

University of Leeds

School of Law

Master of Laws

International Law of Foreign Investment

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2nd Semester

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Preamble

This module is a 15 credit running in Semester 2 this year. It is an optional LL.M. module. It covers the main principles of international law of foreign investment governing international economic relations between States. Areas covered are the evolution of the law of foreign investment, international efforts to regulate foreign investment, regulation under bilateral investment treaties, free trade agreements and regional trade and investment agreements, and the case law developed by various international courts and tribunals, including the International Centre for the Settlement of Investment Disputes (ICSID).

The aim is to provide a through understanding of the law of foreign investment and the interplay between law and politics in regulating foreign investment.

Further information about the syllabus, readings and assessment will be given at the seminars. The module would be taught by Professor Surya Subedi.

Objectives

1. To analyse the evolution of the law of foreign investment and the substantive principles of customary international law applicable to the treatment of foreign investment;
2. To have a critical understanding of the international efforts to regulate foreign investment;
3. To understand the interplay between law and politics in regulating foreign investment;
4. To critically assess the provisions of various international treaties concerning foreign investment;
5. To develop a critical understanding of the provisions of bilateral investment treaties, foreign investment provisions of free trade agreements and multilateral trade and investment treaties;

6. To understand the mechanisms available for the settlement of investment disputes;
7. To analyse critically the impact of arbitral awards of various international tribunals on the nature, scope and meaning of various principles of the law of foreign investment;
8. To apply the knowledge obtained in relation to investment disputes so as to identify and analyse problems which arise in the law and practice of resolving investment disputes;
9. To critically assess the role of the UN, WTO, OECD and UNCTAD in regulating foreign investment.

Course Outline

Seminar 1 will deal with the evolution of the law of foreign investment and the fundamental principles of investment protection. It also will survey the international efforts made to regulate foreign investment and include the following topics:

1. Origins of the law of foreign investment: the early years
2. National Standards v International Minimum Standard
3. National Treatment and the Calvo Doctrine
4. The Duty to Compensate and the Hull Formula
5. International efforts to regulate foreign investment
 - UN efforts
 - Efforts made by the World Bank
 - OECD efforts
 - The role of the WTO

6. The fundamental principles of the law of foreign investment
 - Protection against expropriation
 - Fair and equitable treatment
 - Full protection and security
 - National Treatment
 - The MFN treatment
 - Non-discrimination and fairness

Seminars 2 will examine the regulation of foreign investment under bilateral and regional investment treaties (BITs) and cover:

1. Origins of the BITs
2. The Content of BITs
3. Significance of BITs

4. Free Trade Agreements

5. Regional Treaties

Seminar 3 will deal with jurisprudence of international courts and tribunals on the law of foreign investment. It will examine the following topics in the light of the decisions of international courts and tribunals:

1. Fleshing out of the Principles of the Law of Foreign Investment
2. Definition of Expropriation
3. International Claims Tribunals
4. Iran-US Claims Tribunals
5. ICSID tribunals under both BITs and NAFTA
3. Determination of the Quantum of Compensation

Seminar 4 will examine the recent attempts to extend the frontiers of expropriation, expanded definition of the MFN principle and the development of the ‘umbrella clause’:

1. Metalclad v. USA
2. Pope & Talbot
3. S.D. Myers v. Canada
4. Interpretation of the NAFTA Free Trade Commission
5. MFN treatment
6. Treaty-shopping and forum –shopping
7. The ‘Umbrella Clause’

Seminar 5 will examine some recent foreign investment cases

1. Methanex v. USA
2. Noble Ventures v. Romania
3. Saluka Investments v. the Czech Republic

Textbooks:

Essential Reading

Surya P. Subedi, **International Investment Law: Reconciling Policy and Principle** (Hart Publishing, Oxford, 2008).

Further reading

Dolzer, R and C. Schreuer (2008). *Principles of International Investment Law* (Oxford University Press: Oxford).

M. Sornarajah, *The International Law on Foreign Investment* (Cambridge University Press, Cambridge, 2004).

Peter Muchlinski, Multinational Enterprises and the Law (Oxford University Press, Oxford, 2007).

Andreas Lowenfeld, International Economic Law (Oxford University Press, 2008).

Important Note:

Although the course is self-contained, a basic knowledge of public international law is highly desirable to be able to follow this course. Those who have never studied public

international law are strongly advised to do some background reading on this subject. The list of recommended reading in public international law are as follows:

Recommended Reading on Public International Law:

(Please check the availability of the latest editions of these books)

Antonio Cassese, International Law (Oxford University Press, 2004).

J.G. Merrills, International Dispute Settlement, 3rd edn., Cambridge University Press, 2004.

I. Brownlie, Basic Documents in International Law (6th edn., 2008), Oxford University Press.

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