

International Investment Law

Semester:	Fall semester- FS 2024
ECTS:	5
Lecturer:	Prof. Krista Nadakuvakaren
Dates:	Tuesdays 10:15 – 12:00.
Room:	Silva Casa Auditorium, World Trade Institute

Welcome

Welcome to International Investment Law! This is a master of law course, intended for advanced students with a firm understanding of the basics of international law and a good passive (reading and listening) knowledge of English. The class meets Tuesday from 10.15-12.00.

The readings indicated are from a textbook (which is available in the library as well as for purchase) and are to be done *before* class. I will call on persons to discuss cases and/or concepts found in the readings. While participation is not “graded” per individual contribution, **the overall impact of each student’s contributions to class discussions will be assessed** and factored into the final grade.

Please note that the exam for this course will be **oral**. To ensure that the examinations remain punctual, exam candidates will be expected to be in the waiting area **20 minutes prior** to his/her timeslot. **No books or computers** will be permitted during the exam. You may, however, bring **one A4 page of handwritten notes** (one-side of a piece of paper) to the exam.

If you have questions during the semester, please write me an email at k.nadakavukaren@unibas.ch and we can arrange for a personal meeting.

Lecturer

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.

Reading Materials

Basic Texts:

- Krista Nadakavukaren Schefer, INTERNATIONAL INVESTMENT LAW 3d ed. (Edward Elgar, 2020).
- Convention Establishing the International Center for the Settlement of Investment Disputes (ICSID Convention)
- Agreement Between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United Arab Emirates for the Promotion and Reciprocal Protection of Investments (*effective 06/03/2020*)
- Agreement Between the Swiss Confederation and the United Republic of Tanzania on the Promotion and Reciprocal Protection of Investments (*effective 06/04/2006*)
- Investment Cooperation and Facilitation Treaty Between the Federative Republic of Brazil and the Republic of India (*signed 25/01/2020; not yet in effect*)

Suggested Texts:

- David Collins, AN INTRODUCTION TO INTERNATIONAL INVESTMENT LAW (Cambridge, 2017)
- M. Sornarajah, The International Law on Foreign Investment 4th ed. (Cambridge, 2017)

** Reading list is subject to change; additional materials may be distributed in class*

Learning Outcome

Gain an understanding of the special situation of foreign investors. Learn about the main principles as set out in international agreements and case law. Critically assess the movements to reform the current international investment law regime.

Exams and Grades

The examination of the course will be an oral exam. The course will follow the University of Bern grading system.

Course Overview

C l a s s	Date	Topic	Reading Assignment <i>additional materials may be distributed in class</i>
1	17. 09.24	What is international Investment Law? History and Trends	<input type="checkbox"/> https://www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Internationale_Investitionen/Vertragspolitik_der_Schweiz.html Nadakavukaren, International Investment Law (Nadakavukaren), pp. 4-12
2	18. 09.24	Webinar - IEL And the Role of the Legislature	
3	24.09 .24	Sources of Investment Law <ul style="list-style-type: none"> <input type="checkbox"/> Review of general international law sources <input type="checkbox"/> Sources of international investment law 	<input type="checkbox"/> Statute of the International Court of Justice, Art. 38 <ul style="list-style-type: none"> ➤ https://www.icj-cij.org/en/statute <input type="checkbox"/> Nadakavukaren, pp. 33-71 <ul style="list-style-type: none"> ➤ <i>Discussion of Gustav FW Hamester v. Ghana, pp. 50-56</i> <i>ILC, Responsibility of States for Internationally Wrongful Acts (https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)</i>
4	01.10 .24	Definitions Definition of “investor”	<input type="checkbox"/> Nadakavukaren, Who is an investor?, pp. 145-205 <ul style="list-style-type: none"> ➤ <i>Discussion of Soufraki v. UAE, pp. 148-151</i> ➤ <i>Discussion of Waguieh Elie George Siag v. Egypt, pp. 151-156</i> ➤ <i>Discussion of Aguas del Tunari v. Bolivia, pp. 185-201</i>
5	08. 10.24	Definitions (con't) Definition of “investment”	<input type="checkbox"/> Nadakavukaren, What is an investment?, pp. 74-145 <ul style="list-style-type: none"> ➤ <i>Discussion of Romak v. Uzbekistan, pp. 83-89</i> ➤ <i>Discussion of Salini v. Morocco, pp. 94-96</i> ➤ <i>Discussion of Abaclat v. Argentina, pp. 121-131</i>
6	15. 10.24	Definitions (con't) Definition of “covered investment”	
7	22.10 .24	Expropriation I <ul style="list-style-type: none"> <input type="checkbox"/> Public purpose <input type="checkbox"/> Non-discrimination Due process	<input type="checkbox"/> Nadakavukaren, Expropriation, pp. 207-234 <ul style="list-style-type: none"> ➤ <i>Discussion of Amoco Int’l Finance v. Iran, pp. 212-215</i> ➤ <i>Discussion of Mike Campbell et al. v. Zimbabwe, pp. 227-232</i>
8	29.10 .24	Expropriation II <ul style="list-style-type: none"> <input type="checkbox"/> Compensation Valuation	<input type="checkbox"/> Nadakavukaren, Expropriation, pp. 234-253, 299-337 <ul style="list-style-type: none"> ➤ <i>Discussion of Factory at Chorzów, pp. 244-245</i> ➤ <i>Discussion of Metalclad v. Mexico, pp. 302-304</i> ➤ <i>Discussion of Amoco Int’l Finance v. Iran, pp. 305-311</i> ➤ <i>Discussion of Biwater Gauff v. Tanzania, pp. 326-337</i>

9	05. 11.24	<p>Indirect Expropriation</p> <p>Minimum Standards of Treatment, I</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitrariness <input type="checkbox"/> Nat'l Treatment <input type="checkbox"/> MFN 	<ul style="list-style-type: none"> <input type="checkbox"/> Nadakavukaren, <i>Indirect Expropriation</i>, pp. 253-299 <ul style="list-style-type: none"> ➤ <i>Discussion of Ampal-American Israel Corp. et al. v. Egypt</i>, pp. 256-259 ➤ <i>Discussion of Tecmed v. Mexico</i>, pp. 265-272 ➤ <i>Discussion of Marc E. Poirier, The NAFTA Chapter 11 Expropriation Debate</i>, pp. 283-289 <input type="checkbox"/> Nadakavukaren, pp. 340-357 <input type="checkbox"/> Nadakavukaren, pp. 357-381 <ul style="list-style-type: none"> ➤ <i>Discussion of Occidental v. Ecuador</i>, pp. 362-364 ➤ <i>Discussion of Sergei Paushok v. Mongolia</i>, pp. 365-370
1 0	12. 11.24	<p>Minimum Standards of Treatment, II</p> <ul style="list-style-type: none"> <input type="checkbox"/> Full Protection and Security <p>Fair and Equitable Treatment</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Nadakavukaren, <i>Full Protection and Security</i>, pp. 384-399 <input type="checkbox"/> Nadakavukaren, <i>Fair and Equitable Treatment</i>, pp. 401-451 <ul style="list-style-type: none"> ➤ <i>Discussion of ELSI case</i> ➤ <i>Discussion of Bayinder v. Pakistan</i>, pp. 378-381 ➤ <i>Discussion of Suez v. Argentina</i>, pp. 390-397 ➤ <i>Discussion of Gold Reserve v. Bolivia</i>, pp. 410-415 ➤ <i>Discussion of Glamis Gold v. US</i>, pp. 416-424
1 1	19. 11.24	<p>Dispute Settlement - Structures</p> <ul style="list-style-type: none"> - ICSID - Jurisdiction - Annulment - Award Recognition/ Enforcement 	<ul style="list-style-type: none"> <input type="checkbox"/> Nadakavukaren, <i>Dispute Settlement</i>, pp. 467-560 <ul style="list-style-type: none"> ➤ <i>Discussion of Murphy Exploration v. Ecuador</i>, pp. 505-508 ➤ <i>Discussion of Plama v. Bulgaria</i>, pp. 521-529 <input type="checkbox"/> <i>Discussion of Pac Rim Cayman v. El Salvador</i>, pp. 552-560 <input type="checkbox"/> Nadakavukaren, <i>Dispute Settlement</i>, pp. 565-588
1 2	26. 11.24 (tbc)	<p>Arbitrator Ethics</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Nadakavukaren, <i>Dispute Settlement</i>, pp. 618-652 <ul style="list-style-type: none"> ➤ <i>Discussion of Urbaser v. Argentina</i>, pp. 627-635 <p><i>UNCITRAL, Code of Conduct for Adjudicators in International Investment Disputes, version five</i></p>
1 3	03.12 .24	<p>Investment Insurance</p>	<p>Nadakavukaren, <i>Investment Guarantees: Political Risk Insurance</i>, pp. 661-691</p>