

AJIL

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Compensation for Expropriations in a World of Investment Treaties: Beyond the Lawful/Unlawful Distinction

Steven R. Ratner

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When a state expropriates a foreign investment in violation of an investment treaty, where should a tribunal look for a compensation standard? Tribunals have offered wildly different answers, trapped in a paradigm that distinguishes between “lawful” and “unlawful” expropriations. This article evaluates and criticizes the case law, offering a new framework grounded in five purposes of a remedy. Compensation should take account of specific aspects of the expropriation, including whether the state’s failure to pay stemmed from a bona fide disagreement with the investor and whether the treaty’s procedural criteria were violated. It concludes with implications for violations of other investor protections.

Data, Detection, and the Redistribution of the Sensible in International Law

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International legal work involves trying to verify the condition of the world. This aspect of international legal work is changing in light of growing automation. The range of persons capable of engaging with this work, and ways of contesting what can be experienced in common, are shifting. With this comes redistribution of the power to govern and other juridical capacities on the global plane. Taking IAEA and UNHCR practices as exemplars, this article argues for renewed attention to these shifts.

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