



A de facto SDRM?

The emerging role of international investment agreements in sovereign debt restructuring

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International Investment Agreements



Trans Pacific Partnership

Transatlantic Trade and Investment
Partnership

US-China Bilateral Investment
Treaty

US-India Bilateral Investment Treaty

International Investment Agreements



Trans Pacific Partnership

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Partnership

US-China Bilateral Investment
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US-India Bilateral Investment Treaty

80%

We ask:

To what extent is the sovereign debt regime
creeping into the international investment
regime?



Findings

1. International Investment Agreements, have jurisdiction over sovereign debt restructuring.
2. There have already been cases.
3. The regime is disparate.

What do International Investment Agreements have to do with sovereign debt restructuring?



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(1) Jurisdiction



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(2) Umbrella Clauses



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- (1) Jurisdiction
- (2) Umbrella Clauses
- (3) National Treatment



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- (1) Jurisdiction
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- (4) Expropriation



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- (5) Fair and Equitable Treatment



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- (1) Jurisdiction
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- (3) National Treatment
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- (5) Fair and Equitable Treatment
- (6) Transfers



A Tale of Two Countries: Argentina and Greece



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ABACLAT v ARGENTINA

- September 2006, Holdouts sued under Italy-Argentina BIT at ICSID.
- Claim: the restructuring was “tantamount to expropriation” and violated “fair and equitable treatment” standards.
- August 2011, ICSID found jurisdiction based on the broad definition of investment in the agreement.
- The parties are awaiting their final award.

A Tale of Two Countries



POSTOVA BANK v. GREECE

- May 2013, holdouts sued under the Cyprus-Greek BIT.
- Claim: restructuring amounted to “indirect” expropriation and they were entitled to compensation for their losses.
- April 2015, the case was dismissed on jurisdictional grounds because of the implicit exclusion of sovereign bonds from definition of investment.

Under the TTIP

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This case could have come out another way if the TTIP applied.



Public Debt Annexes

Some U.S. agreements contain these annexes:

US-Uruguay BIT

DR-CAFTA

US-Chile FTA

US-Peru FTA

US-Colombia FTA

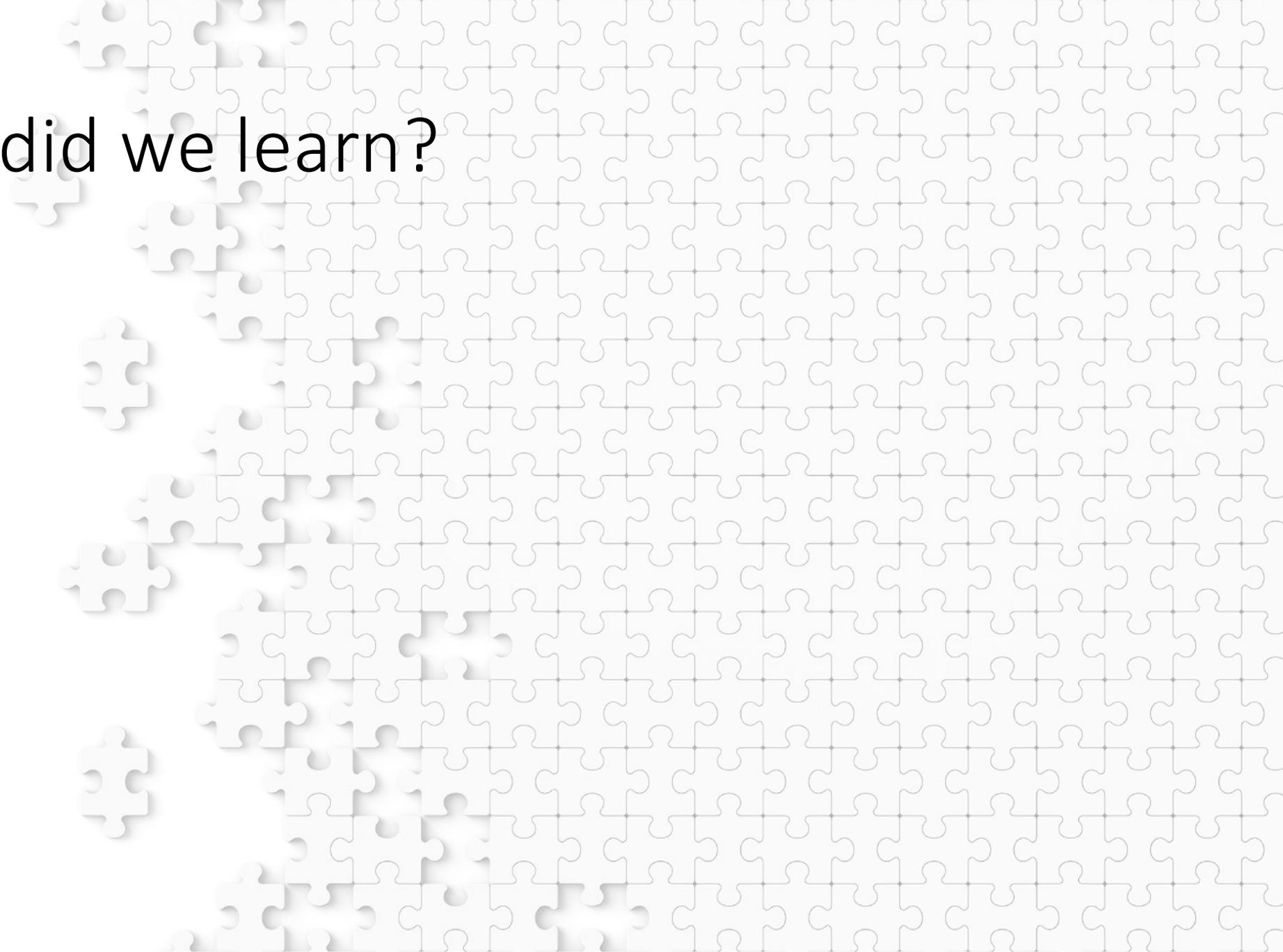
most recent leaked draft of the TPP



Public Debt Annexes

- “Negotiated debt restructuring”
 - except for national treatment and most favored nation claims
- 75% of bondholders consent
- 270-day cooling-off period.

What did we learn?



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Policy Recommendations

1. Exclude sovereign debt from the definition of investment.

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2. If you must include it, also include a Public Debt annex and close the loopholes.

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2. If you must include it, also include a Public Debt annex and close the loopholes.
3. Reserve sovereign debt restructuring conflicts for State-State dispute resolution.