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Colombia's Experience with International Investment Arbitration: An Analytical Framework

This lecture returns to the past to analyze Colombia's experience with international arbitration in its disputes with foreign investors (previously protected by home states, but currently enabled to sue host states directly at ISDS fora). Three periods of roughly 30 years were chosen. (1) Imperialist rivalry in the last decades of the 19th and early years of the 20th century, with diplomatic protection (sometimes featuring naval interventions) to sustain a minimum standard of treatment for foreigners, and its countercurrent, the Calvo doctrine. (2) Interregnum between the 1960s and 1980s, with Calvo prevalent in Latin America, and reincarnated in a post-colonial emancipation drive at the United Nations, but defeated in the World Bank where the ICSID Convention was adopted despite a collective No vote by Latin American members. (3) Expansion of ISDS arbitration under international investment agreements from 1990 (with most Latin American states abandoning Calvo), followed by several countercurrents from the mid-2000s to present, including treaty clarifications, procedural reforms, recent withdrawals of North American and European states, and growing calls to abolish ISDS altogether. This periodization allows for comparing Colombia's international arbitration agreements and cases, as well as highlighting changes in relevant legislation and jurisprudence over time.

Keywords: *International investment arbitration, Sovereign consent, Minimum standard of treatment, Calvo doctrine, Investor-state dispute settlement*