

Bilateral Investment Treaty Arbitration

(LAW-972-001)

Professors Alexandrov and Carlson

Overview

The objective of the course is to introduce students to international investment law and investment treaty arbitration. The course will address:

- an overview of the history and policy underlying investment treaty law;
- jurisdictional and admissibility issues that arise in investment treaty disputes;
- the primary substantive principles and standards which serve to protect qualifying investors and investments under bilateral and multilateral investment treaties, such as fair and equitable treatment, expropriation, national treatment, most-favored-nation treatment, and “umbrella clauses”;
- procedural aspects of investor-state arbitration under investment treaties; and
- the review and enforcement of awards.

Throughout the class we will consider wider issues relating to current criticisms of the investment treaty arbitration system and recent developments, such as the proposed TPP and TTIP treaties.

Class Topics

Class One (August 23):

History, evolution, and controversy surrounding bilateral and multilateral international investment agreements

Reading:

Rudolf Dolzer & Christoph Schreuer, *Principles of International Investment Law* (2d ed. amazon2012), p. 1-27

U.S.-Argentina BIT (1994), available online at

http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_000897.asp

U.S. Model BIT (2004), available online at

http://www.ustr.gov/archive/assets/Trade_Sectors/Investment/Model_BIT/asset_upload_file847_6897.pdf

U.S. Model BIT (2012), in Dolzer & Schreuer, pp. 377-405

Class Two (August 30):

Access to treaty protection – investors and investments; state responsibility & attribution

Reading: Dolzer & Schreuer, pp. 44-78, 216-227

Class Three (September 6):

Substantive treaty protections – pre- and post-establishment rights, non-discrimination (national treatment and MFN)

Reading: Dolzer & Schreuer, pp. 87-90, 198-212, 270-275

Class Four (September 13):

Substantive treaty protections – expropriation, transfers, performance requirements

Reading: Dolzer & Schreuer, pp. 90-92, 98-129, 212-215

Class Five (September 20):

Substantive treaty protections – fair and equitable treatment, full protection and security, arbitrary and discriminatory measures

Reading: Dolzer & Schreuer, pp. 130-166, 178-182, 191-197

Class Six (September 27):

Substantive treaty protections – contract v. treaty breaches, umbrella clauses

Reading: Dolzer & Schreuer, pp. 79-86, 166-178, 267-268, 275-278

“Breaches of Contract and Breaches of Treaty: The Jurisdiction of Treaty-Based Arbitration Tribunals to Decide Breach of Contract Claims in *SGS v. Pakistan* and *SGS v. Philippines*,” 5(4) *Journal of World Investment and Trade* 555 (2004) (to be distributed by email)

Class Seven (October 4):

Substantive treaty protections – defenses and exceptions

Reading: Dolzer & Schreuer, pp. 92-97, 182-190

U.S. Model BIT (2012), in Dolzer & Schreuer, pp. 377-405

Class Eight (October 11):

Dispute settlement - consent, jurisdiction, admissibility, forum selection

Reading: Dolzer & Schreuer, pp. 238-270

Class Nine (October 18):

Dispute settlement – the International Centre for Settlement of Investment Disputes

Reading: ICSID Convention, in Dolzer & Schreuer, pp. 313-328

The ICSID Caseload – Statistics (Issue 2015-2), available online at

[https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID%20Web%20Stats%202015-2%20\(English\).pdf](https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID%20Web%20Stats%202015-2%20(English).pdf)

Class Ten (October 25):

Dispute settlement – arbitration rules, selection of arbitrators, evidence, presentation of witnesses and arguments, third-party participation

Reading: Dolzer & Schreuer, pp. 278-288

ICSID Arbitration Rules, available online at

http://icsid.worldbank.org/ICSID/StaticFiles/basicdoc/CRR_English-final.pdf

(NOTE: the link is to a longer document; you need only read pp. 99-128)

Class Eleven (November 1):

Discussion of student paper topics

Dispute settlement – settlement, provisional measures, other remedies

Reading: Dolzer & Schreuer, pp. 268-270, 281-283

Class Twelve (November 8):

Dispute settlement – claims for damages

Reading: Dolzer & Schreuer, pp. 293-300

Class Thirteen (November 15):

Dispute settlement – set-aside, annulment

Reading: Dolzer & Schreuer, pp. 300-309

Class Fourteen (November 22):

Dispute settlement – enforcement

Reading: Dolzer & Schreuer, pp. 310-312

Review and wrap-up of class topics

Grading

Grading will be based on (i) class participation, and (ii) a 15-20 page, double-spaced research paper, weighted as follows:

Class participation: 40%

Careful preparation and reading of all materials in advance of class is expected, as is active participation in class discussions. *Note that more than two class absences for any reason will automatically result in a half-grade markdown (e.g. from an A to an A-).*

Paper: 60%

The paper will be on a topic of the student's choosing relating to one of the topics discussed in class (15-20 pages). Students must choose their paper topics by October 26 and be prepared to discuss their topics in class on November 1.

Assigned Texts

- Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2d ed. 2012)
- *plus* other materials as indicated above, most of which are available online.

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