The international law gaze: COVID-19 and the protection of foreign investors in New Zealand

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There are "moments in which the world tips out of its axis" says a character in Jose Saramago's novel *The Stone Raft*. COVID-19 is one of them.

The adverse economic impact caused by lock-downs, international travel restrictions and other constraints imposed by governments to deal with the pandemic will lead to thousands of bankruptcies and liquidations worldwide. Consequently, and to avoid this fate, some major foreign investors are keeping a close eye on specific rights owed to them by host States as a result of investment chapters in Free Trade Agreements (FTAs) or of international investment agreements (IIAs). If the losses accumulate, some of these foreign investors may explore relying on these FTAs to either mitigate the losses in negotiations with host States or to try to recover them through future litigation once the COVID-19 crisis passes. The situation also applies both to foreign investors in New Zealand and to New Zealand investors abroad. Indeed, the country has international obligations with foreign investors in the FTAs with Australia, Thailand, Malaysia, Korea, China, Singapore and in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). (the term "foreign investors" refers here to those investors who are nationals of these States only).

This article shows that New Zealand is largely complying with its obligations to foreign investors who are nationals of the parties to the FTAs. The piece also indicates that security exceptions in the FTAs or the customary rule of necessity in international law even allow the country, within limits, to deviate from these obligations during the crises prompted by COVID-19, if needed in the near future. Obviously, this is an assessment limited to the status quo created after the first four months of the pandemic.

States enter into IIAs or accept the inclusion of investment chapters in FTAs for two main reasons. First, to attract foreign investment, a rationale that is being questioned in recent years.

Second, to protect national investors abroad by ensuring that other FTAs States have certain obligations towards them.

By virtue of these agreements, States commit themselves to granting certain treatment to investors or investments of other State Parties. Broadly speaking, the four main obligations are the following: (1) foreign investors will receive the same treatment as that granted by host States to their own nationals in like circumstances (national treatment obligation); (2) host States must grant an investor of the other State party to the FTA or IIA a treatment that is no less favourable than that it accords to investors from a third party in like circumstances (most favoured national treatment): (3) Minimum standard of treatment under international law, including fair and equitable treatment. It means for host States avoiding State conduct that is, among others, arbitrary or grossly unfair; (4) no expropriation of investment without payment of prompt, adequate, and effective compensation; and (5) investor/State litigation, which entails foreign investors to sue the host State before *ad-hoc* international arbitration tribunals and not before its own courts.

States are in full command when they negotiate about the scope of their obligations in these treaties. They qualify the obligations and often exclude certain type of measures and certain industries to ensure States have unfettered freedom to regulate. They can also exclude investment arbitration as in the New Zealand – Australia Closer Economic Relations.

The whole regime has received severe criticism, but despite the objections, there are still thousands of IIAs in force. Consequently, analyses of how host States are using their regulatory powers to deal with COVID-19 and of whether or not they are complying with their international obligations owed to foreign investors still matter.

The spectrum of potential claims by foreign investors may be vast and depends on how host States have handled the pandemic. Some examples are the following, depending obviously on treaty text, magnitude of economic, loss and business considerations. First, breach of national treatment obligation when the emergency measures do not categorise the service provided by the foreign investor as essential, when the investor is in like circumstances to other nationals who received this categorisation and are allowed to operate. A second potential event is breach of the same national treatment obligation if the foreign investor lacks access to COVID-19 governmental support programs. A third potential claim is the violation of the fair and equitable

treatment standard because governments' border controls and lockdown restrictions are arbitrary or disproportionate. A fourth potential claim is that the emergency measures constituted an indirect expropriation of the investment since they caused a total or substantial reduction of the value of the investment.

Although it is too early to make general statements since the pandemic is still occurring, no violation of IIAs by New Zealand seems evident at first sight at the time of writing. The purpose of the measures has been to protect the life of New Zealanders at a time of the emergence of a lethal and unknown virus and national investors have not been spared the effects of the measures. Some claims of violation of the national treatment obligation will end there.

Claims of discrimination in access to government funds are unlikely as well. First of all, common in New Zealand's FTAs is an explicit exclusion of subsidies from the national treatment obligation; and second, the program is supporting New Zealand based businesses, even those controlled by foreign persons.

Claims of violation of the fair and equitable treatment obligation would also have a similar fate, since the measures have been reasonably connected to the goal of protecting public health. The level 4 lockdown, for instance, was adopted on March 23. The previous day the World Health Organization had declared that (World Health Organization "Critical preparedness, readiness and response actions for COVID-19 Interim Guidance" 22 March 2020 at 1):

> Every country should urgently take all necessary measures to slow further spread and to avoid their health systems becoming overwhelmed as a result of seriously ill patients with COVID19.

The content of the measures adopted are also in line with those recommended by the WHO and are therefore reasonable and not arbitrary. Thus, violations of the fair and equitable treatment obligation will be unlikely on that basis.

Finally, claims of indirect expropriation of the investment caused by the COVID-19 measures face significant challenges. First of all, the loss of value that needs to be demonstrated is either total or substantial. In addition, COVID-19 measures are diverse and include adverse measures for some investors, to be sure, but also positive ones, such as massive governmental economic

support programs. Claimant investors that received the benefit of the latter will have to prove that the government's actions were, at the same time, the cause of the loss. This cause and effect relationship may not be evident. Investors will also have to prove that the loss is not attributed to their own actions or omissions and inability to adjust to the new environment, even if it is more challenging.

In sum, there is strong evidence that New Zealand's COVID-19 measures are in compliance with its obligations under its investment chapters in its FTAs. But even if, in the unlikely event of a violation, New Zealand, as any other State, still enjoys some defences to justify or excuse such violations. This article turns to those defences.

TWO DEFENCES AVAILABLE TO HOST STATES DURING COVID-19

Severe crises of different natures are not uncommon. Thus, States have developed international provisions they can invoke as an excuse for measures taken which are contrary to their international law obligation in normal times. The first is security clauses in IIAs, and the second is the state of necessity under customary international law. Both have been widely interpreted in the context of investment arbitration as a result of litigation between foreign investors and Argentina after its economic collapse in 2001.

Security clauses in IIAs

Some of New Zealand's FTAs contemplate security clauses, a very strong defence to respond to emergencies. To be sure, these clauses are not the only instruments to this effect. Indeed, narrowing the scope of international obligations or excluding certain areas from the protection of the IIAs are also tools that allow States to confidently handle severe collapses of all sorts. However, security clauses can also play their role and excuse certain measures regarded as contravening IIAs.

Article 29.2(b) of the CPTPP provides as follows:

> Security Exceptions
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> Nothing in this Agreement shall be construed to: …
>
> (b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of

> international peace or security, or the protection of its own essential security interests.

These exceptions apply to measures affecting trade or investment. A security clause with a similar wording in an IIA was interpreted by the tribunal in *Continental Casualty Company v the Argentine Republic* (ICSID Case No ARB/03/9, 5 September 2008). The tribunal held that once the factual situation falls under the scope of the clause, the clause justifies measures adopted by the State to deal with the given crisis that are contrary to the obligations normally owed to investors of the other parties. Thus, no compensation is to be paid to the claimant investor despite losses resulting from the measures. In addition, the measures do not have to be removed once the given calamity is no longer severe. The combination of zero compensation and permanent effect of the measures that outlive the crisis are two effects of security clauses that significantly favour host States at times of crises. In principle, by virtue of the operation of the security exception in this FTA, New Zealand would not have to pay any compensation to foreign investors from CPPTP countries for losses caused by COVID-19 measures.

However, the wording of other security exceptions in New Zealand's FTAs appears to be more limited. For instance, art 200.1 (b) of the New Zealand – China FTA and art 17.2.1 of the New Zealand – Malaysia FTA provide:

> Security Exceptions
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> Nothing in this Agreement shall be construed:
>
> to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests:
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> (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
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> (ii) taken in time of war or other emergency in international relations;

(iii) relating to fissionable and fusionable materials or the materials from which they are derived;

COVID-19 would fall under this provision to justify measures adversely affecting foreign investors only if it constitutes an emergency in international relations. The term was first interpreted by the WTO panel in *Russia — Measures Concerning Traffic in Transit* (WTO Panel Report *Russia — Measures Concerning Traffic in Transit* (WTO/DS512/R 5 April 2019) (*Russia—Traffic in Transit*). It stated (at [7.76]):

> An emergency in international relations would, therefore, appear to refer generally to a situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing or surrounding a state. Such situations give rise to particular types of interests for the Member in question, i.e. defence or military interests, or maintenance of law and public order interests.

This statement needs to be taken with caution. It was made in an inter-State trade dispute under a multilateral treaty, the General Agreement on Tariffs and Trade (GATT), which also has another exception to protect human health, GATT art XX(b). It makes then sense to interpret the term "emergency in international relations" narrowly for a public health emergency will be generally dealt with through art XX.

This is not the case when art 200.1 (b), a provision in a bilateral treaty, is invoked to justify measures taken to address a health emergency that adversely affects Chinese investors in New Zealand or New Zealand investors in China, if there is no subsequent agreement between the Parties to prevent the violation during Covid-19. In this specific context, the term "emergency in international relations" should have a wider scope to include not only tensions, but also events in which the international community, including the two parties to the treaty, is in a state of health emergency. This is just what the UN General Assembly resolution 74/270 of 3 April 2020 indicates. It says that COVID-19 constitutes a global threat to human health, safety and well-being and "requires a global response based on unity, solidarity and renewed multilateral

cooperation". There is an emergency in international relations because a joint action of the international community is key to overcome the emergency.

Obviously, a purely domestic health crisis does not qualify as an "emergency in international relations". Thus, the latter term has important boundaries to prevent its abuse. For these reasons, and in the present author's view, COVID-19 may constitute an "emergency in international relations" under art 200.1(b) and art 17.2.1 to justify measures affecting foreign investors of the other Party to the New Zealand – China and New Zealand – Malaysia FTAs. There are potential criticisms to this conclusion which are not within the scope of this article.

However, if COVID-19 does not fall under provisions like art 200.1(b), New Zealand can still rely on the customary rule of necessity to excuse potential violations of foreign investors' rights under the said FTAs or others with a similar security exception. The defence is, though, less strong than security clauses in protecting States' interests.

Customary rule of necessity

When States decide not to incorporate security clauses in IIAs or FTAs, or the clause is not applicable to the crisis in question, States can still invoke the customary rule of necessity as a defence in negotiations with affected foreign investors or in international litigation.

Article 25 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ILCASR) embodies the customary rule. It provides as follows (International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts at 6–7. General Assembly Resolution 56/83. 20 January 2002):

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:
    (a) is the only means for the State to safeguard an essential interest against a grave and imminent peril; and
    (b) does not seriously impair an essential interest of the State or State towards which the obligation exists, or of the international community as a whole.
2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

(a) the international obligation in question precludes the possibility of invoking necessity; or
(b) the State has contributed to the situation of necessity.

In its judgment in the *Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, the International Court of Justice (ICJ) interpreted some requirements of this provision. As to the term "grave and imminent peril", which is particularly relevant in this pandemic, the Court expressed (*Case Concerning The Gabcikovo-Nagymaros Project (Hungary/Slovakia)* (Merits) [1997] at [54]):

> [A] state of necessity could not exist without a 'peril' duly established at the relevant point in time: the mere apprehension of a possible 'peril' could not suffice in that respect. It could moreover hardly be otherwise, when the "peril" constituting the state of necessity has at the same time to be 'grave' and 'imminent'. 'Imminence' is synonymous with 'immediacy' or 'proximity' and goes far beyond the concept of 'possibility'.

The Court also held that the above-mentioned provision had the status of customary international law; that the concept had to be interpreted very narrowly, since it served to excuse wrongful acts under international law; and that the requirements must be satisfied cumulatively by the State invoking necessity.

In addition, the consequences of the successful invocation of necessity are set forth in art 27 of the ILCASR, which provides:

> The invocation of a circumstance precluding wrongfulness in accordance with this Chapter is without prejudice to:
> (a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exist;
> (b) the question of compensation for any material loss caused by the act in question.

The first consequence that emerges from the text of this provision is that the excuse of necessity does not preclude the possibility of compensation for the aggrieved investor, an issue that the parties must deal with. The second important consequence is that the violation of an international obligation by the State claiming necessity does not disappear if the State succeeds

in its defence or has a basis for it. Therefore, if the circumstances that created the grave and imminent peril disappear or change for the better, the State has to comply with its obligations in full or partially. In this regard, the ICJ stated in *Gabcikovo-Nagymaros* that "[a]s soon as the state of necessity ceases to exist, the duty to comply with treaty obligations revives"(at [102]). Part of the duty to comply, points out the International Law Commission, includes the cessation of the wrongful conduct. This is to say that the excuse is, in essence, temporary.

The Argentina saga has given ad-hoc investor/State arbitration tribunals many opportunities to interpret art 25. No less than seven tribunals have rejected the invocation of this customary defence by Argentina. The tougher obstacle has been art 25(2)(b): lack of a substantial contribution to the situation of necessity.

The tribunals concluded that Argentina's macro-economic policies were a substantial cause of the collapse of its economy. When assessing art 25(2)(b), tribunals embarked in detailed assessment of the policies, many of them put in place as a result of stand-by agreements with the International Monetary Fund (IMF) spanning half a decade, and praised by this organisation year by year. The tribunals also examined the negative impact that the Asian and Brazilian crises of the end of the 1990s had on the Argentinian economy. In sum, and with the aid of the parties' experts, the tribunals carried out a full assessment of the several causes that prompted the crisis and that, in in Argentina's view, served as basis for the invocation of the customary rule. The tribunals paid little deference to Argentina's policies and decisions when they rejected the customary defence.

Can we expect a similar approach and similar results in the event of the application to art 25 to COVID-19? Could not New Zealand rely on art 25 if so needed? The answer to both questions is negative.

There is no doubt that COVID-19 meets the criteria of art 25(1)(a). It is a threat to an essential security interest: the life and wellbeing of entire communities. The peril is also "grave and imminent". Days before the declaration of State of National Emergency in New Zealand, the WHO had advised (World Health Organization "Critical preparedness, readiness and response actions for COVID-19 Interim Guidance" 22 March 2020 at 1):

> Each country should assess its risk and rapidly implement the necessary measures at the appropriate scale to reduce both COVID-19 transmission and economic, public and social impacts.

New Zealand also meets the other requirements in general. The measures, such as travel restrictions, are the only ones available to protect the essential security interest. Evidence of this uniqueness is the fact that they are explicitly recommended by the WHO. In effect, one of the global objectives of the WHO's strategy is to "[s]uppress community transmission through … appropriate and proportionate restrictions on non-essential domestic and international travel" (World Health Organization COVID-19 Strategy Update 14 April 2020 at 5). The use of WHO's recommendations to assess host States' actions and decisions is not strange to international investment law, as the award in *Philip Morris Brands Sarl, Philip Morris Products SA and Abal Hermanos SA v Oriental Republic of Uruguay* (ICSID Case No ARB/10/7, 8 July 2016) illustrates.

The tough requirement of lack of substantial contribution under art 25(2)(b) is also met. New Zealand had nothing to do with the arrival and spread of COVID-19 in the country. The virus arrived in the New Zealand on 28 of February as a result of international travel. The next day, on 29 February, the WHO was still advising "against the application of travel or trade restrictions to countries experiencing COVID-19 outbreaks" (World Health Organization Updated WHO Recommendations for International Traffic in relation to COVID-19 Outbreak 29 February 2020). In sum, New Zealand has not, so far, made a contribution to the situation of necessity created by the pandemic.

But the requirement of lack of contribution has other dimensions that investor/State tribunals would eventually have to assess. Happily, they are not connected to the country. For instance, how to categorise, under art 25, delayed responses that prevent a host State from bringing the virus under control and compels them to adopt new or more extended restrictions affecting foreign investors; or lack of adequate response in terms of testing and tracing that expands contagions; or States that relied on the concept of herd immunity despite its controversial relevance shortly after the outbreak and are later forced to prolong restrictions with devastating economic effects. The fact that a certain view is not unanimously supported by the scientific community has not meant that a policy based on this view lacks scientific basis. This approach

has been endorsed by the Appellate Body of the World Trade Organization. Interpreting art 5.1 of the Agreement on Sanitary and Phytosanitary Measures, the Appellate Body expressed in *European Communities – Measures Concerning Meat and Meat Products (Hormones)* (WT/DS26/AB/R 6 January 1995 at [194]):

> [I]n most cases, responsible and representative governments tend to base their legislative and administrative measures on 'mainstream' scientific opinion. In other cases, equally responsible and representative governments may act in good faith on the basis of what, at a given time, may be a divergent opinion coming from qualified and respected sources.

The question that remains is if this approach is equally applicable to the assessment of States' actions and omissions under art 25(2)(b). There are other hard questions, such as how to evaluate host States omissions given the reality that COVID-19 was totally unknown, appeared unexpectedly and its potential impact was uncertain. For instance, already at the end of March 2020, the WHO indicated that "[t]here is still much to discover about the disease and its impact in different contexts" (World Health Organization "Critical preparedness, readiness and response actions for COVID-19. Interim Guidance" 22 March 2020 at 1). Is a "wait and see policy" admissible under art 25(2)(b), and if so for how long?

Whether or not an ad-hoc investor/State tribunal is, in the end, the proper *forum* for this debate does not really matter. If a State ever invokes art 25 in investment litigation, the parties will offer scientific evidence in support of their legal positions and the given tribunal will arrive at its own conclusions. But the debate cannot be avoided by future tribunals, as the assessment of Argentina's macro-economic policies over seven years carried out by others in the past evidences.

Finally, the assessment of the contribution under art 25(2)(b) may not always need to focus on complex technical or scientific discussions. Statements by representatives of States may be particularly important when they themselves accept the role of their country in the crisis.

In *EDF International SA, SAUR International SA, and Leon Participaciones Argentinas SA v Argentine Republic,* when assessing the lack of contribution requirement, the tribunal evaluated

a declaration of a, then, new Argentine President in an interview with the Washington Post, stating that "[O]ur crisis is homegrown – made in Argentina, by Argentines" (International Centre for Settlement of Investment Disputes *EDF International SA, SAUR International SA, and Leon Participaciones Argentinas SA v Argentine Republic* ICSID Case No ARB/03/23 11 June 11 2012 at [1173]). Although the tribunal mentioned some policies it considered wrong, the basis of the contribution finding was the said declaration.

The communications strategy during the pandemic is then an important component that can strengthen or weaken States' legal positions under art 25. New Zealand has already been praised in this domain for the consistency and clarity of the messages conveyed by the Primer Minister and other important authorities to the public. The legal value of this strategy in international law terms should not be ignored.

WHEN DOES THE EMERGENCY CREATED BY COVID-19 END FOR THE PURPOSE OF INTERNATIONAL INVESTMENT LAW?

As has been illustrated, security clauses in IIAs and the customary rule of necessity operate in the event of grave threats against certain interest. Given that these defences prevent the existence of violation of IIAs or suspend the international obligations for a certain period, it is key to determining when this period ends. Recall that the International Court of Justice, stated regarding art 25 in particular, that once the situation of necessity ends States have to resume their international obligations.

I have explored this topic in the context of economic crises (see Alberto Alvarez-Jimenez "International Investment Law, Time, and Economics: Fixing the Length of Economic Crises as a Costs-Allocation Tool between Host States and Foreign Investors" (2020) World Trade Review 91), and this article adds to such analysis. To begin with, the two options available at first glance are either non-available or have limitations.

First, investor/State tribunals dealing with the Argentinian saga, in particular the decision on liability in *LG&E Energy Corp v Argentine Republic*, have declared that it is not for host States to determine when a state of necessity ends for international law purposes. This means that a state of necessity in international law does not extend until a domestic state of emergency is lifted by a government. The said tribunal pointed out (International Centre for Settlement of

Investment Disputes *LG&E Energy Corp v Argentine Republic* Decision on Liability ICSID Case No. ARB/02/1 3 October 2006 at [227]):

> The Tribunal does not consider that the initial date for the state of necessity is the effective date of the Emergency Law, 6 January 2002, because, in the first place, the emergency had already started when the law was enacted. Second, should the Tribunal take as the initial date the day when the Emergency Law became effective, it might be reasonable to take as its closing date the day when the state of emergency is lifted by the Argentine State, a fact that has not yet taken place since the law has been extended several times.

The rationale, as can be inferred, is to prevent States from preserving a national state of emergency indefinitely to avoid compliance with their international obligations. On the other hand, States may declare a state of emergency to assume additional institutional powers not available in normal times in order to adopt measures, and lift it once this have been done. The fact that the state of emergency has been lifted does not mean that the grave risk on the security interest no longer exists. This is the case with New Zealand. Even if the state of emergency has been lifted since May 13, the borders remain closed and the legal possibility of returning to lockdowns under Levels 3 and 4 exists to address the risk that COVID-19 still poses to the country. It is then correct to assume that the New Zealand government's decision has no impact on the availability of the customary rule of necessity given the ongoing public health threat.

The second potential criterion to determine when a state of necessity ends in the context of the COVID-19 pandemic would be to rely on the WHO. In effect, art 48 of the WHO International Health Regulations (2005) provides:

> The Director-General shall establish an Emergency Committee that at the request of the Director-General shall provide its views on: (a) whether an event constitutes a public health emergency of international concern; (b) the termination of a public health emergency of international concern;

A declaration marking the end of a global pandemic was made by the WHO Director upon the advice of the Committee regarding the virus H1N1. The WHO expressed (World Health

Organization “Director General statement following the ninth meeting of the Emergency Committee” 10 August 2010):

> …the Committee based its assessment on the global situation. Members noted clear indications that influenza, worldwide, is transitioning towards seasonal patterns of transmission. In the majority of countries, out-of-season outbreaks are no longer being observed, and the intensity of H1N1 (2009) transmission is lower than that reported during 2009 and early 2010. …

The Committee agreed that the global influenza situation no longer represented an extraordinary event requiring immediate emergency actions on an international scale.

There is no question that a statement of this nature on COVID-19 would have significant influence. It could be difficult for States to preserve, for instance, border measures – an emergency action of international scale – after such a declaration. However, this declaration would not necessarily mean the end the national threat for all States. Regard must be paid to the fact that this kind of WHO declaration is based on an assessment of the *global situation*. There might be States that constitute the exception to the global situation and for which the public health risk may not have disappeared at the time of the declaration. In this event, the specific facts only will determine whether the danger is still grave and imminent. The situation, though, may be different for States relying on security clauses based on “an emergency in international relations”.

There is a third element making the assessment of the end of the COVID-19 emergency more complicated from an international investment law perspective. COVID-19 is “mutating” in a different sense: it started as a public health crisis but also became an economic catastrophe. Any declaration by the WHO based on art 48 would cover the health dimension only, not the economic facet of the pandemic. Security clauses or the state of necessity could then still be available to States to address the economic threat after the public health menace has been contained.

No declaration under art 48 has been issued by the WHO at the time of writing and the economic impact of COVID-19 is just evolving. In consequence, it can be said that New Zealand can still rely on security clauses or art 25, if required.

IN A NUTSHELL

Despite the massive negative economic impact that COVID-19 is creating, this article has illustrated that New Zealand has so far complied with its obligations to foreign investors under its FTAs. As a result, the country does not face, for the moment, significant international legal risks as a result of the adverse consequences that the measures aimed at eliminating the virus have had on foreign investors. This low risk is further mitigated by the availability, in principle, of the defence based on security clauses in FTAs or the state of necessity under customary international law to justify or excuse potential actions or measures contravening international obligations owed to such investors. The conclusion for the moment is that the investment chapters of its FTAs do not appear to overly constrain the government when designing new measures to address the pandemic and its effects. It is a narrow conclusion applicable to COVID-19 only, and not to other circumstances. A highly esteemed colleague, Jane Kelsey, holds a different view regarding the post-COVID-19 recovery (see Jane Kelsey, "Trade deals are a handbrake on New Zealand's post-covid recovery" *The Spinoff* (online ed, 19 May 2020)). The debate has just begun and new premises may emerge as a result of the evolution of the pandemic.