechanism into an investment asset may shift sensitive issues of innovation policy, access to medicines and public health into investor-state arbitration [43], [44], [45].

The specific nature of intellectual property makes this analysis more difficult than in cases involving land, factories or concessions. A patent or trademark is intangible, territorial and dependent on the law of the state in which protection is claimed. Its value is created not only by the investor's commercial activity, but also by the national legal regime that defines the scope, limits and validity of the right. For that reason, state measures affecting intellectual property should not be assessed only through the formal question of ownership. The more relevant question is whether the investor has been substantially deprived of the legally protected use, control or economic benefit of the right.

Philip Morris v. Uruguay illustrates this point in relation to trademarks. The investor challenged Uruguay's tobacco control measures, including the single presentation requirement and the obligation to place large graphic health warnings on cigarette packaging. Philip Morris argued that these measures impaired the use of its trademarks and amounted to indirect expropriation. The tribunal accepted that trademarks may constitute protected property rights, but rejected the expropriation claim. It found that the investor retained ownership of the marks and could still use them, although in a restricted form. The measures were also adopted for the legitimate purpose of protecting public health and fell within Uruguay's regulatory powers [46], [47].

The importance of this award is that it rejects the idea that every serious reduction in the commercial value of a trademark should be treated as expropriation. A trademark gives its holder an exclusive right against third parties, but it does not create an absolute right to use the mark in any manner, regardless of public regulation. In highly regulated sectors, such as tobacco, the investor cannot reasonably expect that branding and packaging will remain outside the reach of public health measures. Therefore, the loss of marketing value, goodwill or commercial attractiveness is not enough by itself; the interference must reach the level of substantial deprivation.

Eli Lilly v. Canada shows the patent side of the same problem. The dispute arose after Canadian courts invalidated Eli Lilly's patents for Zyprexa and Strattera under the utility requirement and the so-called promise doctrine. The investor argued that the development and application of this doctrine was a radical and unpredictable change in Canadian patent law and that the invalidation of the patents amounted to expropriation and a breach of the minimum standard of treatment under NAFTA. The tribunal dismissed the claims. It found that Eli Lilly had not shown a dramatic transformation of Canadian law and treated the patents as rights granted within a legal system that allows subsequent judicial review of validity [48], [49].

The relevance of Eli Lilly for expropriation analysis is broader than the specific pharmaceutical patents involved. A domestic court decision invalidating a patent does not automatically transfer the right to the state, does not by itself create a taking, and does not make the investment tribunal an appellate body over national patent law. A patent exists only within the limits of the domestic legal regime that grants it. If a competent court determines that the patent did not satisfy the conditions of protection, the investor must show more than loss of commercial expectations. It must show an internationally wrongful element, such as denial of justice, discrimination, bad faith or a treaty breach capable of turning the judicial act into an internationally unlawful measure.

Taken together, Philip Morris and Eli Lilly confirm that intellectual property disputes in investment arbitration cannot be treated as purely private commercial conflicts. They arise at the intersection of investor protection, public health, access to medicines, innovation policy and the state's power to regulate. A decline in the value of intellectual property rights is not sufficient for expropriation if the measure is connected to a legitimate public purpose, the investor retains the core of the right, or the national legal system determines that the right was not valid in the form claimed. This also explains why modern investment agreements should preserve space for public-interest regulation and for the use of intellectual property flexibilities under international intellectual property law [50].

#### **5. Conclusion**

Expropriation in international investment law cannot be reduced to the simple loss of legal title. The modern concept is broader. It includes direct taking, where the state formally transfers ownership or physically seizes the asset, and indirect taking, where the

investor remains the formal owner but loses control, use or substantial economic benefit. Creeping expropriation is a specific form of indirect taking, characterized by a series of state measures whose cumulative effect destroys the investment or deprives the investor of meaningful enjoyment of property rights.

The analysis of doctrine, treaty practice and arbitral awards shows that expropriation and nationalization are now usually treated as part of one legal field. Nationalization may still have an important historical and policy meaning, especially where entire sectors are transferred to state ownership, but investment treaties generally place both concepts under the same protective standard. The decisive question is not the word used by the state, but the legal and economic effect of the measure on the protected investment.

The article also shows that the lawfulness of expropriation is conditional. The state may expropriate foreign property only where the taking serves a public purpose, is not discriminatory, follows due process and is accompanied by compensation. These requirements are cumulative. A failure to comply with any one of them may lead to a finding of unlawful expropriation. At the same time, tribunals often focus on due process and compensation because these requirements are easier to assess than the political or economic purpose of the measure.

The most difficult boundary remains the distinction between compensable expropriation and non-compensable regulation. States must retain the ability to regulate in the public interest, including in areas such as health, environment, taxation, public safety and economic policy. However, regulatory powers cannot be used to remove the substance of foreign investment without compensation. For that reason, the assessment must remain fact-specific and should consider the effect of the measure, the nature of the protected asset, the purpose pursued and the guarantees available to the investor.

This boundary becomes even more sensitive when the protected asset is an intellectual property right. Patents, trademarks and other intellectual property rights are not identical to tangible property. They are intangible, territorial and dependent on domestic law for their existence and scope. The cases of *Philip Morris v. Uruguay* and *Eli Lilly v. Canada* show that investment tribunals are reluctant to treat every reduction in the value of intellectual property as expropriation. Where the investor retains the core of the right, or where a national court determines that the right was not valid under domestic law, the threshold for expropriation is not easily met.

The broader conclusion is that intellectual property expropriation requires a careful balance between investor protection and the state's regulatory autonomy. Investment law should protect foreign investors against abusive, discriminatory or uncompensated takings, but it should not prevent states from developing patent law, regulating harmful products, protecting public health, or using intellectual property flexibilities in the public interest. In this sense, expropriation remains a balancing mechanism: it protects the investor against excessive state interference, while preserving the sovereign authority of the state to regulate and, where justified, to take property under conditions established by international law.

### **Statements and Declarations**

**Funding:** This research received no external funding

**Conflicts of Interest:** The author declares no conflict of interest.

**ORCID iD** 0000-0001-7103-1750

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