

Latest Developments in International Investment Law and Dispute Settlement

Root Number: 446639

ECTS: 3

Lecturers: Michele Potestà, Krista Nadakavukaren & Rodrigo Polanco

Dates: 11 – 15 July 2022

Location: Silva Casa Room, World Trade Institute, Hallerstrasse 6, Bern. The course will be also offered on a hybrid mode with live sessions on Zoom.

Audience:

- Government officials; Embassy staff; people working for international organisations and NGOs
- 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 various universities across Switzerland

Course Description

This course will examine the latest trends in the negotiation and implementation of international investment agreements (IIAs), placing them into their political economy and public policy context, including issues such as the connection with poverty and the digital divide.

The sessions will devote particular attention to the criticism that the current investor-state dispute settlement (ISDS) system is facing and the various reform efforts that States and other stakeholders are making to address such criticism. The course will in particular deal with the work of UNCITRAL Working Group III with respect to ISDS reform,

including the proposals of tribunals, ad hoc and standing multilateral mechanism (multilateral advisory centre, stand-alone review or appellate mechanism, and standing first instance and appeal investment court, with full-time judges); arbitrators and adjudicators appointment methods and ethics (ISDS tribunal members' selection appointment and challenge, and code of conduct); treaty Parties' involvement and control mechanisms on treaty interpretation; cost management and related procedures (expedited procedures, and principles/guidelines on allocation of cost and security for cost); and third party funding, as well as the possible mechanisms to implement the reform options. The course will also address the recent ICSID Rules amendments which have reformed the ICSID arbitration framework in a number of significant respects and which will come into effect in July 2022.

Additionally, the course will examine investor-State conflict management, as well as alternatives to replace it with other mechanisms, including the use of non-litigious means for addressing investor-State conflicts. It will also address issues of dispute prevention and mitigation, such as the strengthening of dispute settlement mechanisms other than arbitration (ombudsman, mediation).

Finally, this course will also analyse the latest developments of a possible future Investment Facilitation for Development Agreement as part of the joint statement initiative (JSI) at the WTO, as well as the investment facilitation provisions that have been already included in existing IIAs.

Lecturers

Michele Potestà

Michele Potestà specializes in international commercial and investment arbitration, as well as public international law. Over the past ten years, Michele has participated in over 35 international investment and commercial arbitrations as counsel, arbitrator and secretary of the tribunal, under all major arbitral rules (ICC, ICSID, UNCITRAL, SCAI, CAM, DIAC, Danish Institute of Arbitration, and others), and in different jurisdictions.

Michele's areas of expertise include energy and natural resources (oil, gas, mining and solar energy), pharmaceuticals, telecommunications, international sales, banking and finance, shareholders disputes, real estate and construction, aviation, IT- and sports-related commercial disputes. He has particular experience in disputes involving states and state entities.

Michele has advised sovereign states on their investment treaty programs and currently acts as expert advisor to the Swiss Government in the inter-State negotiations on the reform of ISDS in UNCITRAL's Working Group III.

Michele is regularly appointed as arbitrator. He has sat as president of the tribunal, sole arbitrator and co-arbitrator under various rules, including the rules of the ICC, the Dubai International Arbitration Centre (DIAC), the Danish Institute of Arbitration, and the Swiss Rules of International Arbitration. He is listed in the panel of arbitrators at VIAC, LCIA, SIAC, AIAC, and Delos.

In 2020, Michele was named the most highly regarded individual in Europe by Who's Who Legal Arbitration: Future Leaders (Non-Partners), where he was described as a "super smart" and "simply outstanding" lawyer, and commended for his "great breadth and depth of learning on investment treaty arbitration".

Michele is part of the faculty at the Geneva LLM in International Dispute Settlement (MIDS), for which he teaches investment arbitration, and at the Graduate Institute of International and Development Studies, for which he teaches international investment law. He is also a senior researcher at the Geneva Center for International Dispute Settlement (CIDS) where he co-leads a research project on the reform of ISDS. He has authored numerous publications on issues of investment and commercial arbitration as well as public international law, and is frequently invited to speak at arbitration conferences.

An Italian national, Michele is qualified to practice law in Italy and registered with the Geneva bar (foreign lawyers section). He holds a Ph.D., a bachelor and a master's degree from the University of Milan. Michele speaks English, Italian, French, German, and Spanish.

Krista Nadakavukaren Schefer

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.

Krista has been designated by Switzerland as a member of the ICSID Panel of Conciliators.

Rodrigo Polanco

Dr Rodrigo Polanco is a Senior Researcher and Lecturer at the World Trade Institute, University of Bern, a Legal Advisor at the Swiss Institute of Comparative Law, and a

Visiting Professor at the University of Chile. He is a former Assistant Professor of International Economic Law at the University of Chile Faculty of Law, where he also served as the Director of International Affairs, and a former Lecturer and Postdoctoral Researcher at the University of Luzern (NRP 75 – The Governance of Big Data in Trade Agreements).

Before managing the Academic Coordination of WTI Advanced Master Programmes, he joined the WTI as a researcher/lecturer, and also as coordinator of the SECO Project (which supported development of Regional Competence Centres for Trade Law and Policy in Peru, South Africa, Vietnam, Indonesia and Chile) and of the SNIS Project (Diffusion of International Law: A Textual Analysis of International Investment Agreements).

He is also a published scholar and legal practitioner with experience in both the public and private sectors, specialising in economic and international law, investment law, trade law, and air and space law. Dr Polanco is one of the co-founders of the Electronic Database of Investment Treaties (EDIT), <https://edit.wti.org>. He holds a Bachelor and a Master of Laws from Universidad de Chile School of Law, an LL.M. in International Legal Studies from New York University (NYU) School of Law, and a PhD from the University of Bern, Graduate School of Economic Globalisation and Integration, specialised in international investment law.

Rodrigo has been visiting professor at Universidad Externado Colombia and member of the editorial team of their Law and Economy Review (Con-Texto), and a visiting professor and research external evaluator of the Pontifical Catholic University of Peru (PUCP). He is also a co-founder of Fiscalía del Medio Ambiente (FIMA) a Chilean non-profit organisation working in public interest environmental cases, and teaching local communities and members of the judiciary on environmental law. He serves as director of their environmental law journal (Justicia Ambiental).

Learning Objectives:

- Have a clear understanding of the network and architecture of rules governing the settlement of investment disputes at the domestic, bilateral, regional and multilateral levels.
- Know recent developments in investment law treaty-making, including the relationship with the connection with poverty and the digital divide.
- Have a clear understanding of the conceptual differentiation between investor-State conflict management and investor-State dispute resolution and the practical implications of such distinction.
- Understand the most important reforms to investor-State dispute settlement that have been implemented or proposed as alternatives to investor-State arbitration or to improve that system, in the framework of UNCITRAL Working Group III.

- Understand the content of a possible Investment Facilitation for Development Agreement as part of the JSI at the WTO, and provisions on investment facilitation in existing IIAs.

Exams and Grades:

- Students' knowledge will be assessed on the basis of an open book, take-home exam which needs to be completed on an individual basis. The exam will consist of essay questions.
- Take-home assignment made available on Friday morning and to be submitted before Saturday by 20:00.

Course Overview

Date	Day	Time	Lecturer/s	Topic
11. July	Monday	9:00 – 12:00 hrs	Michele Potestà	Criticism and reform of the ISDS system
		14:00 - 17:00 hrs	Michele Potestà	Criticism and reform of the ISDS system
12 July	Tuesday	9:00 – 12:00 hrs	Michele Potestà	Criticism and reform of the ISDS system
		14:00 - 17:00 hrs	Michele Potestà	Criticism and reform of the ISDS system
13 July	Wednesday	9:00 – 12:00 hrs	Rodrigo Polanco	Investor-State conflict management, dispute prevention and mitigation.
		14:00 – 17:00 hrs	Rodrigo Polanco	Investment Facilitation in IIAs and the WTO
14 July	Thursday	9:00 – 12:00 hrs	Krista Nadakavukaren	International Investment Agreements and Poverty
		14:00 – 17:00 hrs	Krista Nadakavukaren	International Investment Agreements and the Digital Divide
15 July	Friday	9:00	Michele Potestà Krista Nadakavukaren Rodrigo Polanco	Take-home exam

MONDAY, JULY 11, 2022**Lecturer: Michele Potestà****Morning Session:** Criticism and reform of the ISDS system**Topics**

- ISDS: Legitimacy crisis and concerns with the current system
 - In particular: alleged lack of consistency of decisions; lack of transparency of process; costs and duration; lack of diversity of adjudicators; lack of legitimacy and accountability of adjudicators; unequal treatment of local and foreign investors; relationship between national courts and international tribunals; multiple proceedings
- Recent efforts and ongoing proposals to reform the ISDS system
 - Introduction
 - Fora and actors involved in the reform process
 - 2022 ICSID Rules Amendments
 - UNCITRAL Working Group III (WGIII)

Compulsory Reading Material

- Gabrielle Kaufmann-Kohler and Michele Potestà, "Can the Mauritius Convention serve as a model for the reform of investor-State arbitration in connection with the introduction of a permanent investment tribunal or an appeal mechanism? Analysis and roadmap," CIDS Report of 3 June 2016 ("CIDS Report I"), available at https://www.cids.ch/images/Documents/CIDS_First_Report_ISDS_2015.pdf

Please read sections I, II and III.

- Julian Arato et al., *Lack of Consistency and Coherence in the Interpretation of Legal Issues*, <https://www.ejiltalk.org/lack-of-consistency-and-coherence-in-the-interpretation-of-legal-issues/>
- Gabriel Bottini, *Excessive Costs and Insufficient Recoverability of Cost Awards*, <https://www.ejiltalk.org/excessive-costs-and-insufficient-recoverability-of-cost-awards/>
- Holger Hestermeyer and Anna De Luca, *Duration of ISDS Proceedings*, <https://www.ejiltalk.org/duration-of-isds-proceedings/>
- Andrea Kay Bjorklund, *The Diversity Deficit in Investment Arbitration*, <https://www.ejiltalk.org/the-diversity-deficit-in-investment-arbitration/>
- Chiara Giorgetti, *Independence and Impartiality of Arbitrators in Investor-State Arbitration: Perceived Problems and Possible Solutions*,

<https://www.ejiltalk.org/independence-and-impartiality-of-arbitrators-in-investor-state-arbitration-perceived-problems-and-possible-solutions/>

- Mark Feldman, *Responding to Incorrect ISDS Decision-Making: Policy Options*, <https://www.ejiltalk.org/responding-to-incorrect-isds-decision-making-policy-options/>
- Julian Arato, Kathleen Claussen, Jaemin Lee, Giovanni Zarra, *Reforming Shareholders Claims in ISDS, Academic Forum on ISDS Concept Paper 2019/9*. <https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/papers/papers/arato-reforming-shareholder-claims-isds-af-9-2019.pdf>

Suggested Reading Material

- Gabrielle Kaufmann-Kohler and Michele Potestà, "Investor-State Dispute Settlement and National Courts – Current framework and reform options", CIDS Report for the Swiss State Secretariat for Economic Affairs (SECO), Springer 2020, in open access. <https://link.springer.com/book/10.1007%2F978-3-030-44164-7>

Afternoon Session: Current efforts to reform the ISDS system (Part I)

Topics

- Substance v. procedure and incremental v. systemic/structural reforms
- Investor accountability
- Treaty Parties' involvement and control mechanisms on treaty interpretation
- Draft Code of Conduct for Adjudicators

Compulsory Reading Material

- Anthea Roberts, "Incremental, Systemic, and Paradigmatic Reform of Investor-State Arbitration", *American Journal of International Law*, Volume 112, Issue 3, July 2018, pp. 410-432.
- Please read the three contributions on treaty parties' interpretation by C. Titi, T. Gazzini, and G. Zarra on *EJIL: Talk!*, at the following links:
 - <https://www.ejiltalk.org/the-timing-of-treaty-party-interpretations/>;
 - <https://www.ejiltalk.org/authentic-or-authoritative-interpretation-of-investment-treaties-by-the-treaty-parties/>;
 - <https://www.ejiltalk.org/uses-and-abuses-of-authentic-interpretations-of-international-investment-agreements-reflections-on-the-role-of-arbitral-tribunals-as-masters-of-the-judicial-function/>

- Draft Code of Conduct, Version 3 (September 2021), available here: https://icsid.worldbank.org/sites/default/files/documents/Code_of_Conduct_V3.pdf
Please read Article 3, 4, 10 and 11 (including the commentaries)

Suggested Reading Material

- Polanco, Rodrigo (2019) "Home State Role in ISDS Together with the Host State", in *The Return of the Home State to Investor-State Disputes: Bringing Back Diplomatic Protection?*, Cambridge University Press, pp. 89-166.
- Martin Jarrett, Sergio Puig, Steven Ratner, Investor Accountability: Indirect Actions, Direct Actions by States, and Direct Actions by Individuals, Academic Forum on ISDS Concept Paper 2021/16. https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/papers/papers/16_investor-accountability.pdf
- IISD, The UNCITRAL Code of Conduct: Breakthrough or diversion?, <https://www.iisd.org/itn/en/2021/11/10/the-uncitral-code-of-conduct-breakthrough-or-diversion/>

TUESDAY, JULY 12, 2021

Lecturer: Michele Potestà

Morning Session Current efforts to reform the ISDS system (Part II):

Topics:

- Cost management and related procedures
 - Expedited procedures
 - Principles/guidelines on allocation of cost and security for cost
- Third-party funding
- Shift from *ad hoc* arbitration to standing adjudicatory mechanisms?
 - Introduction

Compulsory Reading Material

- Herbert Smith Freehills (HSF), UNCITRAL Publishes Initial Draft on the Regulation of Third-Party Funding In Investor-State Dispute Settlement, <https://hsfnotes.com/publicinternationallaw/2021/05/20/uncitral-publishes-initial-draft-on-the-regulation-of-third-party-funding-in-investor-state-dispute-settlement/>
- Gabrielle Kaufmann-Kohler and Michele Potestà, "The Composition of a Multilateral Investment Court and of an Appeal Mechanism for Investment Awards", CIDS Supplemental Report of 15 November 2017 (**CIDS Report II**) https://www.cids.ch/images/Documents/CIDS_Supplemental_Report_ISDS_2016.pdf

Please read the executive summary and sections I and II.

Afternoon Session: Current efforts to reform the ISDS system (Part III) – Standing adjudicatory bodies for the resolution of ISDS disputes

Topics:

- Creation of standing ISDS mechanism:
 - Multilateral Investment Court
 - Appellate Mechanism
- The implementation of reform options

Compulsory Reading Material

- Gabrielle Kaufmann-Kohler and Michele Potestà, "The Composition of a Multilateral Investment Court and of an Appeal Mechanism for Investment Awards", CIDS Supplemental Report of 15 November 2017 (**CIDS Report II**) https://www.cids.ch/images/Documents/CIDS_Supplemental_Report_ISDS_2016.pdf

Please read section III.

- UNCITRAL WGIII, Initial Draft on the Appellate Mechanism, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral_wp_-_appeal_14_december_for_the_website.pdf
- Gabrielle Kaufmann-Kohler and Michele Potestà, "Can the Mauritius Convention serve as a model for the reform of investor-State arbitration in connection with the introduction of a permanent investment tribunal or an appeal mechanism? Analysis and roadmap," CIDS Report of 3 June 2016 ("CIDS Report I"), available at https://www.cids.ch/images/Documents/CIDS_First_Report_ISDS_2015.pdf

Please read section VII. A-B, and section VIII.

Suggested Reading Material

- Council of the European Union, "Negotiating directives for a Convention establishing a multilateral court for the settlement of investment disputes", 12981/17, ADD 1 DCL 1, FDI 25 WTO229 (20 March 2018).
- Bungenberg, Marc & Reinisch, August (2020) "Design and Implementation of a Two-Tiered MIC", in *From Bilateral Arbitral Tribunals and Investment Courts to a Multilateral Investment Court*, European Yearbook of International Law, Special Issue, Second Edition (Marc Bungenberg et al. eds), pp. 29-115, Springer International Publishing.
- Lenk, Hannes (2020) "The EU Investment Court System and Its Resemblance to the WTO Appellate Body". In *Adjudicating Trade and Investment Disputes: Convergence or Divergence?* (S. Gáspár-Szilágyi, D. Behn, & M. Langford, eds.), Studies on International Courts and Tribunals, pp. 62-91, Cambridge University Press.

WEDNESDAY, JULY 13, 2021

Lecturer: Rodrigo Polanco

Morning Session: Investor-State conflict management, dispute prevention and mitigation.

Topics

- Political economy of investor-State conflicts. Political risks affecting FDI in practice and key investment protection clauses in IIAs
- Investor-State conflict management and use of non-litigious means for addressing investor-State conflicts. Escalation of investor-State conflict into legal disputes.
- Dispute prevention and mitigation. Strengthening of dispute settlement mechanisms other than arbitration (ombudsman, mediation)
- Lessons on implementation of IIAs to foster greater retention and expansion of FDI and increase investors' confidence. Criticisms to dispute prevention and mitigation policies.

Compulsory Reading Material

- Bonnitcha, Jonathan, & Williams, Zoe (2022), "Investment Dispute Prevention and Management Agencies. Toward a more informed policy discussion" (International Institute for Sustainable Development (IISD), 28 January 2022), <https://www.iisd.org/publications/investment-dispute-prevention-and-management-agencies>).
- Echandi, Roberto (2013), "Complementing Investor-State Dispute Resolution: A conceptual framework for Investor-State Conflict Management" in Echandi R. & Sauvé P. (Eds) (2013), *Prospects for International Investment Law and Policy* (Cambridge: Cambridge University Press)
- Hernandez-Crespo Gonstead, Mariana, (2021), "Beyond Investor-State Disputes: Inter or-State Disputes: Intercultural Capacity Building to Optimize Negotiation, Mediation, and Conflict Management", 17 U. ST. THOMAS L.J. 251, available at: <https://ir.stthomas.edu/ustlj/vol17/iss2/4>
- World Bank Group (2017) 2017/2018 Global Investment Competitiveness Report: Foreign Investor Perspectives and Policy Implications, available at: <https://openknowledge.worldbank.org/handle/10986/28493>

Optional Reading Material

- Echandi, R. (2014) *Investor-State Conflict Management: A Preliminary Sketch*, 11 *Transnational Dispute Management*, available at: <https://www.transnational-dispute-management.com/article.asp?key=2083>

- Echandi, Roberto, & Hernandez-Crespo Gonstead, Mariana (2017), "Investor State Conflict Management" in Cottier T & Nadakavukaren Schefer K, (Eds) Elgar Encyclopedia of International Economic Law (EE 2017), pp.335-338
- Hepburn, Jarrod, Paporinskis, Martins, Poulsen, Lauge N Skovgaard, and Waibel, Michael (2020), "Investment Law before Arbitration", *Journal of International Economic Law*, Volume 23, Issue 4, December 2020, Pages 929–947.
- ICSID (2021) Background Paper on Investment Mediation, July 2021, https://icsid.worldbank.org/sites/default/files/publications/Background_Paper_on_Investment_Mediation.pdf
- Kalisz, Alexander (2021), Investor-State Mediation: Trends, Risks and Opportunities, British Institute of International and Comparative Law (BIICL), 18 January 2021, <https://www.biicl.org/blog/17/investor-state-mediation-trends-risks-and-opportunities?cookieset=1&ts=1652361133>
- Mark McLaughlin, Mark (2021), Investor-State Mediation and the Belt and Road Initiative: Examining the Conditions for Settlement, *Journal of International Economic Law*, Volume 24, Issue 3, September 2021, Pages 609–629, <https://doi.org/10.1093/jiel/jgab028>

Afternoon Session: Investment Facilitation in IIAs and the WTO.

Topics:

- What is Investment facilitation?
- Investment facilitation provisions in existing IIAs.
- Investment Facilitation for Development Agreement negotiations at the WTO:

Compulsory Reading Material

- Baliño, Sofía, Nathalie Bernasconi-Osterwalder, and Soledad Leal Campos. "The Joint Initiative on Investment Facilitation: Developments from 2020 and the Road Ahead to MC12", 29 April 2021, <https://www.iisd.org/system/files/2021-05/joint-initiative-investment-facilitation-en.pdf>
- Calamita, N Jansen (2020), "Multilateralizing Investment Facilitation at the WTO: Looking for the Added Value", *Journal of International Economic Law* 23, N° 4 (18 December 2020): 973-88. <https://doi.org/10.1093/jiel/jgaa036>.
- Chung Hua Institution for Economic Research. Taiwan WTO & RTA Center, (2022), "WTO Structured Discussions on Investment Facilitation for Development. Consolidated Document by the Coordinator. "Easter Text" Revision. INF/IFD/RD/74/Rev.6' (February 2022)", <https://web.wtocommerce.org.tw/Download.aspx?pid=367074&fileNo=0>
- Coleman, Jesse, Brooke Güven, Lise Johnson, y Lisa E Sachs (2018), "What Do We Mean by Investment Facilitation?" Columbia Center on Sustainable Development, 21 February 2018. <http://ccsi.columbia.edu/2018/02/22/what-do-we-mean-by-investment-facilitation/>.

- Muniz, Joaquim P., Kabir A. N. Duggal, y Luis A. S. Peretti (2017), "The New Brazilian BIT on Cooperation and Facilitation of Investments: A New Approach in Times of Change". ICSID Review - Foreign Investment Law Journal 32, No 2 (1 May 2017): 404-17. <https://doi.org/10.1093/icsidreview/six007>.
- Polanco Lazo, Rodrigo (2018) «Facilitation 2.0: Investment and Trade in the Digital Age». RTA Exchange. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and the Inter-American Development Bank (IDB), September 2018.
- UNCTAD. Investment Facilitation: A Review of Policy Practices (2017) Geneva, Switzerland, 2017. http://investmentpolicyhub.unctad.org/Upload/Investment-Facilitation_Review%20Note%203%20feb.pdf.

Optional Reading Material

- Dressler, Andreas (2018), "Investment Facilitation: A Practical Perspective." E15 Investment Theme Think Piece, May 2018, https://e15initiative.org/wp-content/uploads/2015/09/e15_think_piece-investment_facilitation-dressler.pdf
- Marceddu, Maria Laura (2019), "Investment Facilitation in the WTO Multilateral Agenda: Drawing Lessons from the EU-India IFM". Indian Journal of International Economic Law 11 (2019): 112-126.
- Echandi, Roberto & Sauvé, Pierre (2020), "Investment Facilitation and Mode 3 Trade in Services: Are Current Discussions Addressing the Key Issues?" World Bank - Policy Research Working Paper 9229 (May 2020). <https://papers.ssrn.com/abstract=3593891>.
- Berger, Axel, Manjiao Chi, Bernard Hoekman, Makane Moïse Mbengue, Karl P. Sauvant, & Matthew Stephenson (2021), "Facilitating Sustainable Investment To Build Back Better". Journal of World Trade 55, No. 6 (1 October 2021). <https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/55.6/TRAD2021037> <https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/55.6/TRAD2021037>.
- Berger, Axel, Karl P. Sauvant, Silvia Karina Fiezzoni, Rodrigo Polanco Lazo, Matthew Stephenson, Akihiko Tamura, & Pavel Trunin (2018), "Moving the G20's Investment Agenda Forward". Transnational Corporations Review 10, No. 3 (3 July 2018): 262-67. <https://doi.org/10.1080/19186444.2018.1507793>.
- UNCTAD (2017), "Investment Facilitation: The Perfect Match for Investment Promotion". The IPA Observer. Investment Promotion and Facilitation Monitor, No. 6 (July 2017).
- Joseph, Reji K. (2017): "Investment Facilitation Agreement in WTO: What It Contains and Why India Should Be Cautious?" SSRN Electronic Journal, 2017. <https://doi.org/10.2139/ssrn.3083945>.
- Novik, Ana, & de Crombrughe, Alexandre (2018), "Towards an International Framework for Investment Facilitation", OECD Investment Insights, April 2018, <https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf>

THURSDAY, JULY 14, 2021**Lecturer:** Krista Nadakavukaren**Session:** Poverty and Investment Law – investigating the connections**Topics:**

1. Discovering Poverty
 - a. History of attitudes toward poverty
 - b. Defining Poverty
 - c. Economics of the Poor
2. Growing out of Poverty?
 - a. Development
 - i. Development Aid
 - ii. Right to Development
 - iii. IFIs and Poverty
 - b. SDGs
 - i. Background
 - ii. SDG 1
3. Empowering the Poor?
 - a. State obligations to address poverty?
 - b. Poverty as an economic right or a civil right?
4. Investment Law and Poverty – can investment law help overcome poverty? Example of the Digital Divide

Compulsory Reading Material

- Collins, Daryl, et al. (2009), "Portfolios of the Poor: How the World's Poor Live on \$2 a Day", Princeton University Press, 2009, pp. 28-64;
- United Nations (1986), "Declaration on the Right to Development", <https://www.ohchr.org/sites/default/files/rtd.pdf>
- Malhotra, Rajeev (2006), "Right to Development: Where are We Today" in Reflections on the Right to Development, (Sengupta, Arjun; Negi, Archana & Basu, Moushumi, eds), Centre for Development and Human Rights, Sage Publications, ("Conclusions") pp. 145-149.
- Sustainable Development Goals, Goal 1, <https://sdgs.un.org/goals>
- Shue, Henry (1996), "Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy", 2nd edition. Princeton Chichester: Princeton University Press, pp. 13-26, 35-60.

Optional Reading Material

- Banerjee, Abhijit V., & Duflo, Esther (2012) "Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty", Reprint edition. New York: Public Affairs, pp. 1-16.
- Yalnizyan, Armine (2007), "The Rich and the Rest of Us. The changing face of Canada's growing gap", Canadian Centre for Policy Alternatives, March 2017, pp. 13-39, 41-69, https://policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2007/The_Rich_and_the_Rest_of_Us.pdf
- World Bank (2017) "Monitoring Global Poverty. Report of the Commission on Global Poverty", pp. xv-xxi, <https://openknowledge.worldbank.org/bitstream/handle/10986/25141/9781464809613.pdf>
- Narayan, Deepa; Chambers, Robert; Shah, Meera K.; Petesch, Patti (2000), "Voices of the Poor : Crying Out for Change", New York: Oxford University Press for the World Bank, World Bank, pp. 21-43, <https://openknowledge.worldbank.org/handle/10986/13848>
- United Nations (1993), "Vienna Declaration and Programme of Action", <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>
- Sengupta, Arjun (2017), "Conceptualizing the right to development for the twenty-first century", in Realizing the Right to Development. Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development (UNOHCHR), pp. 67-90, <https://www.ohchr.org/sites/default/files/Documents/Issues/Development/RTDBook/PartIChapter4.pdf>
- Moyo, Dambisa (2009), "Dead Aid: Why Aid Is Not Working and How There Is a Better Way for Africa", New York : Farrar, Straus and Giroux, pp. 10-28:
- Cochrane, Glynn (2008), "Festival Elephants and the Myth of Global Poverty" 1st edition. Boston: Pearson, pp. 1-9.
- Pogge, Thomas (2007), "Severe Poverty as a Human Rights Violation" in Freedom from Poverty as a Human Right. Who Owes What to the Very Poor? (Pogge, Thomas, ed., Oxford University Press) pp. 11-55,
- Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, <https://www.escr-net.org/resources/limburg-principles-implementation-international-covenant-economic-social-and-cultural>
- Olga Tellis v Bombay, <https://indiankanoon.org/doc/709776/>
- Grootboom v South Africa, <http://www.saflii.org/za/cases/ZACC/2000/19.html>

FRIDAY, JULY 15, 2021

Lecturer: Michele Potestà, Krista Nadakavukaren & Rodrigo Polanco

Session: Take-home exam