Legal Aspects of Investment in Agriculture

Study by
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Responsible Investment through International Investment Law

• **The problem**: the one-sided character of international investment law
• **The approach**: a sustainable development perspective
• **The remedy question**: how strengthening peoples’ rights?
The one-sidedness of international investment law

- **Asymmetry**: high standard of investment protection – no standards for legitimate regulatory space and peoples’ rights
- **Background**: investment = growth = development => trickle down effect
- **Legitimacy crisis**: a call for balancing international investment law
Balancing Investment Law Through the Prism of Sustainability

• The crucial role of interpretational underpinnings
• The prism of the sustainable development concept (ICJ, WTO Appellate Body)
  – The cutting knife: new standards and norms in the environmental sphere (>developmental sphere)
  – Reconciliation-obligation: balancing to respect and promote best all three interests (legal techniques)
  – The Trojan effect: the ‘colour, texture and shading‘ of standards and principles in the field of international environmental and social law (human rights, development)
Shaping International Investment Law

- Interpretational guidelines
- Investors' obligation to respect
- Sustainability Impact Assessments
- Weighing and balancing criteria
- Mixed panel members
Balancing Investment Law Through Remedies

• **National level:**
  – Binding: home states‘ extraterritorial duties?
  – Non-binding: National Contact Points (OECD)

• **International level:**
  – Investment arbitration: investor-only-remedy & amicus curiae – should there be more?
  – World Bank Inspection Panel: a model to extent?
  – Specialized regimes: e.g. responsible investment in agriculture monitoring and grievance mechanism
Thank you for your attention