

# POSITING FOR BALANCING: INVESTMENT TREATY RIGHTS AND THE RIGHTS OF CITIZENS

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## ABSTRACT

*Substantive bilateral investment treaty (BIT) rules have the potential to undermine the rights to health, safety and the environment of the citizens of host States if stricter State regulations to protect these rights amount to regulatory expropriation or breach other investment protection rights. This article argues that the rules created by BITs are comparable with and stand parallel to the rules created by the domestic laws of host States and BIT arbitral tribunals should balance these rights when they conflict with each other. BIT arbitral tribunals act as de facto courts since they enforce rights that are assertable against the public at large and not against the host State alone. Similar to the “rules” created by BITs, an analysis of the legal nature of “rights” created by BITs also reveals that they are comparable with the rights created by domestic laws of host States. The article articulates three legal arguments founded on substantive BIT clauses, human rights, and property rights on the basis of which, three specific rights, i.e., the rights to health, safety and the environment of citizens of host States may stand parallel to the rights created by BITs in favour of foreign investors. These arguments, both individually and pooled together,*

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*call for balancing these citizens' rights with the rights of foreign investors arising from a BIT in the event of conflict.*

**KEYWORDS:** *BITs, right to health, right to safety, right to the environment, international law*