

LLM International Investment Law and Policy



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Teaching and assessment (2014): Semester 2, Exam - 3hrs

Module description:

International investment law is emerging as a distinct and important field of international law. International investment law addresses the regulation of the behavior of sovereign States towards foreign investors. Originally the province of customary international law, international investment law has become dominated by bilateral and multilateral investment treaties of which there are presently nearly 3,000 in force. Disputes under these agreements are often resolved through arbitration before tribunals established by the International Centre for Settlement of Investment Disputes (ICSID), which is part of the World Bank group.

Closely intertwined in the resolution of these arbitrations are important questions about the rights and obligations of international investors (e.g., whether they should have substantive and procedural rights beyond those afforded to domestic investors), about the rights and obligations of sovereign States (e.g., the extent to which treaty-based protection of foreign investors limits the scope of the State's power to regulate), and about the appropriate mechanisms for resolving investment disputes (e.g., whether the public should have the right to see and participate in what have traditionally been confidential proceedings).

This course examines the substantive law governing international investment, explores how rights and obligations can be enforced in an investment dispute, and considers the proper role of investment law in the international legal system. Students intending to practice in this area are also encouraged to take International Commercial Arbitration, which examines the procedural issues involved in investor-State disputes.

This module considers the central topics of international investment law. It will examine the traditional approach of regulating foreign direct investments in customary international law and then focus on the present state of investor protection under more than 2,500 bilateral investment protection treaties and a number of multilateral agreements containing investment provisions such as the North American Free Trade Agreement, the Energy Charter Treaty, and others. The standards of treatment guaranteed to foreign investors in these treaties and under customary international law will be analyzed. The primary focus of this course is on substantive standards, such as fair and equitable treatment, full protection and security, most-favoured-nation treatment, national treatment. Protection against expropriation will merit special attention. The growing case-law of international arbitration tribunals will serve as a background to this analysis.

Seminar topics:

- Contextual and Theoretical Understanding of the Subject (the concept of investment, 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 foreign direct investment, national insurance systems, international organizations)
- Sources of International Investment Law (the customary international law of investment, guidelines and codes of conduct, resolutions, national legislation, bilateral investment treaties, multilateral agreements)
- Investment Agreements (nature of State/investor contracts, internationalization, applicable law, stabilization, arbitration)
- Expropriation (permissibility of expropriation, requirements for legal expropriations, indirect expropriation)
- Treatment Standards I (regulatory framework for foreign direct investment, standards of protection, fair and equitable treatment, full protection and security, international minimum standard)
- Treatment Standards II (umbrella clauses, arbitrary and discriminatory treatment, national treatment, most-favoured-nation clauses)
- Responsibility of the Host State and Protection by the Home State (responsibility for illegal acts, attribution, circumstances precluding wrongfulness, diplomatic protection, nationality of corporations, the Calvo doctrine)