

CIPL/ANU College of Law Seminar

Methanex and *Saluka*:

Towards a Re-definition of Indirect Expropriation in International Investment Arbitration?

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According to the NAFTA Chapter 11 tribunal in *Methanex Corporation v. United States of America*, 2005, “[...] as a matter of general international law, a non-discriminatory regulation for a public purpose, which is enacted in accordance with due process and, which affects, inter alios, a foreign investor or investment is not deemed expropriatory and compensable unless [...] .” In a similar way, an UNCITRAL investment tribunal in *Saluka Investments BV (The Netherlands) v. The Czech Republic*, 2006, held that “the principle that a State does not commit an expropriation and is thus not liable to pay compensation to a dispossessed alien investor when it adopts general regulations that are “commonly accepted as within the police power of States” forms part of customary international law today.”

These two arbitral holdings have raised questions as to the present day content of the international law on indirect expropriation, in particular as to whether the traditional approach focusing on the intensity of interference with investor rights may have been replaced by a broad police powers doctrine immunizing state action against claims of *de facto* expropriation.

August Reinisch is professor of public international law and European law at the University of Vienna and lecturer at the Austrian Diplomatic Academy. From 2004 to 2006 he served as Dean for International Relations of the Law School of the University of Vienna. He is also a professorial lecturer at the Bologna Center/SAIS of Johns Hopkins University. He currently serves as arbitrator on the *In Rem* Restitution Panel according to the Austrian General Settlement Fund Law 2001 and as president of an UNCITRAL investment arbitration.

He holds Master’s degrees in philosophy (1990) and in law (1988) as well as a doctorate in law (1991) from the University of Vienna and an LL.M. (1989) from NYU Law School. He is admitted to the Bar of New York and Connecticut (since 1990).