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***Can Proportionality Make a Balance Between Interests of
Foreign Investors and Hosting States?***

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In investor-state arbitration, "proportionality" has been applied by judges and arbitrators in order to clarify whether the measures of hosting states, which resulted in a breach of their obligations under Bilateral Investment Treaties (BITs), are necessary to realize the public interests of the state or not. Proportionality is rooted in the judicial system of Germany and has afterwards spread across other countries and at the international level. International courts, including the Court of Justice of the European Union, the European Court on Human Rights and the World Trade Organization, have applied proportionality to evaluate states' measures when treaties provide for the possibility of derogation from obligations if the public interests of the hosting state are concerned. When it comes to International Investment Law (IIL), "proportionality" has been also used by tribunals from the International Centre for the Settlement of Investment Disputes (ICSID) in cases brought against Argentina, for instance. This has led to inconsistent approaches among arbitrators and other jurists.

The presentation aims at analyzing some examples of how the balancing of interests of investors and hosting states takes place through proportionality, in investor-state arbitration awards. For this purpose, the role of proportionality in different areas of international investment law, including the interpretation of investment treaties, expropriation, and fair and equitable treatment will be discussed. To do so, firstly the legal status of proportionality will need to be clarified. Then, the way proportionality is invoked by tribunals when interpreting the BITs on which the claims are grounded, defenses of necessity invoked by hosting states, protections toward investors which are regulated in BITs, including fair and equitable treatment, and measures of hosting states against foreign investors including expropriation will also be addressed.



Amineh Farasatmand completed her bachelor's degree in the University of Isfahan, Iran, as a top Student and was then ranked second in the National University Entrance Exam throughout all the participants in Iran. She was admitted for an LL.M course in International law at the University of Tehran, Iran. She then began her Ph.D. in the University of Tehran upon being ranked first in the National University Entrance Exam. She is a member of ICC YAF (Young Arbitrators Forum) in Iran and has been working as a legal consultant in foreign investment projects in Iran in the area of renewable energy.