**JONK429XA0 International Investment Law**  bySándor Lénárd

**Course outline**: Today most people agree that no business is purely domestic any more. Not only states and national economies have become more interdependent but business operations have been also well in the process of internationalization. The economic realities of the modern world make all business international as global competition, increasingly complex supply chains and various world events can affect even the smallest local firm. At the same time transnational corporations appeared on the horizon of international economic life and have a major impact on various aspects of societal life as well as on the regulatory policies of states. International business relations can take various forms from trade relations through different methods of licensing to the actual establishment of production lines or other operations in a foreign country. The letter form of business relation is called foreign direct investment.

The main objective of this course is to give students a basic introduction to the legal world of foreign direct investments. In doing so the course explores the different economic theories of foreign direct investments along with the historical path, the basic treaty structure and the institutions of its international regulation. By assessing actual investment disputes the course will give students detailed insights into the various standard of protections the international investment regime currently offers. The course will also outline the historical roots and main characteristics of investor-state dispute settlement mechanisms.

The current international investment regime has attracted heavy criticism throughout the past several decades. Therefore, the course will explore the reasons of such criticism by providing an overview of the investment regime's modern-day challenges. In doing so, great emphasis will be put on assessing those areas of international law which interrelate with investment law. Hence its relations with human rights regime, environmental law and the principle of sustainable development will be discussed by assessing actual investment cases.

**Requirements:** The final grade is influenced by the result of the midterm and final exams as well as the class participation. The midterm exam consists of two parts. One of them is a multiple choice examination, while the second part is an essay. The material for the midterm exam is the previous class material covering both the substantive and procedural basis of the international investment law. The final exam is an essay which is on one of the modern challenges of investment law. The midterm and final exams have equal weight in the course of the grade evaluation.

Also, student participation during class and discussion are required. Each student is expected to participate fully in these discussions and the intensity of their participation influences the final grade. Cases may be distributed to pair of students throughout the semester. Case presentation also influences the final grade.

**Absenteeism Policy:** A student should not have more than 3 unexcused absences. Excused absence must be validated with the instructor. To assist in keeping track of excused absences, please submit a note (or email) documenting your validated absences.

**Cell Phone Policy:** Cell phones should be silenced during class out of respect for classmates. If you need to take a call due to an emergency, please excuse yourself from the class. Please do not text either as it is disturbing to your fellow classmates.

**Outcome:** Upon completion of this course, the student will be able to comprehend the philosophy and operation of investment regimes and capable of understand how to build arguments before investment courts as well as how to apply the pertinent international legal tools.

**Recommended Bibliography**:

Andrew Newcombe and Lluis Paradell: Law and Practice of Investment Treaties (Wolters Kluwer 2009) &

M. Sornarajah: The International Law on Foreign Investment (Cambridge Univeristy Press 2010)

**Tentative Course Schedule**

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| **Date** | **Topic** | **Assignment** |
| Sept. 23. | **Introductory class, the buildup of the material, structure and requirements of the course.** |  |
| Sept. 30. | **The international legal foundation, the basic legal concepts and economic theories of foreign investments**  [This class introduces students to the basic international legal framework of foreign investment. In doing so the class outlines the sources of international law and their relationships with international business activities. Beyond the formal legal sources the class also touches upon 'soft law' material related to transnational corporations. Finally students gain an insight into the economic contexts as well as the other shaping factors of foreign investment]. |  |
| Oct. 7. | **The historical path and development of international investment regulation**  [This class looks back in time and gives an overview on the different historical phases of the protection of foreign investment. Starting with the questions of diplomatic protection and the standard of treatment for aliens this class explores the main characteristics of each phase by referring to the then prevailing economic and world order]. |  |
| Oct. 14. | **The standard of protection in investment law I: direct and indirect expropriations**  [The class covers the concept and dilemmas of expropriation in customary international law and its different types and standards in the current international investment regimes. Through actual cases the class illustrates the scope of expropriation under investment law. The class also discusses the conditions for expropriations, the valuation as well as the various questions of compensation]. | Case #1 & #2 |
| Oct. 21. | **The standard of protection in investment law II: fair and equitable standard, national treatment and the most-favored nation treatment**  [This class covers the different aspects of the requirement of the fair and equitable treatment. Through actual investment disputes the concept of legitimate expectation, the denial of justice and due process irregularity are among the aspects which are being illustrated. The class also gives an outline of the origin and content of the non-discrimination principles, namely the national as well as the most-favored nation treatment]. | Cases #3 & #4 |
| Oct. 28. | **The regime of dispute settlement: Investor - State Dispute Settlement (ISDS) - an alternative**  [This class explores the historical roots and current roles of treaty-based investment arbitrations. The basic rules and characteristics of their operations are also discussed. The ICSID (1965) and the subsequent ICC and UNCITRAL regimes are to be outlined. The class also addresses the questions whether ISDS regimes signify an alternative way for diplomatic protection? If so, what are the shortcomings of the ISDS system and what reform tools might be necessary to overcome these shortcomings?]. | Case #5 & #6 |
| Nov. 4. | **No class - fall recess** |  |
| Nov. 11. | **Midterm Exam** |  |
| Nov. 25. | **Modern Challenges I: Investment Law & Human Rights. Is investment law part of or constrained by human rights?**  [In a certain sense, the investment treaties protect human rights, namely the property rights of foreign investors. However, human rights considerations also embody various constrains of investment standards. Private property is usually subject to public interests. This is the public interests that the various requirements of human rights law represents. Through assessing investment disputes this class endeavors to explore the growing complexity of the relations between human rights and investment law. ICSID *Biwater Gauff v. Tanzania* ARB/05/22., ICSID *Compania de Aguas v. Argentina* ARB 97/3.; ICSID *Azurix v. Argentina* ARB/01/12., ICSID *Suez v. Argentina* ARB/03/17.]. | Case #7 |
| Dec. 2. | **Modern Challenges II: Investment Law & Environment**  [One of the most dynamically developing area of international law is the environmental regulation. The widespread and increasingly tightening requirements of international environmental law has a standard setting characteristic *vis-a-vis* both business life and public policies. These requirements might interfere with the standard of investment law. The class covers those investment disputes in which the conflicting interests between investment and environmental areas of international law became visible. The class also address the question of what conflict resolution tools the general international law offers in these scenarios. ICSID *SPP v. Arab Republic of Egypt* ARB/84/3.; ICSID *Parkerings v. Lithuania* ARB/05/8.; NAFTA Arbitration under UNCITRAL Rules *S.D. Myers v. Canada*; NAFTA Arbitration under UNCITRAL Rules *Methanex v. United States*; ICSID *Maffezini v. Spain* ARB/97/7.; ICSID *Metalclad v. United States* ARB/97/1.; ICSID *Tecmed v. Mexico* ARB/00/2.]. | Case #8 & 9 |
| Dec. 9. | **Modern challenges III: Sovereign Debt Restructuring in the traps of investment law?**  [The last class raises a very actual dilemma: how modern states are able to restructure their sovereign debts if bonds are considered as investment. As the concept of welfare state gained widespread acceptance throughout the last century the functions as well as the public debt of states began to grow rapidly. As the examples of a lot countries such as Argentina or Greece recently show there is a definite need for restructuring very high amount of public debt. In these scenarios can investment law offer protection for bondholders? If so, is it an adequate answer? The class discusses these questions along with the international legal as well as the economic policy background of investment protection in the course of sovereign debt restructuring. ICSID *Abaclat and others* *v. Argentine Republic* ARB/07/05.; ECtHR *Mamatas and others v. Greece* (63066/14), 21 July 2016.]. | Case #10 & # 11 |
| Dec. 16. | **Final Exam** |  |