International Investment Law
University of Basel – Fall Semester 2010
Prof. Krista Nadakavukaren Schefer
Outline

A. Fundamentals and Development of International Investment Law
   I. History of International Law on Investment Protection
   II. Numbers and Trends

B. Sources of International Investment Law
   I. General International Law
      1. Treaties
      2. Custom
      3. General Principles
   II. International Investment Law
      1. Multilateral
      2. Regional / Sectoral
      3. Bilateral (BITs)
      4. Free Trade Areas
   III. Custom
   IV. Soft Law
   V. National Law
      1. Law of the Host State
      2. Investment Treaties (sog. Konzessionsverträge)
C. Definitions

I. INVESTOR
   1. DEFINITION INVESTOR
   2. NATIONALITY

II. INVESTMENT
   1. CRITERIA
   2. ROLE OF DEVELOPMENT

D. Principles of International Investment Law

I. PROTECTION OF INTERNATIONAL INVESTMENT
   1. NO-OBLIGATION TO ADMIT FOREIGN INVESTMENT
   2. PROTECTION AGAINST EXPROPRIATIONS / NATIONALIZATIONS
      a) Definition of expropriation
      b) Background: Right to expropriate
      c) Requirements for a lawful direct expropriation
   3. PROTECTION AGAINST INDIRECT EXPROPRIATIONS
   4. MINIMUM STANDARD
      a) Non Discrimination
      b) Prohibition on Arbitrariness
   5. FAIR AND EQUITABLE TREATMENT
   6. FULL PROTECTION AND SECURITY
   7. UMBRELLA CLAUSE
II. **Dispute Settlement Traditional International Law**

1. **Diplomatic Legal Protection**
2. **State-State Dispute Resolution**

III. **Investor-State Dispute Resolution**

1. **Fora**
   a) **ICSID**
   b) **UNCITRAL**
   c) *Arbitration Institute of the Stockholm Chamber of Commerce*
   d) *International Chamber of Commerce*
2. **Standing**
   a) **Ratione Personae**
   b) **Ratione Materiae**
   c) **Consent**
3. **Procedure**
4. **Awards**
5. **Enforcement and Annulment**
6. **MFN within Dispute Settlement**

IV. **Current Issues of Investment State Arbitration**

E. **Investment Insurance**

I. **History and Background**
II. **National Programmes**
III. **Private Insurers**
IV. **Public vs. Private Insurers**
V. **MIGA**
VI. **Disputes between Insured Investors and Insurers**
F. Critique of BITs

I. EFFECTIVENESS

II. HUMAN RIGHTS
## Reading Assignments

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Campbell et al. vs Zimbabwe |
| 6      | Indirect Expropriation | Dolzer / Schreuer pp. 271 - 277  
Chorzow Case  
Oscar Schachter: Compensation for Expropriation  
Un GA Rep. 1803  
Charter of Economic Rights and Duties of States  
Sornarajah, pp. 450-51 (method of computation)  
Biwater Gauff vs. Tanzania, pp. 1-6, pp. 142-154, pp. 218-228, pp. 228-239  
Biwater Gauff Dissenting Opinion, paras. 15-33  
Guiso-Gallisay v Italy, ECHR paras. 90ff. |
| 7      | Fair and Equitable Treatment | Dolzer / Schreuer pp. 92-118:  
Marc R. Poirier  
Case: Tecmed v Mexico, paras. 95-151  
((AIDA Makes Progress, www.aida-americas.org)) |
| 8      | Dispute Settlement I   | UNCTAD: Latest Developments 2010 (skim)  
Dolzer / Schreuer pp. 211-229 |
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*Peterson, Divergent Paths*  
*Won-Mog Choi, The Present and Future of the Investor-State Dispute Settlement Paradigm* |
| - Annulment |  
*Dolzer / Schreuer pp. 230-290, 292-313, 330 - 351*  
*C. Schreuer: Withdrawal from investment arbitration*  
*Political implications: Marc R. Poirier*  
*Kingsbury/Schill, I-S Arb as Governance, 1-8, 50-53*  
*Plama v Bulgaria, Decision on Jurisdiction, paras. 183-227* |
| - MFN within Dispute Settlement |  
*Rubins/Lauterburg, Independence, Impartiality, pp. 168-179*  
*Vivendi v Argentina, Annulment Case, paras. 17-23, 99-116, 217-239*  
*Urbaser v Argentina, Arbitrator Challenge, paras. 1-33 (skim 1-19); 50-59* |

| Class 10 | Dispute Settlement III: Current Issues in Investment State Arbitration  
*Arbitrator Challenges  
Role of ICSID in DS* |
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|           | Rogers, The Ethics of International Arbitrators  
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*MIGA Convention (skim)*  
*MIGA, Investment Guarantee Guide*  
*The Impact of Political Risk on the Foreign Direct Investment Decisions: A Capital Budgeting Analysis (p. 129-132; 139-141)*  
*Hansen, Investment Promotion and Political Risk Insurance*  
*Sornarajah, Subrogation*  
*Hansen, et al., Dabhol Power Project Settlement*  
*Christopher Cardona, Will recent nationalisations in Bolivia give rise to claims under political risk insurance policies?* |
| Class 12 | Critique of BITs | Hamdani, et al., Overview of Political Risk Insurance  
List of public and private political insurance providers and re-insurers: [http://www.pri-center.com/directories/sub_index.cfm?typenum=661,681](http://www.pri-center.com/directories/sub_index.cfm?typenum=661,681)  
Human Rights & BITs  
Effectiveness |  
Reiner/Schreuer, pp. 82-96  
Luke Peterson, Human Rights and Bilateral Investment Treaties – Chapter 2  
Case Study Tibet  
Jason Webb Yackee, Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints  
Jason Webb Yackee: Toward a minimalist system of international investment law? |  
Class 13 | Review | SD Myers v. Canada |

**Indicates required reading**  
*Indicates optional, but helpful reading*