International Investment Arbitration

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Sao Paulo 2013
The genesis

- Foreign law
  - Expropriation
  - No subject to local law
  - Consular officers were the ones with jurisdiction about their nationals

- International investment law was created to protect the national abroad, within international public law.
Investment Law

- Gunboat diplomacy. Venezuela (1902); cobro de deuda externa (U.K., Alemania e Italia)
- Post war architecture
- FCN’s
Introducción al Der. de la Inversión

• Calvo v. Hull
• First BIT (Germany-Paquistán 1959)
• ICSID / CIADI
• Modern BIT’s (+ de 2200)

http://icsid.worldbank.org/ICSID/FrontServlet
Types of BIT’s

• First Generation (diplomatic protection)
• BIT’s (ius standi for the investor)
• Procedural Treaties (i.e. CIADI)
• Enforcement treaties (i.e. Convención de NY)
• New generations? (i.e. Australia, UNASUR?)
Treaty Network

España (TBI) — Colombia — Perú (TBI) — Suiza (TBI) — Bolivia — Chile — Ecuador
¿What a BIT means?

Relevant factors to foreign investments
- Regulatory system
- Economical environment
- Accessible resources

Predictable
No Discriminatory
Infrastructure
Human Resources

What a BIT means?

- BIT rights stand alone despite local law and local contracts.

- BIT rights are in then Int’l Law Arena

- They do not generate more foreign investments per se. Another factor:
  - Tim Büthe & Heln Milner.
  - I.e.: Brasil.
Where do we go?

- Backlash?
- A problem?
- A risk? Certain countries need BIT’s
- New wave.