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Bilateral Investment Treaties: India and Beyond

by Nupur Jalan

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In this article, the author examines bilateral investment treaties, noting the rise and decline in their popularity, and reviews some disputes under the agreements, focusing on India and the *Vodafone* case.

As the quantum of cross-border investments has grown, the number of cross-border disputes has also increased. This led countries to enter into bilateral investment treaties (BITs) and other international agreements (for example, free trade agreements and energy charters) to protect foreign investors against risks that could adversely affect their investment in the host country — a trend that has been followed by something of a backlash in recent years. A classic example of a cross-border dispute is the arbitration claim that recently resulted in a victory for Vodafone, which invoked a BIT against the government of India in the Permanent Court of Arbitration (PCA) at The Hague.[1]

This article discusses BITs generally and some of their most important clauses before examining the BITs in India specifically and the *Vodafone* case. It then examines some BIT clauses that are considered vague and some of the possible solutions to those uncertainties.

I. BITs: Background and Rationale

In a sidebar to its collection of international investment agreements, the United Nations Conference on Trade and Development (UNCTAD) defines a BIT as:

> An agreement between two countries regarding promotion and protection of investments made by investors from respective countries in each other's territory.

Thus, the agreements establish terms and conditions for private investments that nationals and companies from one state make in another state.

A network of 2,342 BITs is in force.[2] These agreements are reciprocal in the application. Broadly, the objectives of BITs are specified in their preambles and often include:

- extending and intensifying economic cooperation to the mutual benefit of both countries;
- creating and maintaining favorable conditions for the investments that the investors from one contracting jurisdiction make in the territory of the other contracting party; and
- stimulating business initiatives.

BITs are entered into for a specific term, which can sometimes be extended for a specified period after a termination notice has been given.

There are variations among specific BITs, but a typical BIT contains definitions of key terms such as investment, investor, returns, and territory;

[1] *Vodafone International Holdings BV v. Government of India*, PCA Case No. 2016-35 (Sept. 25, 2020). *See also* Stephanie Soong Johnston and Kiarra M. Strocko, "Vodafone Wins Arbitration Over Indian Capital Gains Tax Dispute," *Tax Notes Int'l*, Oct. 5, 2020, p. 145.

[2] UNCTAD, "International Investment Agreements Navigator" (last accessed Oct. 10, 2020).

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broad conditions regarding the creation of favorable conditions for investments; a guarantee of national and most-favored-nation treatment; a prohibition on nationalization and expropriation; an assurance of the right to repatriate investments and returns; and provisions covering dispute settlement.[3] While many BITs define investments broadly, some only award BIT protection to a narrow category of investments (for example, equity interests only) or expressly exclude specific investments.

II. Key Clauses in BITs

The fair and equitable treatment (FET) standard in many BITs is intended to protect investors from arbitrary or abusive treatment by the host state. For example, it would prohibit taking unreasonable or discriminatory measures against the other state's investors. It would also require that the host state treat the investments of investors from the other contracting state at least as favorably as it treats investments by its own nationals and nationals of third states.

The arbitration clause in international agreements allows parties and affected entities (that is, jurisdictions and their taxpayers) to submit disputes to a neutral arbitration tribunal. For BITs, this is normally the International Centre for Settlement of Investment Disputes (ICSID),[4] with the next most frequently used forum being the United Nations Commission on International Trade Law (UNCITRAL). There are 183 cases pending before the ICSID, including the $7 billion *Venezuela Holdings B.V.* case and the $30 billion *ConocoPhillips Petrozuata B.V.* case, both based on the Netherlands-Venezuela BIT.

The cornerstone of most BITs is a prohibition against the uncompensated expropriation, whether direct or indirect, of foreign-owned property. Tribunal awards in expropriation claims often apply the effect test — that is, they focus on whether there has been a permanent and substantial deprivation of the investment that amounts to expropriation. The most notable line of expropriation-related disputes arose from the nationalization of the Yukos oil company by the Russian government.[5]

Expropriation by taxation is one form of "indirect expropriation," a term that describes situations in which the host state deprives an investor of its investment through regulatory measures that erode its value rather than through an overt taking.[6]

Umbrella clauses allow investors to secure the observance of specific obligations or commitments that a host state has made in connection with a foreign investment that falls under the protection of the applicable BIT.

Transparency is an important component of the FET standard in BITs because it limits the sort of discretionary exercise of power that often leads to arbitrariness. Notably, Canadian BITs typically include a transparency clause that is separate from the FET clause.

The goal of both the national treatment and most-favored-nation (MFN) treatment clauses in BITs is to establish a level playing field among domestic and foreign investors regardless of their country of origin, thus removing all forms of horizontal and vertical discrimination against non-nationals.[7] Both clauses are among those that BITs most frequently carve out for tax purposes. These carveouts take many forms, with the stated rationale for and the specific boundaries of the carveouts varying from treaty to treaty.

More broadly, tax carveout clauses are used to exclude the levying of taxes from the scope of some bilateral treaties. Many BITs contain carveouts for tax matters; however, if a carveout is not expressly included, then tax matters may fall within the ambit of BITs. BITs have been invoked several times in reference to tax matters, and the issues involved are often complex. These disputes are usually resolved using an arbitration panel.

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[3] H. David Rosenbloom, "Through the Looking Glass: Resolving Tax Disputes by Arbitration Under a Bilateral Investment Treaty," in *Essays on International Taxation* (2020).

[4] *Venezuela Holdings B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27; and *ConocoPhillips Petrozuata B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30.

[5] *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, PCA Case No. 2005-04/AA227. For a summary of the litigation and discussion of the most recent holding in a related matter, see William Hoke, "Dutch Court Reverses Stolichnaya Seizure Order in *Yukos* Tax Case," *Tax Notes Int'l*, Nov. 2, 2020, p. 706.

[6] *See, e.g., Metalclad Corp. v. United Mexican States*, ICSID Case No. ARB(AF)/97/1 (Aug. 30, 2000). *See also* August Reinisch, "Expropriation," in *The Oxford Handbook of International Investment Law* (2008).

[7] Pasquale Pistone, "Chapter 1: General Report," in *The Impact of Bilateral Investment Treaties on Taxation* (2017).

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Generally, when it comes to covering taxes, most BITs fall into one of two groups. The first group only excludes taxes from some substantive provisions. For example, the model BITs that France, Germany, India, and Italy use do not have a separate article dedicated to tax issues and do not provide special mechanisms for tax matters in the investor-state dispute settlement (ISDS) clause. The second group of BITs contain a separate article dedicated to taxes, including a special ISDS mechanism for claims regarding taxation, as well as provisions excluding taxes from major elements of the treaty. Canada, Norway, and the United States use this type of model BIT.

III. BITs in India

India signed its first BIT, which was with the United Kingdom, in 1994. Between 1994 and 2010, India signed over 80 BITs. This number highlights the vivacity with which India pursued international investment agreements and the importance the government attaches to foreign investment for economic development.

However, the pace at which India was entering into BITs was severely affected by the verdict in *White Industries v. Republic of India*,[8] in which the UNCITRAL held that a delay by Indian courts violated the effective means obligation — even though the governing treaty did not contain such a right — using the MFN clause to support borrowing the provision from another treaty. This ruling led India to review its existing BITs.[9]

The decision in *White Industries* demonstrated two things.[10] First, it showed that BITs could be used to circumvent the domestic justice system and its procedural requirements. Second, it showed that tribunals could use MFN protection to expand the scope of a given treaty through borrowing, which can defeat the entire purpose of having bilateral agreements.

Thereafter, the Indian government constituted a working group to review its model bilateral investment protection agreements to "incorporate the experiences gained in the working of these agreements over the last 20 years and international best practices."[11]

The older model bilateral investment protection agreements have now been reviewed and replaced with a new model for Indian BITs. This model text is now being used to renegotiate the text of existing BITs. Some of the features of the new model text include:

- *Exclusion of tax matters*: In the past, investors invoked arbitration to resolve disputes on tax issues under BITs, thus bypassing the mutual agreement procedure and the country's judicial system. Hence, India's new model BIT excludes tax matters from its purview. It states that under customary international law, the host state's sovereign power of taxation is supreme.[12] Another, more practical, rationale for the new rule is that taxation matters are handled by authorities that do not participate in negotiating investment treaties, and governments want to avoid conflict among different agencies.[13]
- *Umbrella clauses*: Early Indian BITs contained a broadly worded umbrella clause.[14] For example, article 13 of the 1997 India-Switzerland BIT provides:

  > Each Contracting Party shall observe any obligation it may have entered into with regard to an investment of an investor of the other Contracting Party. In relation to such obligations dispute resolution under Article 9 of this Agreement shall however only be applicable in the absence of normal local judicial remedies being available.

[8] *White Industries Australia Ltd. v. Republic of India*, Final Award (UNCITRAL Nov. 30, 2011).

[9] Poonam Khaira Sidhu, "Chapter 14: India," in *The Impact of Bilateral Investment Treaties on Taxation* (2017).

[10] *Rethinking Bilateral Investment Treaties: Critical Issues and Policy Choices* (2016).

[11] "Bilateral Investment Promotion and Protection Agreements to Promote Foreign Investment: Nirmala Sitharaman," *The Economic Times*, July 11, 2014.

[12] This is also recognized in *Burlington Resources Inc. v. Venezuela*, ICSID Case No. ARB/08/5 (Dec. 14, 2012).

[13] UNCTAD, *Bilateral Investment Treaties 1995-2006: Trends in Investment Rulemaking*, UNCTAD/ITE/IIT/2006/5 (2007).

[14] *See, e.g.*, Katia Yannaca-Small, "Interpretation of the Umbrella Clause in Investment Agreements," OECD Working Papers on International Investment 2006/03 (2006).

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Similar clauses are found in, among others, the Germany-India BIT and the Denmark-India BIT.[15] The new model BIT does not have any umbrella clauses.

- *Taxation as expropriation*: The model BIT has a detailed provision on expropriation. It specifies that compensation must be adequate and equivalent to the fair market value of the expropriated investment on the day expropriation takes place.
- *Transparency clauses*: Transparency is an explicit obligation in the model BIT. Investors and investments must comply with the law of the host state and disclose true and complete information to the extent possible.

Further, some other features of the model BIT are the absence of an MFN clause, the lack of a stabilization clauses, the presence of an appeal facility, and the presence of a state-state dispute settlement mechanism.

IV. Status of Indian BITs

Since the early 2000s, several countries have been actively revisiting their BIT programs. Some are clarifying the language used in BITs to bring uniformity and coherence to treaty interpretations; others are terminating their existing treaties. A backlash against BITs has gained momentum in several countries.

India has served several countries with termination notices for BITs.[16] It has also asked some countries with which it has unexpired treaties to sign joint interpretative statements to clarify ambiguities in treaty language and avoid expansive interpretations by arbitral tribunals. According to UNCTAD, only 14 Indian BITs are now in force.[17] Most of the old agreements have been terminated, although there are some that have been signed but are not yet in force.

Likewise, several other countries have terminated many of their BITs. In the global south,[18] this movement started when dozens of claims were launched against Argentina after the country imposed new regulatory measures during the financial crisis it experienced in 2001. In 2007 Bolivia became the first country to denounce the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, a multilateral convention that had been ratified by more than 150 member states. Ecuador and Venezuela have also submitted written notices denouncing the convention. In 2008 Ecuador alone terminated nine BITs, namely its treaties with Cuba, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Romania, and Uruguay.

The list of examples of countries taking similar actions is significant.

V. Vague Clauses in BITs

Vague terms — examples include "FET," "indirect expropriation," and "umbrella clause" — and other ambiguities can lead arbitral tribunals to rely on expansive interpretations. This can lead to foreign investors filing substantial monetary claims that unduly restrict regulatory requirements.

For example, the FET standard does not provide any ascertainable means of answering the question of whether a tax measure is objectionable, which makes assessing liability under FET difficult.

In *Nations Energy*,[19] U.S. investors invoked the FET clause in the Panama-U.S. BIT in relation to a refusal to allow the transfer of tax credits to third parties. The tribunal rejected the claim, holding that the BIT only permits claims involving "matters of taxation" under a few narrow circumstances, such as alleged expropriation, and that tax policies fall outside the parameters of the FET standard. By contrast, in another case, a different tribunal used a particularly broad

[15] In *Duke Energy International Peru Investments No. 1 Ltd. v. Peru*, ICSID Case No. ARB/03/28, Award (Aug. 18, 2008), the investment tribunal applied the umbrella clause in the Bermuda-Peru treaty to protect the investor after tax authorities recharacterized a merger as a sham transaction concluded solely for tax benefits.

[16] For a discussion of these actions and the potential consequences, see Pramit Pal Chaudhuri, "India's Bilateral Investment Treaties: Once BITten, 57 Times More Shy," *Hindustan Times*, Nov. 25, 2016.

[17] UNCTAD, "International Agreements Navigator: India" (last accessed Oct. 11, 2020).

[18] The World Bank uses the term "global south" to encompass countries classified as low- or middle-income that are located in Africa, Asia, Oceania, Latin America, and the Caribbean.

[19] *Nations Energy Corp., Electric Machinery Enterprises Inc., and Jaime Jurado v. Republic of Panama*, ICSID Case No. ARB 06/19 (Nov. 24, 2010).

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interpretation of an FET clause to apply it to the tender process.[20]

National treatment, which is covered in both BITs and double taxation treaties, can also obstruct some legal or administrative measures. Investors frequently invoke the MFN provision to import more convenient treatment standards or increase access to arbitration, which can add to uncertainty for the host state.

VI. Dispute Resolution

BITs provide a right to access arbitration without the consent of the competent authority. This contrasts with the MAP, in which this right is subject to the agreement of the competent authority or depends on the case passing through MAP without the competent authority arriving at a conclusion.[21]

The issue of the overlap between BITs and tax treaties only arises when there is no exclusion for tax matters in the BIT.

Over time, there has been an increase in tax-related international arbitration.

Because of the uncertainty inherent in the MAP — notably, tax treaties stipulate only that the competent authorities "shall endeavor to resolve" cases without specifying any time limits — investors may seek recourse in BITs, looking to benefit from the arbitration mechanism, which, as provided for by the ICSID, is of considerable importance and effectiveness.[22] For example, in the *Vodafone* case (discussed below), the company chose international arbitration rather than the MAP in the India-Netherlands double taxation treaty.

VII. Prominent Indian BIT Tax Cases

A. *Vodafone*

In 2007 Vodafone International Holdings BV acquired the entire share capital of CGP Investments (Holdings) Ltd., a company resident in the Cayman Islands, which in turn held a 67 percent interest in Hutchison Essar Ltd., a company incorporated in India, for a total consideration of $11.08 billion.[23] India asserted that capital gains tax was owed on the sale because the indirect offshore transfer involved an asset situated in India — that is, India argued that Vodafone indirectly acquired shares in an Indian company and should have paid Indian withholding tax. Reversing the lower court's ruling, the Indian Supreme Court found that India could not claim source-based taxation because the shares in the Cayman Island-based company were not situated in India.

However, in a surprise move, as part of the Finance Act 2012, India's Parliament inserted two explanations into section 9(1)(i) of the Income Tax Act, 1961, with retroactive effect. In what is often referred to as a retrospective amendment, the language explained that an asset consisting of shares or interests in a company that, directly or indirectly, derives its value substantially from assets located in India would be deemed to be — and was always intended to have been deemed to be — situated in India. Thus, section 9(1)(i) of the Income Tax Act, 1961, covered a foreign holding company's offshore transfer of assets — including the transaction at issue in the *Vodafone* case.

In 2014 Vodafone filed for arbitration under the India-Netherlands BIT,[24] claiming that the tax liability imposed on it via the retrospective amendments to the income tax law violated international legal protections contained in the BIT, specifically the principles of the FET standard.

Notably, Vodafone Group Plc., the U.K.-based parent entity, also began parallel proceedings in the United Kingdom. The government of India filed a suit before its national courts seeking an anti-arbitration injunction to restrain Vodafone from proceeding with it. These proceedings were ultimately dismissed, possibly because Vodafone offered to consolidate both the arbitrations.

The threshold conditions that trigger the applicability of the BIT are the presence of an

[20] *Lemire v. Ukraine*, ICSID Case No. ARB/06/18 (Jan. 4, 2010).

[21] Article 25 of the OECD and U.N. model tax conventions.

[22] Stephen E. Blythe, "The Advantages of Investor-State Arbitration as a Dispute Resolution Mechanism in Bilateral Investment Treaties," 47(2) *Int'l Law.* 273 (Fall 2013).

[23] *Vodafone*, PCA Case No. 2016-35.

[24] The India-Netherlands BIT was signed November 6, 1995, came into force on December 5, 1996, and was terminated on September 22, 2016. Under article 16 of the BIT, investments that Dutch entities made in India before September 22, 2016, should be protected for 15 years from the date of the BIT's termination.

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investor, investment, and territoriality. The taxpayer had claimed all along that the investment was shares of a Cayman Islands entity, CGP Investments. Thus, questions arose regarding whether it was an investment in the territory of India sufficient to invoke the India-Netherlands BIT. Hence, *Vodafone* involved an interpretation of article 2 of the relevant BIT, which typically only includes wholly owned subsidiaries within the umbrella of protection. This is a prima facie jurisdictional issue — that is, whether the BIT can be invoked at all — that must be decided before claims regarding treaty standards can be considered on the merits. Nonetheless, the tribunal in the *Vodafone* case accepted that it had jurisdiction.

Vodafone prevailed in the arbitration against India. The text of the complete decision is confidential, but a key single-page excerpt was leaked. After accepting that it had jurisdiction, the tribunal ruled that India's imposition of tax liability (as well as related interest and penalties) on Vodafone was a breach of the India-Netherlands BIT. As the excerpt from the ruling explains, the tribunal concluded that India's demand was a breach of the FET standard and the government must cease seeking the dues from Vodafone.

The question arises: Is the retrospective amendment a weak link on which the fair and equitable argument was built?[25] There have been other instances in which other countries have instituted retrospective amendments. To cite a prominent example, the U.S. Tax Cuts and Jobs Act contains important provisions with retroactive effects. Hence, is it not merely about retroactivity, but about the legislature appearing to refute the decision of the Supreme Court in India? Of course, every country has the sovereign power to amend its tax laws, but the timing of this amendment may have been cause for concern.

Some argue that Vodafone should have challenged the validity of the retrospective amendment under India's Constitution. Notwithstanding that debate, the FET argument raises the following questions:

- Was it possible for the investor to know at the time of investing that a retroactive amendment might be passed?
- Was it possible for the investor to know that a judgment from the nation's highest court might be overturned?
- Would it make a difference if similar events had occurred in the past?[26]

Another interesting wrinkle is that the tax claim in this case involved withholding tax and not a final tax. Vodafone could not have withheld taxes if it sincerely believed that the transaction was nontaxable. The principle of *lex non cogit ad impossibilia* — that is, the law cannot compel one to do impossible things — may be considered in this regard.

The Indian government has the option to challenge the arbitral award before a court in Singapore, the legal seat of the arbitration panel.

B. Disputes With Cairn, Nokia, and Others

The other prominent pending case involves U.K. oil company Cairn Energy, which filed a notice of dispute under the India-United Kingdom BIT, "necessitating a period of negotiations, the failure of which could result in international arbitration."[27] The company noted that the draft income reassessment order issued to the subsidiary of Cairn UK Holdings for 2006-2007 amounted to $1.6 billion (plus applicable interest and penalties).

Indian tax authorities tried to levy 20 percent tax on the alleged short-term capital gain that Cairn UK Holdings made when it transferred its Indian assets to Cairn India Ltd. for shares of Cairn India Holdings, which is incorporated in Jersey but holds oil and gas assets located in India. The tax authorities cited section 9(1)(i) of the Income Tax Act, 1961, and the explanations thereof. They held Cairn India Ltd. in default for not deducting taxes at source when it made payments to the U.K. firm and put the 10.3

[25] Rosenbloom, *supra* note 3.

[26] *Id.*

[27] *See* Gireesh Chandra Prasad, "After *Vodafone*, Cairn Invokes Treaty to Dodge India's Tax Demand," *The Financial Express*, Mar. 12, 2015. For a brief report on the status of the dispute, see Jennifer McLoughlin, "Arbitration Decision Deferred in Cairn Energy-India Tax Dispute," *Tax Notes Int'l*, Mar. 18, 2019, p. 1205.

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percent residual stake that Cairn Energy holds in the Indian unit toward the recovery of dues.

Likewise, in 2013 Nokia informed the government of a claim under the Finland-India BIT about disputes regarding the imposition of withholding tax on royalty payments from Nokia India to its parent.[28]

Another issue that India needs to consider is the uncertainty regarding the enforcement of arbitral awards in BIT disputes. India is not a signatory to ICSID, which means that it does not have an obligation to enforce BIT awards based on that agreement. There have been some discussions regarding the applicability of India's Arbitration and Conciliation Act, 1996, to arbitrations initiated under BITs. Conflicting views have emerged from the different high courts on this issue — yet another example of the uncertainty in this arena.

The table on the following page contains information about some of the tax dispute cases that investors have brought against countries based on BITs. Similarly, numerous disputes are pending under BITs involving other issues.

VIII. Solutions to Address the Problems

There have always been arguments that arbitration under BITs is a costly, time-consuming process involving lots of paper submissions and that the opinions, in the end, are too long.

It seems far better for countries to actively and creatively engage in a tax treaty world and have disputes heard in a forum in which tax issues are regularly presented before decision-makers who have appropriate experience and expertise in the subject matter and will give appropriate weight to considerations of efficiency, time, and cost.

In 2018 UNCTAD outlined some reform options, which it separated into three different phases[29] — that is, designing sustainable development-oriented new treaties (phase 1[30]); modernizing the existing stock of old-generation treaties (phase 2); and promoting coherence between international investment agreements, national and international rules, and investment and other policies (phase 3) — and three levels (multilateral, regional, bilateral, and national).

In a world of increasing cross-border investment, countries must help build investors' confidence and secure their trust. However, it remains unclear whether the changes being discussed will bring sufficient clarity to the BIT arena to encourage countries to reenter BITs that they may have previously terminated.

[28] *See* "A BIT More Indian Investment Arbitration," Herbert Smith Freehills blog, May 16, 2014.

[29] UNCTAD, "UNCTAD's Reform Package for the International Investment Regime" (2018).

[30] The first phase includes five priorities for reforming the substance of international investment agreements: safeguarding the right to regulate while providing protection, enhancing systemic consistency, ensuring responsible investment, reforming investment dispute settlement, and promoting and facilitating investment.

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Other Tax Disputes Raised Under BITs

Case Name	Treaty	Arbitration Rules	Status
Goetz v. Republic of Burundi	Belgium-Luxembourg-Burundi BIT	ICSID	Won by the investor on grounds of indirect expropriation.
Enron Corp. & Ponderosa Assets LP v. The Argentine Republic	Argentina-U.S. BIT	ICSID	Won by the investor on grounds of FET and umbrella clauses.
Occidental Exploration and Production Co. v. Republic of Ecuador	Ecuador-U.S. BIT	UNCITRAL	Won by the investor on grounds of FET and national treatment.
El Paso Energy International Co. v. The Argentine Republic	Argentina-U.S. BIT	ICSID	Won by the investor on grounds of FET.
Jan Oostergetel and Theodora Laurentius v. The Slovak Republic	Netherlands-Slovak Republic BIT	UNCITRAL	Lost by the investor; the tribunal decided that respondent state did not violate the treaty.
The Rompetrol Group N.V. v. Republic of Romania	Netherlands-Romania BIT	ICSID	Lost by the investor; the tribunal decided that respondent state did not violate the treaty.
EDF v. Republic of Romania	Romania-U.K. BIT	ICSID	Lost by the investor; the tribunal decided that respondent state did not violate the treaty.
EnCana Corp. v. Republic of Ecuador	Canada-Ecuador BIT	UNCITRAL	Lost by the investor; the tribunal decided that respondent state did not violate the treaty.
Tokios Tokeles v. Ukraine	Lithuania-Ukraine BIT	ICSID	Lost by the investor; the tribunal decided that respondent state did not violate the treaty.
Link-Trading v. Republic of Moldova	Moldova-U.S. BIT	UNCITRAL	Lost by the investor; the tribunal decided that respondent state did not violate the treaty.
Noble Energy v. Republic of Ecuador	Ecuador-U.S. BIT	ICSID	Case settled by agreement between claimant and respondent state.
Phoenix Action v. the Czech Republic	Czech Republic-Israel BIT	ICSID	Tribunal did not accept the jurisdiction over claims.
Burlington Resources v. Republic of Ecuador	Ecuador-U.S. BIT	ICSID	Tribunal rejected jurisdiction over umbrella clause but accepted jurisdiction over other claims. Tribunal decided Ecuador expropriated claimant's investment unlawfully but dismissed other claims.
Paushok v. The Government of Mongolia	Mongolia-Russia BIT	UNCITRAL	Lost by investor.
Quasar de Valores Sicav SA v. The Russian Federation	Spain-U.S.S.R. BIT	Stockholm Chambers of Commerce (SCC)	Won by the investor on grounds of expropriation clause.
RosInvestCo v. The Russian Federation	U.K.-U.S.S.R. BIT	SCC	Won by the investor on grounds of indirect expropriation.
Duke Energy v. Republic of Ecuador	Ecuador-U.S. BIT	ICSID	Won by the investor on grounds of national treatment and umbrella clause.
Data source: International Investment Arbitration and Public Policy database and relevant awards.			

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