

# International Investment Law and Sustainable Development

<b>Semester:</b>	Spring Semester- FS 2023
<b>Root Number:</b>	481934
<b>ECTS:</b>	3
<b>Lecturer:</b>	Professor Marie-Claire Cordonier and Professor Markus Gehring
<b>Dates:</b>	<b>July 17 to July 20, 2023</b>
<b>Room:</b>	The is a hybrid course. The course will be held on-site at the World Trade Institute and online on Zoom.

## Audience:

- Government officials; Embassy staff; people working for international organizations and NGOs, industry and in legal practice
- Master of Advanced Studies of International Law and Economics (MILE) Students
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe
- Masters students from different universities across Switzerland

## Course Description

International investment flows, and principles and accords which governs them, can either foster or frustrate global sustainability. The UN Sustainable Development Goals (SDGs) lay out a common policy agenda, 169 time-bound targets under 17 Goals to guide a transition to a more sustainable world. Advancing these SDGs, which address key global priorities such as poverty, hunger, universal access to health and education, clean water and energy, climate change, biodiversity protection, justice and more, requires significant investment, which can be incentive by international



investment law. This course examines international investment treaty law, highlighting procedural innovations and objectives, exceptions, substantive obligations and collaborative measures which can help rather than hinder sustainability in different regions and countries.

The course also surveys recent dispute settlement decisions and arbitral awards related to sustainable development, and examines how international investment promotion and governance mechanisms could promote nature positive and net zero development, more sustainable management of natural resources, and realisation of indigenous and human rights. It draws on insights from international communities of practice, and sustainable development initiatives led by the WTI instructors, as well as recent publications such as MC Cordonier Segger, [Athena's Treaties: Crafting Trade and Investment Accords for Sustainable Development](#) (OUP, 2021), S Stephenson & MC Cordonier Segger, *Research Handbook on Sustainable Development & International Investment Law* (EE, forthcoming) and MC Cordonier Segger, M W Gehring & A Newcombe, *Sustainable Development in World Investment Law* (Kluwer, 2011).

Through discussions, guided exploration of key content and resources, and an experiential treaty negotiations exercise, the course enhances learners knowledge, understanding and skills in environmental and social elements of investment law, and interactively explores recent developments in investment law assessments and negotiations; treaty and governance innovations; and jurisprudence from a sustainable development law perspective. Learners gain answers to pertinent questions on recent advancements in investment law, including the negotiation (and renegotiation) of regional and bilateral agreements, as well as the increasing number of investor-state disputes with a particular focus on recent reform discussions in the Energy Charter Treaty as well as climate change and investment law. Learners also debate and explore future directions for new treaty negotiations and dispute settlement proceedings, as well as ongoing investment promotion efforts, against a background of rapidly evolving global trends and challenges. Learners gain new career development opportunities and pathways, and expand their knowledge, networks and horizons in the increasingly promising new sustainability aspects of international investment law.

## Lecturers

### Markus Gehring

Markus W. Gehring is a Visiting Professor of Law at Yale Law School and was Director of the Centre for European Legal Studies (CELS) at the University of Cambridge. He is an expert in EU and international trade, investment and environmental law, particularly with respect to sustainable development. Gehring also serves as a tenured



Associate Professor in Law in Cambridge's Faculty of Law and is a Fellow in Law at Hughes Hall, one of Cambridge's constituent colleges. He is a Founding Fellow of the Cambridge Centre for Environment, Energy and Natural Resources Governance (CEENRG) and a Fellow of the Lauterpacht Centre for International Law (LCIL). As Lead Counsel for Sustainable Trade, Investment and Finance Law with the Centre of International Sustainable Development Law (CISDL), Gehring has served as a representative at World Trade Organization Ministerial Conferences, the World Summit on Sustainable Development, and the Rio+20 Summit on Sustainable Development. Gehring has taught at a number of international institutions, including the University of Chile, the University of Hamburg, the Université de Montréal, the University of Ottawa, the University of Victoria and HBKU Qatar. He holds a J.S.D. and LL.M from Yale and a Dr iur from Hamburg. A member of the Frankfurt/Main and Ontario Bars, he practiced European and international trade law with Cleary Gottlieb in their Brussels office.

### **Marie-Claire Cordonier Segger**

Professor Dr Marie-Claire Cordonier Segger is a founding pioneer in sustainable development law and governance, inspiring new legal and interdisciplinary scholarship to confront crucial global challenges such as climate change. She serves as senior Visiting Chair in Sustainable Development Law and Policy at the University of Cambridge where she is also a Fellow of the Lauterpacht Centre for International Law, the Centre for Energy Environment and Natural Resources Governance, and the Bennett Institute for Public Policy; and Law Fellow, Director of Studies for LLM/MCLs and Programme Director at Lucy Cavendish College. As co-author of the foundational legal textbook Sustainable Development Law (OUP), with over 25 other scholarly volumes with world-class publishers and over 140 articles, chapters, reports and other contributions in several languages, Prof. Cordonier Segger is a recognised senior authority in her field globally. She has published widely on aspects of sustainable trade and investment law. Most recently in *Crafting Trade and Investment Accords for Sustainable Development: Athena's Treaties* (OUP, 2021), with HE CJ Weeramantry, eds, *Sustainable Development in International Courts and Tribunals* (Routledge, 2017) and *Sustainable Development in World Investment Law* (Kluwer Law International, 2010). As founding CUP series co-editor on Treaty Implementation for Sustainable Development, editorial board member of five law journals including the McGill Journal of Sustainable Development Law and the prestigious Cambridge Journal of International Law, and founding Senior Director of the Centre for International Sustainable Development Law (CISDL), her academic endeavors are shaping her discipline and related practice, as evinced by her international fellowships, awards and leadership engagements, and by invitations through the United Nations to advise design and implementation of international accords and post-pandemic measures to advance the global Sustainable Development Goals (SDGs).



In her scholarship, Prof. Cordonier Segger analyses integrated legal solutions to critical ecological, economic and social justice challenges of her generation, including global climate change. Her international legal regime implementation research has carried inquiry into comparative and interdisciplinary realms requiring rigorous, deeply collaborative scholarship. She has secured and led many competitively awarded legal research projects and institutions; delivered many prestigious lectures including the 2020-22 Leverhulme Lectures hosted by the University of Cambridge Vice-Chancellor reaching over 9,000 registrants; and chairs key global conferences in her field. Prof. Cordonier Segger's rigorously detailed analysis, including her studies of regulatory and institutional innovations in Canada and the world's poorest and most highly climate-vulnerable countries, has provided crucial contributions to global investigations of the climate and biodiversity emergencies; also to climate law provisions in trade, investment and financial instruments; and to the rights of future generations and indigenous peoples, for which she has won the inaugural HE CG Weeramantry International Justice Award, the Justitia Regnorum Fundamentum Award, and other international awards and honours. In 2020, she was elected Fellow of the United Kingdom's Royal Society of the Arts, and in 2022, a Fellow of the Royal Society of Canada in the Academy of Social Sciences.

As a full professor of international law in the University of Victoria Faculty of Law in Canada, Prof. Cordonier Segger also leads important Canadian studies and dialogues on key SDGs such as climate action. Her purposive research on sustainable development law regimes, while advancing profound underlying inquiries on cooperative approaches to compliance, treaty negotiation and implementation, pilots nuanced interactional theories of legality and legitimacy. These works led to her Executive Secretary appointment for the United Nations Framework Convention on Climate Change (UNFCCC) Climate Law and Governance Initiative partnership, where she has fostered interdisciplinary research collaborations and strengthened capacity of developing country emerging scholars and officials. She also achieved impressive impact as UNFCCC CoP Presidency Senior Legal Advisor, where her expertise shaped the drafting of key provisions in the Paris Agreement. She was one of the first women law professors to be awarded a highly prestigious University of Cambridge senior Leverhulme Trust visiting professorship for world-class research, and is a senior Visiting Professor at Yale Law School. Previously, she served as a full professor of law in the University of Waterloo where she continues an adjunct professor and senior advisor to the Waterloo Climate Initiative (WCI) and fellow of the Balsillie School of International Affairs. She has also served as senior legal expert and head of department for the International Development Law Organisation (IDLO), as a senior advisor to the United Nations, and a senior advisor in the government of Canada ministries of natural resources, and of environment and climate change, among other positions.

In recognition of her contributions, Prof. Cordonier Segger has been appointed to the boards of several prestigious commissions and foundations, including the IUCN World Commission on Environmental Law and the World Future Council. She adjudicates grants for several countries, councils and foundations; serves as arbitrator of international treaty disputes and senior legal advisor to international treaty bodies such as the UNFCCC COP Presidency; and serves on the juries of leading awards and fellowships including the Climate Law and Governance Global Leadership Awards, the King Mohammed VI Prize for the Climate and Sustainable Development, and the Association of American University Women International Fellowships.

### Learning Objectives

- To provide knowledge, understanding and skills in environmental and social elements of investment law, and interactively explores recent developments in investment law assessments and negotiations; treaty and governance innovations; and jurisprudence from a sustainable development law perspective.
- To interactively explore recent developments in investment, the SDGs and the broader investment liberalisation and sustainability agenda.
- To gain answers to pertinent questions on recent advancements in investment law, including the negotiation (and renegotiation) of regional and bilateral agreements, as well as the increasing number of investor-state disputes with a particular focus on recent reform discussions in the Energy Charter Treaty as well as climate change and investment law.

### Assessment (to be defined by lecturers)

- Students' knowledge will be assessed on the basis of a take home exam which needs to be completed on an individual basis.
- Each lecturer will provide a set of questions or essay topics for the paper. Students can choose three out of 10 question/topics.
- No more than 1200 words
- Take-home assignment made available on 20 July 2023, 16:00 and to be submitted before 21 July 2023, 20:00 to [masters@wti.org](mailto:masters@wti.org)



## Course Overview

Date	Day	Time	Topic / lecturer
<b>17 July</b>	Monday	10:00 12:00	Introduction to Investment Law / Dr Gehring
		13:00 16:00	Introduction to Sustainable Development Law/ Dr Gehring
<b>18 July</b>	Tuesday	10:00 12:00	Introduction to Law and the SDGs / Prof Cordonier Segger
		13:00 16:00	Investment and Sustainable Development – Treaty Norms – A History / Dr Gehring
<b>19 July</b>	Wednesday	10:00 12:00	Investment and Sustainable Development – Disputes / Prof Cordonier Segger
		13:00 16:00	Investment and Sustainable Development – Regional and EU Perspectives – New Treaties / Dr Gehring
<b>20 July</b>	Thursday	10:00 12:00	Investment and Sustainable Development – Group Exercise – Preparation
		13:00 16:00	Investment and Sustainable Development – Group Exercise - Presentation
<b>21 July</b>	Friday	Due 20:00	Case study/exam (take-home assessment)

## MONDAY, JULY 17, 2023

**Lecturer: Dr. Gehring**

### Subject

- Introduction to Investment Law

### Topics

- Development of International Investment Law
- Treaty Development – What are BITs?
- Early Challenges
- Development Perspective

### Compulsory Reading Material

- 1. Friedl Weiss, 'Trade and Investment' in Peter Muchlinski, Federico Ortino and Christoph Schreuer (eds), *The Oxford Handbook of International Investment Law* (Oxford University Press 2008)  
<<https://doi.org/10.1093/oxfordhb/9780199231386.013.0006>>.
- 2. Kate Miles, 'Origins of International Investment Law', *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital* (Cambridge University Press 2013)  
<<https://www.cambridge.org/core/books/origins-of-international-investment-law/origins-of-international-investment-law/88FB1CD9F6F3FAE7CC3523C27F2EF0E5>>.
- 3. Campbell McLachlan, 'Investment Treaties and General International Law' (2008) 57 *The International and Comparative Law Quarterly* 361.

### Optional Reading Material

- 1. Andreas F. Lowenfeld, *International Economic Law*, vol 2nd ed (OUP Oxford 2008) Ch. 15.
- 2. M Sornarajah, *The International Law on Foreign Investment* (5th edn, Cambridge University Press 2021)  
<<https://www.cambridge.org/core/books/international-law-on-foreign-investment/9A020CAE3B47C16AFAE541FCA6D038C3>> Ch 1 – Introduction
- 3. Peter Muchlinski, '341THE DIPLOMATIC PROTECTION OF FOREIGN INVESTORS: A TALE OF JUDICIAL CAUTION' in Christina Binder and others (eds),

*International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (Oxford University Press 2009)  
<<https://doi.org/10.1093/acprof:oso/9780199571345.003.0019>>.

### Lecturer: Dr. Gehring

### Subject

- Introduction to Sustainable Development Law

### Topics

- What is Sustainable Development?
- What is the law on sustainable development?
- How did the WTO deal with the Sustainable Development objective

### Compulsory Reading Material

- 1. MC Cordonier Segger and Ashfaq Khalfan, *Sustainable Development Law: Principles, Practises and Prospects* (Oxford University Press 2004) Ch. 1-2.
- 2. Marie-Claire Cordonier Segger and Alexandra Harrington, 'Environment and Sustainable Development' in Simon Chesterman, David M Malone and Santiago Villalpando (eds), *The Oxford Handbook of United Nations Treaties* (Oxford University Press 2019)  
<<https://doi.org/10.1093/law/9780190947842.003.0013>>.
- 3. Daniel Barstow Magraw and Lisa D. Hawke, "Sustainable Development" in Daniel Bodansky, Jutta Brunnee and Ellen Hey, 'The Oxford Handbook of International Environmental Law' 1<sup>st</sup> ed. (Oxford University Press, 2008).

### Optional Reading Material

- 1. Schrijver Nico, *Development Without Destruction : The Un and Global Resource Management*. Bloomington: Indiana University Press 2010. Ch. 1-2



## TUESDAY, JULY 18, 2023

**Lecturer: Prof. Cordonier Segger**

### Subject

- The SDGs and International Law

### Topics

- Meaning of the SDGs
- Importance of the SDGs for International Law
- Relationship of the SDGs with Treaties

### Compulsory Reading Material

- 1. - Huck, W. 2022. Sustainable Development Goals: Article-by-Article Commentary, Beck Hart Nomos: Berlin, <https://doi.org/10.5771/9783748902065> [Read Chapter 1]
- United Nations. 2015. A/RES/70/1. Transforming our World: The 2030 Agenda for Sustainable Development [Read in Full, including SDGs] Online: <https://undocs.org/A/RES/70/1>
- - UN Secretary General, 2015. High-Level Global Sustainability Panel Report, United Nations: New York, Online: <http://sustainabledevelopment.un.org>

### Optional Reading Material

- 1. Sen, A. 1999. Development as Freedom, Oxford University Press: Oxford [Read Chapters 2,3]
- 2. Cordonier Segger, MC. and Mrema, E. 2016, "SDGs: Contributions of International Law, Policy and Governance". Online: <https://www.cisd.org/?s=UNEP%2FCISDL> [Skim]
- 3. World Commission on Environment and Development. 1987. Our Common Future. Oxford University Press: Oxford. Online: <http://www.un-documents.net/ocf-ov.htm> [Read Chapters 1-2]

**Lecturer: Dr. Gehring**

**Subject**

- Investment and Sustainable Development – Treaty Norms – A History

**Topics**

- The Clinical Isolation of Investment Law
- Economic, social and environmental relationships
- BITs and sustainable develop

**Compulsory Reading Material**

- 1. Markus W Gehring, Marie-Claire Cordonier Segger and Andrew Paul Newcombe, *Sustainable Development in World Investment Law* (Kluwer Law International ; Biggleswade : Turpin, distributor 2011) Ch. 1-3.
- Gehring, M. et al. 2016. "SDG 12 on Ensuring Sustainable Consumption and Production Patterns: Contributions of International Law, Policy and Governance", Online: [https://www.cisd.org/wp-content/uploads/2018/03/SDG\\_12\\_Consumption\\_-\\_Issue\\_Brief\\_-\\_UNEP\\_CISDL\\_-\\_30.07.2016\\_-\\_Phase\\_I\\_Basic\\_Final-1.pdf](https://www.cisd.org/wp-content/uploads/2018/03/SDG_12_Consumption_-_Issue_Brief_-_UNEP_CISDL_-_30.07.2016_-_Phase_I_Basic_Final-1.pdf)
- Cordonier Segger, MC. and Khalfan, A. 2004. *Sustainable Development Law: Principles, Practices and Prospects*, Oxford University Press: Oxford, <https://doi.org/10.1093/acprof:oso/9780199276707.001.0001> [Read Chapter 6-8]

**Optional Reading Material**

- 1. Konrad von Moltke, *An International Investment Regime? Implications for Sustainable Development* (International Institute for Sustainable Development 2000).
- 2. Markus W Gehring and Avidan Kent, 'International Investment Agreements and the Emerging Green Economy: Rising to the Challenge' in Freya Baetens (ed), *Investment Law within International Law: Integrationist Perspectives* (Cambridge University Press 2013) <https://www.cambridge.org/core/books/investment-law-within-international-law/international-investment-agreements-and-the-emerging-green-economy-rising-to-the-challenge/12F3B492A40124CAF766C54C8978F7CB>.

## WEDNESDAY, JULY 19, 2023

**Lecturer: Prof. Cordonier Segger**

### Subject

- Investment and Sustainable Development – Disputes

### Topics

- The emerging disputes on investment and sustainable development
- Arbitral awards in the field of investment and sustainable development
- Reform attempts in NAFTA and other fora

### Compulsory Reading Material

- 1. Cordonier Segger, M.-C., & Weeramantry, J.C.G. (Eds.) *Sustainable Development Principles in the Decisions of International Courts and Tribunals: 1992-2012* (1st ed.). (Abingdon, Routledge 2017).  
<https://doi.org/10.4324/9781315769639> Chs 23-15
- 2. K. von Moltke and H Mann, *NAFTA's Chapter 11 and the Environment -- Addressing the Impacts of the Investor-State Process on the Environment* (International Institute for Sustainable Development 1999).
- 3. Chester Brown, "Bringing Sustainable Development Issues before Investment Treaty Tribunals" in Markus W Gehring, Marie-Claire Cordonier Segger and Andrew Paul Newcombe, *Sustainable Development in World Investment Law* (Kluwer Law International ; Biggleswade : Turpin, distributor 2011)

### Optional Reading Material

- 1. M.C. Cordonier Segger, "Inspiration for Integration: Interpreting International Trade and Investment Accords for Sustainable Development" (2017) *Canadian Journal of Comparative and Contemporary Law* Vol 3 / 1, p159
- 2. M. Gehring, S. Stephenson & M.C. Cordonier Segger, "Sustainability Impact Assessments as Inputs and as Interpretative Aids in International Investment Law" (2016) *Journal of World Investment and Trade* Vol 17, p155
- 3. Avidan Kent and Markus Gehring "Investment Law and the Environment" in Shawkat Alam et al, *Routledge Handbook of International Environmental Law Edited by Shawkat Alam ... [et Al.]*. (Abingdon, Oxon : Routledge, 2013 2013) Ch. 27.

- 4. Markus Gehring and Dimitrij Euler, 'Public Interest in Investment Arbitration' in Dimitrij Euler, Markus Gehring and Maxi Scherer (eds), *Transparency in International Investment Arbitration: A Guide to the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration* (Cambridge University Press 2015) <<https://www.cambridge.org/core/books/transparency-in-international-investment-arbitration/public-interest-in-investment-arbitration/B199BFE42ED6A8075F9487E163B27CD6>>.

### Lecturer: Dr Gehring

### Subject

- Investment and Sustainable Development – Regional and EU Perspectives – New Treaties

### Topics

- The emerging new treaties on investment and sustainable development
- EU reform steps
- Energy Charter Treaty

### Compulsory Reading Material

- 1. Rumiana Yotova "Balancing economic objectives and environmental considerations in new EU investment agreements: a brave new world?" in Kate Miles, *Research Handbook on Environment and Investment Law* (London, Edward Elgar, 2019) Ch. 16.
- 2. Markus Gehring and Marios Tokas, 'Synergies and Approaches to Climate Change in International Investment Agreements: Comparative Analysis of Investment Liberalization and Investment Protection Provisions in European Union Agreements' (2022) 23 *The Journal of World Investment & Trade* 778.
- 3. Johannes Tropper and Kilian Wagner, 'The European Union Proposal for the Modernisation of the Energy Charter Treaty – A Model for Climate-Friendly Investment Treaties?' (2022) 23 *The Journal of World Investment & Trade* 813.

### Optional Reading Material

- 1. Edna Sussman, 'Chapter 21: The Energy Charter Treaty's Investor Protection Provisions: Potential to Foster Solutions to Global Warming and Promote Sustainable Development', in Marie-Claire Cordonier Segger, Markus W.

Gehring and Andrew Newcombe, *Sustainable Development in World Investment Law, Global Trade Law Series, Volume 30* (Kluwer Law International; Kluwer Law International 2011) pp. 515 - 532

- 2. Rumiana Yotova, 'Opinion 2/15 of the CJEU: Delineating The Scope of the New EU Competence in Foreign Direct Investment' (2018) 77 *The Cambridge Law Journal* 29.
- 3. Chrsitina Eckes, "Stepping out of the modernized Energy Charter Treaty – the best way forward? 23 SEPTEMBER 2022 European Law Blog, <https://europeanlawblog.eu/2022/09/23/stepping-out-of-the-modernized-energy-charter-treaty-the-best-way-forward/>



**THURSDAY, JULY 20, 2023**

**Lecturer: Dr. Gehring and Prof. Cordonier Segger**

**Subject**

- Investment and Sustainable Development – Group Exercise – Preparation

**Topics**

- Groups will have
  1. Developing Country Representative
  2. Developed/EU Representative
  3. Environmental NGO or Mining Industry Representative

**Preliminary instructions**

- Detailed confidential negotiation briefs will be made available for each party.
- An outline investment agreement dealing with one or two of the SDGs needs to be negotiated
- A short presentation with the main elements of the agreement prepared.



**FRIDAY, JULY 21, 2023**

- Take-home assessment due 20:00