

INTERNATIONAL INVESTMENT LAW AND POLICY
AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW
Law-795ZZ-001

Course Syllabus – Spring 2015

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I. Course Description

This seminar provides an overview of the international investment process from start to finish, examining the perspectives of the relevant legal institutions and instruments, their interactions, and the oftentimes competing objectives. The international investment landscape includes at least four constituencies: governments, investors, advocates, and adjudicators. Governments invite, promote, and regulate investments. Investors make, manage, and divest investments. Advocates advise and influence governments and investors. Adjudicators determine the existence and consequences of wrongful acts relating to investment. The landscape is best appreciated when viewing the constituencies in light of their interplay and, in turn, the legal devices they use in advancing their overlapping agendas. Starting with political stability and policies that welcome foreign investment, the course will proceed to review the investment-making process and dynamics, regulation and sustainability, disputes and remedies, and investments' broader geopolitical setting.

II. Location/Time

We will meet on Mondays from 8:00 PM – 9:50 PM.

Some classes, announced in advance, will be held at:

White & Case LLP
701 13th Street NW, 11th Floor
Washington, DC 20005-3807
(Metro Center metro stop; 13th Street between G and H streets)

III. Prerequisites

There are no prerequisites for this course.

IV. Course Objectives

1. Students will gain a thorough understanding of the international investment process from start to finish.
2. Students will explore each relevant stage in the international investment process, complementing other courses that explore some of these stages in greater detail. Students will gain a broad-based understanding of the international investment landscape, including investment policy as a part of economic development, international project finance, international commercial arbitration, and investment treaty arbitration. By balancing rigorous treatment with breadth of coverage, this seminar will prepare students to participate in this field across its many facets.
3. Students will interact with guest speakers who are practitioners in the field of international investment. By blending academic discussion with engagement with practitioners in the field, students will gain an enhanced perspective on international investments and an opportunity to network.

V. Course Requirements

Students will be required to:

- Read class materials
- Participate fully in class discussions
- Prepare and deliver a 5-10 minute class presentation
- Write a 10-15 page research paper

VI. Evaluation and Grading

The final grade in the course will be based on the following three components:

- Attendance and class participation (15%)
- 5-10 minute in-class presentation (25%)
- 10-15 page research paper (60%)

Students will be required to submit proposals for their papers and presentations no later than March 31, 2015, and will receive feedback on the proposals no later than April 3, 2015. Students are free to submit paper and presentation proposals at any earlier point and will similarly receive feedback earlier. Paper proposals should consist of an abstract of 200-300 words describing what the paper will cover. Presentation proposals should be a brief synopsis of 1-3 sentences setting out what will be discussed in the presentation. Students are free to structure the presentation as a walk-through of the paper or a more detailed exploration of a subset of the paper.

Citation Requirement: Students' research papers must contain citation to two (2) of the readings from this Course Syllabus, each from a different Part as set out in the Course Outline below. Readings used to fulfill the citation requirement may be required or optional readings and citations need not be to excerpts designated as required readings. The citation must include a pincite and may include no signal word or any signal other than "see generally." Citations intended to fulfill the citation requirement must contain the indication "[Required Citation]" (including highlight) in the relevant footnotes in students' papers.

Research papers will be due on April 28, 2015.

VII. Assigned Readings

The assigned readings for this seminar are available as PDFs on the WCL course website, available online (as indicated in the Course Outline below), or assembled in a course bundle specially designed for this course.

VIII. Course Outline

Part I: The Setting for Foreign Direct Investment

Class 1 (1/12/15): The Investment Climate; Peace and Security; Political and Legal Stability

Issues:

- The Peace-Prosperity Nexus
- Security and conflict impediments to investment
- Role of law
- The situation in Sudan / South Sudan

Required Readings:

- International Peace Academy, *The Security-Development Nexus: Conflict, Peace and Development in the 21st Century* (2004), at 1-9, http://reliefweb.int/sites/reliefweb.int/files/resources/905AE30BAEE61FC38525742D005CACD3-IPA_Security-Development_Nexus_May04.pdf
- U.S. Energy Information Administration, *Country Analysis Brief: Sudan and South Sudan* (2014), <http://www.eia.gov/countries/analysisbriefs/Sudan/sudan.pdf>
- United Nations Security Council Resolution 2046 (2012), [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046(2012))
- Agreement between The Government of the Republic of South Sudan and The Government of the Republic of the Sudan on Oil and Related Economic Matters (Sept. 27, 2012), Arts. 1-4, 9, 14,

http://www.sudantribune.com/IMG/pdf/oil_agreement_between_sudan_south_sudan0001.pdf

- Global Arbitration Review, *South Sudan Hit with ICSID Claim from the North* (Sept. 3, 2012) (not publicly available; see PDF on WCL course website)
- United Nations Security Council Resolution 2187 (2014), <http://www.un.org/en/sc/documents/resolutions/2014.shtml> (click on S/RES/2187 (2014))

Optional Readings:

- Civil-Military Fusion Centre, *Sudan and South Sudan's Oil Industries: Growing Political Tensions* (2012), <http://www.cmi.no/file/2154-r016-CFC-Monthly-Thematic-Report-17-May-12.pdf>
- Cooperation Agreements between The Government of the Republic of the Sudan and The Government of the Republic of South Sudan (Sept. 27, 2012), <http://www.sudantribune.com/spip.php?article44031>
- Okeke-Uzodike, Amao, Obu & Whetho, African Security Review, *From Adversity to Prosperity: Towards a "New" Governance Paradigm for Natural Resource Management in Africa's Conflict Zones* (2014), <http://www.otago.ac.nz/politics/otago075603.pdf>
- Alexandre Genest, *Sudan Bilateral Investment Treaties and South Sudan: Musings on State Succession to Bilateral Treaties in the Wake of Yugoslavia's Breakup*, 11 TRANSNAT'L DISP. MGMT. (2014), <http://www.transnational-dispute-management.com/article.asp?key=2119>
- Erik Gartzke, Quan Li, & Charles Boehmer, *Investing in the Peace: Economic Interdependence and International Conflict*, 55 INT'L ORG. 391 (2001), http://pages.ucsd.edu/~egartzke/publications/gartzkeetal_io_01.pdf
- Satish Chand, *Building Peace in Bougainville: Measuring Recovery Post-Conflict*, Australian National Univ., SSGM Discussion Paper 2013/5, http://ips.cap.anu.edu.au/sites/default/files/SSGM-DP-2013-5-Chand-ONLINE_0.pdf
- Okezie Chukwumerije, *Rhetoric Versus Reality: The Link Between the Rule of Law and Economic Development*, 23 EMORY L. REV. 383 (2009)
- Kojo Yelapaala, *Rethinking the Foreign Direct Investment Process and Incentives in Post-Conflict Transition Countries*, 30 NORTHWESTERN J. INT'L L & BUS. 23 (2010)
- Ibronke T. Odumosu-Ayanu, *South-South Investment Treaties, Transnational Capital and African Peoples*, 21 AFR. J. INT'L & COMP. L. 172 (2013)

Class 2 (1/26/15): Attracting Investment; Domestic and International Legal Frameworks

Issues:

- Domestic investment laws
- Bilateral investment treaties
- Multilateral investment treaties

Required Readings:

- Jason Webb Yackee, *Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence*, 51(2) VA. J. INT'L L. 397, 426-34 (2010), <http://www.vjil.org/assets/pdfs/vol51/issue2/Yackee.pdf>
- Harvard Kennedy School case, *Target of Opportunity: South Africa's Western Cape Seeks a Role in African Oil Boom* (2014) [Coursepack]
- U.S. Department of State, *Investment Climate Statement, South Africa* (2014), Sections 1, 4, 5, and 14, <http://www.state.gov/documents/organization/229217.pdf>
- Stanford Graduate School of Business case, *AES in Nigeria* (2002), pp. 1-10 (please only scan over exhibits at pp. 11-21) [Coursepack]
- U.S. Department of State, *Investment Climate Statement, Nigeria* (2014), Sections 1 and 4, <http://www.state.gov/documents/organization/229183.pdf>

Optional Readings:

- U.S. Model BIT (2012), <http://www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>
- Mark Kantor, *The New U.S. Model BIT: "If Both Sides are Angry With You, You Must be Doing Something Right,"* 7 TRANSNAT'L DISPUTE MGMT. (2012), <http://www.transnational-dispute-management.com/article.asp?key=1915>
- Warren H. Maruyama, Jonathan T. Stoel & Charles B. Rosenberg, *Negotiating the U.S.-China Bilateral Investment Treaty: Investment Issues and Opportunities in the Twenty-First Century*, 4 TRANSNAT'L DISPUTE MGMT. (2010), <http://www.transnational-dispute-management.com/article.asp?key=1637>
- Gabriella Blum, *Bilateralism, Multilateralism, and the Architecture of International Law*, 49 HARV. J. INT'L L. 323 (2008)
- Jeswald W. Salacuse, *The Emerging Global Regime for Investment*, 51 HARV. J. INT'L L. 427 (2010)
- Yoram Margalioth, *Tax Competition, Foreign Direct Investments and Growth: Using the Tax System to Promote Developing Countries*, 23 VA. TAX REV. 161 (2004)
- Sebastian James, *Providing Incentives for Investment: Advice for Policymakers in Developing Countries*, IN PRACTICE (Jan. 2010), <https://www.wbginvestmentclimate.org/uploads/Providing%20Incentives%20For%20Investment.pdf>
- Jacques Morisset & Olivier Lumenga Neso, *Administrative Barriers to Foreign Investment in Developing Countries*, 11 TRANSNAT'L CORPORATIONS 99 (2002), http://unctad.org/en/Docs/iteiit31_en.pdf
- Magnus Blomström, *The Economics of International Investment Incentives*, OECD, International Investment Perspectives (2002), <http://www.oecd.org/daf/inv/investment-policy/2487874.pdf>

Part II: Making the Investment

Class 3 (2/2/15): Why Invest Internationally?

Issues:

- Goals of investing internationally
- Incentives to attract investment
- Risks and challenges to investing internationally
- Legal instruments and recourse to address risks and challenges

Required Readings:

- Ivey School of Business case, *GE Energy – The Decision to Re-Enter India: Is Opportunity Blowing in the Wind?* (2011), pp. 1-11 (please only scan over exhibits at pp. 12-21) [Coursepack]
- Thunderbird School of Global Management case, *Enron and the Dabhol Power Company* (2002), pp. 1-14 (please only scan over exhibits at pp. 15-18) [Coursepack]
- Van Harten, *TWAIL and the Dabhol Arbitration*, 3 Trade, Law, and Development 131 (2011), at 136-147,
<http://www.tradelawdevelopment.com/index.php/tld/article/viewFile/3%281%29%20TRADE%20L.%20%26%20DEV.%20131%20%282011%29/76>
- Request for Arbitration Under the Investment Incentive Agreement between the Government of the United States of America and the Government of India 19 November 1997, *The Government of the United States of America v. The Government of India* (Nov. 4, 2004), ¶¶ 1-2, <http://www.opic.gov/sites/default/files/docs/GOI110804.pdf>

Optional Readings:

- ICC International Court of Arbitration, ICC Case No. 12913/MS, *Capital India Power Mauritius I & Energy Enterprises (Mauritius) Co. v. Maharashtra Power Devel. Corp. Ltd., Maharashtra State Electricity Board & State of Maharashtra*, Final Award, http://italaw.com/documents/Dabhol_award_050305.pdf
- American Arbitration Association, International Centre for Dispute Resolution, AAA Case No. 50 TI95 00509 02, *Bechtel Enterprises Int'l (Bermuda) Ltd., BEn Dabhol Holdings, Ltd. & Capital India Power Mauritius I v. Overseas Private Investment Corp.*, Findings of Fact, Conclusions of Law and Award, http://www.opic.gov/sites/default/files/docs/2294171_1.pdf
- Diana Farrell, Jaana Remes, Vivek Agrawal, et al., *New Horizons: Multinational Company Investment in Developing Economies*, McKinsey Global Institute (2003), http://www.mckinsey.com/insights/economic_studies/new_horizons_for_multinational_company_investment
- Dilek Aykut & Andrea Goldstein, *Developing Country Multinationals: South-South Investment Comes of Age*, in INDUSTRIAL DEVELOPMENT FOR THE 21ST CENTURY: SUSTAINABLE DEVELOPMENT PERSPECTIVES 85 (U.N. Dep't of Econ & Soc. Affairs 2007),
http://www.un.org/esa/sustdev/publications/industrial_development/full_report.pdf

- Uche Ewelukwa Ofodile, *Trade, Empires, and Subjects – China-Africa Trade: A New Fair Trade Arrangement, or the Third Scramble for Africa?*, 41 VAND. J. TRANSNAT'L L. 505 (2008)
- Mariana Pargendler, Aldo Musacchio, & Sergio G. Lazzarini, *In Strange Company: The Puzzle of Private Investment in State-Controlled Firms*, 46 CORNELL INT'L L.J. 569 (2013)
- Antonio de Moura Borges, Marcos Aurélio Pereira Valadão, & Natacha Ward Sá, *The BRIC Context in a Globalized World and Foreign Direct Investment in Brazil*, 18 LAW & BUS. REV. OF THE AMERICAS 329 (2012)

Class 4 (2/9/15): Facilitating International Investment

Issues:

- International project finance
- Investment guarantees
- Political risk insurance

Required Readings:

- Harvard Business School case, *Petrolera Zuata, Petrozuata C.A.* (2002), pp. 1-11 (please only scan over exhibits at pp. 12-22) [Coursepack]
- *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V., & ConocoPhillips Co. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and the Merits (Sept. 3, 2013) ¶¶ 106-140, 404, <http://www.italaw.com/sites/default/files/case-documents/italaw1569.pdf>
- Robert Ginsburg, *Political Risk Insurance and Bilateral Investment Treaties: Making the Connection*, 14 J. WORLD INV. & TRADE 943, 943-50 (2013), http://c.ymcdn.com/sites/www.fdia.com/resource/resmgr/Docs/International_Investment.pdf
- Ivey School of Business case, *The Antamina Copper-Zinc Project: Political Risk Insurance* (2009), pp. 1-9 (please only scan over exhibits at pp. 10-20) [Coursepack]

Optional Readings:

- Mark Kantor, *Comparing Political Risk Insurance and Investment Treaty Arbitration*, TRANSNAT'L DISPUTE MGMT. (2014), <http://www.transnational-dispute-management.com/journal-advance-publication-article.asp?key=554>
- Asia Case Research Centre, University of Hong Kong case, *Projects, Institutions, and Project Finance: The Dabhol Power Project* (2008) [Coursepack]
- S. Linn Williams, *Political and Other Risk Insurance: OPIC, MIGA, Eximbank and Other Providers*, 5 PACE INT'L L. REV. 59 (1993)
- Kristen E. Boon, "Open for Business": *International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law*, 39 N.Y.U. J. INT'L L. & POL. 513 (2007)

- Allison F. Kingsley, *Reevaluating Emerging Market Risks: The Case For Project Finance*, 4 YALE J. INT'L AFF. 51 (2009)
- William Langer, *The Role of Private Sector Investment in International Microfinance and the Implications of Domestic Regulatory Environments*, 5 INT'L L. & MGMT. REV. 1 (2008)
- Valentina Okaru-Bisant, *Overcoming Challenges in the Multilateral Investment Guarantee Agency's Risk Insurance Coverage to Private Water Investors: Corruption and Consumer Risks*, 57 S. DAK. L. REV. 277 (2012)

Part III: Investment Dynamics

Class 5 (2/16/15): How the Investment is Made and Managed

Issues:

- Initiating the investment
- Managing the investment
- Challenges due to changing political and regulatory environments

Required Readings:

- Harvard Business School case, *AES: Hungarian Project (A)* (2001), pp. 1-16 (please only scan over exhibits at pp. 17-25) [Coursepack]
- *AES Summit Generation Ltd. & AES-Tisza Erömu KFT v. Republic of Hungary*, ICSID Case No. ARB/07/22, Award of Sept. 23, 2010, Sections 4-6, 14, http://www.italaw.com/sites/default/files/case-documents/ita0014_0.pdf

Optional Readings:

- *AES Summit Generation Ltd. & AES-Tisza Erömu KFT v. Republic of Hungary*, ICSID Case No. ARB/07/22, Decision of the *Ad Hoc* Committee on the Application for Annulment of June 29, 2012, <http://www.italaw.com/sites/default/files/case-documents/ita1072.pdf>
- David Ellison, *Subnational Regionalism in a Supranational Context: The Case of Hungary*, 8 ROMANIAN J. EUR. AFFAIRS 60 (2008)
- Ursula Kriebaum, *Regulatory Takings: Balancing the Interests of the Investor and the State*, 8 J. WORLD INVESTMENT & TRADE 717 (2007)
- Ibronke T. Odumosu-Ayanu, *Multi-Actor Contracts, Competing Goals and Regulation of Foreign Investment*, 65 UNIV. OF NEW BRUNSWICK L.J. 269 (2014)
- Sam Foster Halabi, *Efficient Contracting between Foreign Investors and Host States: Evidence from Stabilization Clauses*, 31 NORTHWESTERN J. INT'L L. & BUS. 261 (2011)
- Rainer Geiger, *Coherence in Shaping the Rules for International Business: Actors, Instruments, and Implementation*, 43 GEO. WASH. INT'L L. REV. 295 (2011)

- Thomas W. Waelde & George Ndi, *Stabilizing International Investment Commitments: International Law Versus Contract Interpretation*, 31 TEX. INT'L L.J. 215 (1996)

Class 6 (2/23/15): How the Investment is Run; How Things Fall Apart

Issues:

- Challenges due to changing political and regulatory environments
- Negotiation of disputes
- Dispute resolution

Required Readings

- Harvard Business School case, *Aguas Argentinas: Settling a Dispute* (2007), pp. 1-14 [Coursepack]
- *Suez, Sociedad General de Aguas de Barcelona S.A. & Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19 and *AWG Group v. Argentine Republic*, UNCITRAL, Decision on Liability (July 30, 2010), at pp. 10-45, 106-07, <http://www.italaw.com/sites/default/files/case-documents/ita0826.pdf>

Optional Readings:

- Jose E. Alvarez, *A BIT on Custom*, 42 N.Y.U. J. INT'L L & POL'Y 17 (2009), <http://nyujilp.org/wp-content/uploads/2013/02/42.1-Alvarez.pdf>
- Julie A. Maupin, *Public and Private in International Investment Law: An Integrated Systems Approach*, 54 VA. J. INT'L L. 367 (2014), <http://www.vjil.org/assets/pdfs/vol54/Maupin.pdf>
- A.F.M. Maniruzzaman, *The Issue of Resource Nationalism: Risk Engineering and Dispute Management in the Oil and Gas Industry*, 5 TEX. J. OIL, GAS & ENERGY L. 79 (2010)
- Susan D. Franck, *Foreign Direct Investment, Investment Treaty Arbitration, and the Rule of Law*, 19 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 337 (2006)
- Alberto R. Salazar, *Defragmenting International Investment Law to Protect Citizen-Consumers: The Role of Amici Curiae and Public Interest Groups*, 19 LAW & BUS. REV. OF THE AMERICAS 183 (2013)
- Stephen Olynyk, *A Balanced Approach to Distinguishing Between Legitimate Regulation and Indirect Expropriation in Investor-State Arbitration*, 15 INT'L TRADE & BUS. L. REV. 254 (2012)
- Proceedings of the 2nd General Counsels' Roundtable, *Understanding Renegotiation and Dispute Resolution Experience in Foreign Infrastructure Investment*, 7 J. WORLD INV. & TRADE 805 (2006)

Part IV: Dispute Resolution

Class 7 (3/2/15): Framework for Resolving International Investment Disputes

Issues:

- International commercial arbitration (LCIA, ICC, SCC)
- *Ad hoc* arbitration (PCA, UNCITRAL Arbitration Rules)
- International Centre for Settlement of Investment Disputes

Required Readings:

- UNCTAD Module 2.2: Selecting the Appropriate Forum: http://unctad.org/en/docs/edmmisc232add1_en.pdf, pp. 5-31 (close the prompt for username and password and browser should redirect to UNCTAD Module)

Optional Readings:

- Stephen Schwebel, *A BIT about ICSID*, 1 TRANSNAT'L DISP. MGMT. (2010), <http://www.transnational-dispute-management.com/article.asp?key=1509>
- Susan D. Franck, *International Investment Arbitration: Winning, Losing, and Why*, 1 TRANSNAT'L DISP. MGMT. (2010), <http://www.transnational-dispute-management.com/article.asp?key=1514>
- *The ICSID Caseload – Statistics*, ICSID, Issue 2014-1, <https://icsid.worldbank.org/apps/ICSIDWEB/resources/Pages/ICSID-Caseload-Statistics.aspx>
- Piero Bernardini, *ICSID Versus Non-ICSID Investment Treaty Arbitration*, in LIBER AMICORUM BERNARDO CREMADES (2011), http://www.arbitration-icca.org/media/0/12970223709030/bernardini_icsid-vs-non-icsid-investent.pdf
- Karl-Heinz Bockstiegel, *Commercial and Investment Arbitration: How Different are they Today?*, 28(4) ARB. INT'L 577 (2012)
- PCA Annual Report (2013), http://www.pca-cpa.org/showpage.asp?pag_id=1069

Class 8 (3/16/15): Consent/Jurisdiction

Issues:

- Consent through host state legislation
- Consent through treaties
- Jurisdiction: *Rationae personae*

Required Readings:

- UNCTAD Module 2.3: Consent to Arbitration: http://unctad.org/en/docs/edmmisc232add2_en.pdf, pp. 5-30, 37-39
- UNCTAD Module 2.4: Requirements Ratione Personae: http://unctad.org/en/Docs/edmmisc232add3_en.pdf, pp. 5-28

Optional Readings:

- Jan Paulsson, *Arbitration Without Privity*, 10(2) ICSID REV. – FOREIGN INVESTMENT L. J. 232 (1995), http://www.arbitration-icca.org/media/0/12254614477540/jasp_article_-_arbitration_without_privity.pdf
- Christoph Schreuer, *Traveling the BIT Route: Of Waiting Periods, Umbrella Clauses and Forks in the Road*, 5(2) J. WORLD INVESTMENT & TRADE (2004), <http://www.univie.ac.at/intlaw/pdf/68.pdf>
- Yulia Andreeva, *Interpreting Consent to Arbitration as a Unilateral Act of State: A Case Against Conventions*, 27(2) ARB. INT'L 129 (2011)
- Michele Poteste, *The Interpretation of Consent to ICSID Arbitration Contained in Domestic Investment Laws*, 27(2) ARB. INT'L 149 (2011)
- Centre for Research on Multinational Corporations, *Dutch Bilateral Investment Treaties: A gateway to 'treaty shopping' for investment protection by multinational companies*, Oct. 2011, http://somo.nl/publications-en/Publication_3708

Class 9 (3/23/15): Jurisdiction/Substantive Investment Protections

Issues:

- *Ratione materiae*
- *Ratione temporis*
- Expropriation

Required Readings:

- UNCTAD Module 2.5: Requirements *Ratione Materiae*: http://unctad.org/en/docs/edmmisc232add4_en.pdf, pp. 5-33
- *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8, Award dated Jan. 17, 2007, <http://www.italaw.com/sites/default/files/case-documents/ita0790.pdf>, Sections IV, VI(3)

Optional Readings:

- *Salini v. Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction dated July 23, 2001, <http://italaw.com/sites/default/files/case-documents/ita0738.pdf>
- *Malaysian Historical Salvors SDN BHD v. Government of Malaysia*, ICSID Case No. ARB/05/10, Decision on the Application for Annulment dated April 16, 2009, ¶¶ 56-84, <http://italaw.com/sites/default/files/case-documents/ita0497.pdf>
- *Ambiente Ufficio S.p.A. & Others v. Argentine Republic*, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility dated Feb. 8, 2013, ¶¶ 435-87, <http://italaw.com/sites/default/files/case-documents/italaw1276.pdf>
- Christoph H. Schreuer, *The Concept of Expropriation under the ECT and other Investment Protection Treaties*, 5 TRANSNAT'L DISP. MGMT. (2005), <http://www.transnational-dispute-management.com/article.asp?key=596>
- Jan Paulsson, *Indirect Expropriation: Is the Right to Regulate at Risk*, 2 TRANSNAT'L DISP. MGMT. (2006), <http://www.transnational-dispute-management.com/article.asp?key=776>

- Omar E. Garcia-Bolivar, *Defining an ICSID Investment: Why Economic Development Should be the Core Element*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, Apr. 13, 2012, <http://www.iisd.org/itn/2012/04/13/defining-an-icsid-investment-why-economic-development-should-be-the-core-element/>
- Frédéric G. Sourgens, *Keep the Faith: Investment Protection Following the Denunciation of International Investment Agreements*, 11 SANTA CLARA J. INT'L L. 335 (2013)
- Bjørn Kunoy, *Developments in Indirect Expropriation Case Law in ICSID Transnational Arbitration*, 6 J. WORLD INV. & TRADE 467 (2005)

Class 10 (3/30/15): Substantive Investment Protections

Issues:

- Fair and equitable treatment
- Full protection and security
- Umbrella clause

Required Readings:

- *SGS v. Pakistan*, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction dated Aug. 6, 2003, Facts and ¶¶ 144-174, <http://www.italaw.com/sites/default/files/case-documents/ita0779.pdf>
- *SGS v. Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction dated Jan. 29, 2004, Facts and ¶¶ 113-164, <http://www.italaw.com/sites/default/files/case-documents/ita0782.pdf>
- *SGS v. Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, Declaration of Antonio Crivellaro dated Jan. 29, 2004, <http://www.italaw.com/sites/default/files/case-documents/ita0783.pdf>
- *El Paso v. Argentina*, ICSID Case No. ARB/03/15, Award dated Oct. 31, 2011, Facts and ¶¶ 330-379, 459, 509-519, <http://italaw.com/sites/default/files/case-documents/ita0270.pdf>

Optional Readings:

- Rudolf Dolzer, *Fair and Equitable Treatment: Today's Contours*, TRANSNAT'L DISP. MGMT. (2014), <http://www.transnational-dispute-management.com/journal-advance-publication-article.asp?key=513>
- Christoph Schreuer, *Full Protection and Security*, 1(2) J. INT'L DISPUTE SETTLEMENT 353 (2010), <http://jids.oxfordjournals.org/content/1/2/353.abstract>
- Christoph Schreuer, *Fair and Equitable Treatment in Arbitral Practice*, 6(3) J. WORLD INV. & TRADE 357 (2005), <http://www.univie.ac.at/intlaw/pdf/77.pdf>
- Hussein Haeri, *A Tale of Two Standards: 'Fair and Equitable Treatment' and the Minimum Standard in International Law*, 27(1) ARB. INT'L 27 (2011)
- *Noble Ventures, Inc. v. Romania*, ICSID Case No. ARB/01/11, Award, Oct. 12, 2005, <http://italaw.com/sites/default/files/case-documents/ita0565.pdf>

- *SGS v. Paraguay*, ICSID Case No. ARB/07/29, Award, Feb. 10, 2012, <http://italaw.com/sites/default/files/case-documents/italaw1525.pdf>
- Anthea Roberts, *Power and Persuasion in Investment Treaty Interpretation: The Dual Role of States*, 104 AM. J. INT'L L. 179 (2010)

Class 11 (4/6/15): Sustainability: Environmental, Human Rights, and Development Concerns

Issues:

- Sustainability in investments
- Social issues and human rights in international investments
- Investment as a means to promote development

Required Readings:

- Alexander Zaitchik, *Sludge Match: Inside Chevron's \$9 Billion Legal Battle With Ecuadorean Villagers*, ROLLING STONE, Aug. 28, 2014, <http://www.rollingstone.com/politics/news/sludge-match-chevron-legal-battle-ecuador-steven-donziger-20140828>
- *The Facts About Chevron in Ecuador and the Plaintiffs' Strategy of Fraud*, CHEVRON CORP., Mar. 2014, <http://www.chevron.com/documents/pdf/ecuador/ecuador-lawsuit-fact-sheet.pdf>
- Harvard Business School case, *Environmental Risk Management at Chevron Corp.* (1999), pp. 1-11 [Coursepack]

Optional Readings:

- *Chevron Corp. & Texaco Petroleum Co. v. The Republic of Ecuador*, PCA Case No. 2009-23, Third Interim Award on Jurisdiction and Admissibility, Feb. 27, 2012, <http://italaw.com/sites/default/files/case-documents/ita0175.pdf>
- *Chevron Corp. & Texaco Petroleum Co. v. The Republic of Ecuador*, PCA Case No. 2009-23, First Partial Award on Track I, Sept. 17, 2013, <http://italaw.com/sites/default/files/case-documents/italaw1585.pdf>
- Stephanie Barbara Leinhardt, *Some Thoughts on Foreign Investors' Responsibilities to Respect Human Rights*, 1 TRANSNAT'L DISP. MGMT. (2013), <http://www.transnational-dispute-management.com/article.asp?key=1927>
- Susan L. Karamanian, *The Place of Human Rights in Investor-State Arbitration*, 17(2) LEWIS & CLARK L. REV. 423 (2013), <http://law.lclark.edu/live/files/14084-lcb172art2karamanianpdf>
- Mark Jacob, *International Investment Agreements and Human Rights*, Mar. 2010, http://www.humanrights-business.org/files/international_investment_agreements_and_human_rights.pdf
- Vassilis P. Tzevelekos, *In Search of Alternative Solutions: Can the State of Origin Be Held Internationally Responsible for Investors' Human Rights Abuses That Are Not Attributable To It?*, 35 BROOK. J. INT'L L. 155 (2010)

- Olivier De Schutter, Jan Wouters, et al., *Foreign Direct Investment, Human Development and Human Rights: Framing the Issues*, 3 HUMAN RIGHTS & INTERNATIONAL LEGAL DISCOURSE 131 (2009)
- Anatole Boute, *Combating Climate Change Through Investment Arbitration*, 35 FORDHAM INTERNATIONAL LAW JOURNAL 613 (2012)

Class 12 (4/13/15): Remedies and Enforcement

Issues:

- Enforcement and annulment of ICSID awards
- Enforcement and set-aside of non-ICSID awards

Required Readings:

- UNCTAD Module 2.8: Post-Award Remedies and Procedures: http://unctad.org/en/docs/edmmisc232add7_en.pdf, pp. 5-6, 13-33
- UNCTAD Module 2.9: Binding Force and Enforcement: http://unctad.org/en/Docs/edmmisc232add8_en.pdf, pp. 5-16
- J. Stewart McClendon, *Enforcement of Foreign Arbitral Awards in the United States*, 4 NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS 58 (1982), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1113&context=njilb>

Optional Readings:

- New York City Bar, Report by the Committee on International Commercial Disputes, *Recommended Procedures for Recognition and Enforcement of International Arbitration Awards Rendered Under the ICSID Convention* (July 2012), <http://www2.nycbar.org/pdf/report/uploads/20072262-ProceduresforAwardsunderICSID.pdf>
- Stanimir A. Alexandrov, *Enforcement of ICSID Awards: Articles 53 and 54 of the ICSID Convention*, 1 TRANSNATIONAL DISPUTE MANAGEMENT (2009), <http://www.transnational-dispute-management.com/article.asp?key=1345>
- Edward Baldwin, Mark Kantor & Michael Nolan, *Limits to Enforcement of ICSID Awards*, 23(1) JOURNAL OF INTERNATIONAL ARBITRATION 1 (2006), <http://www.milbank.com/images/content/5/6/5666/0106-Nolan-Journal-of-Intl-Arbitration.pdf>
- Charles B. Rosenberg, *The Intersection of International Trade and International Arbitration: The Use of Trade Benefits to Secure Compliance with Arbitral Awards*, 44(2) GEORGETOWN JOURNAL OF INTERNATIONAL LAW 505 (2013), <https://www.law.georgetown.edu/academics/law-journals/gjil/recent/upload/zsx00213000503.PDF>
- Suyash G. Paliwal, *Strengthening the Link in Linkage: Defining “Development Needs” in WTO Law*, 27(1) AMERICAN JOURNAL OF INTERNATIONAL LAW REVIEW 37 (2012), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1728&context=auilr>

- Markus Burgstaller & Charles B. Rosenberg, *Challenging International Arbitral Awards: To ICSID or Not to ICSID?*, 27(1) ARB. INT'L 91 (2011)

Part V: Divestiture

Class 13 (4/20/15): Exiting the Investment/Class Presentations

Issues:

- Divestiture of an investment
- Preservation of claims

Required Readings:

- *EDF Int'l S.A., SAUR Int'l S.A. & León Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23, Award of June 11, 2012, pp. 10-39, <http://italaw.com/sites/default/files/case-documents/ita1069.pdf>
- *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award of Aug. 22, 2012, pp. 39-59, <http://www.italaw.com/sites/default/files/case-documents/ita1082.pdf>

Optional Readings:

- Perry S. Bechky, *Darfur, Divestment, and Dialogue*, 30 U. PA. J. INT'L L. 823 (2009)
- Andreas Woeller, *Private Equity Investment in the BRICs*, 17 FORDHAM J. CORP. & FIN. L. 1307 (2012)
- IMF, Report of the Working Group of the Capital Markets Consultative Group, *Foreign Direct Investment in Emerging Market Countries* (2003), <https://www.imf.org/external/np/cm/cg/2003/eng/091803.pdf>
- Sonia Yeashou Chen, *Positioning Sovereign Wealth Funds as Claimants in Investor-State Arbitration*, 6 CONTEMP. ASIA ARB. J. 299 (2013)
- Detlev F. Vagts, *Coercion and Foreign Investment Rearrangements*, 72 AM. J. INT'L L. 17 (1978)

Class 14 (4/22/15): Class Presentations

IX. References

Investment Treaty Arbitration Resources

- International Centre for Settlement of Investment Disputes: <https://icsid.worldbank.org/ICSID/>
- Investment Treaty Arbitration: <http://www.italaw.com/> (full-text investment treaty arbitration awards)
- International Arbitration Case Law Project: <http://www.internationalarbitrationcaselaw.com/> (summaries of investment treaty arbitration awards)
- Kluwer Arbitration Blog: <http://kluwarbitrationblog.com/>

Treaties

- ICSID Convention: https://icsid.worldbank.org/ICSID/StaticFiles/basicdoc_en_archive/ICSID_English.pdf
- New York Convention: http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf
- Energy Charter Treaty: http://www.encharter.org/fileadmin/user_upload/document/EN.pdf
- North American Free Trade Agreement, Chapter 11: <https://www.nafta-sec-alena.org/Default.aspx?tabid=97&ctl=SectionView&mid=1588&sid=539c50ef-51c1-489b-808b-9e20c9872d25&language=en-US>
- UNCTAD BIT Database: http://www.unctadxi.org/templates/docsearch_779.aspx