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SOCIETÀ ITALIANA DI DIRITTO INTERNAZIONALE

**TESI DI DOTTORATO NEI SETTORI DI DIRITTO INTERNAZIONALE,
DIRITTO DELL'UNIONE EUROPEA E DIRITTO INTERNAZIONALE PRIVATO**

(da restituire all'indirizzo e-mail: info@sidi-isil.it)

Il questionario è rivolto ai dottorandi, anche non soci della SIDI, che desiderano fare conoscere l'oggetto del loro lavoro di ricerca, tramite l'apposita sezione presente nel sito della Società.

A) Informazioni generali

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B) Informazioni sulla tesi

Titolo della tesi di dottorato:

INVESTMENT PROTECTION BETWEEN INTERNATIONAL LAW AND EC LAW:
BILATERAL INVESTMENT TREATIES CONCLUDED BY EC MEMBER STATES
AND THE EUROPEAN LEGAL SYSTEM

Ciclo di dottorato e anno di inizio:

XXII CICLO

A.A. 2006/2007

Sede amministrativa del dottorato (si possono indicare anche le altre sedi consorziate):

UNIVERSITA COMMERCIALE LUIGI BOCCONI

Tutor della tesi di dottorato:

PROF. GIORGIO SACERDOTI

Anno e mese in cui scadono i tre anni del ciclo di dottorato (o alternativamente anno di discussione della tesi per i neo-dottori di ricerca, anno 2008 o 2009):

FEBBRAIO 2010

Abstract della tesi di dottorato (massimo 2 pagine):

Justification and Objectives. The research topic acknowledges the recurrence of a number of varied international Bilateral Investment Treaties (BITs) as a means to economic integration between States and investigates on possible conflicts between international legal instruments and in particular between BITs and the European legal system.

In fact, the European legal system (i.a. non discrimination principle and fundamental economic freedoms under the EC Treaty) grants reciprocal economic integration between EC Member States. At the same time, Member States themselves and - under certain circumstances - the EC are willing to pursue closer economic integration with third countries, and exercise their respective authority to enter into BITs with third States.

The research question focuses possible conflicts between concurring binding international legal instruments in the field of international economic relations and especially those for the promotion of foreign investment such as BITs on one side and the European legal system on the other side.

In general terms, the research concerns the relation between international law and the EC legal system (Ch. 1) in the field of investment protection and aims at verifying the hypothesis whether: (i) the EC legal system is peculiar and prevails over international law; (ii) the EC legal system has the authority to limit international agreements concluded by Member States (Ch. 2); (iii) the EC legal system actively contributes to the formation of international law (Ch. 3).

Three research sections may be identified: the first on BITs concluded by and between Member States (Ch. 4), the second on BITs concluded by Member States with third countries (Ch. 5); and the third on BITs concluded by the EC with third countries (Ch. 6).

For each research section, this research will ascertain whether the relationship between international law and the European legal system is governed by the principle of coexistence, by the principle of prevalence or by the principle of integration (i.a. Article 307 of the EC Treaty and Article 59 of the 1969 Vienna Convention on the Law of the Treaties).

The research question does not therefore cover other areas (such as neighbourhood policy, human rights, development policy, humanitarian aid) where the activity of Member States and of the EC/EU is less likely to come to an international binding legal instrument.

The practical relevance of this matter has been recently addresses by arbitral tribunals and by the ECJ, reaching diverging solutions on whether BITs and EC Treaties are

reciprocally incompatible i.e. whether they regulate the same subject matter in a conflicting manner.

In addition, the matter has been considered among the constitutional amendments introduced by the Treaty of Lisbon. Article 188C to the Treaty on the Functioning of the European Union gives competence to the EU to conclude international agreements in the field of direct foreign investments (Ch. 7).