

Course title	International Investment Law 1				
Teacher(s)	Nicos LAVRANOS, TAMADA Dai			開講区分	単位数
				1st semester	2.0
Numbering Code	J2ML600	Day・Period	Other	Timetable Slot Code	1J386

Lesson topic

This course will cover the main elements of “international investment law” and “investment treaty arbitration”. In addition, recent developments in Europe, in Asia and within the UNCITRAL Working Group III will be covered. Moreover, at the end of the course a Mock Arbitration case will be done by the students in order to apply their theoretical knowledge into practice.

Lesson target

Upon completing the course, Students will have an understanding of the following topics and be able to apply them in practice:

- Introductory principles of International Investment Law
- Protection Standards contained in investment treaties
- Procedural aspects of investment treaty arbitration
- The arbitration process
- Recognition, enforcement, annulment, setting aside procedures
- Recent developments in International Investment Law

Syllabus and plan

This course is provided via online (real-time). There will be a total of fifteen lectures covering the following topics.

1. Introduction into International Investment Law

- Historic overview of the development of international investment law
- The origins and sources of investor-state arbitration
- The role of diplomatic protection in investment disputes and drawbacks and advantages of diplomatic protection
- The purpose and main content of an investment treaty
- The main institutions involved in international investment law
- Recent developments in international investment law from a global perspective

2. Protection Standards contained in investment treaties

- The beneficiaries of investment treaties (who is protected? what is protected?)
- The protection standards contained in investment treaties
 - o FET (European style+ NAFTA style minimum standard of customary international law, new CETA FET)
 - o MFN, NT
 - o umbrella clause
 - o Full protection and security
 - o Exceptions (tax carve out, denial of justice)

3. Procedural aspects of investment treaty arbitration

- The main procedural requirements for initiating an investment treaty arbitration claim
- Consent
 - “cooling off period”
- Exhaustion of local remedies
- “fork-in-the-road” clause
- Arbitration institutions and regimes: ICSID and non-ICSID investment arbitration
- Choice of arbitration rules (ICSID, UNCITRAL, SCC)
- The importance of the seat of arbitration in non-ICSID cases
- The selection process of arbitrators, the constitution of the tribunal
- Challenge of arbitrators, ethics, impartiality and independence of arbitrators
- jurisdiction and admissibility, objections to jurisdiction
- Sectoral exclusions, mail box companies, double nationality, host state national

4. The arbitration process

- The jurisdictional phase
- The merits phase
- Main principles of interpretation and application of investment treaties
- Written procedure, oral hearings, cross examination of expert witnesses
- The damage calculation (various methods of calculating damages)
- Costs, length of arbitration
- Third part funding
- The emergency procedure

5. Recognition, enforcement, annulment, setting aside procedures

- The various options of annulment of awards and setting aside procedures
 - o at ICSID
 - o before national courts (non-ICSID)
 - o indirectly before the CJEU
- The various procedures for enforcement of arbitral awards under the ICSID Convention and the New York Convention on the Recognition and Enforcement of Arbitral Awards
- Sovereign immunity in enforcement proceedings

6. Recent developments in International Investment Law

- The exit of several south American states from ICSID
- The termination of BITs by an increasing number of states
- The public debate against ISDS and BITs in Europe
- The problems of finalizing investment treaties (CETA, TTIP)
- The reform efforts (modification protection standards, filter mechanisms, the UNCITRAL transparency rules)
- The newly proposed investment court system (ICS) in EU investment treaties
- The push for the creation of a multilateral investment court
- The push towards “inclusive” and “good” investments
- The developments in Asia (EU-Japan FTA, EU-Singapore FTA, EU-Vietnam FTA, CPTPP, RCEP)

7. Practical session:

• Mock arbitration

- o The group of students will be split into three groups (claimant, respondent and tribunal) and will argue a case before the tribunal and which will be decided by the tribunal.
- o The case will be given to students at the end of the first class, so that they have sufficient time to prepare

Evaluation method

Your final grade will be calculated according to the following process:

Final Essay: 60%, In-class contribution: 20%, Mock arbitration performance: 20%

Evaluation baseline

Students should be able to explain the main concepts and definitions of “international investment law” and “investment treaty arbitration” as well as recent developments in those areas.

The Final Essay should be completed with appropriate research questions, hypotheses, logical arguments, evidence based on the discussion in the course. References are also required.

Notice (include info. on related class)

Prior to taking this course, students are expected to have advanced knowledge of public international law, international economic/trade law and preferably EU law.

Review and preparation

Preparation: Read all the assigned materials (the Textbook chapters and the PowerPoint slides) and prepare the case-law before each lecture. The designated textbook “Rules and Practices of International Investment Law and Arbitration” is available in PDF with a limited period of time. Details will be notified to students who have registered the course.

Review: Read the materials again and develop better understanding of the topics covered during the course.

Office hour · Contact information

Contact details will be announced during the course.

Message for student

Please make sure that you have the Textbook before the course starts.

Slides will be made available to students before each class.

The two classes in the week will be structured as follows: the first class will introduce the topic of the week and cover the topic on a general level. The second class will allow for more discussion with students and any assignments will be presented in that class.

Improvements in Teaching

Text

<https://www.cambridge.org/core/books/international-investment-law/7C4F917B6618E808EB10542C0ED24670#fndtn-information>

Rules and Practices of International Investment Law and Arbitration / Yannick Radi : Cambridge University Press , 2020 , ISBN:

Reference Material

1. ICSID Convention,
<https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf>
2. UNCITRAL Arbitration Rules,
<https://docs.pca-cpa.org/2016/01/UNCITRAL-2013-English.pdf>
3. New York Convention,
<http://www.newyorkconvention.org/11165/web/files/original/1/5/15432.pdf>
4. CPTPP,
<https://www.dfat.gov.au/trade/agreements/in-force/cptpp/official-documents/Pages/official-documents>
5. EU-JAPAN FTA
<https://trade.ec.europa.eu/doclib/press/index.cfm?id=1684>
6. EU-Singapore FTA
<https://trade.ec.europa.eu/doclib/press/index.cfm?id=961>
7. RCEP
<https://rcepsec.org/legal-text/>
8. CETA
<https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>
9. NAFTA/USMCA
<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>
10. ECT
<https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf>
11. Dutch Model BIT text 2019,
<http://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2020/05/new-model-Netherlands-BIT.pdf>

Classroom Language

English

Keywords

International Law; Foreign Investment; International Arbitration, remote class, exchange student