

R&P and Israel Center @ IIMB event

Once Bitten, Twice Shy? Investment Disputes, State Sovereignty and Change in Treaty Design

**Tomer Broude,
The Hebrew University of Jerusalem**

Area: OB&HRM, ESS, Public Policy

Date: 30.08.2019, Venue: C11 @ 2.30PM

Abstract

More than 3000 international investment agreements (IIAs) provide foreign investors with substantive protections in host states and access to binding investor state dispute settlement (ISDS). In recent years, states increasingly have sought to change their treaty commitments through the practices of renegotiation and termination, so far affecting about 300 IIAs. The received wisdom is that this development reflects a “backlash” against the regime and an attempt by governments to reclaim sovereignty, consistent with broader anti-globalization trends. Using new data on the degree to which state regulatory space (SRS) is restricted by IIA provisions, this article provides the first systematic investigation into the effect of ISDS experiences on state decisions to adjust their treaties. The empirical analysis indicates that, indeed, exposure to investment claims leads either to the renegotiation of IIAs in the direction of greater SRS or to their termination. This effect varies, however, with the nature of involvement in ISDS and with respect to different treaty provisions.

Speaker Profile

Prof. Tomer Broude is an Associate Professor and Sylvan M. Cohen Chair in Law at the Hebrew University of Jerusalem Faculty of Law and Department of International Relations, Academic Director of the Minerva Center for Human Rights, and former Vice-Dean of the Faculty of Law. He specializes in public international law and international economic law, particularly international trade and investment, human rights, dispute settlement, development and cultural diversity. He is currently working on a book project on “Behavioral Economics and International Law,” to be published by *Oxford University Press* in 2020 (co-authored with Anne van Aaken). He is the author and editor of several books as well as numerous articles that have appeared in top-ranked publications such as *International Organization*, the *University of Pennsylvania Law Review*, *Vanderbilt Law Review*, *Virginia Journal of International Law*, *International Journal of Cultural Property*, *Journal of World Trade*, *World Trade Review*, and the *Journal of International Economic Law*.

He directs the Jerusalem side of a major Doctoral interdisciplinary program, “Human Rights under Pressure”, a joint program with Freie Universität Berlin, funded by the German Research Council (DFG) and the Einstein Stiftung Berlin. He

has taught at numerous law schools around the world, such as the University of Toronto, University of Virginia, University of California-Los Angeles, Fordham Law School, Hong Kong University, University of Melbourne, University of British Columbia and Gujarat National Law University.

He is one of the founders of the Society of International Economic Law and a former member of its Executive Council.

He has been appointed to the indicative list of governmental and nongovernmental panelists to hear WTO disputes and the list of Israeli arbitrators under the Israel-MERCOSUR Free Trade Agreement. In 2018 he was appointed by the government of Canada to the roster of NAFTA Chapter 19 (Trade Remedies) Panelists. He is a member of Israel's Trade Remedy Advisory Board. He has also worked with the WTO's Institute for Training and Technical Cooperation, training government officials from Central and Eastern Europe and Central Asia in WTO law, and he regularly consults governments, corporations and nongovernmental organizations.