

International Investment Law and Sustainable Development

Semester: Spring Semester- FS 2024

Root Number: 481934

ECTS: 3 ECT – (25 hours)

Lecturer: Prof. Roberto Echandi, Prof. Krista Nadakavukaren and Prof. Mariana H.C. Gonstead

Dates: **July 1 to July 5, 2024**

Room: This 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
- Students from different universities across Switzerland

Course Description

The course will introduce students to a multidisciplinary vision of international investment law and policy and its relationship with sustainable development. The course will start by explaining the concept of sustainable investment and addressing the different features and impacts of different types of cross-border investment and their different challenges and opportunities posed for sustainable development.

Before drilling on the features of international investment law, the course will also explain how over the last decade the patterns of international production for goods and services shaping international investment are in turn responding to deep environmental, geopolitical and technological transformations. Further, the course will explain how these tectonic shifts have translated into domestic and international social and political pressures reshaping the international investment regime. Within this context, from a multidisciplinary perspective, this course will provide participants with a thorough understanding of these developments and how they are shaping international investment law. Further the course will explain the evolution of the contents and implementation of different international agreements covering investment, including the WTO, Preferential Trade Agreements and Bilateral Investment Treaties, and how to leverage them in practice for sustainable development, including for purposes of managing conflict among stakeholders on the ground.

This course will be of particular interest to academics, legal practitioners and policy makers interested in sustainable investment and development, and to anyone interest in learning how to design, implement and leverage international investment agreements to foster inclusive and green economic growth.

Lecturers

Roberto Echandi

Dr. Roberto Echandi is a Lead Trade Specialist in the Trade Unit of the Macroeconomics, Trade and Investment Global Practice of the World Bank Group (WBG). From this position, his current work program focuses on research and policy advice on issues related to cross border trade in services, negotiation, implementation and maximization of potential benefits of Trade Agreements.

He is also member of the Editorial Board of the Journal of World Investment and Trade (JWIT), Member of the Faculty of the Academy of International Economic Law and Policy at Athens, Greece, and Adjunct Professor of the Institute of International Studies at the National University of Malaysia.

Prior to joining the WBG trade unit, he was the Global Lead for Investment Policy and Promotion of the Trade and Competitiveness Global Practice of the WBG. Before joining the WBG, he was Director of the Program on International Investment at the World Trade Institute (WTI) of the University of Bern, where he continues to be part of the Advisory Board and Faculty of visiting professors.

Dr. Echandi was Costa Rica's Ambassador to Belgium, Luxembourg and the European Union from 2007 to 2010. During the same period, he was also Chief Negotiator for the Association Agreement negotiations between the EU and Central America, where he led the negotiation process on behalf of Costa Rica and in many occasions for the whole Central American region. From October 2002 until January 2005, he also served as Special

Adjunct Ambassador for U.S. Trade Affairs and lead negotiator in services and investment in the US-Central America Free Trade Agreement (CAFTA).

Among other positions in academia and international organizations, Dr. Echandi has also been Faculty of the master's in international Economic Law (IELPO) at the University of Barcelona, member of the Editorial Board of the Journal of International Economic Law (JIEL), Adjunct Professor at the Georgetown University Law Center, Contributor Expert of the Latin American Program of the Baker Center at Rice University, and Legal Affairs Officer of the WTO Appellate Body Secretariat. For more than 15 years, Dr. Echandi led Costa Rican delegations to multiple trade and investment bilateral and regional negotiations and was heavily involved in domestic policy reforms to ensure implementation of international trade and investment agreements in Costa Rica. Roberto Echandi has a Ph.D in international law from the University of Bern, an LL.M. from the University of Michigan School of Law at Ann Arbor; an M.Phil. in Latin American studies with emphasis in economic integration at the University of Oxford; a Licenciatura en Derecho from the University of Costa Rica, and studies at the JFK School of Government of Harvard University.

He has published more than 40 international contributions on the legal and political economy dimensions of investment issues, dispute settlement, trade in services and regional economic integration. He has served as a consultant to the OECD, the WBG, UNCTAD, the Organization of American States, the Inter- American Development Bank and the WTO.

Krista Nadakavukaren

PD Dr. iur Krista Nadakavukaren Schefer is Vice-director and Head of the Legal Division at the Swiss Institute of Comparative Law. Previously working with the Swiss Center for Human Rights Studies at the University of Zurich and the law faculty of the University of Basel, Krista continues to teach at the universities of Basel and Bern, as well as at the WTI. Her research interests cover a wide range of topics relating to trade and investment, but she mainly focuses on the questions of how the international economic law system interacts with the general international law rules relating to natural and human resources. Krista holds a JD from Georgetown University Law Center and a doctorate and Habilitation from the University of Bern. She is registered with the New York State Bar Association.

Mariana H.C. Gonstead

Mariana H.C. Gonstead is a Professor of Law, and Executive Director of the International Dispute Resolution Research Network (IDRRN) at St. Thomas School of Law in Minneapolis, Minnesota. For nine years, she also served as Deputy to the Dean for International Legal Studies. She holds a Juris Doctor (J.D.) and a Master of Laws (LL.M.) from Harvard Law School and another law degree from Universidad Catolica Andres Bello (UCAB).

Professor Gonstead's broad international experience includes: designing and leading a national consensus building in Brazil, working with the Trust of the Americas (OAS), teaching at the World Trade Institute in Switzerland, developing capacity for the economic

partnership agreement between Mongolia and Japan, and participating as an expert at the United Nations Conference on Trade and Development (UNCTAD) and the World Bank. She was also a member of the working group that drafted the International Bar Association Rules for Investor-State Mediation. Additionally, she was appointed by the President of the World Bank to serve on the International Centre for Settlement of Investment Disputes (ICSID) Panel of Arbitrators and of Conciliators, as one of ten globally selected mediators. She has co-chaired the American Bar Association (ABA) Dispute Resolution Section Law Schools Committee and has publications in English, Spanish, and Portuguese. She is one of the co-authors of the book, "Global Issues in Mediation," which is part of West's Global Issues Series.

Learning Objectives

- To provide a multidisciplinary view (history, political economy and law) of international investment, international investment agreements and their relationship with sustainable development.
- To provide an introduction to key concepts, legal frameworks, empirical data and practical tools (including non-litigious conflict management) to better understand and leverage international investment law for policy making promoting sustainable development.
- To provide participants with practical examples on the impacts of different types of investment on sustainable development and how they have shaped international investment law rule-making.
- To provide a comprehensive understanding of the main contents of international investment agreements and their application and impact on sustainable development, including key dispute settlement cases and non-litigious means of investor-State conflict management.
- To provide practical training and hands-on experience in the application of international investment agreements for sustainable development at a macro and micro level, both in the negotiation and application of international investment agreements on the ground.

Assessment

- Students' knowledge will be assessed on the basis of a take home exam which needs to be completed on an individual basis.
- Take-home assignment made available on July 5, 2024 at 17:00 and to be submitted 24 hours later by, 17:00 (CET) to masters@wfi.org

Course Overview

Date	Day	Time	Topic / lecturer
1 July	Monday	09:30 12:00	Introduction: The different types of investment and their impact on sustainable development / Roberto Echandi
		13:00 16:00	The political economy of the historical evolution of international investment law / Roberto Echandi
2 July	Tuesday	09:30 12:00	Understanding the concept of sustainability and sustainable development/ Krista Nadakavukaren
		13:00 16:00	What would be sustainable investment? / Krista Nadakavukaren
3 July	Wednesday	09:30 12:00	Evolution of international investment agreements and sustainable development Krista Nadakavukaren
		13:00 16:00	Evolution of international investment agreements and sustainable development: ISDS and sustainable development concerns / Krista Nadakavukaren
4 July	Thursday	09:30 12:00	The multi-layered governance framework of international investment and its relationship with trade and sustainability/ Roberto Echandi
		13:00 16:00	Understanding the controversy about international investment law and sustainability: The different types of dispute settlement in international investment agreements / Roberto Echandi
5 July	Friday	09:30 12:00	Non-litigious means of conflict resolution : introduction to investor-State conflict management / Mariana Gonstead
		13:00 16:00	Investor-State conflict management and sustainable investment : opportunities and challenges / Mariana Gonstead
6 July	Saturday	Due 17:00	Case study/exam (take-home assessment)

Monday, July 1, 2024

Lecturer: Roberto Echandi

Subject

- Introduction: the different types of investment and their impact on sustainable development & political economy of international investment law

Topics

- The different kinds of investment, their political economy, impact for development and relevance for investment policy and negotiation
- The historical development of international investment law, particularly focusing on the historical origins, policy objectives and evolution of the law governing foreign investments.

Compulsory Reading Material

1. Echandi, R. (2015), "Connecting the dots between trade and international investment regulation, investment climate reform, and development", in Current Issues in Asia Pacific Foreign Direct Investment, The Australia APEC Study Centre, RMIT University, Melbourne, Pages 32-54
https://www.researchgate.net/publication/335079140_Connecting_the_dots_between_International_Trade_Investment_Regulation_Investment_Climate_Reform_Development_The_World_Bank's_Investment_Reform_Map
2. Echandi, R. & Newson, M. (2014) "The Influence of International Investment Patterns in International Economic Law Rulemaking: A Preliminary Sketch", Journal of International Economic Law, Volume 17, Issue 4, December 2014, Pages 847–866, <https://doi.org/10.1093/jiel/jgu046>

Optional Reading Material

- Vandevelde, K. (2010), Bilateral Investment Treaties: History, Policy and Interpretation, Oxford University Press. (Available at the WTI Library).
- Alvarez, J. (2011) The Public International Law Regime Governing International Investment (Pocketbooks of the Hague Academy of International Law), The Netherlands (Available at the WTI Library).
- Dolzer R. & Schreuer C. (2012) Principles of International Investment Law (Oxford University Press 2012, 2nd Edition) (Chapter 1, pp.1-27)

- Newcombe A. & Paradell. L. (2009) Law and Practice of Investment Treaties (Kluwer 2009) (Chapter 1, pp 1-64) (available on Kluwerarbitration.com)
- Echandi, R., Krajcovicova, J. & Qiang C.Z. (2015), The impact of investment policy in a changing global economy : a review of the literature, World Bank Policy Research Working Paper, No. WPS7437, Washington D.C.
- Echandi R, (2011) "What do Developing Countries Expect from the International Investment Regime?" in J. Alvarez & K. Sauvart et. Al (Eds) The Evolving International Investment Regime: Expectations, Realities, Options, (Oxford, New York: Oxford University Press, 2011)

Tuesday, July 2, 2024

Lecturer: Krista Nadakavukaren

Subject

- Basic concepts and sustainable investment

Topics

- From sustainability to sustainable development
- The Sustainable Development Goals
- Sustainable investment

Compulsory Reading Material

1. P. S. Elder, 'Sustainability' (1991) 36 McGill L J 831
2. UNDESA, History [of the SDGs], <https://sdgs.un.org/goals#history>
3. Weale A. Governance, government and the pursuit of sustainability. In: Adger WN, Jordan A, eds. *Governing Sustainability*. Cambridge University Press; 2009:55-75.
4. Charles di Leva, Investment and Sustainable Development, in: Nadakavukaren/Cottier, *Encyclopedia of International Economic Law* (forthcoming)

Optional Reading Material

- GROBER, ULRICH, Deep roots – A conceptual history of 'sustainable development', Paper Nr. 2007-002, Wissenschaftszentrum Berlin für Sozialforschung (2007) (<https://bibliothek.wzb.eu/pdf/2007/p07-002.pdf>)
- World Commission on Environment and Development, *Our Common Future* (Brundtland Report), 1987, pp. 1-23
- ICJ, *Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia), 1997 (extract and separate opinion Weeramantry)
- Introduction to Sustainability and Sustainable Development (chapter 1) and The Need, Role and Significance of Sustainability (chapter 2), Rao Y. Surampalli et al., eds., *Sustainability* (John Wiley and Sons, 2020).

Wednesday, July 3, 2024

Lecturer: Krista Nadakavukaren

Subject

- International Investment Agreements and Sustainable Development

Topics

- Tensions between investor protections and sustainable development
- Approaches to treaty reform
- How sustainable are new treaties?

Compulsory Reading Material

1. George K. Foster, 'Investor-Community Conflicts in Investor-State Dispute Settlement: Rethinking 'Reasonable Expectations' and Expecting More from Investors' (2019) 69 Am U L Rev 1053. Pp. 105-135.
2. Anthea Roberts, 'Investment Treaties: The Reform Matrix' (2018) 112 AJIL Unbound 191
3. Gudrun Monika Zagel, 'International Investment Agreements (IIAs) and Sustainable Development: Are the African Reform Approaches a Possible Way out of the Global IIA Crisis?' (2020) 17 Manchester J Int'l Econ L 26
4. Krista Nadakavukaren Schefer, 'Sustainability in International Investment Law: Building on What Exists by Enhancing the Right to Regulate' (2021) 31 Swiss Rev Int'l & Eur L 193

Optional Reading Material

- Dwight Newman, 'The Rule and Role of Law: The Duty to Consult, Aboriginal Communities, and the Canadian Natural Resource Sector' (May 2014)
- M. Sornarajah, 'The Unworkability of "Balanced Treaties" and the Importance of Diversity of Approach among the BRICS' (2018) 112 AJIL Unbound 223

Thursday, July 4, 2024

Lecturer: Roberto Echandi

Subject

- Understanding the controversy about international investment law and sustainability

Topics

- The multi-layered governance framework of international investment and its relationship with trade and sustainability
- The different types of dispute settlement in international investment agreements
- Investor-State Dispute Settlement, facts and figures

Compulsory Reading Material

1. Franck, Susan (2019), *Between Myth and Reality: The 9th John E.C. Brierly Memorial Lecture*, McGill Journal of Dispute Resolution, Vol. 5, No. 1, 2018-2019, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3222792
2. Echandi R, (2019), *The Debate on Treaty-Based Investor–State Dispute Settlement: Empirical Evidence (1987–2017) and Policy Implications*, ICSID Review, Vol. 0, No. 0 (2019), pp. 1–30, doi:10.1093/icsidreview/siy024, available at: https://www.researchgate.net/publication/343083848_The_Debate_on_Treaty-Based_Investor-State_Dispute_Settlement_Empirical_Evidence_1987-2017_and_Policy_Implications
3. *The ICSID Case load Statistics: 2024-1*. Available at: <https://icsid.worldbank.org/resources/publications/icsid-caseload-statistics>
4. Echandi R, (2018), *Bilateral Investment Treaties and Investment Provisions in Preferential Trade Agreements*, in Yannaca-Small K.(2018) *Arbitration under International Investment Agreements: A Guide to Key Issues*, 2nd Ed. Oxford University Press.

Optional Reading Material

- Sornarajah M, (2016), “International Investment Law as Development Law: The Obsolescence of a Fraudulent System” , in Bungenberg, M, Herrmann C, Krajewski

- M, & Terhechte J (Eds) 2016 European Yearbook of International Economic Law, (2016 Springer), pp. 210-230. (not provided).
- Echandi, R (2016) "Be Careful with What You Wish: Saving Developing Countries from Development and the Risk of Overlooking the Importance of a Multilateral Rule-Based System on Investment in the Twenty-First Century" in Bungenberg, M, Herrmann C, Krajewski M, & Terhechte J (Eds) 2016 European Yearbook of International Economic Law, (2016 Springer), pp. 234-270 (not provided).
- (World Bank, 2019) Retention and Expansion of Foreign Direct Investment (Vol. 2) : Political Risk and Policy Responses (English)
Available at: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/387801576142339003/political-risk-and-policy-responses>

Friday, July 5, 2024

Lecturer: Mariana Gonstead

Subject

- Non-litigious conflict resolution to foster sustainable investment

Topics

- Non-litigious means of conflict resolution : introduction to investor-State conflict management / Mariana Gonstead
- Investor-State conflict management and sustainable investment : opportunities and challenges / Mariana Gonsteadxx

Compulsory Reading Material

1. Susan D. Franck, The Past, Present, and Future of Investment Treaty Conflict Management and Dispute Systems Design, 17 U. ST. THOMAS L.J. 345 (2021), https://researchonline.stthomas.edu/esploro/outputs/journalArticle/The-Past-Present-and-Future-of/991015130971503691/filesAndLinks?institution=01CLIC_STTHOMAS&index=0.
2. Roberto Echandi, Straightening the Purpose of International Investment Law from Litigation to Consolidating Relationships: The Role of Investor-State Conflict Management Mechanisms, 17 U. ST. THOMAS L.J. 219 (2021), https://researchonline.stthomas.edu/esploro/outputs/journalArticle/Straightening-the-Purpose-of-International-Investment/991015131348203691/filesAndLinks?institution=01CLIC_STTHOMAS&index=0.
5. Mariana Hernandez-Crespo Gonstead, Beyond Investor-State Disputes: Intercultural Capacity Building to Optimize Negotiation, Mediation, and Conflict Management, 17 U. ST. THOMAS L.J. 251 (2021), https://researchonline.stthomas.edu/esploro/outputs/journalArticle/Beyond-Investor-State-Disputes-Intercultural-Capacity-Building/991015130930603691/filesAndLinks?institution=01CLIC_STTHOMAS&index=0
6. Mariana Hernandez Crespo G., A New Chapter in Natural Resource-Seeking Investment: Using Shared Decisions System Design ("SDSD") to Strengthen Investor-State and Community Relationships, 18 CARDOZO J. CONFLICT RESOL. 551 (2017), https://static1.squarespace.com/static/60a5863870f56068b0f097cd/t/60a5ec679c566c58976ee200/1621486695505/CAC315_crop.pdf.

Optional Reading Material

- Bianca S. Santos, Sabrina G. Devereaux, Kristina Gjerde, Kevin Chand, Janet Martinez & Larry B. Crowder, The Diverse Benefits of Biodiversity Conservation in Global Ocean Areas Beyond National Jurisdiction, MARINE AFFS. & POL'Y, FRONTIERS MARINE SCI., Aug. 25, 2022, <https://www.frontiersin.org/articles/10.3389/fmars.2022.1001240/full>.
- SUSAN D. FRANCK, ARBITRATION COSTS: MYTHS AND REALITIES IN INVESTMENT TREATY ARBITRATION (2019), <https://global.oup.com/academic/product/arbitration-costs-9780190054434?cc=us&lang=en&>.
- JACQUELINE NOLAN-HALEY, ELLEN E. DEASON & MARIANA HERNANDEZ-CRESPO GONSTEAD, GLOBAL ISSUES IN MEDIATION (1st ed. 2019), (not provided) <https://www.amazon.com/Global-Issues-Mediation-Jacqueline-Nolan-Haley/dp/1683286197>.
- LISA BLOMGREN AMSLER, JANET K. MARTINEZ & STEPHANIE E. SMITH, DISPUTE SYSTEM DESIGN: PREVENTING, MANAGING, AND RESOLVING CONFLICT (2020), (not provided) <https://www.sup.org/books/title/?id=17595>.
- U.N. CONF. TRADE & DEV., U.N., INVESTOR-STATE DISPUTES: PREVENTION AND ALTERNATIVES TO ARBITRATION II: PROCEEDINGS OF THE WASHINGTON AND LEE UNIVERSITY AND UNCTAD JOINT SYMPOSIUM ON INTERNATIONAL INVESTMENT AND ALTERNATIVE DISPUTE RESOLUTION, HELD ON 29 MARCH 2010 IN LEXINGTON, VIRGINIA, UNITED STATES OF AMERICA (Susan D. Franck & Anna Joubin-Bret eds., 2011), https://unctad.org/system/files/official-document/webdiaeia20108_en.pdf.

Saturday, July 6, 2024

- Take-home assessment due 17:00