



UNCITRAL Secretariat / ISDS Academic Forum Webinar

The Role of Mediation in ISDS

June 18, 2020, 2pm-4pm CEST / 8am-10am EST

From Two-Party to Multi-Party Dispute Resolution: A Negotiation Analysis Perspective

Dr. Arvid Bell

Lecturer on Government

Director, Negotiation Task Force

Davis Center for Russian and Eurasian Studies

Harvard University

Three approaches to dispute resolution:



**Power-
based**



**Rights-
based**



**Interest-
based**



Key question:
**What do they
really want?**

ISDS

Negotiation

Stakeholder

Party/Issue/Conflict Mapping



Context	Government/State Interests	Corporation/Investor Interests	NGO/Civil Society Interests
Relationship Management			
Changes to domestic legislation			
State regulatory or policy shift			
State seizure/nationalization			
Domestic court judgement			



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Relationship Management	Sovereignty: ability to implement, change and enforce national legislation; reduce domestic criticism about being captured by foreign interests Maintain reputation for positive investment climate		
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Relationship Management	Sovereignty: ability to implement, change and enforce national legislation; reduce domestic criticism about being captured by foreign interests Maintain reputation for positive investment climate	Preserve relationship with governments so that you can secure future contracts Minimize publicity, protect investor reputation Maintain predictable relationship with government regardless of administration	
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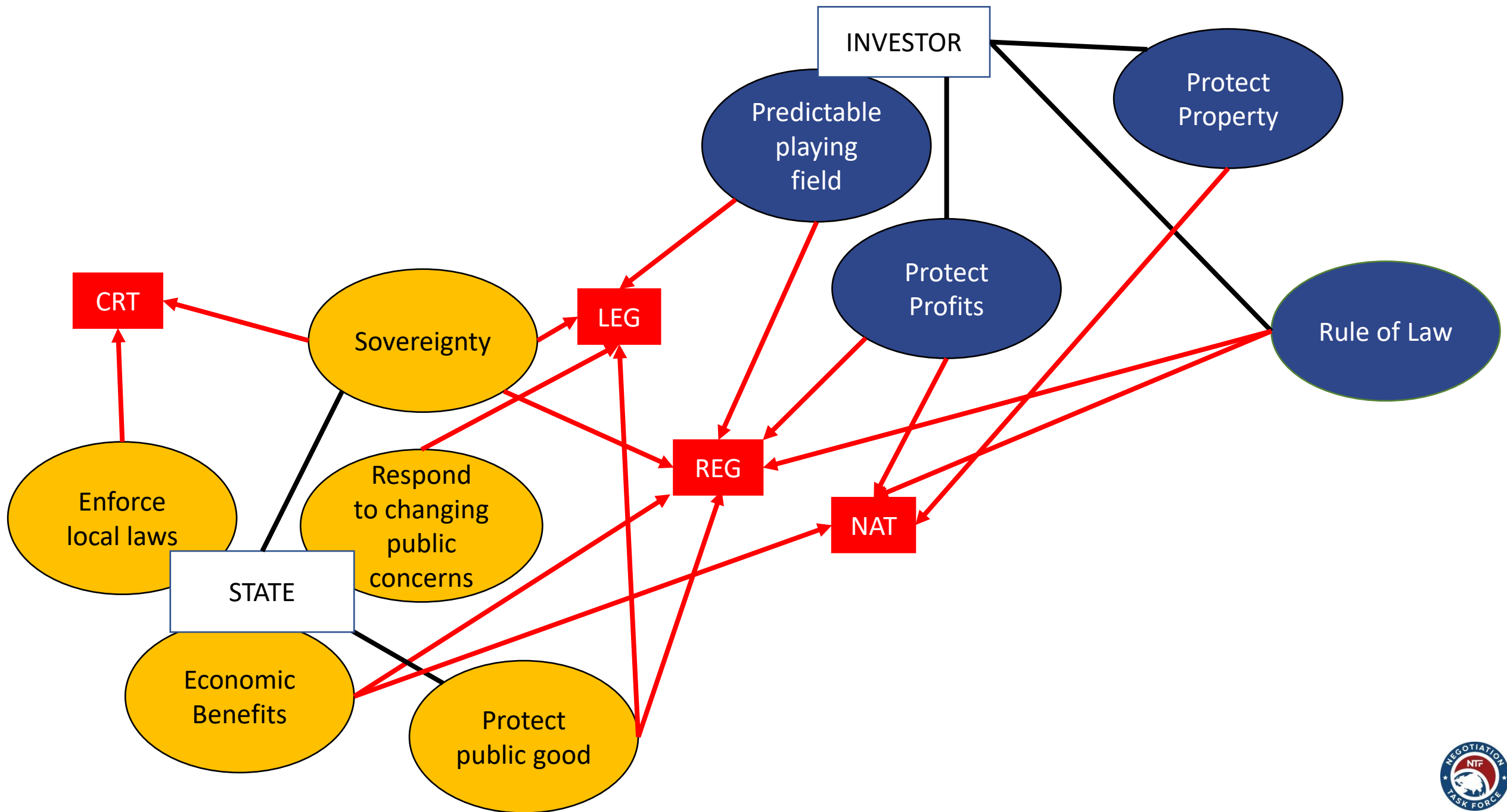
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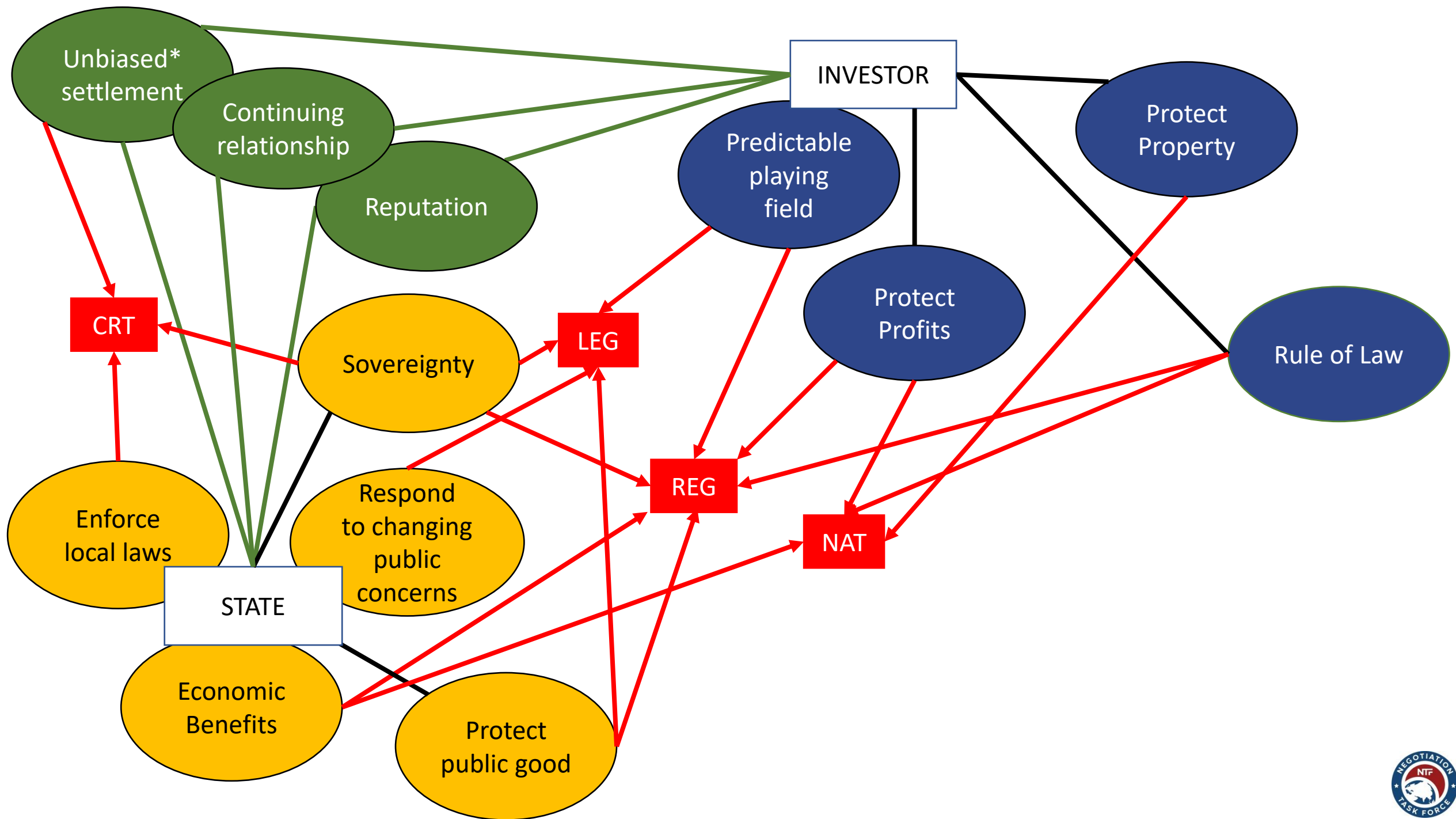


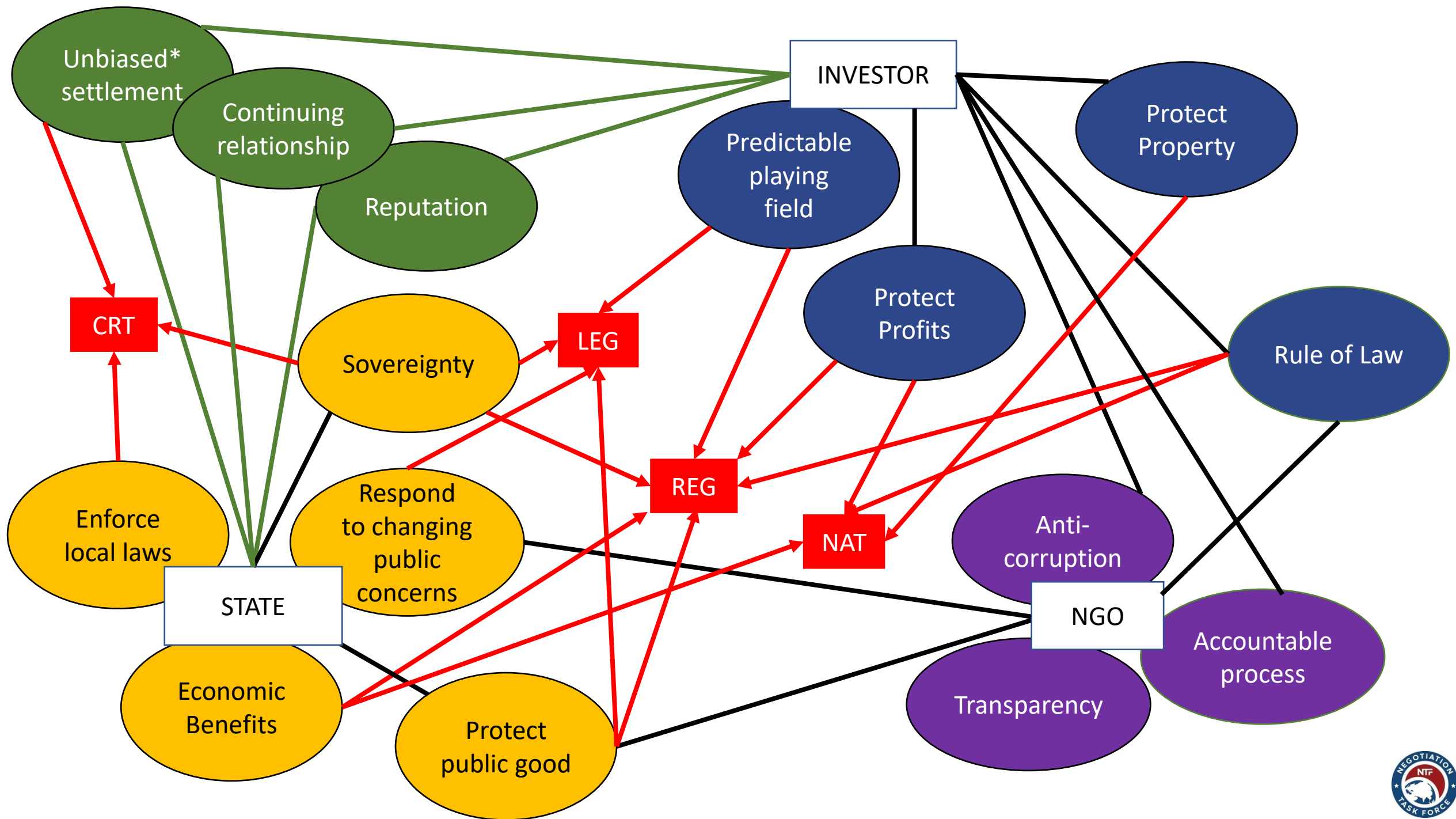
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Changes to domestic legislation	Institute regulations that effectively protect the public; retain sovereign control of creating or altering national regulation. Offer little to no compensation to the company. Resolve case without triggering investor rights under its concession or investment treaties	Revision of new legislation to maintain the existing economic stability for its investment as agreed with the State; obtain fair compensation for any damages caused by new legislation	Protect ability of government to enact laws that improve the economic wellbeing of their citizens
State regulatory or policy shift	Institute regulations that effectively protect the public; retain sovereign control of creating or altering national regulation; revise the economic balance previously agreed. Offer little to no compensation to the company	Maintain agreed economic balance and contract/treaty protections. Secure revocation of new regulations that have changed the existing bargain; obtain fair compensation for damages caused by the new regulations	Protect ability of government to enact regulatory measures that protect citizens even when unfavorable to corporate investors
State seizure/nationalization	Seize corporate assets with minimum damage to the assets or the state's reputation. Offer little to no compensation to company	Regain or retain control of expropriated assets; alternatively, obtain compensation for loss of economic interests in the form of damages	Rule of law
Domestic court judgement	Enforce local laws. Keep case in national court system to control the outcome of the dispute and receive positive publicity or, possibly, a share of the settlement. Prevent meddling of foreign actors in domestic problems	Overtuning an adverse judicial outcome in a domestic court; ensuring an impartial and independent review is undertaken of the claim; undoing reputational damage caused by domestic judgement; avoiding domestic court fines	Ensure that affected civilians are fairly compensated(especially in cases when neither national governments nor international corporations are motivated to provide said compensations do so)

Context	Government/State Core Interests	Investor Core Interests	NGO/Civil Society Core Interests
REL Relationship Management	<ul style="list-style-type: none"> • Sovereignty • Reputation • Continuing relationship 	<ul style="list-style-type: none"> • Continuing relationship • Reputation • Predictable playing field • Anti-corruption 	<ul style="list-style-type: none"> • Accountability • Transparency • Anti-corruption
LEG Changes to domestic legislation	<ul style="list-style-type: none"> • Sovereignty • Protect public good • Respond to changing public concerns 	<ul style="list-style-type: none"> • Predictable playing field 	<ul style="list-style-type: none"> • Respond to changing public concerns
REG State regulatory or policy shift	<ul style="list-style-type: none"> • Sovereignty • Economic benefits • Protect public good 	<ul style="list-style-type: none"> • Predictable playing field • Rule of law • Protect profits 	<ul style="list-style-type: none"> • Protect public good • Respond to changing public concerns
NAT State seizure/nationalization	<ul style="list-style-type: none"> • Economic benefits 	<ul style="list-style-type: none"> • Rule of law • Protect property • Maintain control of property • Protect profits 	<ul style="list-style-type: none"> • Rule of law
CRT Domestic court judgement	<ul style="list-style-type: none"> • Enforce local laws • Sovereignty • Unbiased settlement (local fora) 	<ul style="list-style-type: none"> • Unbiased settlement (international fora) 	<ul style="list-style-type: none"> • Protect public good

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**Power-
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Careful mapping of stakeholders
and their interests in each type of
dispute can enable us to identify
areas of common ground and
deep differences, as well as help
to find linkages to parties outside
of the central dispute that could
act as a bridge between the main
conflicting parties.

Key question:
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Thank you!

Questions?

Negotiation Task Force
Davis Center for Russian and Eurasian Studies
Harvard University

ntf@fas.harvard.edu | +1 (617) 496 2180