MOST FAVOURED NATION TREATMENT APPLICATION IN INTERNATIONAL INVESTMENT ARBITRATION

A DISSERTATION TO BE SUBBMITTED IN THE PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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CERTIFICATE

This is to certify that dissertation entitled "MOST FAVOURED NATION TREATMENT APPLICATION IN INTERNATIONAL INVESTMENT ARBITRATION " is the work done by Vikas kumar singh under my guidance and supervision for the partial fulfillment of the requirement for the degree of master of laws in school of legal studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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CORPORATE AND COMMERCIAL LAW

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Dr. Gunjan Srivastava

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ABBREVIATIONS

BIT	Bilateral Investment Treaty
DIAE	Division on Investment and Enterprise (UNCTAD)
DTT	Double Taxation Treaty
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement
FDI	Foreign Direct Investment
FET	Fair And Equitable Treatment
FTA	free trade agreement
FTC	Free Trade Commission
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
ILC	International Law Commission
ISDS	Investor–State Dispute Settlement
MFN	Most-Favoured-Nation Treatment
NT	National Treatment
NAFTA	North American Free Trade Agreement

OECD	Organisation for Economic Cooperation and Development
REIO	Regional Economic Integration Organization
RTA	Regional Trade Agreement
TNC	Transnational Corporation
UNCITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization

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Republic of Egypt, ICSID Case No. ARB/02/09, Award, 27 October 2006.

CME Czech Republic B.V. v. The Czech Republic, UNCITRAL, Final Award, 14 March 2003.

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CHAPTER 1

INTRODUCTION

The Most Favored Nation (MFN) treatment standard is a core element of modern BIT. Like many of the investment protection standards offered under the BIT, it is designed to avoid discrimination.

The purpose is put only to provide a mechanism to ensure that the parties concerned do not consider each other less favorable than the treatment offered by them to third parties.

Investment disputes settled by international arbitration over the past ten to fifteen years have had a strong impact on the meaning of the original standards proposed by bilateral investment treaties (BITs). From practice it may be noted that some standards have evolved to attain importance while others have diminished. Some standards have increased in complexity, appear to interact with others while some have gained or proved an autonomous nature.

Until a decade ago the academic debate concerning the MFN clause in international investment arbitration focused largely on its original application. The legal practice surrounding the formulation, contravention or violation of the MFN clause was not controversial and the debate mainly constituted discussions concerning investment policy formulation and host state limits in investment definitions.

However, since the year 2000, the discussion has changed, beginning with the International Center for Settlement of Investment Disputes (ICSID) arbitration court in Mafezzini v. Spain. In it, it was found that the function of the standard could be extended far more than before. An interesting aspect of this decision is that the Arbitrary Tribunal went against the general norm, which at the time had a very restrictive interpretation of the MFN treatment with respect to importing original provisions from other treaties, especially when the provision was absent from the original treaty. and changed the scope of the application of the treaty, especially the negotiation.

With the discovery of the Arbitration Tribunal, the scope of the MFN standard has evolved from strictly actual negotiations to reach a process of international dispute settlement. Since Mafezzini's decision, several cases have dealt with the relationship between the international arbitration process and the scope of the MFN standard and the results are inconclusive. The reasons for the conflicting results are many, complex and controversial. Suffice to say, the conflicting verdicts point to a lack of a defined stare judgment.

The question whether the MFN clause can be extended to procedural provisions has now crystallized into three schools, with one saying yes it can, one saying it cannot and the third saying That is impossible to say. With this development, it is possible to understand that the possibility of predicting with any certainty the obligations undertaken by a contracting party when the MFN standard is incorporated in the IIA is significantly reduced in the area of international investment law.

Also, the sector has experienced a 57 percent increase in treaty-based investor-state dispute settlement over five years. The states concluded 5,939 IIAs at the end of 2009, and during the same year, international arbitration produced approximately US$170 million in damages in favor of the claimant.

This thesis argues that this development is not desirable and that judicial predictability is an important aspect of international investment law. In the context of arbitration, both states and investors will have cause for concern when they see that the same argument succeeds one day and fails the next. For investors, legal uncertainty creates an inability to accurately assess commercial risks, where states may experience an inability to exercise their legislative and regulatory powers without the risk of litigation.

To remove the uncertainty about how to interpret the MFN standard in IIA, this paper proposes that one has to investigate the teleological meaning of the standard. The hypothesis of this thesis is that the MFN standard is a clear obligation and therefore has a precise scope of application, which may or may not include procedural provisions. This letter also envisages that the parties to a treaty are aware of and intend this when drafting an agreement. In fact, the notion of MFN "standard" itself leads to such a conclusion.

In 1999, when the first edition of the UNCTAD series of international investment agreements (IIAs), "Challenges to Most Favored-Nation (MFN) Treatment" was issued, the vast majority of international investment agreements (IIAS) concluded by states were contained . A provision under which parties to the treaty must propose the treatment of most favored nation (MFN) rule. Investors and investments of the other Contracting Party. However, significant changes have occurred since then, both in terms of practical implementation of the convention and in the development of arbitration interpretation (Unctad 1999a).

Although it is a common feature of public international law and regulation practices and governance in international economic development, MFNs have been developed in the context of international trade and as a part of member states to provide preferential cargo handling and free trade agreements. acted as a liability. FTA). and services, in relation to entering the market. The MFN is a central pillar of the international system aimed at ensuring that a country does not discriminate between its partners. The MFN defines it as the "cornerstone" of the World Trade Organization (WTO), and "define the rules of the General Agreement on Tariffs and Trade (GATT)" (WHO, 2004).

According to the IIA, National Treatment (NT), the selection of necessary treatment is a standard according to which member states must report it to foreign investors, in order to

offer equal competition opportunities by the foreign state hosting the member state. Treatment MFN should be used as the second standard of treatment for IIA. This usually precedes host states and HT enforcement, and comes in the form of additional guarantees of equality and non-discrimination. First Bilateral Investment Contracts (BITs) usually do not apply to NT entries in MFNs and countries, it is up to investors in accordance with previous agreements to ensure that when-NT is available on the second contract. This applies to you as well.

ClassicBit focuses on protecting investors and investments in accordance with the laws and regulations of the host country and, once established, to provide NT and MFN investors and investments. However, in some forms, slightly more general, it is a free trade agreement or economic partnership agreement (EPA), as well as investment liberalization. They can do so through NTs and MFNs for foreign investors at the stage of primary registration, i.e., third for citizens of this country (NTs) or members of the general public to obtain the right to invest in less favorable circumstances. for. Country (MFN). It's not like this. . With this approach, the NT and MFN (although more specifically, under the previous approach, the standards are used in countries that are required to perform all barriers and restrictions on the entry of foreign investment and, as a result, the use of services). Publicity How it is necessary for their application.

When discussing MFN treatment in the IIA, the regulation will focus on developments of an economic and/or political nature, for example: in the area of application (ie, investors and investments, as well as before and after settlement), with as well as exceptions (general and specific to a country). use, including the presence of regional preferential transactions and "citizens" who may attempt to use them. MFN, as always, was not brought into controversy, and its position, as well as investments, were more concerned with the interpretation and application of the public authorities' terms, conditions and standards. (Lam, 2013)1

The application by arbitration courts of measures defined in the Law on the Settlement of Disputes between Investors and the State to resolve legal issues was not taken into account

in the statement of claim during negotiations or implementation of the IIA, and in particular in the BIT. Regarding the claim, the size of the majority of the IIA agreement. It was created in 2000 by an investor against the Empire of Spain (see, for example, Section II.C. 2 Mafezzini d.Spain).

In the early 1990s, the first BIT requirement was: "AAPL v. Sri Lanka (see Chapter II below. (b) applicant wanted to borrow from genuine third-party default liability, Lamm, 2013), by convention time attempt failed, And the application mfn it does not attract much attention from Kriegen. Jurisdiction MFN in the cases relating to the jurisdiction of the courts of Spain v. Jurisdiction MFN highlights the possibility of applying the rule of ISDS rules and causes a heated discussion , which now In fact, the Maffezini Funds was the first of a series of court decisions regarding the use of MFNs, which is to import the ISDS prescription of the third contract, considered more useful to job seekers. Some of these requirements were incorporated through the expansion of the scope of the ISDS rules, while others, such as Mafezzini v. Spain, were intended to eliminate the need for arbitration. These decisions were reinforced during the disc. particularly in the light of the fact that the Court I was inconsistent in her arguments and conclusions. (Lam, 2013)1

As a result, states have begun to express attention or concern about the increasing level of uncertainty.

Mafezzini v. In Spain, prosecutors are attempting to use the remedies clause MFN invested in the original contract (a contract between a country of origin and a host EU member state that deals with arbitration) to claim more favorable points of origin. for. Ha. safety and security. For example, tried to create import provisions on fair and equitable treatment (FET) that are not available in the same terms of the original contract, or (Lamm, 2013), and as a substitute for clothing objections appropriate to the original contract Simply exclude the condition included in the third part of the contract.

In the world of BIT, which today includes more than 2,700 countries, it is denuclearised, and the lack of stability is primarily the result of negotiations on the agreement. Until now, the courts worked in different ways, and sometimes in different ways. In this respect, the

potential for weak or strong security commitments unlike others is a tangible reality for many countries with different treaty partners. (Lam, 2013)1

It is important to have a clear understanding of how the laws of governance work. MFN must be completed by arbitral tribunals (Lam, 2013), and 1 - for imports, the so-called best measures, and then please assess whether this is the desired outcome, ii. It is also important to assess how the contract of practice was developed, and (Lam, 2013)1. To what extent have the states responded to the debate on the MFN regime? Means Member States:

* Make better informed decisions to develop and align various causes (more precisely, scope, statements, exceptions, etc.). Article about the MFN clause) (Lam, 2013) [1]

* Management of international obligations by other means, such as the question of negotiation, negotiation, and interpretation of collective and unilateral declarations); and (Lam, 2013) 1

• Please take into account the reasons for failure or success in the context of this process. (Lam, 2013)1

From the outset, it should be noted that international arbitration and access to foreign investors, as indicated in the ISDS rules for the vast majority of IIAs, is a feature that has no analogues in other areas of international economic law. This privilege, granted to a foreign investor, is of an extraordinary nature, as it is distinct from international law, which requires the adoption of any measure or action taken by the State, and within the national jurisdiction of the State. Appeal can be made. Only after the developer's local system expires can the country he is a citizen of, take action against the country, but it is never used for investors. The move away from a fundamental principle of international law carries significant implications for states because of the risk of global liability, so it is not surprising that the merits of the case are referred to international arbitration, which has to

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

be drawn up by consent and consent. I went. MFN, need repair options.(Lamm, 2013)[1] The expansion has given rise to controversy and concerns.

It is also worth noting that the ISDS provisions in the IIA Agreement are, in fact, intended to protect the land for any loss or damage caused by your actions or measures taken by the State. In most cases the MFN restores claims that have been caused to the vessels, using the best legal remedies, promptly, as opposed to determining the fault, and creating compensation for the damages caused by the breach. Perhaps it should not be in the role of an investment court obligation, or to try to protect their compatibility. For example, they do not compel the state to accept the return on investment in the host country due to the provision of the MFN regime, but this is not sufficient to compensate for the losses incurred as a result of selective and discriminatory liberalization. (Lam, 2013))1

In the context of global investment, the current debate is not focused on alleged wrongdoing or infringing MFNs. Instead, it focuses on the owners' ability to choose one of the so-called improved security terms, ISDS, and thereby reduce or modify the terms of the original contract. Is it a mod application mfn found in many arbitral awards and original documents and as a "purchase contract" by some commentators. The term is generally understood to mean investments in profits structured or created in the country on the basis of double taxation treaties or MFNs (rarely more), while not actually conducting business activities in investor practice. However, within the arrangement the MFN term "contract of sale" is used to refer to the import implementation of the provisions in the country of origin, the TNC, and does not in itself carry a negative connotation. (Lam, 2013)1

Not as a formal source of international law), shed some light on the actual content and practical application of MES. However, in the case of the MFN regime, and prices did not provide clear instructions to the negotiators or beneficiaries of the contracts, they made contradictory statements (not to be based on a difference in wording and different ideological views on how the MFN regime works).). Additional information is generated. States who participate in negotiations and agreements, politicians who develop investment

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

plans, and investors who are present and working in a foreign country looking for forecasts in terms of their responsibilities and benefits. The negotiators should be aware of what responsibilities they actually need to perform, if the rule clause mfn and, iia them. In the context of arbitration, both the state and investors have reason to worry about where to find the same argument, so you can send it one day instead of the next. There is disagreement, they have a special meaning. (Lam, 2013)1

In this context and with the appropriate choice of the table of policy makers, this article attempts to examine the evolution of the clauses of the MFN regime, the IIA agreement. It will also review arbitration and original documents that have been set against the backdrop of the 2000 case in Mafezzini v. Spain. Part I provides some of the most important questions about the treatment of MFNs and their interactions. It examines the purpose and scope of the application, as well as the application of liberalization and foreign investor protection in recently agreed practices, and provides an overview of the legal benefits of the opposite regime MFN (Lam, 2013).

In particular, the document will announce the results of the latest agreements on the application of exercise and governance MFNs at various stages or stages of investment. It will assess the extent of application of MFN treatment, pre-investment and/or post-investment stage with respect to various approaches in the inter-agency agreement on application of MFN treatment. For investors and investments. Exceptions used to limit the scope of time law are country-specific exceptions for commitments made in the MFN or Regional Economic Integration Organization (REIO), or period of taxation, or establishment. (Lam, 2013)1

According to the article, it is necessary to analyze under what circumstances, the application of the clause on the governance of MFNs, and, conversely, the actual protection of the rights of investors under the IIA agreement and the essential conditions of sale, as per the latest amendment. This is the entry into the destination country. Mediation. (Lam, 2013)1

The paper will then address a recent conference on countries' response to the exercise, and how governance can be implemented. MFN treatment is given in IIA. (Lam, 2013)1

The final chapter will take into account the impact of the governance rule MFN treatment for public policy development purposes and the potential impact on the design and construction of the host Member State. MFN with respect to liberalization and security among Member States, including IIAs, to train negotiators to meet and implement policy objectives, taking into account the overall goal of the MFN governance in the context of the IIA, and the implications and meaning of the commitments . and priorities. The document will also contain a number of options, as you say, on how Member States wish to address, clarify or limit the further development of this provision on MFN in the system. (Lam, 2013)1

Which country is the Most Favored Nation (MFN)?

Most Favored Nation (MFN) regime, which is one of the Basic Principles and Common Terms, as well as obligations of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). The basic rule of this recipe is that a GATT/WTO member state must offer the treatment of MFN to all other member states and cannot isolate itself. In this respect, every other GATT/WTO member was the "most favored nation" on an equal and non-discriminatory basis. In the sphere of trade, meaning that the duty payable by a country called MFN is taken from its exports to the markets of countries where MFNs are used in other countries, and all countries must be treated as MFNs. You will need to consider

One of the Most Favored Nation (MFN) provisions requires a state to grant concessions, privileges or immunities to individuals participating in a trade treaty and to all other WTO member states. As the name suggests, etc. The principle of equal treatment applies to other peoples, and to all EU countries.

The provisions of Article I of GATT stipulate that Member States grant treatment to all other Member States, and basically define the principle of non-discrimination among WTO members.

* Customs duties and duties of any kind that may be imposed in relation to import or export or in connection with the international transfer of import or export payments;

• How to upload these charges and taxes;

• all rules and formalities relating to import and export, and

• The right to exercise options, mercy, privileges or protections provided by a member of the WTO, if goods originating from another country or a good product related to it, appear in the territory of the other Contracting Party or the member is assigned with immediate and unconditional reason.

Definition

The Most Favored Nation Doctrine is one of the main principles of the World Trade Organization (WTO), and that the rights of one country to another with respect to non-discriminatory trade policies are enforced on the basis of the principle of reciprocity, which its Meaning that both the countries have the lowest import duties and enjoy quota restrictions on imports.

The Most Favored Nation Doctrine is one of the main principles of the World Trade Organization (WTO), and that the rights of one country to another with respect to non-discriminatory trade policies are enforced on the basis of the principle of reciprocity, which its Meaning that both the countries have the lowest import duties and enjoy quota restrictions on imports.

The provisions of Article I of the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO), as well as the extension of this regime to

all signatory states, to another. However, general markets, customs unions and free trade zones enjoy exemptions from the MFN provision.[1]

WTO Most Favored Nation Concept

Most Favored Nation Treatment (MFN) - According to international economic relations and international politics, it is the level of state or opportunities used in international trade or commerce from one state to another. The term means that the country that is the recipient of such treatment, at a nominal cost, you will receive the same name benefit that contributes the most to the country where such treatment is applied.

literature review

Agarwal (1982) showed that the role of exports is an important factor in economic development. The export sector of the economy is considered as a catalyst, which contributes and accelerates the process of economic development.

Robert (1987) in his article "Developing Countries in GATT/WTO" concluded that developed countries do not have as much access to markets as developing countries. These are all GATT rules that all countries covered in this article must follow.

Dubi (1996), who provided a clear and critical analysis of the Uruguay Round of negotiations that led to the creation of the World Trade Organization. As the title of the book suggests, "an unequal treaty—after further running in the trade world", although the author claims that the treaty was unequal, and was a partisan convention favoring developed countries and developing ones.

Nayyar (1997), discusses the industrialization process, as well as the current changes in the perceptions of foreign trade and the planning process in India, and their potential impact on the development of the foreign sector on the economy as a whole. , as well as its effects and consequences. it will be inserted. In the field of foreign trade, I tried to take the place

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

of the external sector in the broader context of strategic planning issues, industrial and economic development.

Mehta (1997) in his research found that the process of liberalization has led to a significant reduction in the protection of Indian industry. However, no changes were made to the structure of the company. After a period of recovery, there was no sign of any improvement in external competition, and India's highest export growth rate was a result of changes in our markets in the Asia-Pacific region.

Harry White and John Wise (1998) concluded in their review that they are strong supporters of a liberal international business environment and recommend that three institutions should be established: the International Monetary Fund, the World Bank and the ITO..

Purpose of MFN Clause

In the context of international trade, the MFN regime is essential to ensure equal opportunities for all trading partners, and is therefore a central pillar of the international trading system. The MFN mode aims, in order, it is to be able to ensure equal competition among foreign investors of different nationalities who wish to invest in the host country. Foreign investors should be reassured that there is no negative discrimination that puts them at a competitive disadvantage. Such discrimination includes situations where competition from a foreign country is treated more favorably. So the standard MFN helps to determine the equality of competitive opportunities for investors in different countries of the world. It seems that competition among investors suffers from discrimination due to nationality.

The regulation on the MFN regime in the contract with the equipment that most accurately matches the target, and the target itself is IIA. The regulation on the IIA regime should play the role of guaranteeing fair treatment and conditions for foreign investors, or the IIA

[1] 2 For a detailed reading of WTO/GATT agreements, please see WTO, The Results of Uruguay Round of Multilateral Trade Negotiation

will be liberal without any responsibility to liberalize the access and working conditions of a foreign investor and/or developer and/or investor . these conditions. security of their investment. Simpler, more liberal or less strict. In practice, the effect of MFN treatment will vary significantly when used in combination with NT: •:

* guaranteeing the right of foreign investors to enter and establish, as well as the conditions applicable to the initial stage of investment formation;

*Ensure that dealing with investors and their investments is done in accordance with the law of the host state, this will be no different.

The Parties to the Federal Republic of Germany in Egypt (2005) provides a list of legal remedies that may be considered less beneficial from the point of view of the BIT regime with respect to investments in your article. The list of sites shall, in particular, include differences in treatment in terms of means of production and operation or operation of each type of improper conduct, as well as to reduce the amount of raw materials or auxiliary materials, consumables, electricity or fuel Huh. In the event of any interference in the market of the products within or outside the country, as well as all other drugs of similar action.

This is a list of measures—also known as operating measures, performance standards, or trade-related investment measures (TRIMs) within the multilateral trading system. Let us see what is the nature of the matter that investors will not be exposed to, and where are the MFN measures applicable to you. On. The Egyptian-German BIT (2005) also refers to "measures aimed at ensuring public safety, order, health or morality", and states that they should be regarded as "less favorable remedies" according to this article. needed. “6, as indicated in Column 3, the states responsible for foreign investors derive from various legal acts and measures the MFN-remedy-component focuses on those actions or measures.

Aim

Most Favored Nation (MFN), also known as normal trade relations, with the guarantee of equal trade opportunities for the most favored nation at this time; In effect, it is a method of determining equality of opportunity among member states in the conduct of bilateral, multilateral agreements. Sovereign equality of all states in the field of trade policy, as a principle of public international law. Providing a legal basis for competition in international transactions, as an instrument of economic policy.

Research objectives and questions

With this in mind, I would like to answer four key questions:

• What country might be best suited to introduce procedural rules in international investment arbitration?

* What are the procedural rules and objectives of the MFN standard?

• What exactly is the problem of priority dispute?

* The use of presentations by the court, i.e. the evidence provided for the case and by the question?

I believe these questions need to be answered to help me predict the consequences of meeting the obligations of the standard MFN and its consequences. Although the company's resources are limited, the purpose of this study is to provide a comprehensive understanding of the application of the MFN standard in the event of a dispute, using quantitative analysis of the current situation.

METHOD

This thesis provides a legal affirmative approach to answer the questions raised, and provides evidence to support this hypothesis. I mean, in the international legal system, the nature and structure of international justice can be removed from the hierarchy of norms. Thanks to the hierarchy of norms, you can distinguish between standards that are

mandatory and those that are not. To confirm the correctness of the interpretation, I must refer to the hierarchy of sources of law provided for in Article 38 of the Statute of the International Court of Justice. It identifies the following sources of international law:[1]

a) International conventions, whether general or private, establishing rules that should explicitly state the enemy:

b) as evidence of a common practice accepted as law in international practice;

c) general principles of law recognized by civilized people;

d). Subject to the provisions of Article 59, Judicial Judgment and Science

LIMITATIONS

Since this problem is extremely complex, and the scope of this study has many limitations, I think it is necessary to pay attention to it. First, I think I should say that the legal position, however, is not an exact science, and anything that differentiates between the positions of various arbitral tribunals, including a dissertation, is like a book. Second, this study is applicable only to cases in which the article is about MFN, it does not directly indicate whether this standard applies to the dispute resolution process.

There are many subtasks that this thesis will address, but will not analyze in sufficient depth. It deals mainly with questions of space and boundaries, but it is also difficult to summarize when similar situations also produce very different results. For example, if the original contract provides for a dispute resolution clause, but the investor does not know what type of transaction, it could be a third party that Most Favored Nation-Knows-Provided to them. options to use? I can do. contract? Another example is the original contract, the special conditions for initiating international arbitration, article MFN, which must be enforced to take advantage of the favorable circumstances of a third party convention? But I don't think the answer is to focus on the consequences, it relates to the

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

question of whether there is a need for a system of restrictions and restrictions on the operation of the provision on MFNs in the context of dispute resolution.

CHAPTER 2

Origin and History of the MFN Standard

Although the twelfth century provisions on the mfn mode, they were a common feature of most treaties of friendship, commerce and navigation during the eighteenth and early nineteenth centuries. This early article was very comprehensive and dealt with a wide range of issues such as "rights, privileges, immunities and exemptions in respect of trade, commerce and navigation" or "rights in relation to ships", as well as access to exit was. I had to. Properties, as shown in the examples.-1

examples of the first mention

Treaty of Friendship and Commerce between the United States of America and France (1778)1

Article 3.D

Most Christian kings and subjects must be paid at the port of port, roads, countries, states, countries, towns and cities of the United States of America, or any of them, and any other large or duty of a target or nature, or of that country. in the name of which most of the time or you have to pay for them; and shall exercise all rights, liberties, privileges, immunities and exemptions in trade, navigation and trade, or as such from one port to another, or the period, and the period, and the period. part of the member states. the world that the people in question are making or enjoying1

References

Alejandro FayaRodríguez, A. J.-B. (2010, nov). *MOST-FAVOUREDNATION TREATMENT.* Retrieved from Unctad.org: https://unctad.org/system/files/official-document/diaeia20101_en.pdf

Art 4

From subjects, peoples and inhabitants in the United States, as well as from each of them, you will not have to pay at the ports, the port on the island of Rhodes, the islands, cities, towns and cities of Europe, one of His Most Christian Majesty. any other, or any kind of high duty or levy or under whatever name the most favored nation is, or to be paid; and to make full use of the rights, liberties, privileges, immunities and dismissals in trade, navigation and commerce, whether in the passage from one port to another within the said Dominion in Europe, and from there to be part of it. The world from which he uses the said people or will.1

Treaty of Friendship, Navigation and Commerce between the United States of America and Greater Great Britain, and the Treaty of Union (1794)1

Article 15, it was decided that there shall be no other or greater duty to be paid by the ships of one party or the property of the other party if they pay for comparable ships or goods from other countries of the world. Nor shall any other or higher duty be charged for the import, research and development, production or production of products in the country (Lam, 2013), which would or would be paid for the import of the product from which it was developed, produced . or produced in another country. building construction. At the same time, there will be no restrictions on the export or import of goods, or all other states of the world subject to the territories of both parties.

These are the first points, often conditional", meaning the benefits provided by a state that depends on the host member state for such an agreement. The approach developed at the end of the XVIII century is undeniable. A good example is commerce. Treaty and Industry (Bachelor-Cobden Treaty), signed between Great Britain and France in 1869.1

This trend was reversed after World War I and during the economic crisis in 1929, when the protectionist core approach was adopted. However, after World War II, inspired by new forces, hatred, an unconditional approach to the handling of the MFN, it was reborn in the context of the Malecon map, which was agreed upon in 1949, but not implemented) . It was back in the GATT of 1947, as the unconditional MFN, was one of the key pillars of the multilateral trading system. (Lam, 2013)1

MFN entered the GATT

Article I

regulations of import and the formalities relating to exports, and in respect of all matters referred to in paragraphs 2 and 4 of Article III, second, the State must be immediately and permanently supplied with similar products obtained or intended from the territory of the other contract. Party.1

Today is the day when the rule MFN In WTO agreements that go beyond basic trade in goods, areas of trade in services and issues related to trade, intellectual property laws are referred to.1

Meanwhile, in 1970, the International Law Commission (ILC) recognized the importance of governance MFN According to international law, "by drafting

articles on the most favored nation" (in 1978 draft article, MFN) the ILC recommends to the United Nations General Assembly that the adoption of the treaty, however, should not be carried out. The purpose of this document was to strengthen and further develop the use of the mentioned??? In treaties between the states of America. The draft statute addresses issues relating to, inter alia, the definition, scope and consequences arising out of the conditional or unconditional nature of the condition which is a source of legal remedies in the event of suspension or termination.1

For the first BIT, signed between Germany and Pakistan in 1959, it contained provisions on the MFN regime and was summarized in the conclusion of agreements during and after negotiations. Given the protectionist policies currently being implemented in many countries, the BIT NT in the early stages is not always determined by the contracting parties. The MFN was considered less problematic (due to the rare use of selective intervention among foreigners as a "foreign country") and was included in the agreement to ensure equal opportunities among foreign investors from different countries. The MFN treatment segment class in BITs predates the co-provisioning of HT in the early 1980s, and can be found in most MoES today. However, out of 715 IIAs tested by UNCTAD, it follows that in only 19.6% of the cases it is not only about the MFN. Following the 1976 Declaration of International Investment and Multinational Enterprises by OECD member governments, MFNs and other free trade agreements (FTAs/FTAs) concluded by countries in the region have included the NT regime and all conditions on MFNs, both provisions of the convention. Words and attitudes among OECD member states have increased significantly with the spread of the IIA trend.

The number of online users is growing rapidly, with a total of 2,750 at the end of 2009. In the late 1990s, especially after the formation of the North American Free Trade Agreement (NAFTA) (1992). There were 295 international investment laws that began to appear under FTAs or US by the end of 2009 (UNCTAD 2010)1

CHAPTER 3

Most Preferred Nation (MFN) Treatment for India

The issue of granting Most Favored Nation (MFN) treatment to India has sparked a heated debate with a number of strong arguments in favor and against the decision. As the federal cabinet announced in November 2011 that it had decided to give Pakistan an 'in-principle' Indian decision (in 1996) to grant MFN treatment, not only a nationwide debate began but protests in some parts of the country. Demonstrations also started. Decision.

Proponents argue that there is no harm in granting the MFN treatment, as both Pakistan and India are already members of the South Asia Free Trade Agreement (SAFTA), which can be termed as the MFN-plus arrangement. Those opposing this move believe that it will increase the influx of Indian goods into Pakistan and the Pakistani industry will have to bear the brunt. There is also a very strong opposition to any liberalization of trade with India on political grounds.

effect, positive or negative, different; It would not be wrong to say that the issue is misunderstood at the public and even academic level. This paper briefly introduces the concept of MFN treatment, sheds some light on recent developments in the context of Pakistan India; Explores its implications for Pakistan and suggests an approach for Pakistani decision makers. Pakistan India trade is a broad topic and inevitably has a political angle attached to it, which cannot be ignored in any discourse. However, the letter reaches out to the recent decision of the current government in Pakistan to fully liberalize trade with India by the end of 2012, by providing MFN treatment from the

beginning of January 2013. The write-up, however, traces, in essence, international pressures to Pakistan highlighting the decision more as an instrument of the international agenda than swadeshi in this regard.

Exceptions to MFN

However, the above provisions do not mean that MFN treatment is mandatory for all member countries. GATT, agreement in operation with effect from January 1, 1948, which changed to WTO with effect from January 1, 1995 (also known as GATT 1994, as the same agreement was continued with some modifications and several additions) Some provide exceptions to this general principle. These exceptions include

• When two or more member states enter a 'free-trade zone' or 'customs union', they are not required to give equal tariff treatment to members outside such arrangement (GATT 1994 Article XXIV of

• When member countries offer certain trade benefits to another member country for the purpose of facilitating marginal traffic (XXIV. 3)

• Further, the MFN treatment does not apply to government procurement and can be denied citing Article ** for security reasons.

This means there are still 'reasons' one country can cite for blocking or denying MFN treatment for another. Apart from the exception mentioned above, a special exception has been provided in the GATT specifically for Pakistan and India. Article 11 of Article XXIV of the GATT is read as a follow-up.

Taking into account the extraordinary circumstances arising out of the establishment of India and Pakistan as independent states and recognizing the fact that they have long constituted an economic entity, the Contracting Parties agree that That the provisions of this Agreement shall not prevent the two countries from entering. Special arrangement in respect of trade between them, pending the establishment of their mutual trade relations on a fixed basis.

This particular exception literally provided an exception to the two countries entering into a specific arrangement for reciprocal trade "pending the establishment of their mutual trade relations on a certain basis." However, this 'exception' is seen by some as a 'positive' exception rather than as a prohibitive exception, as it implies that both countries originating from the same economic entity are required to go beyond the general principle to an arrangement. was allowed. MFN, there is no denying it.

It may be noted here that Pakistan is not the only instance of using the exception and not providing the MFN. In his recent book on China China for the United States of America (2011) Hennery Kissinger (2011) also describes that politics has been practiced as a tool for achieving its political or economic objectives in the case of various countries including The grant of MFN was used in the grant of MFN treatment to China by the United States, not so long ago.

Pakistan-India affair

Since independence in 1947, Pakistan India trade has been conducted on the basis of several bilateral, regional and multilateral arrangements. However,

due to two wars between the two countries, commercial relations were blocked between 1965 and 1974. Business resumed in 1974, and remained at a negligible level for the next two decades.

India provided MFN treatment to Pakistan in 1995, soon after the formation of the WTO, and the treatment has been in place since 1996. However, Pakistan had so far not responded, saying that despite giving MFN treatment to Pakistan, India has imposed several non-tariff barriers (NTBs) against imports from Pakistan. These NTBs include political/security clearance requirements, sampling/customs inspections, technical/standard certification requirements, labeling and marketing regulations, packaging rules and specifications, etc.

Therefore, despite the grant of MFN treatment, Pakistan has a huge trade deficit with India, which continues to grow. According to State Bank of Pakistan data, with import payments of $1,033 billion and export receipts of $313,037 million, Pakistan faced a deficit of $719,857 million in the financial year 2008-09 with India.. In the next fiscal year 2009-10, the deficit widened to $802 million, a growth of 11 per cent with import payments of $1,061 billion and export receipts of $260 million. The balance worsened during the last fiscal year as Pakistan faced a deficit of $1,158 billion as compared to $802 million in FY 2010, an increase of 44 per cent in FY 2011.

Although Pakistan did not give MFN treatment to India, it maintains a positive list of items it imports from India, in which it continues to grow. The list began with seven items when trade resumed after a gap of 9 years in 1974, reaching 800 items in 1996 when India

[6] Kissinger, On Ch
[7] Op. Cit. Qam

granted MFN treatment to Pakistan and by the end of 2011 when the Pakistani government stepped in. 1945 items had been reached. Towards providing MFN treatment to India.

Recent developments

In November 2011 the Pakistani government announced that it had made an 'in-principle' decision to give India the much-awaited treatment. While there may have been some trickery behind the scenes, the public decision was so swift, apparently, it even shocked Indian officials, if media reports are to be believed. There was an illusion in Pakistan as to what would actually happen. The modalities of the grant of this treatment, as much confusion exists in the WTO/GATT documents as in the clear explanation of how this treatment is done, whether it is automatic or whether it is to be notified.

However, on 29 February, the Pakistani cabinet decided that the 'positive list' of imports from India would be replaced by a 'negative list' of 1209 items, with trade restricted, meaning trade immediately opened to all. Will go Items not listed in 'Negative List'. Surprisingly, in the same session, the cabinet decided that even this 'negative list' would be removed completely in phases by December 31, 2012 and thus, trade with India would be subject to MFN treatment with effect from January 1, 2013. will be based on

Base and ground position

It was argued that since SAFTA already provides a 'sensitive list' for member states, there would be no harm in granting MFN treatment and removing the 'positive list', assuming that the 'sensitive list' is restricted. and unwanted flow of imports from India which may be detrimental to the local industry. However, ironically, the 6th SAFTA ministerial meeting held in Islamabad on 15 February also announced that the member states have agreed to continue to further reduce their respective 'negative lists' with the aim of increasing regional trade.

Another argument put forward by Pakistani authorities and raised by supporters of free trade between India and Pakistan was that in exchange for MFN treatment, India could be asked to remove the NTB against Pakistani exports. Thus, it was argued that Pakistani exports would also increase. Rather, Pakistan would benefit more because the Indian market of 1.2 billion people was much larger than the Pakistani market of 180 million people. However, no assurance or guarantee has been given by India in this regard despite the claims of Pakistani authorities.

The clear reality is that even if India removes all or some of the NTBs on Pakistani exports, Pakistani industry is currently not in a position to profit from the severe gas and power shortages and the damage caused to the Pakistani economy by the 2010 floods. 2011, as well as the negative effects of a decade-long 'war on terror'. Thus, the timing of the decision is also questionable.

International Dimension - Agenda Beyond Bilateral Trade

The decision of the Pakistani government comes in a peculiar atmosphere at the global and regional level, when India is being explicitly promoted as a 'rising power' to counter the rise of China in Asia. Hillary Clinton's speech in Chennai during her visit to India in July 2011 made waves around the world in which she publicly invited India to come forward and take a leadership role in the Asia Pacific region.

There is no denying the fact that Pakistan is under pressure to 'normalize' its relations with India including opening up trade towards Afghanistan and the Central Asian Republics (CARs) and providing transit to Indian goods and services. is. First, the country was persuaded to provide transit facilities to India under the Afghanistan-Pakistan Transit Trade Agreement (APTTA), which was signed in Washington in 2009. Hillary Clinton expressed her desire in an interview to a Pakistani journalist in October 2011. following words.

We share the vision of a sovereign, self-reliant and democratic Pakistan; A Pakistan full of peace and trade with its neighbors and opportunities for both men and women.

The decision to provide MFN treatment to India can also be linked to the much talked about New Silk Route Initiative of the United States, which apparently, appears to be an attempt to give India unhindered access to Afghanistan and the CAR. There is also pressure on Pakistan to open more crossing points for crossing the Line of Control (LoC) in Kashmir. All these steps seem to be in sync with each other, and assume that the decision to grant MFN treatment to India pertains to the international agenda rather than just bilateral trade.

Implications for pakistan

Granting MFN treatment implies that gains would be questionable due to India's NTB and the current fragile state of the Pakistani economy, but the peculiar nature of relations between the two countries and the current state of affairs of their economies has consequences worth considering..

Profit, perceived and real

It is recognized, and is true to some extent as a general rule, that an increase in trade leads to mutual benefit and therefore the decision to grant MFN is beneficial to Pakistan's commerce and industry in particular and the economy as a whole. will have some positive results. Some of these purported benefits, which this Government and its office bearers describe as merits of this decision, are as follows:

• Opposition to MFN treatment for India is often based on a misconception of the definition. It is wrongly assumed that giving MFN treatment to India would mean zero rated and free trade, which means free flow of goods and services. This is not the case, and MFN treatment means the same tariff rate and structure for all WTO member states.

• Pakistan and India are two close neighbours, and doing business with each other will save time and transportation costs. While there is not much direct trade between the two

countries, both countries trade in high volumes through third markets (mostly Dubai, Sri Lanka and Hong Kong), which certainly increases the time and intermediary costs. These costs can be saved.

• Geographical proximity, long borders and lack of desired level of legal trade transactions result in trafficking. Legalizing this illegal trade will increase revenue for both the countries, especially Pakistan.

• It will be beneficial for Pakistan to import only those goods from India which it exports from western and other distant countries. Less expensive goods will be available to Pakistani consumers and it will be in the 'consumer interest'.

• Cheaper raw material will be available for Pakistani industries which can reach Pakistan in a relatively short time.

• Diplomatically it is believed that Pakistan will be able to create goodwill in India and also at the world level. The decision will also result in a Confidence Building Measure (CBM) between the two countries.

The other side of the coin:

The above 'perceived profits' represent only one side of the coin. As is the case with every decision, there will be significant pitfalls in the treatment. For example, a few other things should be taken into account.

• There are several studies that show that compared to Pakistani manufacturing sector, Indian industry is much broader-based, subsidized and more competitive. This is due to the easy and cheap availability of electricity and credit as compared to Pakistan's industry, which operates in an environment of high cost of doing business and severe power shortage. Under these circumstances, MFN would mean that Pakistan's already struggling industry would be wiped out.

• India's NTB and tariff rate quota will continue to hinder Pakistan's export potential, with India's trade deficit continuing to widen.

• Considering the nature of relations between Pakistan and India, in which trade has been closed several times in the past due to hostilities and tensions, and the important issues between the countries are still unresolved, Pakistani industry and economy building cannot afford any dependence on the supply of raw materials, even if the cost of imports from other countries is relatively heavy. It should not be forgotten that India has opted out of the proposed Iran-Pakistan-India gas pipeline as it does not want its industry/economy to depend on gas supplied through Pakistan. • It is not always appropriate to allow inflow of cheap goods only in the name of "consumer interest". A country must always find a balance between being a trading country and a manufacturing/industrialized country.

• The biggest flaw, which is being neglected in the prevailing discourse on the subject, is that MFN does not simply mean the abolition of the 'negative list' of tradable goods with effect from January 1, 2013. The MFN also implies that Pakistan will have to allow free transit. Indian goods, services and their transportation through Pakistani territory to other countries. Soon after the Pakistani announcement to provide 11 MFN treatment, Indian traders have already started asking for transit access to Afghanistan and CAR. Confederation of Indian Industry Amritsar Zone President Sunit Kochhar has demanded that "Pakistan should now act on giving India a transit route for catering to Central Asia." 12 It is well known that most transit goods headed for Afghanistan, mostly subsidized, end up in the Pakistani market, seriously harming local industry. This would be a major drawback in this arrangement. While Pakistan may incur some transit charges, past experience in the transit trade suggests that most goods headed for Afghanistan are dumped in the Pakistani market. In addition, if this happens, Pakistan's weak physical infrastructure, especially the network of roads that have already been dilapidated due to over-use by NATO-supplied containers, could drive traffic from India to Afghanistan and the Central Asian republics. cannot bear the unprecedented load of

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- India's NTB and tariff rate quota will continue to hinder Pakistan's export potential, with India's trade deficit continuing to widen.
- A closer look at the concept of MFN treatment reveals that exceptions exist, and have been used by countries for their own national interest. Based on the above discussion, one can conclude that there may be some short term benefits of providing MFN treatment to India from a purely commercial point of view, but they seem to outweigh the cost and demerits. Thus, this decision could be a heavy cost and risky bet for Pakistan in the medium to long term. In the light of the above

brief discussion on this multifaceted subject, the following suggestions are made for the policy makers of Pakistan.

- A gradual and cautious approach should be adopted and no hasty decisions should be taken, removing the "negative list" within a quick period of only 10 months. Such decisions are not only taken to establish a soft image but the ground realities (economic as well as political and strategic) are also considered accordingly. A gradual and regional approach should be adopted for liberalization of trade with India. In the short to medium term, commodities useful for mutual trade can be added to the "positive list".
- Transit/transit to Afghanistan and Central Asia through Pakistan is very important for India. It is also detrimental to the interests of world powers, especially the US at this time. The idea is not to block India's access to Afghanistan and the CAR. But the concept of business is 'give and take'. Therefore, if Pakistan is making such a huge concession, the country should link it to India with some concessions - economic and political - notably the abolition of the NTB, guarantees of Pakistan's rightful share of water, and assurances that India will support it. Will not defame Pakistan. Terrorism.
- The government ministries and departments concerned should prepare a comprehensive study of the implications of this decision for the economy of Pakistan, and especially for industry and infrastructure, before the grant of the MFN. Remedial and precautionary measures should be taken before this big step.
- The trade and industrial sectors of the two countries should also pressurize the two governments that increased trade would be in favor of both sides; Unless the root causes and sources of tension between the two sides are removed, it will be very difficult to ensure its stability..

CHAPTER 4

Import of procedural provisions from MFN and other IIAs

The MFN measures specified in reverse order in the Applicability ISAF Rules have resulted in a number of arbitral awards whose jurisdiction has been challenged by the responding State. The cases of these two classes cannot be separated. In the first set of cases, the plaintiffs argued that the protection clause MFN is a procedural requirement that is a condition of filing a claim in international arbitration. This has led to a series of cases against Argentina terminated by Argentina with a mandatory 18-month waiting period (during which applications must be made in national courts, local courts) before being referred to international arbitration. Necessary. The first big deal was the case against Spain, but in all of the cases listed below, it is more about Argentina than the defendant's position. Article about MFN It has been used to circumvent or prevent an 18-month claim for local treatment on the grounds that it is not covered by a third party (concluded with you, Argentina). The Respondent also argued that the requisite waiting period was a condition that had to be met for the claim to be filed in the Court, and that the Court has no jurisdiction in the matter, hence this condition should be struck down. In such cases the arguments of both sides may be called "valid" requirements.**Error! Bookmark not defined.**

In another category of cases, the plaintiffs sought to extend the MFN of jurisdiction to go beyond the scope of the agreement, the arbitral tribunal should have specifically provided for in the original contract. The use of the provision on the MFN must inform the Court of any problems and disputes in which the original Member States are opposed or boycotted. Cases of requests for contracts and complaints, as well as for the conclusion of an agreement, according to the arbitration panel, as well as the number of applications for the extension of the jurisdiction of institutions, subject to a premium in addition to the assessment of damages, are considered is. This is the second class of cases, which will be discussed below in the scope of claims.**Error! Bookmark not defined.**

1. Entry Requirements

Mafezzini v. The Court in Spain held that the Argentine-Spanish BIT (1991) ruled regulation MFN, which can be used by an applicant to prevent or eliminate the 18-month waiting period before it becomes available for international arbitration. This argument, used by the claimant, was because the Third Agreement between Spain and Chile had no such requirement, and therefore the ISDS article is less restrictive as far as the Third Convention is concerned. It can then be imported using the MFN clause in the original contract. Relying heavily on the District Court's decision, it held that, although the article about MFNs does not explicitly say dispute resolution; "There were very good reasons to conclude that the dispute resolution mechanism concerns the protection of foreign investors". It was further developed as follows:**Error! Bookmark not defined.**

It can be concluded that if a third-party contract contains dispute settlement provisions that are more useful to protect the rights and interests of the depositors of the original contract, if such provisions can be extended most generously to the recipient , and can go on. As a nation, some of them are in good agreement with the principle of unique counterparty ejusdem. Of course, this third is trying to deal with the same subject matter of the original contract, whether protecting foreign investment and facilitating trade, because to resolve the dispute, the rules in the context of these matters would apply; Otherwise, the rule is allegedly violated. However, there are several important limitations arising from public policy considerations in the operation of the Most Preferred Nation Section, which will be discussed further below.**Error! Bookmark not defined.**

The court examined Spanish negotiating practices, which are best used in Spain for arbitration and class action, after six months of efforts to reach an agreement. In addition, with respect to all matters governing the widespread use of MFN, they can be found only in the treaty between Spain and Argentina, but not in any other BIT no contract was signed.**Error! Bookmark not defined.**

However, the court recognized certain important limitations that must be taken into account and imposed certain restrictions on the MFN clause, while the following conditions must be met:**Error! Bookmark not defined.**

As a general rule, the recipient of this reservation may not be able to substitute public policy considerations that the Contracting Parties recognize as the main precondition for accepting this Agreement, particularly if the beneficiary is a private investor. is. So it happens often. Accordingly, the number of vacancies may be quite less at the first glance.**Error! Bookmark not defined.**

It is clear that in any case, a distinction must be made between a law providing for and benefiting from the application of the provisions of the Article, a good contract on the one hand that would jeopardize the objectives of the policy, and on the other. Specific provisions of the Convention relating to children.**Error! Bookmark not defined.**

The Court goes further and gives some examples of concepts that cannot be overridden by MFNs in the sense that they would not conflict with the goals of the plan, which is considered important from a public policy point of view in many countries.**Error! Bookmark not defined.**

* the arbitration agreement provides for the cessation of the use of local resources,**Error! Bookmark not defined.**

* set out on the path of power,**Error! Bookmark not defined.**

* Establishing specialized forums, such as the ICSID, or (iv) a highly institutionalized system of international arbitration, such as NAFTA (1992), or entering into arbitration agreements under a similar agreement.**Error! Bookmark not defined.**

The same problem happened in the case of "Siemens Vs Argentina". Here the court rejected the defendant's opinion that the interpretation of the MFN treatment, only the interpretation of the transaction with the business and economic conditions relating to the operation and management of the investment, the level of competitiveness of the

[3] Ibid., para. 106.
[4] Paragraph 120
[5] Gas Natural SDG, S.A. and The Republic of Argentina, ICSID Case No. ARB/03/10, Decision of the Tribunal on Preliminary Questions on Jurisdiction, 17 June 2005, para. 49.

investment. A similar comparison can be made in the case of Instagram vs Spain, using logic, he came to the following conclusion:**Error! Bookmark not defined.**

The committee emphasized that "the purpose of the regulation on MFNs is to void the validity of the agreed terms, unless they have been omitted." This statement cannot be considered too broad. The Court also rejected the defendant's argument that if an investor is compelled to import harmful aspects of the Third Convention, he must import from harmful aspects already recognized by the creation of the petition "on contracts". Should have done. If we are talking about the package of negotiations. Advantages and disadvantages of trade-offs compared to the benefits they provide**Error! Bookmark not defined.**

The article about MFN is only of a general nature, and its application is only concerned with the benefits, context and degree of expected benefit of the agreement?**Error! Bookmark not defined.**

In fact, GAS, The Natural v Argentina, while satisfying itself that the provisions of ISDS are part of a comprehensive package of protections to foreign investors and except for the "sting" given to it by the host state, the Court held that, Except where the condition is expressly stated BIT and the parties to the particular investment contract are otherwise settled by settling any dispute that may arise in connection with the provisions of the BIT. The Most Favored Nation Agreement should not be considered the subject of a dispute settlement plan. Suez v Argentina, following a similar approach, reaffirms that the goal of peso-Spanish MFNs is from the point of view of promoting and protecting investment, and that it is as important as resolving disputes on other issues, BIT subject to and shall be an integral part of it. These investments are part of a security agreement that was agreed upon by the two sovereign states—Argentina and Spain. The Court focused on the wording of the provision on the BIT with respect to "all things", with the list of exceptions not

including ISU. The courts of Cammuzzi v Argentina-The National Grid and AV Argentina, as well as AWG v Argentina, reached similar conclusions.[1]

In such cases, the arbitration courts have not yet enjoyed full access to the article on MFN. Sent to court for arguments in the case Instagram v Spain and listed a number of restrictions on the operation of the provision on MFN. As mentioned above, certain government policies and restrictions adopted by the parties to the contract were taken into account. In addition, "it was necessary to distinguish between destructive contracts and purchases that would harm public policy under the law providing for profit and benefit during the use of the products on the one hand and specific provisions of the contract on the other." In Argentina, the Court ruled that the recipient of the provision on the MFN cannot be dominated by considerations of public policy, as determined by the contracting parties to the treaty, as required by the treaty. The International Criminal Court in Gas-Natural-V-Argentina rejected the argument that the 18-month length of service was because public policy principles are 37, while the court in Network Nacional and AV Argentina found that some candidates had " There were reasonable limits" in the mfn clause. I tried to use it.**Error! Bookmark not defined.**

However, the court then reaffirmed the hypothesis that the use did not require consent and jurisdiction over jurisdiction as it was "obviously bad". In this regard, "compromise" is particularly important as the fundamental principle on which power is based.**Error! Bookmark not defined.**

"Furthermore, it is a general principle of international law that international tribunals and courts may exercise jurisdiction in a member state subject to their consent. This is a principle often described as a consequence of the sovereignty and independence of the state. Authority is not sufficient to consider as a restriction on the liberty of the State which has not been agreed upon and shall not be considered by the Court.**Error! Bookmark not defined.**

The court ruled that the "line" (with a delay of 18 months), whose criteria "is part of Argentina, is a motion for ICSID arbitration", which "must be accepted by the investor on

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

an equal basis". Furthermore, the court based its decision on the the analysis of the provision MFN on development and concluded that "treatment" is comprehensive, not contested. The committee reached the following conclusions.**Error! Bookmark not defined.**

With the option of choosing one of the investors, each option under different circumstances, negotiated with the other party under different terms, and, in general, without ado, it is referred to as a dispute resolution order.**Error! Bookmark not defined.**

The original contract is rewritten with, unless, of course, the clause MFN The original contract does not explicitly indicate that it should not be interpreted as if it were not so in this case.**Error! Bookmark not defined.**

The Court holds that with respect to Siemens, the Court holds that:

Avoid adding words in line with the intended purpose. This is a practice presented as a statement that "this site has a tendency to create meaning.**Error! Bookmark not defined.**

Court said that:

Even words like "all about MFN" are not sufficient to extend such a clause to the BIT's provisions regarding dispute resolution.**Error! Bookmark not defined.**

It should be noted that regardless of the analysis, decisions regarding the nature and scope of the powers conferred under the ISDS, which are the actual length and broad concepts used in the ruling clause MFN, can only be made by an arbitration court. cannot be removed through You can do this.**Error! Bookmark not defined.**

2. Jurisdiction Requirements

Within this category, many cases were dismissed under the Spanish approach of Mafezzini de. Spain on the grounds that the component MFN - Cleaning - cannot be used to interfere with or circumvent the basic design provisions. The things you should follow with this approach are Salini, Plama, Telenor and Bershader. In these cases, the courts have expressed doubts that the contracting parties could be rational, meaning that the authority

was established to include the information by reference, except where it was intended to be used for the ISDS related to the original draft. was designed for. I really don't understand the rules.[Error! Bookmark not defined.]

In fact, does the "Salini vs Jordan" investor use the tool??? Which is to prepare contractual claims, the ICSID Court held that the original contract, the Italian-Jordan BIT (2001) stipulated that any dispute regarding investment in the contract should be settled in accordance with the terms. Since examining the main issues related to this issue, the court rejected all comparisons with Ambitelos. The court criticized Instagram v Spain, arguing that "it may be difficult to implement in practice, but how to add even more uncertainty to the risk of buying a convention". The Committee further observed that there is no provision in the proposal of MFN to increase the scope of ISU:[Error! Bookmark not defined.]

The plaintiff did not provide evidence to establish the common intention of the parties to invoke the most favored nation clause in dispute resolution. Conversely, suppose, as defined in Article 9(2) BIT, legal, contractual disputes that are very close to ICSID between an investor and a public authority of the State, which is a party to the dispute, pursuant to Can be conducted with established procedures. Finally, in investment contracts, plaintiffs do not refer to all practices inherent in Jordan and Italy in support of their claims.[Error! Bookmark not defined.]

In fact in the range of the application of the application of the applicant of the spot V Bulgaria original-??? In the area of jurisdiction limited by the Recovery of Forfeiture Act. Reason, in the hope of achieving this goal, is open to other types of requirements, in terms of part of the wider ISDS proposal. However, the court did not accept the arguments presented by the plaintiffs, despite the fact that these arguments were a deciding factor with respect to the 18-month claims (see The Court also examined the history of the BIT concluded by Bulgaria, and the fact That Bulgaria used as the last bit of conditions during the communist regime, and the talks between Bulgaria and Cyprus in 1998, experienced this particular issue. It seems very reassuring. Within the scope of the ISDS proposal.[Error! Bookmark not defined.]

The Court came out with a well-established rule, that in both domestic and international law, that an arbitration agreement must be clear and understandable, and thus indicates that the parties' explicit intention cannot be determined unless the arbitration not be affected. through this. Thanks for the integration of the information from the link.**Error! Bookmark not defined.**

Further, the court pointed to the need for an objective test for less favorable treatment.**Error! Bookmark not defined.**

Furthermore, any doubt about the relevance of the provision on the BIT deepens the difficulty in applying an objective criterion to confirm the problem from the integration of provisions relating to dispute settlement and other treaties that comes from a more thorough investigation. . The applicant claims that the investor is clearly better off having to choose between various alternative dispute resolution mechanisms, and that if the entire dispute is resolved in arbitration, as provided in Bulgaria, Finland, you will be liable for the amount of compensation. in ad hoc arbitration for damages to the site. The Court agrees with the contention of the applicant that in this particular case there is no alternative, it is preferable. But what if you have one BIT providing commercial arbitration and the other in ICSID indemnification? "He is better.**Error! Bookmark not defined.**

In addition, great importance is attached to more radical results in the search for a cause. We are talking about the risk of "covenant purchases" going out of control:[1]

It should be better added to the appeal to the convention that presents you. It is a completely different matter that it needs to be changed, the process is exclusively chosen by the parties to a completely different process.[1]

In the case of a multilateral or bilateral investment treaty with specific dispute resolution provisions, States are expected to replace such terms in future, in whole or in part, with other dispute resolution rules based on the dispute resolution provision, when , unless Member States agree that the current International Criminal Court does not see how to rely on a dispute resolution order, this may lead to harmonization of dispute resolution law.[1]

"In its basket and remedies with regard to settlement of disputes in the service sector (for example, claims of plaintiffs, and on self-regulation of the provision on MFNs taking into account the fact that the investor will have the opportunity to choose from different BITs) If this is true, then we can add that the host member state, which did not agree with it in different ways, faced a huge number of changes in the provisions relating to the settlement of disputes of various BITs. , But was closed. In a chaotic situation, it is actually probably atonement, perhaps not the expected intention of the contracting parties.[1]

After reviewing previous pertinent questions, with some critics as to how Mafezzini D. Siemens of Spain D. Wi-Fi is free, following is a statement about MFN The original agreement does not contain, in whole or in part, any provision relating to the settlement of disputes. . Another agreement, as long as you have no doubts about reservations about MFN in the preliminary agreement of the Contracting Parties on the plan for their integration into society.[1]

In Telenor, V-Hungary and V-Bulgaria, the question was raised whether the o clause could be used to extend the claims from any claim to mfn. That you are suing, the court "wholeheartedly supports the statement of the politician made in court in Plum v. Bulgaria, in the circle of four reasons":[1]

Let the first, third and fourth reasons explain this:

In the absence of return in context, show that the investment in the general sense to the contrary should not be less favorable than the investment made by the investors of a third state. Host member states and third countries that should be considered no less positive are among the BITs, and they do not form grounds for considering the specified meaning as a flow of procedural rights. It is one thing to determine whether the investor benefits from the investment MFN treatment, but the use of the provision on the BIT in dealing with a disabled person at the same time that the parties did not choose a language, the provision on the MFN. it had been. The intention is to do as it was done in some bits. (Faya Rodríguez & Joubin-Bret., 2010)[1]

Bearing in mind that the Court's task is to interpret the BIT if the general rules of interpretation apply for this purpose, it is not necessary to specifically take into account general policy considerations relating to investor protection, on the other hand. A dispute resolution mechanism has been put in place. (Faya Rodríguez & Joubin-Bret., 2010)[1]

The second and third reasons relate to the risk arising from the purchase contract, uncertainty and volatility (which could reasonably be assumed that this was the intention of the parties).**Error! Bookmark not defined.**

This is the result of a broad interpretation of the MFN provision, that it must be located in the host State party to the convention, and must be acquired by the investor of any number of treaties and conventions for the dispute resolution clause to be sufficient. Acceptance of a dispute is not subject to the dispute resolution provisions. You can use key conventions, and still the question arises whether the developer can choose which elements of integrated dispute resolution you can and cannot use for this purpose.**Error! Bookmark not defined.**

Should a broader interpretation also arise as uncertainty and volatility, the limit, at this point, is the active, original BIT, and the next time it is replaced by a comprehensive dispute resolution clause, it will be one introduced by another state. BIT.[1]

A similar result was obtained in the case of Bershder v. Russian Federation. Here the court agreed with the statement that in the case of Spa, V in Bulgaria, in the sense that an arbitration agreement cannot be reached by possession or reference.[1]

Thus, while it is true that there is no general rule under which arbitration agreements can be considered exhaustive, special care should be taken when determining the intentions of the parties with respect to the arbitration agreement to be received by the Fund. Link to section about MFN.[1]

Finally, the court disagreed with the argument being made by another natural gas resource arbitration court, Natural Q. Argentina Price:[1]

"The Court, while considering the case of natural gas, considers that, in principle, the provisions of the MFN should be considered to include these parts within the scope of the dispute resolution clause, unless it is clear that the parties would like to do otherwise. For the above reasons. In this regard, it should be understood that this court does not agree with this opinion. Instead of the present situation, the rule about what is the statement about MFN in a small BIT, use, it shall only be included in the scope of an arbitration agreement entered into in any other route, in which the initial terms are BIT - specifically and directly, or where it was expressly stated that it is the intention of the parties to the contract .[1]

The court rejected the argument that if you have access to arbitration, such an important form of investment protection should work that, as opposed to a binding rule, if the MFN is increased in relation to arbitration. would be the object, and an object would factor into the BIT-main case chain). In Argentina, this is up to the 18-month requirement).[1]

In general, they are exactly the same, and practically do not provide guidance when determining the intentions of the parties to the convention.[1]

Finally, in the mail *** noise. In Peru, the court recognized the provision on MFN in BIT China and Peru (1994). Following traditional Chinese treaties, this agreement may also be limited in terms of claims for damages in the event of confiscation. The Committee held that "means", as defined in the MFN clause, are limited only to tangible objects and any evidence that the parties wish to convey a particular meaning. It states that "if a State incorporates one or more of the MFNs set forth in the Treaty, it shall do so effectively and in accordance with the future content of the treaties recognize the investors of the other Contracting State in the Convention." " provides more favorable treatment and protection, while acknowledging that "any article mfn it is its own world, i.e. an interpretation of the extent of the application. However, in the end, the court still attaches great importance to dispute resolution." Specific conditions of the clause:[1]

The present Court indicates that Article 8, the specific content of Article 3, takes precedence, on the contrary, over the terms and wording of Article MFN in Article 3 of the arguments presented by the plaintiff, and renders them redundant.[1]

It is also worth noting that this conclusion was made in light of the specific wording of the original BIT arbitration, implying that the jurisdiction should proceed from fraud cases "where the parties have agreed to do so." (Faya Rodríguez & Joubin-Bret., 2010)[1]

The tendency of arbitration courts to refuse to conduct by an authority regarding incorporation through references using the clause on MFN, the decision of the court in the case of the Russian Federation was questioned, and to expand its scope. decision was taken. Competence with offer: MFN. who did his job. At the same time, the district court concluded that this was due to the application of the provision on MFN. (Faya Rodríguez & Joubin-Bret., 2010)[1]

The defense, however, recalls that "every court that has considered the issue of extending the jurisdiction of the International Criminal Court on the basis of the most privileged provisions, refutes the plaintiff's position.[1]

Noting that arbitrage is seen as a very important part of investor software" (see paragraph 130), the Committee concluded that:[1]

In fact, although the application of the provision on the MFN in Article 3 and the Dispute Resolution expands the scope of the application of Article 8, and therefore violates the restrictions, it is usually the result of the application of the provision on the MFN, the nature and extent of this The object of the project is security, which must be acknowledged in the treaty. Protection that has not yet signed the Convention is extended through the transfer of ownership.[1]

In the Court, it is not appropriate to distinguish between the "substantive and procedural" provisions of the treaty establishing the European Court of Human Rights.[1]

"If this action is considered in the context of the actual defence, the Court sees no reason not to recognize it from the point of view of its procedural rules, including the arbitration clause. On the contrary, it may conclude that if necessary , “only” procedural measures should be applied on a defense basis. However, the Court is of the view that this cannot be considered affirmative, but, as noted above, in view of the fact that arbitration The clause, at least in the context of the contract, is of equal importance to safety and security as these programs would be provided for by the present circumstances, for example, in paragraph 5 BIT.[1]

More recently, in the case of Yates v. Russian Federation, the court had to take into account o clause.mfn and the question of whether it can be used to extend the range of its powers beyond the rights of the copyright owner. The main problem, which is before the court, is to determine whether there is access to arbitration, and the foreign investor's behavior for this component is part of the MFN.[1]

It is unfair, being able to conclude in general that it is accepted as a system of arbitration against citizens of one country, but not so much against citizens of another. Detail of obligations, nature of provision on MFN. For authors who want to do this, you should have no problem defining constraints that go beyond the usual ejusdem constraints.[1]

The Court rejected the distinction between "primary" and "secondary" rules and concluded that there was no basis to argue that MFNs could be limited "basic" requirements. It also recognizes that when gaining access to international arbitration, it is one of the main and enduring requirements for investment protection, and therefore an important factor when considering the goals and objectives of the Bank. They also rejected the "dense" world, as some commentators have shown, but the courts in these investments were far above national courts, and therefore should attempt to consider their application at a neutral international forum, and investors can be quite important. They were established. The Committee stressed that there was no explicit legal provision or rule under which Member States had no way of obtaining international recognition of arbitration.[1]

After considering these arguments, the court ruled in favor of the investor. However, the Court noted that the wording of the provision on MFN is not presented under normal circumstances, but covered only by the treatment referred to in para 1 above, i.e. fair and equal treatment." The discussion revolved around the question. Whether or not dispute resolution should be an integral part of the standard of fair and equal treatment. After detailed grammatical analysis and, consequently, in negative terms, as follows: [1]

It can be concluded that the specific promise??? Article (5) contained in bit 2 Spain-Russia, which cannot be read, must be present to increase the competence of the court. I have come to this conclusion - most of the members of the committee. A dissenting opinion is attached, and it will be changed for most people. It was agreed that in theory, it would be more profitable to have access to international bodies. Ultimately, however, consider the terms and conditions. The Spanish BIT prohibits the MFN mode within the framework of fair and equal treatment in accordance with the norms of international law. These would be regulatory standards from the point of view of the majority, and are not related1

(i) presence of international rather than national forums or

(ii) Place of arbitration (eg differing opinions, to name a few).

Thus, we can say that today the majority of seafarers – a component of the wider IFRS standards – are required to consider claims other than those applied for payment during investigations into the possibility of its integration through the MFN. not allowed. of property.[1]

Reducing the scope of provision on MFNs, in response to applications for investment contracts[1]

The above is an interpretation of the provision on the treatment of MFNs, with the courts expressing concern about this position, both with respect to the facts and with respect to the procedural consequences, in so far as the amount of this obligation is in dispute. In particular, the need for BIT and more convenient imports, procedural rules, ISDS, and the

expansion of the scope of the ISDS clause appear when rewriting the document in question. It is hard to believe that the parties to the negotiations are actually supposed to be the result of the reservation, oh mfn ISDS rules for entering into their contracts. Such claims surfaced recently, when most bits would have been agreed upon a few years ago. In response, several months include the information and principles of operation of the provisions on MFN to avoid extensive judicial interpretation by reference to the procedural provisions contained in the third party convention. basis of contracts.[1]

In the context of ongoing negotiations on a free trade agreement (FTAA), the investment group submitted a proposal in November 2003 with the following note:[1]

One delegation was of the view that the reference to the following in a footnote to the history of the negotiations, one of the most favored countries in this article, and the general understanding of the parties to the matter, was a reflection of Instagram. This note will be omitted from the final text of the contract[1]

The Parties acknowledge that the recent Court decision in Mafezzini (Arg.) v. Kingdom of Spain, which is extremely comprehensive, contains the Most Favored Nation clause in the Argentine-Spanish Agreement on International Dispute Resolution Procedures. See The Power On and the Power 38-64 (25 January 2000), ICSID 16 Rev. FILJ Reprinted in 212 (2002). Conversely, the most favored nation clause of this treaty is limited to matters directly relating to the construction, acquisition, expansion, management, management, maintenance and sale or other disposition of investment. The parties share an understanding, and the view is that this part shall not be part of the international dispute settlement body, as it is covered in clause c. 2. B (settlement of disputes between one party and the other party, developer or otherwise) of this section, and therefore cannot be Instagram, takes the same conclusion in this case.[1]

This text, later known as the "Mafezzini Note", was the result of strong resistance by several Latin American states to their decisions and an argument for Mafezzini v. There is a tendency to receive information in MONTHS, in which many of the later MONTHSs were less detailed, but explain much of the application of the regime MFN, or as a

footnote, or immediately as an appendix and part of the Regulations on MFNs) (Table 25 see).[1]

Negotiators and policy makers should therefore also be aware that, for any other provision of an investment treaty, the intention of the parties must be clear and clear from the matter of wording and the outcome of the negotiation, especially in so far as the MFN treatment provision With relation to. . The following section will look in detail at various options to ensure clarification of the scope and functioning of the MFN Remedy Clause and provide guidance to arbitral tribunals as to the underlying policy objectives on behalf of States Parties to the Treaty.1

ASSESSMENT AND POLICY CHOICES

A delegation proposed the inclusion of the following footnote in the history of the negotiations, as a most-favoured-nation article and a reflection of the parties' shared understanding of the Mafezzini case. This footnote will be removed in the final text of the contract1

The Parties note the recent decision of the Arbitral Tribunal in Maffezini (Arg.) v. Kingdom of Spain, which found an unusually broad most favored nation clause in the Argentine-Spain Agreement to include international dispute resolution procedures. See Jurisdiction on Jurisdiction 38-64 (January 25, 2000), reprinted in ICSID 16 Rev.-F.I.L.J. 212 (2002). Conversely, the most-favored-nation article of this Agreement is expressly limited to matters "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of the investment". The parties share the understanding and intent that this section does not include an international dispute resolution mechanism such as is contained in section C.2.b (dispute settlement between a party and another party's investor) of this chapter, and Therefore it cannot reasonably be that Mafezzini leads to the same conclusion as the case.1

This text, which later became known as the "Mafezzini Note", was the result of strong disagreement by several states in Latin America for the decision and argument of the Mafezzini v. Spain Tribunal. The trend to include clarifications in IIAs continues as many recent IIAs include a less detailed but equally clear explanation on the scope of application of MFN treatment (whether as a footnote, annex or directly as part of the MFN clause) (see box 25).1

Therefore, negotiators and decision-making bodies should be aware that for each of the remaining provisions of the agreement, the intention of the parties should be clear and clear, in particular to the extent that the provision is on the procedure. MFN touches it. . In the next chapter, the scope and scope of the provision on remedies are described in detail, taking into account the various options, as well as recommendations to arbitration courts and the main objectives of public policy in the interests of States that are parties to the Convention.1

On the other hand, there are also selective intervention strategies. Following these strategies, they seek to reach foreign investors in activities they consider particularly important to the economy. There is evidence that such a policy, in particular, can contribute to accelerating and accelerating the process of industrial development. This approach requires identifying activities in which the country cannot expect to achieve comparable benefits and stimulating production in these sectors.1

It can be concluded that the exception of MFNs based on the nationality of the foreign investor would be in line with the strategy of the host member state, which decided that the best way to lead economic development is to create and maintain special economic zones. Relations with one or more other countries that will be selected as strategic partners. Therefore, participating countries are only allowed to obtain market access or other exclusive rights for investors in these countries. This strategy is based on the assumption that one or more of them can be recognized as having a strategic advantage over other potential partners and provide investors in other countries with the same conditions that it would undermine the strategic partnership. Will give It is necessary to change the stage of

development of one's own model of comparative advantage and that of partner's comparative advantage.1

It is not clear why one group of investors would be more desirable to receive exactly the investment needed, than any other group of investors, while key growth rate targets must be met. In contrast, there is evidence that these strategies are based on differences between foreign and domestic investors, rather than differences between foreign investors." (UNCTAD 1999a)1

As for the investment strategies and regulations used in this analysis, this is true today, and also to MFN about the time, to chat with you about a variety of laws, when assessing the economic justification of the state. can be taken into account. in their contracts. No major changes have been made to this policy.1

However, in this context, the interpretation and application of the Governance Rule MFN and the arbitral tribunals that began in the case of Mafezzini v. Spain, have recently focused on the Governance Provisions MFN in the IIA, and this is a number of things you can do. There is a basis for strong comments. is. These interpretations are a cause for concern, and one should be careful during negotiations or MoE negotiations on behalf of the states. As mentioned in the previous chapter, this particular aspect, as well as the degree of interpretation of MFN mode, is of no priority or concern among posts on Instagram in Spain. But a lot has changed since then, and there are more and more new powers that you should consider.1

As in the previous analysis of recent developments in the interpretation and application by arbitral tribunals of the MFN ruling provisions, they were approached in different ways. In some countries, these interpretations were introduced and quickly responded to attempts to define, clarify or limit the scope of the rules at the time of the MFN in their specific agreements and negotiations.1

In other countries, after assessing the results, it was concluded that with such a comprehensive interpretation, which was in line with expectations, and did not lead to

significant changes in model treaties and agreements, the wording of the provision on treatment mfn no future The conversation was changed. However, the fact that the country did not respond by making changes to the contract template or a new contract does not mean it met with tacit consent and conflicting interpretations of the arbitration courts.**Error! Bookmark not defined.**

In most of the countries, especially in developing countries, we are dealing with the scope and wording of the provision of governance MFN IIA, in particular, with the following three questions:: a) inconsistent or conflicting interpretation of the application of the MFN regime in ISDS cases; and (b) conflicting views and preferences of their network of existing agreements, particularly the vague and broad terms of previous contracts; and, as a result, (i) clear and unambiguous methods to address these issues in future negotiations and network contracts.**Error! Bookmark not defined.**

inconsistent and contradictory interpretations

Whether they have genuine uncertainty about the scope of the obligations, the regime MFN arising from the conflicts of arbitration, binding on the member states of the opposition party to terminate the obligations when considering the wide network of contracts and, of course, their interests. ISAF matters for defense from effect to parties. However, it is important (and often overlooked) that uncertainty and constant discussion and debate influence investor concerns about how to exercise or fulfill the responsibilities of the MFN regime a country has. not clear.**Error! Bookmark not defined.**

Inconsistent view and formulation of the laws of time MFN

This is especially true for developing countries, which in the process of negotiation have become unlike many capital-exporting countries, or in most cases capital-importing countries for exporting countries. These countries usually have a network of agreements,

and this is due to differences in approach to the MFN regime, and sometimes significant differences between current security legislation and the wording of the ISAF. These differences are the result of negotiations, contracts, different perspectives and/or goals of the partners. Uncertainty in Interpretation Mode The broad interpretation of who can form a channel through other regulations relating to the security of the MFN and, ultimately, the ISUS or other IIAs, is a major challenge for developing countries with respect to the structure, design or amendment of existing treaties. . Negotiations are proceeding according to his own model and IIA.**Error! Bookmark not defined.**

IIA Network, UNCTAD, in most countries has weak, vague or generic terms and conditions. Therefore, it is a very important question for many countries to assess whether the terminology of treaties is their knowledge and is against their participation. MFN. legal remedy under the law, or when there is none, and how to deal with any terms of the agreement.**Error! Bookmark not defined.**

Many countries have started or will undertake UNCTAD internships to help review the IIA agreement, commitment in accordance with the MFN to assess the scope of their responsibilities, identify potential errors and risks, and identify necessary actions. It has already been mentioned.**Error! Bookmark not defined.**

For member states with extensive networks of agreements, especially in developing countries with networks of treaties, the different methods used to assess the potential risks of such an approach and then assess their existing networks are important. . This is important for making informed decisions. contracts, and future obligations. Considering the importance of legal certainty and predictability for foreign investors who enter into obligations under IIA treaties for these countries, in the context of widely recognized or contradictory interpretations by arbitral tribunals in this section, the implications of What more policies to assess, and to meet with decision makers. This would be a good option. partner.**Error! Bookmark not defined.**

Implications for negotiators and policy makers to review rules for dealing with MFN treatment policy.

As mentioned in the first version of the document, the more foreign investors from different countries are investing in your host country, the more important is the duty of the MFN regime. To ensure equal opportunities for investors of different nationalities, and if possible, they are looking for such. Investing in or implementing prescribed investments in accordance with the laws and regulations of the host country (UNCTAD 1999A). Considering the fact that most countries are connected to the rest of the world and attracting and retaining foreign investment requires constant hard work, the HT regime is an important factor in ensuring non-discriminatory treatment in the target country. The equipment is built.**Error! Bookmark not defined.**

The role of MFN mode in "investment policy", and, iia, is no less important than the role of NT. In fact, say there is generally no difference between foreign investors from different countries when it comes to dealing with them once that investment community is established. Major policy decisions are concerned with protecting the national investor or sectors of the national economy, so policies tend to focus on the distinction between local investors and foreign investors rather than foreigners of different nationalities.**Error! Bookmark not defined.**

With the rare exception of the benefit treatment defined in the sector (REIO) and investment section BITS and free trade agreements/regional trade agreements (RTAs), governance to define it, there are several specific problems in the field of MFN, as there are practically foreign trade agreements. There is no discrimination among investors. With very few exceptions (eg, specific areas where admission is subject to reciprocity). The role of the MFN mode is not with the aim of liberalizing the import regime in the NT, but to ensure that each future liberalization does away with the agreement, extending the partner to investors as recipients of the contracting state. is.**Error! Bookmark not defined.**

AND PROVISION OF ARRANGEMENT MFN Contribution of a foreign investor/investors is made only when an IIA agreement is concluded and potential discrepancies in action or potential violations of community law require special attention when assessing and registering. The scope of time law MFN and, the beneficiary, or

investor and/or investment and related investments in economic (preliminary preparation, list of operations, complex view), contract design, in articles, in particular, ISAR, and others specific Responsibilities with respect to qualifications are important.**Error! Bookmark not defined.**

The arrangement provision is necessary to ban MFN entry into the country in order to ensure their current and future investment policies, especially with respect to rights existing before creation. States don't talk about changing the rules of the game very easily. Despite the fact that the economic justification for this action is weak in favor of a given foreign investor and a foreign investor benefits a national rather than a foreign investor, there are some cases when the state seeks to extend the benefits of a limited number of foreign investors. The number of foreign beneficiaries, i.e. preferential transactions with strategic partners and membership in economic agreements in a region or region in which reciprocity is a key element, be it a policy of selective intervention. In these cases, states may use specific and general exceptions.**Error! Bookmark not defined.**

With the proliferation of IIAs that are located about the governance of MFNs, and networks of IIAs in most countries—within the last 20 years, and other terms (including the section about MFNs, which are based on many different types and terms). In some countries, the REIO mode clause defaults to exceptions to the MFN and is concluded with them in the IIA, while in other countries, for example, it is no exception. Some countries still The MFN regime is tax-excluded for matters, while others have only limited exceptions to obligations or obligations arising from a double taxation agreement. In some countries, a list of investment-related actions is consistently implemented, as well as the practice Identifying and explaining the true scope of MFN. use specific articles of convention or conditions providing for the extension of the MFN regime to other and all cases", while others use the IIA terms on the basis of which the MFN mode should be paid and without any conditions or reservations K must be paid. In some countries, the demand compares, while in others it is not. While most countries have separate and specific commitments to the MFN regime, others associate it with an effort to ensure fair and equitable treatment. Different approaches must be considered at the time, as many

countries have most of the "legacy" tools in their networks, while others have recently begun to oppose negotiations and, as a result, a more coherent approach to governance MFN. It will be done.**Error! Bookmark not defined.**

Given that the interpretation of some arbitral tribunals for the treatment of MFN, in principle, all corrective and protective mechanisms should be concluded with third parties to handle more than the article on the treatment of MFN the original convention was not specifically restricted, Specifically: MFN A restructuring proposal, it is likely to be multilateral of all obligations of the contract and transfer to the investor in the country that has signed such terms. While some favor the provision and hate speech on the MFN regime as a factor contributing to stability in international investment relations, despite the apparent fragmentation of the IIA, others criticized the many possible combinations and unforeseen consequences. Think of it as an explosion of predictability, confidence, and even validity in the system. Achieving reconciliation, and especially a significant number of earlier agreements.**Error! Bookmark not defined.**

MFN the nature of public governance in accordance with international law, which extends the obligations arising from the agreement to other counterparties. However, it is fair to say that this "comprehensive" interpretation of the ISDS arrangement provision, which allows for the inclusion of ISDS provisions in another treaty, was not created at the time this article was priced on the MFN. Although the issue has been discussed among practitioners and academics, and is sometimes challenged by arbitration courts in important cases, it is fair to say that the interpretation of Mafezzini v. Spain came as a surprise to many negotiators and decision-makers as well. came as. Academics and physicians. I arrived in uniform. The purpose of these Terms of International Investment Law is to ensure truly competitive equality and to prevent discrimination against foreign investors from different countries, as defined by national laws, regulations or decisions or actions of the Administrator in the Member State, instrument and with respect to their respective treatment in terms of practice.1

In certain arbitral awards and original documents, it has been decided that the contents of the IIA Agreement may be treated as a basis for competitive equality and as provided for in the Law on the Governance of MFNs. In this case, a foreign investor protected by convention, with a comprehensive ISDS policy, can expect a better competitive position should the investor adhere to the particular convention. However, it should be noted that only some arbitrations and original documents, please go to the degree of equation.1

This interpretation is unconvincing, and raises concerns in many aspects, particularly with regard to dispute resolution. It is clear that dispute resolution in the procurement process is more beneficial than the need for national courts or international arbitration. Perception, not reality, of the early 1960s. Investment protection agreements are used only for ex-post compensation for security breaches and are not intended to force obligations other than payment of fees. Calculation of investments by the parties in dispute, if the decision is made in favor of the investor, is made at the expense of the fee, and not on the state's withdrawal from the foreign investor's essence or action, social or any other damage and (or) performance. In addition, the amount of damages must be taken into account, and interest will accrue from the day the alleged breach occurred, and accordingly, the date of payment of such non-existent damages should not result in a large competition gap . Investor, which was canceled or not. FET It has been or should be processed according to the complete safety. This may be interesting to an investor who is a guarantee of political risks created by a private insurance company or state-universal guarantee agency, able to take advantage of comprehensive ISDS or other de facto protections and protections, but applicable to any other There is no clause of the contract. The risk is only on the front side. Special case and level of ISDS capability.1

It is also very difficult to take or import it from the original conditions of the third bear and you need to do it carefully. The court ruled that the value of the original order should be upheld. It is also not possible to introduce the terms contained in the original article, framing such a charter, which can only be better viewed. However, when it comes to lending terms that were not included in the original contract—a concept that has so far been adopted by courts to consider the issue—many of the issues referred to in the

previous paragraph still apply. And they were. depending on the mode??? In investment contracts, as practice shows, there should not be auto-imports, but it is a ruling in this case that there is no act in play to guarantee such loss to the investor that would give rise to a dispute. Give . It is the first thing to be described as a violation of this provision. Furthermore, if a basic convention is introduced into the system, the latter being quite limited, the structure and nature of its operation should not be overlooked.1

Whether investors are beginning to seek primary story MFNs to correct clause violations with a partial rewrite of the primary BIT or apply for arbitration, policy makers and negotiators should take this into account in future health policy MFNs. and conference requirements.1

Applying Mode MFN to Pre-Organization

Member States want to bear the cost, but MFN in the first phase of installation. This can be done by explicitly stating that their use is related to creation-related activities (for example, "to create, obtain, or extend"). In such circumstances, the entry system is governed by contract, not by internal context. In combination with the NT domain of commitment to the organization (or, as it is more commonly the case), the system provides transparency, certainty and predictability of investment. It should also be noted that the HT is far more centralized than the MFN regime for applying the liberalization approach of entry conditions, indicating that the barriers to entry are inconsistent with those of the NT, and only a few of those are MFNs. with the government. The MFN objective is to ensure that the liberalization of access conditions granted to a third country is extended to investors in that member state. Please refer to Chapter II. a. 1(b) for examples and additional information.1

This approach, which can be found in the IIA for dealing with tariffs (for example, FTA/EPA), actually creates a significant burden on host countries, as pointed out earlier. Discriminatory action is not permitted between investors on the basis of their citizenship. However, these impacts can be mitigated by including specific and general exceptions through which the state can implement appropriate policies in the region and has the

flexibility to regulate specific activities and/or areas of interest. Please refer to Chapter II. a. 3. (ii) For example and additional information.1

Applying MFN processing, as well as after installation

Another option is often used in the application of the Regulation on MFN for a single entry into the BIT. Conversely, in this context, what is an "approved" provision and a governing provision MFN does not apply to any plant-related activity that may lead to a situation in which the conditions of entry are left to the discretion of the national . Regulatory Authority. This approach holds true if the goal of IIAS is only to protect foreign direct investment (FDI) inflows and not eliminate them. Apart from negotiating an approach, it is a conservative approach where it is difficult to point out all the unfair means and exceptions to which a good policy should be in place in the event of a lack of institutional. An argument in favor of the regime MFN here is quite a contrast to its model for construction, taking into account the fact that states generally do not discriminate between foreigners and after its inception. However, it is important because bankruptcy is not only effective, but also protects against discriminatory practices. Please refer to Chapter II. a. 1. (i) For example and additional information.1

Enforcement of regulations on MFNs for investors and/or investments

An IIA generally applies to both the investment and the investor, although there are other types of protection, such as reducing the security level of the investment. In the latter approach, it undermines the goal, objective and IIA. But of a different nature, it would reduce the state's influence on it (responsible, among other things, for ensuring that the investee is eligible, defined by national law and is a legal entity and therefore subject to less compliance.). They may or may not qualify for certain rights that pertain exclusively to investors (for example, access to ISDS using MFNs. However, the decision to cover units may be made by adopting a model and incorporating Exceptions and qualifications seem less important than the decision to do. Also, practice both as an investor and to invest in MFN mode. It was very similar and did not cause any significant problems. For samples and additional information Please see Chapter II A2.1

Local exception

The BIT contains several provisions regarding MFNs, except for a few exceptions. The most common exceptions to these systems, especially when it comes to IIAs after inception, are REIOs and income tax exemptions (examples and additional information are given in Part II. A. 3. (i). In fact, their purpose is to To ensure that the benefits of such agreements are transferred to investors who do not participate in certain investments. In both cases, implementing the MFN is a treaty with the exception of regional economic integration and the abolition of double taxation. concept of . Exceptions to regional integration processes may be particularly important for maintaining and strengthening South-South integration. Therefore, if the parties agree to review existing legal acts, they may benefit from existing schemes that are not included in the Instagram Governance Agreement. This can be particularly useful for maintaining interregional agreements between developing countries.1

Exceptions for specific countries or regions

Other IIAs (in particular, construction rights, several exceptions) are based on (a) current developments in regulations in areas such as intellectual property rights, grants, grants and contracts; and (b) the need to ensure that existing wrongful actions resulting from the domestic legal system at the time of conclusion of the contract are protected; and (c) the need to maintain full regulatory capacity in certain areas or areas in the future. Other exceptions may include, for example, concerns about national minorities and the country's culture. As noted above, this exception somehow compensates for the restrictions imposed on member states to build the model. Please refer to Chapter II. a. 3. (ii) For example and additional information.1

Dealing with other treaties

As described in this article, the general approach to implementing the MFN mode creates a number of problems. It may also differ from the original purpose of such a requirement. By automatically including obligations under third party convention, comprehensive liability

MFNs may actually disregard the sovereign independence of states and, consequently, the revocation of international obligations at their discretion. Partial change or withdrawal from the original contract may occur through the implementation of third party convention provisions, and may also create a sense of integrity in the standards of actual differences in size, material and configuration for very obvious political reasons. Do this to happen. Also, it may be contrary to the actual policy and balance otherwise.**Error! Bookmark not defined.**

Comprehensive commitments MFN You can also make it difficult to estimate the magnitude of the host country's obligations, to the extent that applicable security, protection and ISDS provisions would be nearly impossible to have on a per-investor basis, on a case-by-case basis , and in various combinations and permutations. Software and Management. This approach also leads to the fact that new MONTHS can be updated, cleaned or improved, as new contracts can be changed just like previous contracts.**Error! Bookmark not defined.**

Most importantly, states must be able to do whatever it takes to be in charge of their duties. Within this broad and liberal interpretation a number of alternatives have emerged. In particular, Member States may wish to indicate the interaction of MFN networks in their IIA's net time laws.[1]

Extension of MFN treatment to all treaties

This approach leads to responsibility for the treatment of MFN, which is associated in such a way as with treatment that may be reserved in the opposite direction due to a new country. This method is useful for member states that wish to maximize security and liberalization outside their MONTHS. The high level of maintenance and security of the procedures to be performed extends to other services. In this case, it is required that states file against it as a "contract of acquisition" and not to the effect that could affect them.

At the same time, large-scale and far-reaching consequences are fraught with the presence of a provision on the MFN, which is a clear indication that the rule of the treaty—an article

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

that follows the obligations enshrined in contracts with third parties. Examples of the MFN treatment clause in the IIA, as well as extending it to all conventions, although you can find examples in the context of regional agreements (see: Table 17). These effects may be possible, sometimes incidental, as a result of a split in the MFN treatment with some vague terminology (for example, without limiting the words that refer to "all matters" and/or the provisions of an interagency agreement on the issue). Refers to) sidebar, for example, can be seen, 22). In the latter case, it is not clear and precise enough to allow for a detailed explanation. Therefore, this formulation raises fundamental questions about the transparency, predictability and sustainability of investments, as it can lead to unintended and unforeseen consequences.[1]

Excluding other treaties from MFN treatment for pre-installation and/or post-establishment purposes

In particular, in the context of treaty liberalization (ie pre-settlement) and a more integrated approach, the question also arises as to whether the MFN regime is being used in past and/or future contracts. Behavioral MFNs can be carefully crafted commitments to liberalize, pre-configure or access markets at the bilateral level that may be effective in altering the balance of rights and obligations with respect to a particular treaty. You have a hard time learning how to make promises in the past and how they see it. Therefore, Member States that wish to abide by all of the above are in favor of maintaining the territorial integrity of the Accessibility Treaty. In addition, states wish to stay out of future conventions, precisely because the treaty does not intend to extend them without receiving some in return for benefits to be transferred to other partners, while member states to third-party partners. Can exclude transferred benefits. of agreement. It can happen and will disappear. They are equivalent. The fact is that the regime MFN, which plays an important role in relation to market liberalization, is created by a contracting state, to make it difficult for future convention to govern MFN). Alternatively, countries likely to be affected by future liberalization or special liberalization should be subject to recognition of all such benefits or to further negotiations in the original contract (see Table 18 for examples). In

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

any case, it is recommended that all previous agreements, as well as future agreements on specific areas, be considered in the context of mutual interests, such as aviation, aviation, fishing, defense and the maritime sector (for example, in Table 16). (Faya Rodríguez & Joubin-Bret., 2010)[1]

For the purposes of the report, the role of governance MFN is not as important as I mentioned. As shown by the various arbitral awards in these two cases, the remedy has an actual performance as in the rest of the sales contract. Therefore, with the exception of treaties, states must take into account both the past and the future. At the same time, you should also take into account the fact that the MFN mode is a regime that fully respects the various security laws of the original treaty and the ISAF. MFN will continue to provide equal opportunities to foreign investors under similar circumstances. It will certainly help the states to negotiate in the context of different interactions and situations. For this purpose, you can use phrases such as:**Error! Bookmark not defined.**

Clarifying the scope of application of MFN treatment with restrictive effects

When we're negotiating a new contract, however, shouldn't we agree to a one-step approach to the MFN regime, building on a number of restrictive phrases that highlight the regulation's operation on MFNs.So it may be the case that both parties to the contract confirm that it is clear what they should be.

As part of the wording of the Special Qualifications and Provisions on MFN and may be enforced through the use of explanatory footnotes or programs/appendices, which are an integral part of this Agreement. These requirements are set out for the purpose of "for greater confidence", that is, they should be, but it was understandable. This approach is useful even if the state does not want to intervene, as may be understood by others. BIT can also play an important role in this context, along with the revision of the country model, for a precise solution to the problem of MFN.

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

Member States can use the information to ensure that the Governance MFN is interpreted and used as it actually intended. The objective of this approach is to clearly mention it to avoid ambiguity, i.e. to explain the range of responsibilities of MFNs. Explicit language is not used to control the discretion of a dishonest arbitrator. This ensures that the clause regarding MFNs will be interpreted by the parties to the agreement in accordance with established policy options. Various methods can be adopted.**Error! Bookmark not defined.**

Specifying the activities to which the treatment applies

A variation of this approach is to associate it with investing as a result of a specific set of "processing"/actions of the investor. A specific list of activities related to construction, acquisition, expansion, etc.). and/or an explanation of the meaning of the regime under an inter-institutional agreement (see, for example, Chapter II. A.4.(ii) (see This approach highlights this regime MFN, which covers the entire investment life cycle). However, it should be noted (as evidenced by the validation of practice) that such an approach does not guarantee concrete results, such as the application of MFN. Whether it includes the provisions of the ISMS or not.[1]

Specifying the nature of treatment

The second change is that if we are talking about the measures taken by the government then a more targeted time frame is used in the treatment. This can be done with a specific call for laws, regulations, regulations, etc., or the complaint should be understood in the context of laws and regulations applicable to community investment. With this approach, it would reinforce the idea that a regime of MFNs is needed, a true comparison of behavior which in this case must be achieved by two foreign investors and an initial agreement to buy an operation may not be . This approach can be obtained using the following formula. You also need to define the word "action". In this context, the provisions of Article 1 of the Canada-Peru BIT (2006) define a number of measures, such as laws, regulations, procedures, requirements or practices.**Error! Bookmark not defined.**

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

Specifying what would constitute unequal or less favorable behavior

The parties to the investment contracts are free to use a clearly defined definition of what would be considered inconsistent with the investor's obligation to extend the MFN regime. Many countries have listed measures taken in their contracts to fund underperforming that do not meet their commitments in the MFN. As noted above, there are very few remedies that may otherwise be expressly provided for in this Agreement. However, their description may serve as a guide for arbitral tribunals as to what elements and criteria should be considered when assessing non-compliance or violation of these Terms. Explicit terms shall not be used for the interpretation of MFN in this subject, as in Article 3.2 of MFN (2005) between Egypt and Germany: (Faya Rodríguez & Joubin-Bret., 2010)[1]

"Less favorable action" for the purposes of this article includes, in particular, the following:: This is unequal treatment, or, in the case of a ban on the purchase of raw materials or auxiliary materials, consumables, energy or fuel, or But the means of production or work of any country, whether inside or outside, most favourable, differences in use in the event of any interference with the sale of the products, as well as any other means which have the same effect. Measures are taken to ensure that public safety, order, health or morals are not considered "under or over-favourable" for the purposes of this article.**Error! Bookmark not defined.**

Conditions such as qualifiers

Another idea is to use a general, broad statement about the MFN or an explicit reference to the question of comparison, despite similar circumstances or similar circumstances (for example, in section II.A. 4. I). See below for more details). As mentioned above, it is believed that the standard MFN. But a clear reference would remind arbitral tribunals that there should be a comparative reference when assessing the alleged violation. This is a comparative assessment of the alleged violation. It is very important that you compare what you see with what is intended and the goal of ensuring competitive parity.**Error! Bookmark not defined.**

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

Show that mode MFN is not applicable in procedural, and/or physical terms

In cases where the parties wish to terminate the contract, purchase agreement, purchase agreement or real estate purchase agreement, the Terms of Use, the working language. Therefore, the court must choose to import third-party content or replace the original content. This designation may be partially conditional on the specific terms of this Agreement, or it may not apply to the treatment MFN for this component. This approach has recently been adopted by several other countries with regard to ISAR provisions. In fact, post-Instagram versus Spain and several ISD countries have become in contrasting explanations in the comments to exclude behavioral MFNs (see Chapter II. (d) for examples and additional information).[1]

The exclusion of some or all of the provisions of the contract must be derived using formulas such as the following, with option 1 referring to a particular entry, while option 2 ensuring that the cloth remains intact.**Error! Bookmark not defined.**

The option 1

1. MFN treatment vol.**Error! Bookmark not defined.**

2. For greater certainty, the obligation set forth in paragraph 1 does not apply to Article [section] of this Agreement.**Error! Bookmark not defined.**

Option 2

1. MFN Treatment Vol.**Error! Bookmark not defined.**

2. For greater certainty, the obligation set forth in paragraph 1 above applies without prejudice to the provisions defined in this Agreement.**Error! Bookmark not defined.**

No MFN treatment clause

Another solution would be to avoid the otherwise most-favored-nation clause. In its international relations, it is one of the most favored countries mentioned, which can

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

provide accurate and distinct economic benefits. However, from the point of view of the MoE, it is a positive investment in promoting social integration of the most favored nation segment, although it is less significant than other alternatives. This follows from the fact that states are rarely able to isolate newcomers within the framework of certain "preferential" or financial agreements with strategic partners. In fact, the most preferred nation treatment, which is just one of a large set of factors influencing a company's investment decision, and because it would be a reasonable decision for you to include a most preferred nation clause, it should include: There is more risk than profit. To avoid the inclusion of the most-favored nation clause, CONTRA explicitly addresses the distinction between universal rule and nuclear power, as well as absolute governance, as for example in the case of the spaghetti mess in a bowl. In a multilateral system of international trade rules, the "most favored nation" is certainly a core element of that system. The specific context in which the agreements are developed and the bilateral relations between the various parties should be discussed accordingly, their role and the most preferred nation clause should be considered.**Error! Bookmark not defined.**

However, it should be kept in mind that although it is not essential, MFN treatment still plays an important role in protecting the targets along with the liberalization. (Faya Rodríguez & Joubin-Bret., 2010)**Error! Bookmark not defined.** Also, the risks of treaty purchases can be effectively mitigated by limiting the scope of enforcement, excluding third treaties or specific qualifications, as already noted by the preceding subsections.**Error! Bookmark not defined.**

Addressing the past as well as preserving the future

The MFN clauses allowing treaty purchases can raise a number of fundamental policy and legal issues. Accordingly, the State would like to ensure that it does not have a provision on MFN in future, thus paving the way for possible and/or adverse consequences. However, the problem is compounded by the fact that in 2750—these are already available bits, which usually include the O clause most favored nation. In order for decision-makers to take a more focused and nuanced approach to MFNs in the future, you will need to

consider the way MFNs deal with governance provisions to the point of being contrary[Error! Bookmark not defined.]

The current regime in this section will continue to build on most of the clauses to be interpreted in MFN, and ISDS cases. However, the fact that they have already been agreed should not deter Member States from taking certain steps towards establishing their scope and operations. Among other things, the following options are possible.[Error! Bookmark not defined.]

The first is a two-way training session. Member states can amend the treaty, although this can be difficult and time-consuming. The use of generally accepted interpretations can be useful, even if the effect of explanatory remarks is not as great as was not provided for in the convention. However, some of these agreements stipulate that each interpretation of the provisions of the contract concluded by the parties is binding on the court. This function is particularly useful in the context of NAFTA (1992). But it is precisely this nature of the provision that is not required to be interpreted in terms of legal consequences for the parties to the convention. The general rule of interpretation of the Vienna Convention on the Law of Treaties attention is drawn to "a subsequent agreement between the parties concerning the interpretation of a treaty or the application of the provisions of article 31.3 (a). However, "in a word, the special significance will be attached if it turns out that this is the intention of the parties" (article 31.4).[Error! Bookmark not defined.]

The second way is one-sided. Unilateral statements have an explanatory value, especially when they have been presented outside the context of litigation. Such statements reflect the intention of a contracting party. They have limitations, although they cannot replace the text of the treaty and will have to be part of a wider interpretive exercise. But they are very useful for discovering the contents of a specific provision. For example, some treaties, when sent for approval to an internal legislative body, come with implementation details or supporting documentation of an often informative character.[Error! Bookmark not defined.]

Other options include, among others, participation in the deliberations of international organizations, formal positions, and specific objections to certain issues. States which are

uncomfortable with the way certain issues are being resolved can raise their voices. Such voices may have legal implications which will be part of the context that the arbitrators may need to consider in ascertaining the true intention behind the treaty. However, there is a danger in such a process that states may adopt opportunistic statements of interpretation as a defense against future or pending litigation. In such cases, the explanatory statement would be of less probable value. The work of the International Law Commission can also play a role in this context.[1]

[1] (UNCTAD Faya Rodríguez & Joubin-Bret., 2010)

CHAPTER 5

Most-Favoured-Nation Treatment in International Investment Law

Bilateral and regional investment agreements have been expanded over the past decade, and negotiations on a new agreement are still ongoing. Most-favoured-nation proposals (MFNs), on the left side of investment agreements, should ensure that the parties to the convention do not enjoy less favorable treatment than they provide, particularly in the areas referred to in this section. So the article is about MFN it has become an important tool for economic liberalization in the investment sector. Furthermore, there was objection to negotiating these products, for matters with which each country is closest or most influential, partners less favourable, in similar circumstances, through the consciousness of investors from each side that MFN clauses. , use mfn. Avoid economic distortions by being more selective with country-services. Such behavior may be the result of an agreement, law or administrative action taken by a country, or may be solely for the purpose of doing so.[1]

This article provides a factual summary of the jurisprudence and literature along with provisions on MFNs in investment contracts to promote a better understanding of the MFN relationship between contracts.[2]

*Section II section defines MFN, its roots, and gives several examples of such provision in each of the two major types of existing model investment treaties ("North" and "European Standard").[2]

• Section III contains an overview of selected aspects of the International Law Commission's (ILC) comprehensive work on provisions on MFN over the period 1968 to 1978.[2]

*Section IV describes recent arbitral awards and normative documents on the scope of obligations arising from the MFN regime associated with each investment contract dispute.

[1] (OECD, 2005)
[2] (OECD, 2005)

*Section V describes the short.

Examples of mention of MFN in investment contracts

List of laws on MFNs It does not paint a similar picture in investment contracts. In fact, in the point contracts mentioned about MFN, the list is very diverse. Some segment MFNs are somewhat shorter, while others are more general. In addition, references to articles vary in size, as well as the purpose and purpose of the contract in which they are contained. Below is a representative sample of them.[2]

The largest number of BITS was in Germany. According to Articles 3(1) and (2) of the German Constitution in 1998. Sample contract national measures to enable obligations have a duty to provide MFNs with:

1. No Contracting State shall be subject to investments in its territory owned or controlled by investors in the other Contracting State in which it has been treated less favorably than its own investors or investors of any third State.

2. No Contracting State shall, subject to the participation of investors in the other Contracting State, enjoy less favorable treatment of its own investors or investors of any third State, that is, in proportion to their activities in connection with investments in its territory [2]

This is a general statement about the MFN and is not limited to the specific part of the Convention that falls within its purview. It should also be noted that the 1998 model German MFN provides another section on the MFN, which deals only with a higher level of protection, and these are things that fall within the scope of Article 4. Article 4(4), in particular, provides:

Investors of each Contracting State shall enjoy the most-favored-state treatment in the territory of the other Contracting State in respect of matters referred to in this Article.

The same approach was followed by the Dutch model MFN, except for the obligation laid down in Article 3 MFN by the standards of governance, "national" (which is the better of

the two regimes, a fair and equitable governance. and absolute security. Article In accordance with 3(1) 3(2), such persons shall be treated in a non-discriminatory manner as follows:(OECD, 2005) [2]

(1) Each Contracting Party shall ensure fair and equitable treatment of investments by citizens of the other Contracting Party and shall not cause loss of employment, management, maintenance, use, use or disposal by representatives of the Company who wrongly or improperly invest . Each Contracting Party shall ensure the complete physical safety and security of such investments.[2]

(2) In particular, each Contracting Party undertakes to spend on these investments, medical treatment which in no case is less favorable in the case of investments in its own citizens or in the case of investments by third country citizens which are beneficial for health.[2]

In 1996 Albania/Great Britain and Article 3 of the BIT found that:

National Tax Code and Most Favored-Nation Regulations

Neither Contracting Party shall be subject to the investment or income of citizens or companies of the other Contracting Party if its territory is less favorable than the arrangement it ought to have applied to investments and/or income, or in the case of investments to citizens or companies. by, or for the return of, its citizens and/or companies of any third state.[2]

Neither Party, with the exception of investments of its own citizens, provides less favorable treatment to citizens and companies of the other Contracting Party in the territory with respect to the management, maintenance, use, operation or disposal of Company's investments. It determines whether there are enterprises, individuals or companies of any third state.[2]

For the avoidance of doubt, confirms that the measures set out in paragraphs (1) and (2) above apply to the provisions contained in paragraphs 1-11 of this Treaty.

Items 1 to 11 will enter into contracts, with the exception of the last item.

In American and Canadian BITs the specific term of regulation on MFNs applies to the installation and post-establishment stages. Furthermore, within the framework of stock prices and to clarify that the law applies only in such situations, unlike others, in particular, the European Union model, there is therefore no way of comparing the market to be assessed. There can be no question. Recent examples can be found in the Investments section, the US-Chile Free Trade Agreement and the US-Singapore Free Trade Agreement concluded in 2003. The Canada-Chile Free Trade Agreement in 1997 is based on the NAFTA language. United States-Chile FTA Article 10.3: Most Preferred Nation Treatment reads as follows:[2]

(1) In order to avoid the creation, acquisition, expansion, management, conduct, activities, and conduct of any non-Party investors in this area, each Party shall treat the other Party's investors no less favorably under similar circumstances. is the case. Other terms of sale or investment in your area.[2]

(2) Each party to the investment arrangement enters into a regime that, under similar circumstances, was less favorable in the field of building, acquiring, expanding, managing, maintaining, using its territory than an investor would Is not a party, and provides valuable investment. The sale or other disposal of investments.[2]

In US-Singapore SWH, are there any national governance MFNs, they are part of the same story

Article 15.4 National Conduct and Most Preferred Nation's Treatment

(3) Neither party treats the other party's investors in connection with the establishment, acquisition, expansion, management, operation, operation and sale of funds under similar circumstances with investors in any other website or territory of the consortium. The nature of the investment is less conducive to treatment under similar circumstances in respect of the creation, acquisition, expansion, management, operation, operation and sale of each party to proceedings with its own investment. of a non-participant in investing in

your area. communicator. or any other type of investment. Based on this article the attitude of each party is "Most Favored Nation".[2]

(4) Each Party recognizes the other Party's investors and is covered by them for "national treatment", or investments better than the most preferred national.

In Canada-Chile Free Trade, Article G-03 and Most Preferred Nation Treatment) states that:

(1) Each party shall do not less favor with the investors of the other party in similar circumstances, so as to avoid any investor in the construction, acquisition, expansion, management, maintenance and operation. The sale or other disposal of investments.

(2) Each party treats the investments of the investors of the other party as expressly as it did, under similar circumstances, to the investments of any third party investors in connection with the establishment, purchase, expansion, management, management was. , operates, does so. Any sale made from the sale or investment.

The texts of these treaties are similar in that they are explicitly going to use equality of situations in which the rule is available as a basis for comparison. Jurisprudence has provisions on MFNs, but a different basis for comparison and focuses on classifying industries affected by the remedial nature of rehabilitation contracts, which may have little to do with the analysis of such contracts. You can do this.[2]

Limitations and exceptions

Much is mentioned about MFNs in investment contracts, particularly with regard to restrictions and exceptions in certain areas of their application. These areas include, in particular, regional economic integration, as well as taxes, subsidies, etc. for enterprises, and the country is an exception. Relying on whether these exceptions are based on the fact that these restrictions may, in particular, be considered as a factor determining the presence or absence of certain other issues covered by the provision on the MFN. See the following example.

The German model year 1998 has something that is provided for in paragraph 3, the numbers (3) and (4) in which

(3) The regime does not apply to the power of a Contracting State to grant to investors of a third State the right of membership or engagement with any customs or economic union, common market or free trade zone.

(4) The mode of distribution under this article shall not affect the privileges of a Contracting State to investors of a third State by virtue of an agreement for the avoidance of double taxation or other agreements concluded in respect of tax matters. is.

By general measures, paragraph 3), the Dutch model BIT predicts that the following exceptions are exceptions to the duty MFN:

If on the basis of agreements establishing customs unions, unions, economic and monetary unions or similar organizations to one of the Contracting Parties, or on the basis of interim agreements, such associations or organizations have given special incentives to citizens of third countries shall be bound to provide such benefits to citizens of the other Contracting Party.

In addition, Article 4 of the model, which applies only to the income tax regime in Part Two, contains a number of exceptions to MFNs and obligations arising from the national treatment referred to in Part One of this article. This article applies to residents of Contracting States or citizens of third countries to which the same conditions apply." The entire paragraph 4 should read:

1. Article 15.4 (for example, national and most favored nation treatment) does not apply to:

(a) All existing non-compliance-centres, maintained by Page, here:

(i) a central level of control, as defined in Appendix 8A,

(ii) a regional level of Government, as specified, that party in Appendix 8A, or

(iii) Local level of control.

(b) the continuation or immediate continuation of the review on the "non-compliance" referred to in paragraph (a); or

c) replace the inadequate measures specified in this paragraph.

(a) to the extent that the change does not reduce the conformity of activities that existed immediately before the amendment of Articles 15.4, 15.8 and 15.9.2

2. Chapter 15.4 is a measure that a party adopts or maintains in relation to the sectors, sub-sectors or functions covered in Appendix 8B.

3. In every measure adopted after the entry into force of this Treaty and not included in Schedule 8B, neither party may, by reason of its nationality, being an investor of the other party's State, sell or otherwise dispose of Yes, cannot be imposed. Investment will work at the time of receipt of money.[2]

4. Article 15.4 does not apply to any remedy for which it is an exception or less than for obligations arising under section 16.1.3 (the conditions), specifically provided for in this article.

5. Articles 15.4 and 15.9 do not apply to:

a) public procurement; or

b) Grants or subsidies provided by a third party, including government-backed loans, guarantees and insurance.

In addition to the funds specified in Annex I, II and Annex IV, NAFTA is specifically allocated for disposal under all previous bilateral or multilateral international agreements, as well as for recycling based on all future treaties, with the most exceptions With-favored-nation treaty. only in certain areas. 11 The NAFTA range and investment chapter size is limited by the fee mode MFNs transfer to other sectors, such as "income tax" and the financial services industry. As well as security restrictions in the US-Chile and US-

Singapore free trade agreements and the recently concluded US-Australia free trade agreement.[2]

Many American and Canadian companies also have restrictions on the BIT MFN clause, which prevents the coverage of payments made on the basis of bilateral or multilateral agreements or negotiations (for example, the GATT, Uruguay Round) that the partners play a role in. may or may not follow. The term is (except GATT was first created in Article XII, and (2)(b)-US-Polish BIT of 1990. Another example is the Group 8 article of the Canada–Chile Treaty, which states that the MFN's In the Discount Investment Agreement Agreement, the contents of the Agreement on the Site do not apply to any remedy that is an exception to or disregards the obligations of the Parties to the TRIPS Agreement as provided for in the Agreement.[2]

MFN the BIT to avoid potential conflicts of interest arising from obligations, as well as obligations as they are understood to, with the European Commission in the United States and, in particular, in relation to the accession and new Member States. The United States September 22, 2003, also describes the means of individual protocol. It is a member of the European Union.[2]

Finally, you can see that some WTO members need to be included in key positions in bilateral investment treaties related to GATS obligations, such as the cancellation of the MFN.GATS agreements on the high-level protection of the BIT mode.[2]

However, Article V (1) of GATS (economic integration) does not exclude the possibility of concluding an agreement on the liberalization of trade in services between or between the parties to this Agreement, provided that this Agreement meets the requirements specified in paragraph Do you complete 1 of this article. Paragraph V (6) of GATS provides that a service provider, being a supplier of one of such contracting members, is a legal entity established in accordance with the law of the contracting party that fulfills the requirements specified in paragraph 1. The right to treatment is covered, provided that it engages in actual business on the territory of the parties to such agreement. Examples of other investor liability arrangements based on these prescriptions can be found in Articles

1101 and 1139-NAFTA (EU Treaty), Article 43-48, and in Annex D to the Draft Agreement on Selected Bilaterals between the European Union and the United States. transactions. Investment Agreement of September 22, 2003.[2]

International Law Commission work.

In 1964 the International Law Commission (ILC) began a multi-year project to prepare a draft of articles on the MFN clause. The idea for the project originally arose in the context of ILC's work on the law of treaties, and as noted in the introduction to the draft articles, they were interpreted in the light of the Vienna Convention on the Law of Treaties (Vienna Convention). should go.) In determining how to proceed with the project, the ILC recognized the importance of the role of the most favored nation remedial obligation in the area of international trade. However, the ILC did not limit its study to that area in particular, but explored the application of the section to as many areas as possible.

In 1978, the ILC adopted draft articles on the Most Favored-Nation Clauses and recommended to the United Nations General Assembly that they be used for a conference on the subject. The General Assembly did not act on this recommendation and did not take any concrete action on the draft articles. ILC's work, nonetheless, provides a general analysis of MFN clauses and insight into the éjusdem generis principle, which has been used in their interpretation in a number of judicial and arbitral cases, including recent cases. The present section summarizes the most general aspects of this work.

General Principles of MFN Clauses

In examining the work of the ILC, it is important to note first of all that the draft articles detailed by the Commission are intended to "without prejudice to any provision to which the granting State and the beneficiary State may otherwise agree" (Article 29). was. . Thus, the content of the treatment in each specific case is defined by the actual language of the MFN clause in question. This text should be interpreted in accordance with the principles of treaty interpretation, as codified in the Vienna Convention. Article 31.1 of the Vienna

Convention states that "a treaty shall be interpreted in good faith with reference to them and in the light of the object and object of the treaty in the general sense that is given to it."

In the ILC's work, the MFN clause is described as a treaty provision whereby a state (the granting state) has an "obligation" to another state (the beneficiary state) to provide MFN treatment in an agreed area of the relationship. and that (beneficiary) state accepts it. This section may also prescribe the persons or things to whom and to whom the MFN treatment is applicable. Ultimately, the extent to which a beneficiary State can claim (for itself or for persons or things in a determined relationship with it) is limited by the remedies granted by the granting State in the third State (or for persons or things). Same relationship with the third state).

The MFN clause can be invoked if the third State (or the person or things in a similar relationship with the third State being the person or things referred to in the clause with the beneficiary State) has been extended to the favors that constitute the MFN treatment. section. The mere fact of more favorable behavior is what is necessary to trigger the operation of the section. This remedy may be based on a treaty, some other agreement or unilateral, legislative or other act or mere practice. The beneficiary State can invoke the clause on the strength of the MFN clause and demand the same benefits which were granted to the third State. Based on the drafting of the MFN clause, the mere fact that the third State has not availed the benefits which were given to it by the granting State does not exempt the grantee State from liability under the MFN clause.

When two treaties exist, one between the granting state and the beneficiary state containing the MFN clause, and the other between the granting state and the third state, the treaty containing the MFN treatment clause is considered the original treaty.33 As it was historically Anglo- In the Iranian Oil Company case held by the Court's majority, 34 "This is a treaty that establishes a judicial link between a beneficiary State and a third-party treaty and grants that State the rights enjoyed by a third-party. A third-party The Treaty, independent and distinct from the original Treaty, cannot create any legal effect between the beneficiary State and the granting State (this is among other things Acta).To the extent

provided by the MFN provision under the beneficiary's own treaty, The granting state is entitled to claim all rights and favors granted to a third state. This extension may be seen as "simple" legal shorthand for the treaty process.

However, the granting state and the beneficiary state can limit the amount of beneficiary the beneficiary can claim in the original treaty. If the clause contains a restriction, the beneficiary state cannot claim any party beyond the limits set by the clause, even if the treatment does not reach the level of favor granted by the granting state to a third state.

Aegusdem generis principle

The ejusdem generics principle is the rule according to which an MFN clause can only draw on matters relating to the same subject matter or the same category of subject matter to which the clause belongs.

Paragraph 9 of the ILC Draft Articles provides that the beneficiary State of the MFN clause shall, for the benefit of persons or things in a prescribed relation to itself or with it, obtain only those rights which fall within the limits of the subject matter. MFN clause, and only in relation to those persons or things referred to in the clause or vested in it for the benefit thereof. Article 10 of the draft has suggested that the rights availed should be those which extend to the granting State to the third State within the scope of the subject matter of the MFN clause and only if the beneficiary persons or things are of the same category. Of or relating to persons or things. who benefit from the treatment provided to a third party and have an equal relationship with that State..

(a) Which subject matter?

The note to paragraphs 9 and 10 of the draft underscores that the rights of the beneficiary with respect to the subject matter are limited in two ways, namely, by the clause itself, which refers to a certain matter, and second, by the rights conferred by . Giving the kingdom over the third state. Although the meaning of the rule is clear, its application is not always easy. The Commission considered the following matters.

In the Anglo-Iranian Oil Company case (1952), which resulted in the Iranian government's nationalization of the oil industry – the United Kingdom invoked the MFN clause of the agreements concluded with Iran in 1857 and 1903, seeking remedial was. Treaty of Friendship, the 1934 establishment of commerce between Iran and Denmark, and similar agreements concluded with Switzerland and Turkey in 1934 and 1937, guaranteeing the treatment of the parties and property in accordance with international law. The court rejected the claim on the ground that it had no jurisdiction.

In Morocco (1952) a matter relating to the rights of citizens by the United States of America, particularly concerning the extent of consular jurisdiction that the United States may exercise in the French territory of Morocco, and the question of fiscal immunity of American citizens is. - The International Court of Justice concluded that based on the MFN treatment clauses in its 1836 treaty with Morocco, the United States did not have consular jurisdiction over the French territory of Morocco, which was strictly included in that agreement. The Court held that the United States had acquired additional consular jurisdiction from the effect of such an MFN clause, but that the MFN-derived benefits would cease with Great Britain terminating all its rights and privileges of capitulation. Had gone. Character by the Franco-British Convention of 1937. The Court also concluded that the MFN clause did not provide grounds for fiscal immunity, observing that no other state has enjoyed it for the benefit of its citizens. However, the Court's observations seemed to imply that the scope of the MFN clause in the Treaty was limited to matters dealt with in that Convention.

In the Ambatielos case (1952, 1953, 1956), the Greek government relied on Article X (MFN clause) and Article XV (national treatment) of the Treaty of Commerce and Navigation concluded by Greece and the United Kingdom in 1886 and a declaration of commerce and navigation of 1926. Attached to the Treaty of Shipping, the provisions contained in earlier treaties between the United Kingdom and third states (Denmark, Sweden and Bolivia) claimed to have denied justice to the Greek ship-owner Ambatielos. It was brought before the English courts for a dispute. By its decisions of 1 July 1952 and 19 May 1953, the International Court of Justice found that it had jurisdiction to decide

whether the United Kingdom was under the obligation to submit to arbitration the difference in the validity of the claim of Ambatielos hitherto or Not as it was based on the Anglo-Hellenic Treaty of 1886. At the same time, the Court held that there was no jurisdiction to go into all the merits of the case. The matter was subsequently submitted to the Arbitration Commission, which ultimately rejected the claim in its award of 6 March 1956, on the grounds that the provisions contained in other treaties enforced by the Greek government did not provide for "privileges, favors or immunities". Had gone. Favorable compared to those resulting from the national treatment clause. However, the ILC referred the matter as the Arbitration Commission said:

The Most Preferred Nation Clause can attract only matters relating to the subject of the same category to which the clause itself belongs. Regarding the specifics of the case, it held that: It is true that the administration of justice, when viewed in isolation, is a subject other than commerce and navigation, but not necessarily so when it is concerned with security. is seen in. of merchants' rights. The protection of the rights of merchants naturally finds a place in matters settled by treaties of commerce and shipping. ... therefore it cannot be said that the administration of justice, in so far as the protection of these rights is concerned, must necessarily be excluded from the application of the most favored nation clause, when the latter includes all matters relating to commerce. and navigation.

The International Law Commission also depended on the decisions of the national courts. In a 1913 French case, the 48th French Court of Cassation decided against invoking certain procedural requirements to bring the suit found in the French-Swiss Convention on the Execution of Jurisdiction and Judgment in favor of German citizens as a result of the MFN clause. . An 1871 Franco-German commercial treaty applied to the "admission and treatment of subjects of both countries". The Court concluded that "these MFN provisions relate specifically to commercial relations between France and Germany, which are considered from the point of view of rights under international law, and that they do not concern rights under civil law." And the "most favored"-state clause can be invoked only if the subject of the treaty is similar to a particularly favorable treaty whose benefit is claimed.

The Commercial Tribunal of the Seine in Lloyds Bank v de Rickles and Gaillard (1930) rejected a claim by Lloyds Bank, which was ordered to provide protection for costs, 28 of the Anglo-French Regulating Commercial Maritime Relations. Article I of the Convention implemented. February 1882 to benefit from the provisions of the Franco-Swiss Treaty of 15 June 1889, which gave Swiss citizens the right to sue in France without requiring them to pay protection for costs Lloyds argued that Article I of the Anglo-Convention enjoined the parties to "immediately and unconditionally grant to each other the benefit of every favour, immunity or privilege in matters of commerce and industry, which may be granted by one party to a third party". The nation has been accepted, whether within or outside Europe. The Tribunal held that a party to a convention of general character such as the Anglo-French Convention cannot claim the benefits of a special convention such as the Franco-Swiss Convention to the MFN clause. which deals with a particular subject, namely the obligation to provide security for the cost of freedom from freedom.

In the context of this matter, the International Law Commission suggested that, under the logic of the case, the drafters of the MFN clause would have a dilemma whether to draft the clause in too general terms, risking loss of its effectiveness. be put in. Strict interpretation of the ejusdem generics rule, or formatting it very clearly, computing its specific domain, which risks the possible incompleteness of the calculation.

The ILC commentary stated that it is only the subject matter of the clause and not the treaty or contract containing the clause which should belong to the same category. In other words, it is not necessary that the treaty or agreement containing the clause belongs to the same category as the benefits claimed under the clause. Holding otherwise would severely reduce the value of the MFN clause. However, the text of the treaty, including the MFN clause, serves as part of the context for its interpretation under Article 31(1) of the Vienna Convention on the Law of the Treaty.

In its note (11) of the draft Articles 9 and 10, the Commission observed that since the effect of the MFN procedure, through the provisions of one treaty, is to attract the provisions of the other, so long as this procedure is strictly in the cases not be limited to

Where there is a substantial identity between the subject matter of the two sets of related clauses, the result may be imposed on the State providing for obligations which it never considered.

(b) Which categories of persons or things?

A similar argument was proposed by the Commission to assess the application of MFN treatment to particular categories of persons or things. In short, the beneficiary State can claim MFN treatment only for those categories of persons or things that are entitled to or are entitled to receive certain remedies or certain benefits under the authority of a third State. Further, the persons or things in respect of which the MFN treatment is claimed must be in the same relationship with the beneficiary State as there are comparable persons or things with the third states. There are cases where the MFN clause is silent on persons or things that may benefit from it. In such a case, the ILC suggests, for example the subject matter of the clause for Customs, Commerce, Shipping, shall determine the class of persons or things that may benefit from it – importers, traders, ships.

Recent cases

Of the many cases brought to the ICSID in recent years, two cases, Maffezini v. Kingdom of Spain and Tecnicas Medio Ambientales Tecmed S.A. v. The United Mexican States came to the fore as raising issues related to the MFN clause. Any investor-state claims brought under NAFTA Chapter XI have not resulted in the detection of a violation of the MFN clause.

Bits

Mafezzini vs Spain

Mafezzini v. The Kingdom of Spain (2000') relates to a dispute arising out of treatment allegedly received by Argentine investor Emilio Agustin Maffezini from Spanish entities regarding his investment in an enterprise for the production and distribution of chemical products in Spanish territory. of Galicia. Spain (defendant) objected to the jurisdiction of

the Tribunal because Mr. Mafezzini (claimant) had failed to comply with the exhaustion of the local treatment requirements set forth in the Argentina-Spain BIT. Mr Mafezzini acknowledged that the dispute had not been referred to the Spanish courts prior to its submission to ICSID, but argued that the MFN clause in the Argentine-Spain BIT would allow him to invoke Spain's acceptance of the ICSID arbitration vested in Chile. - None of the exceptions from MFN in Spain BIT and Argentina-Spain BIT apply to dispute resolution provisions in the case.

On 25 January 2000, the Tribunal decided that based on the MFN clause of the 1991 Argentina–Spain Bilateral Investment Treaty, the claimant had the right to import the more favorable jurisdictional provisions of the 1991 Chile–Spain Agreement and, consequently, To resort to international arbitration without being obliged to present its dispute to the Spanish courts for a period of eighteen months prior. Paragraph 2 of Article IV of the Argentina/Spain BIT provides that Article 1 after guaranteeing fair and equitable treatment for investors.

In all cases subject to this Agreement, this treatment shall be no less favorable than the treatment of each party to investments made in its territory by third-country investors.

In this regard, the Tribunal noted the logic found in Ejusdem Generis Doctrine 59 and the Ambatielos case (namely that the MFN clause may apply to provisions relating to the administration of justice. The Tribunal also observed that today's dispute settlement arrangements are inextricably linked. “Protection of Foreign Investors as shown below-

Not withstanding the fact that the original treaty containing the clause does not explicitly refer to dispute settlement covered by the Most Preferred Nation Clause, the Tribunal considers that there are good reasons to conclude that dispute settlement arrangements today are foreign. is inextricably related to the protection of investors. , as they also relate to the protection of the rights of merchants under commerce treaties. Consular jurisdiction in the past, like other types of extraterrestrial jurisdiction, was considered necessary to protect the rights of merchants and, therefore, regarded not only as procedural instruments, but for better protection of the rights of such persons abroad. was considered as a ready-

made arrangement. It follows that such arrangements, even if not a part of the physical aspect of the trade and investment policy adopted by the treaties of commerce and navigation, were necessary for the adequate protection of the rights sought to be guaranteed.

International arbitration and other dispute settlement arrangements have replaced these outdated and often abusive practices of the past. However, these modern developments are necessary for the protection of the rights envisaged under the relevant treaties; They are closely linked to the physical aspects of the treatment given.

The Tribunal concluded that

If a third party treaty contains provisions for the settlement of disputes that are more conducive to protecting the rights and interests of the investor than the original treaty, such provisions may be extended to the beneficiary of the Most Preferred State Clause as they are fully compatible with the ejusdem generics principle.

Under the broader MFN clause of the Argentina–Spain treaty, which explicitly refers to "all matters subject to agreement, the Tribunal did not accept the defendant's claim that" under the principle the most-favored nation clause could operate only in respect of is ... the substantive matter or material aspect of the transaction given to investors and not for procedural or jurisdictional questions.

Giving its judgment, the Tribunal observed that the MFN clause in some BITs explicitly incorporates provisions for dispute settlement. In other treaties it refers to all rights enshrined in the agreement without referring to dispute settlement.

However, the Tribunal laid down the following limitations to the interpretation of the clause:

In principle, the beneficiary of the clause should not be able to override considerations of public policy that the contracting parties may not have envisaged as fundamental

conditions for acceptance of the agreement in question, particularly if the beneficiary is a is a private investor.

Here it is possible to envisage a number of conditions that do not exist in the present case. First, if a Contracting Party has conditioned its consent to arbitration upon termination of local remedies, which the ICSID Convention permits, this requirement shall not be circumvented by invoking the Most Preferred State Clause with respect to third party agreements. which does not include the prescribed condition, since this element represents a fundamental rule of international law. Second, if the parties have agreed to a dispute settlement arrangement that involves a so-called fork in the road, which is a choice between submitting to domestic courts or international arbitration, and where the choice once made becomes final and irrevocable. then the condition cannot be circumvented by invoking this clause. This conclusion is reinforced by the idea that it would disturb the finality of arrangements that many countries view as important in terms of public policy. Third, if the Agreement provides for a specialized arbitration forum, such as ICSID, for example, to refer the dispute to a different system of arbitration, this option cannot be changed by invoking the clause. Finally, if the parties have agreed to a highly institutionalized system of arbitration that includes precise rules of procedure, which is the case, for example, with respect to the North America Free Trade Agreement and similar arrangements, it is clear That none of these mechanisms can be changed by the operation of the clause because these very specific provisions reflect the exact will of the contracting parties. Other elements of public policy limiting the operation of the clause will undoubtedly be recognized by the parties or tribunals. It is clear, in any event, that a distinction has to be made between the legitimate extension of rights and benefits through the operation of clauses on the one hand, and disruptive treaty-buying that would jeopardize the objectives of the policy, on the other hand, underlying specific treaty provisions.

TekMed vs Mexico.

In this case, decided on 29 May 2003, the defendant breached its obligations under the 1996 Mexico/Spain BIT, as defined in Articles 4(1) (fair and equitable treatment) and 5(1) (nationalization and acquisition). determined in.) in connection with the failure of the Mexican government to re-license the hazardous waste citrear of the Spanish investor TechMed in the state of Sonora. Considering the challenges made to the jurisdiction of the Arbitral Tribunal and the timely submission by the claimant of some of its claims, the Tribunal was asked to decide whether Article 8(1) of the Agreement contained "the most favorable circumstances". The claimant has the right to apply retroactively to his claim in view of more favorable treatment in respect of the matter which will be borne by an Austrian investor of 29 June 1998 under the Austria/Mexico BIT.

This article reads--

If the provision of the law of one of the Contracting Parties or the margin of an existing agreement under international law, present or in the future, between the Contracting Parties, results in a general or specific regulation in accordance with which it shall be allowed to invest Should the other Contracting Party's investors, a treatment that is more favorable than that envisaged in the present Agreement, such regulation shall prevail over the present Agreement to the extent it is more favorable.

Arguing for this result, the claimant referred to the Mafezzini decision. The Tribunal did not examine the MFN provisions of the Austria/Mexico BIT or the Mexico-Spain BIT and, referring to Articles 62 and 63 of the Mafezzini discussed above, specifically ruled that matters relating to the application of settlement over time, which involves more time dimensions of the application of its substantive provisions rather than matters of procedure or jurisdiction, because of their importance and importance, go to the core of matters which should be understood exclusively as negotiations by the contracting parties (underlined (added) These are determining factors for acceptance of the Agreement, as they are directly related to the identification of the actual security arrangement applicable to the foreign investor, and in particular, the general (national or international) legal context within which within such arrangement operates, as well as the foreign investor's access to the basic

provisions of such arrangement. Therefore their application cannot be influenced by the principle contained in the Most Preferred National Clause. Similarly, the Tribunal found that Title II (4) and (5) of the Appendix to the Mexico/Spain Agreement relating to dispute settlement.

This includes requirements relating to the actual admissibility of claims by the foreign investor, i.e. its access to the actual security arrangements considered under the Agreement. Consequently, such requirements are essentially a part of the essential core of the negotiations of the Contracting Parties; Therefore it should be assumed that they would not have compromised in the absence of such provisions. Such provision is, in the opinion of the Arbitral Tribunal, outside the scope of the most favored nation clause contained in Article 8(1) of the Agreement.

Considering the basic merits of the case, the Tribunal found no violation of the MFN clause of the agreement.

CONCLUSIONS

In its 3277th meeting, on 23 July 2015, the Commission adopted the following summary findings:

(a) The Commission notes that the MFN clauses remain unchanged in character since the expiry of the 1978 draft articles. The main provisions of the draft Articles of 1978 continue to be the basis for the interpretation and application of the MFN clause. However, they do not answer all the lexical issues that may arise with MFN clauses;

(b) The Commission underscores the importance and relevance of the Vienna Convention on the Law of Treaties (VCLT), as a point of departure, in the interpretation of investment treaties. The MFN clause is to be interpreted on the basis of the rules for interpretation of treaties laid down in the VCLT;

(c) The central explanatory issue with respect to the mfn clause relates to the scope of the clause and the application of the ejusdem generics principle. That is, the scope and nature of benefits that can be availed under the MFN provision depend on the interpretation of the MFN provision itself;

(d) The application of the MFN clause to dispute settlement provisions in investment treaty arbitration, rather than limiting them to actual obligations, brought a new dimension to thinking about MFN provisions and perhaps the consequences that arise when the parties negotiate their investment agreements. Time was not seen. However, the matter is one of treaty interpretation;

(e) whether the MFN clause is up to the end to include dispute settlement provisions

States that negotiate such clauses. Clear language can ensure whether the MFN provision applies to dispute settlement provisions. Otherwise, the matter will be left to the Dispute Settlement Tribunals to interpret the MFN clause on a case-by-case basis.

It is widely accepted that MFN clauses can act as a de facto security obligation. As explained in this chapter, however, the structure of such clauses and the use of words pose

a number of obstacles to their use. The identification, interpretation and application of exceptions - both express and implied - significantly determine the extent to which such provisions serve to provide genuine protection to investors.

The interpretation of exceptions to the MFN treatment is likely to become more important in investment treaty arbitration in light of the increasingly complex network of investment treaties and changes in drafting practices over time. Furthermore, and despite significant consideration of such clauses by investment treaty tribunals to date, several important issues remain open regarding the interpretation of the actual MFN treatment. It remains to be seen, for example, how the principle of ezusdem generis will be developed and applied by future tribunals in the context of actual MFN conservation.

This chapter highlights a number of issues that stand ready for future clarification for consideration by the arbitral tribunals that state and enforce new investment treaties. This has highlighted the importance of treaty structure and language for interpretation by arbitral tribunals of this standard of protection. It has further highlighted that, in drafting and negotiating MFN provisions, states play an important role in establishing the scope of security that may be provided by such clauses in future.

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