War Series: Investment Protection Treaties in War for Investors in the Middle East (GÜRİŞ v. Syria)

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The recent arbitration award in the case of **GÜRİŞ and others v. Syria** (ICC, Final Award, 31 August 2020) offers a timely reminder of the complexities businesses face when operating in conflict zones. As tensions rise in parts of the Middle East, understanding the obligations of host states under investment treaties becomes ever more crucial.

In this case, Turkish investors found themselves embroiled in a dispute after their investments in Syria suffered losses due to the ongoing conflict. The investors turned to the **Syria-Turkey Bilateral Investment Treaty (BIT) of 2004**, seeking compensation for their losses.

Key Takeaways from the Arbitration

One of the central issues was whether the Syrian government had breached its obligations under the BIT, particularly concerning the **"full protection at all times"** standard and the provisions related to losses due to war or civil disturbances.

The tribunal highlighted that the existence of an armed conflict does not automatically suspend a state's obligations under international treaties. Referring to the **2011 International Law Commission (ILC) Articles on the Effect of Armed Conflict on Treaties**, the tribunal noted that treaties continue to operate unless specific provisions state

otherwise.

The War-Losses Clause and Its Implications

A significant point of contention was **Article IV(3) of the Syria-Turkey BIT**, known as the "war-losses" clause. This provision ensures that investors are accorded treatment no less favorable than that given to the host state's own investors or those of any third country concerning measures adopted in relation to losses suffered due to war or similar events.

The tribunal determined that this clause did not exclude the application of other protections under the BIT. Instead, it provided an additional layer of security for investors during times of conflict. This interpretation aligns with previous arbitral decisions, reinforcing that **war-losses clauses are additive, not exclusionary**.

Most-Favored-Nation Treatment Extends Protections

The investors also invoked the **Most-Favored-Nation (MFN) clause** in the BIT, seeking to benefit from more favorable provisions in Syria's investment treaty with Italy. The tribunal agreed that the MFN clause allowed the investors to access these enhanced protections, particularly the obligation to offer adequate compensation for losses, as stipulated in the **Syria-Italy BIT**.

This decision underscores the importance of MFN clauses in investment treaties, enabling investors to benefit from the best available standards of protection, even during armed conflicts.

Force Majeure and Necessity Defenses Rejected

Syria attempted to defend its position by invoking **force majeure** and **necessity**, arguing that the conflict excused any breaches of its treaty obligations. However, the tribunal

rejected these defenses, emphasizing that such exceptions are not applicable when the obligation in question is to provide compensation for losses already incurred.

The tribunal noted that the obligation to offer compensation is a financial one and that war or armed conflict does not make it materially impossible to fulfill this duty. By undertaking to compensate for losses due to war or similar events, the state cannot later claim that the very occurrence of these events absolves it of its obligations.

Implications for Middle Eastern Businesses

For businesses operating in the Middle East, the GÜRİŞ v. Syria award serves as a crucial precedent. It highlights that:

- **Investment treaties remain in force during conflicts**, and host states are still bound by their obligations.
- **War-losses clauses provide additional protections** but do not negate other treaty rights.
- **MFN clauses can be powerful tools** for investors to access the most favorable treatment available.
- **States cannot easily evade their compensation obligations** by citing conflict-related defenses.

As regional tensions escalate, companies must be vigilant in understanding their rights under international law. Investment treaties can offer significant protections, but navigating them requires expertise.

Moving Forward: Strategic Considerations

Businesses should:

- **Review existing investment treaties** relevant to their operations to understand the full spectrum of protections available.
- **Consider the inclusion of robust dispute resolution mechanisms** in contracts, ensuring access to

international arbitration if disputes arise.
- **Stay informed about geopolitical developments** that may impact their investments and adjust strategies accordingly.

Conclusion

The GÜRİŞ v. Syria case reinforces the notion that even in the face of war, investment protections endure. Host states have clear obligations, and investors have avenues to seek redress when those obligations are not met.

In these uncertain times, it’s more important than ever for businesses to be proactive in safeguarding their interests. Understanding the nuances of investment treaties and the protections they offer can make all the difference.

For those seeking guidance on navigating these complex legal landscapes, expertise in international arbitration and investment law is invaluable. As the Middle East continues to evolve, staying ahead of the curve is not just advantageous—it’s essential.

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