



IIA ISSUES NOTE

INTERNATIONAL INVESTMENT AGREEMENTS



REVIEW OF 2020 INVESTOR–STATE ARBITRATION DECISIONS: IIA REFORM ISSUES AT A GLANCE

H I G H L I G H T S

- This note reviews investor–State dispute settlement (ISDS) decisions rendered by arbitral tribunals in 2020. Thirty-one ISDS decisions on jurisdiction and merits were publicly available at the time of writing. Most claims were based on old-generation international investment agreements (IIAs) signed in the 1990s or earlier.
- The review of recent ISDS decisions highlights the need to speed up the reform of the old stock of IIAs currently in force. UNCTAD's IIA Reform Accelerator, launched in November 2020, was developed to facilitate such efforts.
- ISDS decisions from 2020 touched upon important issues on the reform agenda for the IIA regime, including:
 - Coverage of tax measures
 - Use of most-favoured-nation treatment to import provisions from respondent States' IIAs with third countries
 - Scope of fair and equitable treatment, legitimate expectations and regulatory stability
 - Indirect expropriation
 - Umbrella clauses, contract claims and other obligations
 - Consent to investor–State arbitration, requirements and limitation periods for bringing ISDS claims
- For policymakers and IIA negotiators, arbitral decisions are a useful source of knowledge on IIAs: How do IIA provisions work in practice, and which areas are most in need of reform? Together with UNCTAD's IIA policy tools, this analysis can also help countries and regions make strategic choices concerning old-generation IIAs with ISDS. One way of addressing the challenges is to clarify key provisions through the interpretation, amendment or replacement of the old IIA. Countries may choose to pursue other available policy options (e.g. terminating an old IIA by consent or unilaterally).

Introduction: Recent ISDS decisions and their relevance for IIA reform

This note provides an overview of tribunals' findings in ISDS decisions rendered in 2020. It focuses on selected issues that are relevant for the reform of the IIA regime. Thirty-one ISDS decisions on jurisdiction and merits were publicly available at the time of writing (box 1; annex 1). The cases and issues highlighted in this note were selected after a detailed mapping of the 31 ISDS decisions, which is available as additional material.¹

For policymakers and IIA negotiators, arbitral decisions are a useful source of knowledge on IIAs: How do IIA provisions work in practice, and which areas are most in need of reform? Most arbitral decisions rendered in 2020 concerned claims based on old-generation IIAs signed in the 1990s or earlier. The review of recent ISDS decisions highlights the need to speed up the reform of the old stock of IIAs currently in force. UNCTAD's IIA Reform Accelerator, launched in November 2020, was developed to facilitate such efforts (UNCTAD, 2020a).

This note also draws on policy options put forward in UNCTAD's Reform Package for the International Investment Regime (2018) and the Investment Policy Framework for Sustainable Development (2015). Together with UNCTAD's IIA policy tools, this analysis can help countries and regions make strategic choices concerning old-generation IIAs with ISDS.

The selected issues addressed in the ISDS decisions are arranged in the order of the typical IIA structure (rather than being divided into jurisdictional, admissibility or merits issues):

- Treaty scope and definitions
- Standards of treatment and protection
- Public policy exceptions and other issues
- ISDS scope, conditions for access and procedural issues

The tables on selected issues present the main facts of the reviewed ISDS decisions and the questions addressed by tribunals.

This review of ISDS decisions can be read together with other recent UNCTAD publications related to IIAs and ISDS. Chapter II of the World Investment Report 2022 (UNCTAD, 2022) gives an update on global IIA policymaking and ISDS claims.

Box 1. ISDS decisions in 2020

In 2020, ISDS tribunals rendered at least 52 substantive decisions in investor–State disputes, 31 of which were in the public domain at the time of writing.^a Eleven of the public decisions principally addressed jurisdictional issues (including preliminary objections), with eight upholding the tribunal's jurisdiction and three declining jurisdiction. The remaining 20 public decisions were rendered on the merits, with 6 holding the State liable for IIA breaches and 14 dismissing all investor claims.

In addition, four publicly known decisions were rendered in ICISD annulment proceedings. Ad hoc committees of the ICSID rejected the applications for annulment in three cases; in one case, the award at issue was annulled in its entirety.

Source: UNCTAD, 2021a.

^a These numbers include decisions on jurisdiction and awards on liability and damages (partial and final). They do not include decisions on provisional measures, disqualification of arbitrators, procedural orders, discontinuance orders, settlement agreements, decisions in ICISD annulment proceedings or decisions of domestic courts.

¹ "Detailed Mapping of 2020 ISDS Decisions", available at <https://investmentpolicy.unctad.org/publications/series/2/international-investment-agreements>.

1. Treaty scope and definitions

a. Definitions of investment and investor

Characteristics of investment

In five decisions rendered in 2020, tribunals examined whether certain characteristics or criteria for covered investment were met (table 1).

ISDS tribunals' findings:

- In *A.M.F. Aircraftleasing v. Czechia*, the tribunal decided that the type of investment in question satisfied the relevant criteria. In *Adamakopoulos and others v. Cyprus*, the tribunal's majority came to a similar finding.
- In *Strabag v. Libya*, the tribunal considered that the Salini criteria were not applicable,² but they would have been met if it were to apply them.
- In *Eyre and Montrose Developments v. Sri Lanka*, the tribunal determined that the alleged investment was not protected, since it did not meet certain criteria (the claimants had not paid any funds or contributions and did not carry an operational risk).
- In *Vento v. Mexico*, the tribunal found that the loan agreements at issue did not constitute an investment because there was no evidence of transfers made under the loan agreements.

Old-generation IIAs typically use an open-ended definition of "investment" that grants protection to all types of assets, without explicitly listing specific characteristics of investment. Many recent IIAs, however, list characteristics in definitions of the term "investment" (UNCTAD, 2019c). They also often exclude certain types of assets from coverage. As drafting options for the definition of investment, UNCTAD's IIA Reform Accelerator suggests requiring investments to fulfill specific characteristics to be covered by the treaty (UNCTAD, 2020a).

Table 1. Characteristics of investment

Case details	Investment at issue	Selected issues and tribunals' findings
Adamakopoulos and others v. Cyprus <ul style="list-style-type: none"> • Cyprus–Greece BIT (1992) • BLEU (Belgium–Luxembourg Economic Union)–Cyprus BIT (1991) • Decision on Jurisdiction, 7 February 2020 • Decision upholding jurisdiction • McRae, D. M. (President); Escobar, A. A.; Kohen, M. G. (Dissenting Opinion) 	Deposits and bonds in two Cypriot banks, Laiki Bank (also known as Cyprus Popular Bank) and the Bank of Cyprus.	<ul style="list-style-type: none"> • Whether bonds, deposits and life insurance constitute a protected investment (→YES – BY MAJORITY; they are explicitly covered by the BITs, the Salini criteria should be applied holistically and subordinated to the ordinary meaning of the term investment)
A.M.F. Aircraftleasing v. Czechia <ul style="list-style-type: none"> • Czechia–Germany BIT (1990) • Final Award, 11 May 2020 • Decision dismissing claims • Tercier, P. (President); Alexandrov, S. A.; Kalicki, J. E. 	Ownership of two aircrafts and related leasing activities.	<ul style="list-style-type: none"> • Whether the claimant has a protected investment under the BIT (→YES; the Lease Agreements are an "investment" entailing a contribution that extends over a certain period of time and involves some risk, which is more than a simple commercial risk)

² According to this test, an "investment" (in the sense of Article 25(1) of the ICSID Convention) is characterized by the following elements: (1) the existence of a substantial contribution by the foreign national, (2) a certain duration of the economic activity in question, (3) the assumption of risk by the foreign national, and (4) the contribution of the activity to the host State's development.

Table 1. Characteristics of investment

Case details	Investment at issue	Selected issues and tribunals' findings
Eyre and Montrose Developments v. Sri Lanka <ul style="list-style-type: none"> • Sri Lanka–United Kingdom BIT (1980) • Award, 5 March 2020 • Decision rejecting jurisdiction • Reed, L. (President); Lew, J. D. M.; Stern, B. 	Ownership of land plot on the banks of Lake Diyawanna for a hotel development project.	<ul style="list-style-type: none"> • Whether the claimants' alleged investment satisfies the Salini test criteria ((i) contribution to the host State; (ii) a certain duration; (iii) participation in the risk of the operation) (→NO; lack of contribution and no operational risk)
Strabag v. Libya <ul style="list-style-type: none"> • Austria–Libya BIT (2002) • Award, 29 June 2020 • Decision finding IIA breaches • Crook, J. R. (President); Crivellaro, A.; Ziadé, N. (Partial Dissenting Opinion) 	Contracts for road projects (in the vicinity of Benghazi and Misurata) and other infrastructure projects assigned to Al Hani General Construction Co., a joint venture between Strabag International and the Libyan Investment and Development Company.	<ul style="list-style-type: none"> • Whether the claimant's alleged investment satisfies the Salini criteria (→YES; but the tribunal does not need to decide this, since Article 25 of the ICSID Convention is not applicable to Additional Facility arbitrations)
Vento v. Mexico <ul style="list-style-type: none"> • NAFTA (1992) • Award, 6 July 2020 • Decision dismissing claims • Rigo Sureda, A. (President); Gantz, D. A.; Perezcano Diaz, H. 	Investments in manufacturing of motorcycles.	<ul style="list-style-type: none"> • Whether a loan to an enterprise where the original maturity is at least three years qualifies as an investment under NAFTA (→YES; however, loan agreements are not sufficient proof of an investment) • Whether the claimant made an investment in the form of loans under NAFTA (→NO; no evidence that any funds were transferred under the loan agreements)

Source: UNCTAD.

Coverage of indirect investments

Four decisions rendered in 2020 addressed whether investments indirectly held by claimants through third State or host State entities were protected by the applicable IIA (table 2).

ISDS tribunals' findings:

- In *Eyre and Montrose Developments v. Sri Lanka* and *Strabag and others v. Poland*, the tribunals unanimously decided that the claimants' indirect investments were protected.
- In *Adamakopoulos and others v. Cyprus* and *Lee-Chin v. Dominican Republic*, the tribunal majorities came to similar conclusions.

In these four cases, the arbitral tribunals determined that the indirect investments in question were covered, since the applicable IIAs contained a broad or open definition of investment and did not explicitly exclude indirect investments.

The broad asset-based definition of investment, combined with a broad definition of investor, is common in the old stock of IIAs in force. Considering past arbitral awards, different types of indirect investments could come within the ambit of unreformed IIAs. Complex ownership structures and ownership chains with multiple cross-border links have significant implications for access to IIA protections and the ISDS mechanism (UNCTAD, 2016). UNCTAD's IIA Reform Accelerator contains options to address such issues in the definitions of investment and investor (UNCTAD, 2020a).

Table 2. Coverage of indirect investments

Case details	Investment at issue	Selected issues and tribunals' findings
Adamakopoulos and others v. Cyprus <ul style="list-style-type: none"> • Cyprus–Greece BIT (1992) • BLEU (Belgium–Luxembourg Economic Union)–Cyprus BIT (1991) • Decision on Jurisdiction, 7 February 2020 • Decision upholding jurisdiction • McRae, D. M. (President); Escobar, A. A.; Kohen, M. G. (Dissenting Opinion) 	Deposits and bonds in two Cypriot banks, Laiki Bank (also known as Cyprus Popular Bank) and the Bank of Cyprus.	<ul style="list-style-type: none"> • Whether the Cyprus–Greece BIT covers the claimants' indirect investments, held via Cypriot entities or entities in third States, in the absence of explicit wording on the issue (→YES – BY MAJORITY; ownership may be direct or indirect and may be full or partial)
Eyre and Montrose Developments v. Sri Lanka <ul style="list-style-type: none"> • Sri Lanka–United Kingdom BIT (1980) • Award, 5 March 2020 • Decision rejecting jurisdiction • Reed, L. (President); Lew, J. D. M.; Stern, B. 	Ownership of land plot on the banks of Lake Diyawanna for a hotel development project.	<ul style="list-style-type: none"> • Whether the BIT covers investments held indirectly by one claimant via a company in a third State (→YES; the broad definition of investment with “every kind of asset” confirms that indirect investments are covered; the claimants have met the indirect foreign control test)
Lee-Chin v. Dominican Republic <ul style="list-style-type: none"> • CARICOM–Dominican Republic FTA (1998) • Partial Award on Jurisdiction, 15 July 2020 • Decision upholding jurisdiction • Fernández Arroyo, D. P. (President); Leathley, C.; Kohen, M. G. (Dissenting Opinion) 	Indirect majority shareholding of 90 per cent in Lajún Corporation, a locally incorporated company that held a concession to operate the La Duquesa landfill in the municipality of Santo Domingo Norte.	<ul style="list-style-type: none"> • Whether the treaty protects the claimant's indirect investments via two companies in a third State, Panama, and protects the claimant as an indirect investor (→YES – BY MAJORITY; the treaty includes an open definition of covered investments and uses the formula “though not exclusively, includes” which is much more expressive even if the text makes no specific reference to direct or indirect investments)
Strabag and others v. Poland <ul style="list-style-type: none"> • Austria–Poland BIT (1988) • Partial Award on Jurisdiction, 4 March 2020 • Decision upholding jurisdiction • Veeder, V. V. (President); Böckstiegel, K.-H.; van den Berg, A. J. 	Indirect shareholding in Hotele Warszawskie “Syrena” Sp. z.o.o. (Syrena Hotels), a local company operating two hotels in Warsaw (Hotel Polonia and Hotel Metropol).	<ul style="list-style-type: none"> • Whether ownership includes direct and indirect ownership of an investment in the absence of express treaty language (→YES; given the term's context and the treaty's object and purpose a wide reading is warranted) • Whether the BIT protects the claimants' investments indirectly owned through their subsidiary in a third State, Cyprus (→YES)

Source: UNCTAD.

Ownership and control, investor nationality, place of incorporation and corporate restructuring

Five decisions examined the concepts of ownership and control, investor nationality, place of incorporation and corporate restructuring (table 3).³

ISDS tribunals' findings:

- The five tribunals affirmed jurisdiction over the relevant claimants, rejecting the respondent States' objections related to the above issues.

Most IIAs contain a broad definition of investor and do not set out requirements for direct ownership, majority ownership or ultimate beneficial ownership of an investment in the host State. For legal entities, old-generation IIAs typically use the incorporation approach to determine the home state, without references to substantial business activities, seat, effective management and control. With respect to natural persons, most IIAs are silent on dual nationals and typically they do not explicitly refer to effective and dominant nationality.

³ In *GCM (formerly Gran Colombia) v. Colombia*, the tribunal addressed issues related to the application of the denial-of-benefits clause; the decision was not publicly available at the time of writing.

UNCTAD's IIA Reform Accelerator lists different reform-oriented options for the definition of investor: (a) specifying the circumstances under which natural persons with dual nationality are covered, (b) excluding legal entities that do not have their seat and substantial business activities in one of the parties, and (c) including a denial-of-benefits clause (UNCTAD, 2020a).

Table 3. Ownership and control, investor nationality, place of incorporation and corporate restructuring		
Case details	Investment at issue	Selected issues and tribunals' findings
Adamakopoulos and others v. Cyprus <ul style="list-style-type: none"> • Cyprus–Greece BIT (1992) • BLEU (Belgium–Luxembourg Economic Union)–Cyprus BIT (1991) • Decision on Jurisdiction, 7 February 2020 • Decision upholding jurisdiction • McRae, D. M. (President); Escobar, A. A.; Kohen, M. G. (Dissenting Opinion) 	Deposits and bonds in two Cypriot banks, Laiki Bank (also known as Cyprus Popular Bank) and the Bank of Cyprus.	<ul style="list-style-type: none"> • Whether under the Cyprus–Greece BIT legal entities, incorporated in the home State, Greece, but wholly owned or controlled by natural persons of the host State, Cyprus, would be covered (→YES – BY MAJORITY; the BIT does not define the nationality of investors who are legal persons on the basis of their control)
Eskosol v. Italy <ul style="list-style-type: none"> • Energy Charter Treaty (1994) • Award, 4 September 2020 • Decision dismissing claims • Kalicki, J. E. (President); Tawil, G. S.; Stern, B. 	Investments in a 120 megawatt photovoltaic energy project in Italy.	<ul style="list-style-type: none"> • Whether the claimant being the company incorporated in the host State, Italy, met the foreign control requirement for jurisdiction under the ECT and ICSID (→YES; the company was under the control of a Belgian company at the time of the challenged measures, prior to the claimant's bankruptcy)
García Armas v. Venezuela <ul style="list-style-type: none"> • Spain–Venezuela, Bolivarian Republic of BIT (1995) • Decision on Jurisdiction, 24 July 2020 • Decision upholding jurisdiction • Nunes Pinto, J. E. (President); Gómez-Pinzón, E.; Torres Bernárdez, S. 	Investments in food products enterprises Frigoríficos Ordaz, S.A.; García Armas Inversiones, S.A.; Koma Inversiones, S.A.; and La Fuente Delicatesses, C.A.	<ul style="list-style-type: none"> • Whether the claimant had the nationality of Spain as the home State (→YES; there was no evidence that the claimant had renounced its home State nationality (Spain) and had acquired that of the host State (Venezuela); obtaining the status of national investor under host State law, receiving pension payments in Venezuela, and being a permanent resident does not equate to the acquisition of Venezuelan citizenship)
Global Telecom Holding v. Canada <ul style="list-style-type: none"> • Canada–Egypt BIT (1996) • Award, 27 March 2020 • Decision dismissing claims • Affaki, G. (President); Born, G. B. (Dissenting Opinion); Lowe, V. 	Interests in a Canadian telecommunications enterprise, Globalive Wireless Management Corporation ("Wind Mobile"), from 2008 to 2014.	<ul style="list-style-type: none"> • Whether the claimant qualifies for protection under the BIT, meeting its establishment and permanent residence requirements for the purposes of the "home State" (→YES; the two criteria are cumulative; the corporate register proves that the claimant is established as an Egyptian entity; a registered office suffices to show permanent residence; no support in the BIT that "permanent residence" is a separate and additional requirement for strong and enduring ties to the home State)
Strabag and others v. Poland <ul style="list-style-type: none"> • Austria–Poland BIT (1988) • Partial Award on Jurisdiction, 4 March 2020 • Decision upholding jurisdiction • Veeder, V. V. (President); Böckstiegel, K.-H.; van den Berg, A. J. 	Indirect shareholding in Hotele Warszawskie "Syrena" Sp. z o.o. (Syrena Hotels), a local company operating two hotels in Warsaw (Hotel Polonia and Hotel Metropol).	<ul style="list-style-type: none"> • Whether the tribunal has jurisdiction under the invoked BIT despite the claimants' access to a second BIT under which claims could potentially be brought by virtue of the claimants' corporate structure (→YES; the claimants retained standing; investment may be legitimately restructured as long as this is not done "to gain access to treaty protection when the dispute has already arisen or is foreseeable")

Source: UNCTAD.

b. Exclusions from the treaty scope (taxation measures)

Five decisions in 2020 examined whether certain measures challenged by the claimants were “taxation measures” excluded from the scope of the invoked IIA (table 4).⁴ All five decisions concerned the Energy Charter Treaty (ECT).⁵

ISDS tribunals’ findings:

- In the three cases against Spain, the tribunals decided that the relevant measure was outside of the ECT’s scope due to the ECT’s tax carve-out.
- In the two cases against Italy, the tribunals determined that some of challenged measures were carved out under the ECT, while some other measures were not considered to be “tax measures” (i.e. they did not qualify for the ECT’s tax carve-out).

Whether a specific measure is a “tax” within the meaning of a carve-out provision has been a contentious issue in many past decisions (see also UNCTAD, 2019b; UNCTAD, 2021b).

Most IIAs do not exclude taxation from their scope, which means that they cover a wide range of tax-related measures (UNCTAD, 2022). Exclusions of specific policy areas from the treaty scope (e.g. taxation, subsidies and grants, government procurement, sovereign debt) are more frequently encountered in recent IIAs, as compared to old IIAs. However, not all recent IIAs include them. UNCTAD’s World Investment Report 2022 suggests that the strongest safeguard for tax policymaking would perhaps be a complete and unambiguous tax carve-out from the scope of an IIA (e.g. accompanied by a mechanism that gives the host State discretion to determine whether the carve-out applies in a specific dispute or that gives the competent authorities of the contracting parties the power to decide).

Table 4.	Exclusions from the treaty scope (taxation measures)	
Case details	Disputed measure(s)	Selected issues and tribunals’ findings
ESPF and others v. Italy <ul style="list-style-type: none"> • Energy Charter Treaty (1994) • Award, 14 September 2020 • Decision finding IIA breaches • Álvarez, H. C. (President); Pryles, M. C.; Boisson de Chazournes, L. 	A series of governmental decrees to cut tariff incentives for some solar power projects.	<ul style="list-style-type: none"> • Whether the tribunal has jurisdiction over some of the claims concerning tax measures (→NO; the ECT carves out tax measures; the Robin Hood Tax and the reclassification of PV plants for tax purposes are genuine tax measures; other measures such as administrative charges and imbalance fees are not tax measures)
Hydro Energy 1 and Hydroxana v. Spain <ul style="list-style-type: none"> • Energy Charter Treaty (1994) • Decision on Jurisdiction, Liability and Directions on Quantum, 9 March 2020 • Decision finding IIA breaches • Collins, L. (President); Rees, P.; Knieper, R. 	A series of energy reforms undertaken by the Government affecting the renewables sector, including a 7 per cent tax on power generators’ revenues and a reduction in subsidies for renewable energy producers.	<ul style="list-style-type: none"> • Whether the tribunal has jurisdiction in respect of Act 15/2012 that introduced a tax on production of electricity other than for the purposes of the expropriation claim (→NO; tax measures are carved out from the scope of the ECT; the measure is regarded as a tax measure under Spanish law and is a <i>prima facie</i> tax measure under international law; it was not imposed in bad faith)
STEAG v. Spain <ul style="list-style-type: none"> • Energy Charter Treaty (1994) • Decision on Jurisdiction, Liability and Directions on Quantum, 8 October 2020 (Spanish) • Decision finding IIA breaches • Zuleta, E. (President); Tawil, G. S.; Dupuy, P.-M. (Dissenting Opinion) 	A series of energy reforms undertaken by the Government affecting the renewables sector.	<ul style="list-style-type: none"> • Whether the tribunal has jurisdiction over the alleged FET breach arising from Act 15/2012 that introduced a tax on the production of electricity (→NO; tax measures are carved out from the scope of the FET clause; the measure is regarded as a tax measure under Spanish law and is a <i>prima facie</i> tax measure under international law; it was not imposed in bad faith) • Whether the claim is admissible that the tax introduced by Act 15/2012 violates the ECT’s expropriation provision (→NO; the ECT requires submission of this question to the relevant competent tax authority; a letter to the prime minister is insufficient)

⁴ The 2020 decision in *Cavalum SGPS v. Spain* also addressed this issue; the decision was not publicly available at the time of writing.

⁵ The Article 21 of the ECT contains a tax carve-out, with a definition of the term “taxation measure” in Article 21(7).

Table 4. Exclusions from the treaty scope (taxation measures)

Case details	Disputed measure(s)	Selected issues and tribunals' findings
SunReserve v. Italy <ul style="list-style-type: none"> • Energy Charter Treaty (1994) • Final Award, 25 March 2020 • Decision dismissing claims • van den Berg, A. J. (President); Sachs, K.; Giardina, A. 	A series of governmental decrees to cut tariff incentives for some solar power projects.	<ul style="list-style-type: none"> • Whether the tribunal has jurisdiction over some of the claims concerning tax measures (→ NO; the ECT carves out tax measures; the Robin Hood Tax and the reclassification of PV plants for tax purposes are genuine tax measures; administrative charges and imbalance fees are not tax measures)
Watkins and others v. Spain <ul style="list-style-type: none"> • Energy Charter Treaty (1994) • Award, 21 January 2020 • Decision finding IIA breaches • Abraham, C. W. M. (President); Pryles, M. C.; Ruiz Fabri, H. (Dissenting Opinion) 	A series of energy reforms undertaken by the Government affecting the renewables sector, including a 7 per cent tax on power generators' revenues and a reduction in subsidies for renewable energy producers.	<ul style="list-style-type: none"> • Whether the tribunal has jurisdiction in respect of Act 15/2012 that introduced a tax on production of electricity (→ NO; tax measures are carved out from the scope of the ECT; the measure was not imposed in bad faith and is not a disguised tariff cut)

Source: UNCTAD.

2. Standards of treatment and protection

a. National treatment and most-favoured-nation treatment (comparators and exceptions)

In two decisions, tribunals examined claims related to national treatment (NT) and most-favoured-nation (MFN) treatment clauses (table 5).⁶

ISDS tribunals' findings:

- In *Global Telecom Holding v. Canada*, the tribunal's majority rejected jurisdiction over the NT claim, determining that telecommunications were excluded from the scope of NT in the applicable BIT.
- In *Vento v. Mexico*, the tribunal unanimously decided that there was no breach of the NT and MFN obligations.

Old-generation IIAs often include broad NT and MFN clauses. UNCTAD's IIA Reform Accelerator suggests including criteria for determining "like circumstances" for NT and MFN, reservations to NT and other limitations (UNCTAD, 2020a).

Table 5. National treatment and most-favoured-nation treatment (comparators and exceptions)

Case details	Disputed measure(s)	Selected issues and tribunals' findings
Global Telecom Holding v. Canada <ul style="list-style-type: none"> • Canada–Egypt BIT (1996) • Award, 27 March 2020 	Government's alleged failure to create a fair, competitive and favourable regulatory environment for new investors in the telecommunications sector	<ul style="list-style-type: none"> • Whether the tribunal has jurisdiction over the claimant's NT claim despite the NT exceptions for sectors listed in the Annex to the BIT (→ NO – BY MAJORITY: the Annex

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