I. Course Description and Objectives

This course aims at providing an overview on central topics of international investment law. It will trace the traditional approach of regulating foreign direct investments in customary international law and then focus on the present state of investor protection through a dense web of more than 2400 bilateral investment protection treaties as well as some multilateral agreements containing investment provisions such as NAFTA Chapter 11, the Energy Charter Treaty, and others.

The standards of treatment guaranteed to foreign investors in these treaties as well as under customary international law will be analyzed. This course will thus focus on substantive standards, such as fair and equitable treatment, full protection and security, most-favored-nation treatment and national treatment. Equally, the protection against expropriation will merit special attention. The growing case-law of international arbitration tribunals will serve as a background to this analysis.

II. Course Outline

This course will address the following main issue areas in a sequence of sessions throughout the entire semester. More than one course meeting will be devoted to the following six areas:

1. Overview
2. The Sources of International Investment Law
3. Investment Agreements
4. Expropriation
5. Treatment Standards
6. Responsibility of the Host State and Protection by the Home State
III. Basic Texts

There is no single basic text which students have to purchase. Instead, the required books are available in the Library of the Law School’s Section of International Law and International Relations. In addition, master copies of the reading assignments according to the syllabus will be available from the LL.M. administration.

IV. Required Reserve Readings


A. Reinisch (ed), Standards of Investment Protection (OUP 2008).


V. Supplementary Readings


N. Horn (ed.), *Arbitrating Foreign Investment Disputes – Procedural and Substantive Legal Aspects* (Kluwer 2004).


VI. Recommended Internet Sites

BITs available through a search engine at UNCTAD Website at http://wwwUNCTADxi.org/templates/DocSearch____779.aspx


UNCTAD Course on Dispute Settlement: ICSID: available at http://r0.unctad.org/disputesettlement/course.htm

Useful material may also be retrieved from the following homepages:
ICSID: http://www.worldbank.org/icsid/
World Bank: http://www.worldbank.org/
ICC: http://www.iccwbo.org/
ILA: www ila-hq.org
UNCITRAL: http://www.uncitral.org/
EU trade page: http://europa.eu.int/comm/trade/index_en.htm
USTR: http://www.ustr.gov/
WTO: http://www.wto.org/
Investment Claims: http://investmentclaims.com/
International Treaty Arbitration: http://ita.law.uvic.ca/
NAFTA Claims: http://naftaclaims.com/

VII. Teaching Method

This course will be taught using a combination of lectures and class discussions. It will be based on student preparation of the course materials which will be distributed in advance. These course materials structure the entire course program in the form of review questions. Students are expected to prepare and to debate them in class as well as to contribute their own insights.

VIII. Assessment Method

A. There will be a 2-hour written final examination which will be worth 70% of the final course mark.

B. Class participation is expected. It will be worth 30% of the final course mark.
SYLLABUS

1. OVERVIEW

(The concept of investment, the conflicting interests of the host State and the investor, attitudes towards foreign investment, investment and economic development, factors influencing the flow of investment, political risk and FDI, national insurance systems, OPIC, MIGA)

Required Readings:


Supplementary Readings:

Muchlinski/Ortino/Schreuer (eds), pp. 3-48, 49-88, 227-258, 524-548.
Sornarajah, pp. 2-33.

2. THE SOURCES OF INTERNATIONAL INVESTMENT LAW

(The customary IL of investment, guidelines and codes of conduct, resolutions, national legislation, bilateral investment treaties, multilateral agreements)

Required Readings:

Dolzer/Schreuer, pp. 11-45

Supplementary Readings:

Muchlinski/ Ortino/Schreuer (eds), pp. 119-153.
Rubins/Kinsella, pp. 191-200.
Dolzer/Stevens, pp. 1-18.

3. INVESTMENT AGREEMENTS

(The nature of State/investor contracts, from concessions to development agreements, internationalization, applicable law, stabilization, arbitration)

Required Readings:

Dolzer/Schreuer, pp. 72-78

Supplementary Readings:

Muchlinski/Ortino/Schreuer (eds), pp. 89-118.
Rubins/Kinsella, pp. 31-67.

4. EXPROPRIATION

(Permissibility of expropriation, the requirements for legal expropriations, indirect expropriation)

Required Readings:

Dolzer/Schreuer, pp. 89-118

Supplementary Readings:

Muchlinski/Ortino/Schreuer, pp. 407-458.
Reinisch (ed.), pp. 151-170, 171-204.
Rubins/Kinsella, pp. 153-188, 200-212.
Dolzer/Stevens, pp. 97-117.


Reisman and Sloane, Indirect Expropriation and its Valuation in the BIT Generation, 74 BYIL (2003), 115-150.


5. STANDARDS OF TREATMENT I

(The regulatory framework for FDI, standards of protection, fair and equitable treatment, full protection and security, international minimum standard)

Required Readings:

Bishop/Crawford/Reisman pp. 1007-1071.

Dolzer/Schreuer, pp. 119-153.

Supplementary Readings:

Muchlinski/Ortino/Schreuer (eds), pp. 259-304.

Reinisch (ed), pp. 111-130, 131-150.

Rubins/Kinsella, pp. 212-244.

Dolzer/Stevens, pp. 58-85.

Schreuer, Fair and Equitable Treatment in Arbitral Practice, 6 The Journal of World Investment and Trade 357 (2005).


6. STANDARDS OF TREATMENT II

(Umbrella clauses, arbitrary and discriminatory treatment, national treatment, MFN clauses)

Required Readings:
Bishop/Crawford/Reisman pp. 1095-1103, 1071-1095, 1133-1165.

Supplementary Readings:
Muchlinski/Ortino/Schreuer (eds), pp. 363-406.
Freyer and Herlihy, Most-Favored-Nation Treatment and Dispute Settlement in Investment Arbitration: Just How "Favored" is "Most-Favored"?, 20 ICSID Review-FILJ 58 (2005).
Schreuer, Travelling the Bit Route—Of Waiting Periods, Umbrella Clauses and Forks in the Road, 5 The Journal of World Investment and Trade 231 (2004).

7. RESPONSIBILITY OF THE HOST STATE AND PROTECTION BY THE INVESTOR’S HOME STATE

(Responsibility for illegal acts, attribution, circumstances precluding wrongfulness, diplomatic protection, nationality of corporations, the Calvo doctrine)

Required Readings:

Supplementary Readings:
Muchlinski/Ortino/Schreuer (eds), pp. 549-583.
Rubins/Kinsella, pp. 115-140.


