

International Investment Law
University of Basel – Fall Semester 2010
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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

Class 1	Introduction - History and Trends	Bishop pp. 1-8 Dolzer / Schreuer pp. 1-7 Sornarajah pp. 36-60 <i>Trends: UNCTAD, World Investment Report 2010, "Overview"</i>
Class 2	Sources of Investment Law - General introduction to international law - Sources of international investment law	<u>General international law</u> - <i>Anne Peters, Völkerrecht Allgemeiner Teil (1st edition: pp. 68-98; 2nd edition pp. 114-133, 139-150)</i> - <i>Responsibility of States: Dolzer/Schreuer, pp. 195-206,</i> - <i>Interpretation of Treaties: Dolzer/Schreuer, pp. 31-45</i> <u>Sources International Investment Law</u> - Schreuer: Die Quellen des internationalen Investitionsrechts - Sornarajah, pp. 79-87 - Bishop pp. 213-224 - Peterson, Global Governance of FDI - <i>List of BITS worldwide (link)</i> <u>Host State Control</u> Sornarajah, pp. 88-95
Class 3	Definitions - Definition of "investor" - Definition of "investment"	Dolzer/Schreuer, pp. 46-71 <u>Investor</u> Siag v Egypt Tokios Tokeles v. Ukraine <u>Investment</u> Salini Case Romak v Uzbekistan, paras. 12-13, 209-243 <i>Pantechniki Case, paras. 12-13, 28-49</i> Malaysian Salvors: Jurisdiction and Annulment <i>Alasdair Ross Anderson v Costa Rica</i>
Class 4	Expropriation - Case discussion on what is public purpose	Sornarajah, pp. 363-369 Dolzer/Schreuer, pp. 90-92 - Case public purpose: ADC v. Hungary, Award, October 2nd, 2006, pp. 77-80

	<ul style="list-style-type: none"> - Case discussion on non-discrimination - Case discussion on due process 	<ul style="list-style-type: none"> - Amoco International Finance Corporation vs Iran, 15 Iran-U.P. C.T.R. (ILM 1988, pp. 1320ff.) - Campbell et al. vs Zimbabwe
Class 5	<p>Expropriation</p> <ul style="list-style-type: none"> - Case discussion on full compensation 	<p>Dolzer / Schreuer pp. 271 - 277</p> <p>Chorzow Case</p> <p>Oscar Schachter: Compensation for Expropriation</p> <p>Un GA Rep. 1803</p> <p>Charter of Economic Rights and Duties of States</p> <p>Sornarajah, pp. 450-51 (method of computation)</p> <p>Biwater Gauff vs. Tanzania, pp. 1-6, pp. 142-154, pp. 218-228, pp. 228-239</p> <p>Biwater Gauff Dissenting Opinion, paras. 15-33</p> <p><i>Guiso-Gallisay v Italy, ECHR paras. 90ff.</i></p>
Class 6	<p>Indirect Expropriation</p> <ul style="list-style-type: none"> - Case discussion of indirect expropriation <p>Minimum Standards of Treatment</p> <p>Non-Discrimination</p> <ul style="list-style-type: none"> - Arbitrary or discriminatory measures - National Treatment - MFN 	<p>Dolzer / Schreuer pp. 92-118:</p> <p>Marc R. Poirier</p> <p>Case: Tecmed v Mexico, paras. 95-151</p> <p>((AIDA Makes Progress, www.aida-americas.org)</p> <p><u>Non-Discrimination</u></p> <p>Dolzer/Schreuer, pp. 173-191</p> <p>Sornarajah, pp. 335-42</p> <p>China's MFN issue</p>
Class 7	<p>Fair and Equitable Treatment</p> <p>Full Protection and Security</p> <p>Umbrella Clause</p>	<p><u>Fair and equitable Treatment</u></p> <p>Dolzer/Schreuer, pp. 119-148</p> <p>Bishop, pp 1011-13</p> <p>Glamis Gold Ltd vs United States of America</p> <p><u>Full Protection and Security</u></p> <p>Dolzer/Schreuer, pp. 149-153</p> <p>Bishop, pp. 1057-60 (American Manu. v Zaire)</p> <p><u>Umbrella Clause</u></p> <p>Dolzer/Schreuer, pp. 153-62</p>
Class 8	<p>Dispute Settlement I</p>	<p>UNCTAD: Latest Developments 2010 (skim)</p> <p>Dolzer / Schreuer pp. 211-229</p>

	<ul style="list-style-type: none"> - State to State - Diplomatic Settlement of Disputes - Investor-State Dispute Mechanism - Institutional law of ICSID 	<p>Fora for Arbitration</p> <p><i>Peterson, Divergent Paths</i></p> <p><i>Won-Mog Choi, The Present and Future of the Investor-State Dispute Settlement Paradigm</i></p>
Class 9	<p>Dispute Settlement II</p> <ul style="list-style-type: none"> - Jurisdiction - Annulment - MFN within Dispute Settlement 	<p>Dolzer / Schreuer pp. 230-290, 292-313, 330 - 351</p> <p>C. Schreuer: Withdrawal from investment arbitration</p> <p><i>Political implications: Marc R. Poirier</i></p> <p>Kingsbury/Schill, I-S Arb as Governance, 1-8, 50-53</p> <p><i>Plama v Bulgaria, Decision on Jurisdiction, paras. 183-227</i></p>
Class 10	<p>Dispute Settlement III: Current Issues in Investment State Arbitration</p> <p><i>Arbitrator Challenges</i></p> <p><i>Role of ICSID in DS</i></p>	<p>Rogers, The Ethics of International Arbitrators</p> <p>Rubins/Lauterburg, Independence, Impartiality, pp. 168-179</p> <p>Vivendi v Argentina, Annulment Case, paras. 17-23, 99-116, 217-239</p> <p>Urbaser v Argentina, Arbitrator Challenge, paras. 1-33 (skim 1-19); 50-59</p>
Class 11	<p>Investment Insurance</p>	<p>Dolzer / Schreuer pp. 207-210</p> <p>MIGA Convention (skim)</p> <p>MIGA, Investment Guarantee Guide</p> <p>The Impact of Political Risk on the Foreign Direct Investment Decisions: A Capital Budgeting Analysis (p. 129-132; 139-141)</p> <p>Hansen, Investment Promotion and Political Risk Insurance</p> <p>Sornarajah, Subrogation</p> <p>Hansen, et al., Dabhol Power Project Settlement</p> <p><i>Christopher Cardona, Will recent nationalisations in Bolivia give rise to claims under political risk insurance policies?</i></p>

		<p>Hamdani, et al., Overview of Political Risk Insurance <i>List of public and private political insurance providers and re-insurers: http://www.pri-center.com/directories/sub_index.cfm?typenum=661,681</i></p>
Class 12	<p>Critique of BITs</p> <p>Human Rights & BITs</p> <p>Effectiveness</p>	<p>Reiner/Schreuer, pp. 82-96</p> <p>Luke Peterson, Human Rights and Bilateral Investment Treaties – Chapter 2</p> <p>Case Study Tibet</p> <p>Jason Webb Yackee, Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints</p> <p>Jason Webb Yackee: Toward a minimalist system of international investment law?</p>
Class 13	Review	SD Myers v. Canada

Indicates required reading

Indicates optional, but helpful reading