

LL4150V/LL5150V/LL6150V
INTERNATIONAL INVESTMENT LAW AND ARBITRATION
Convenor: Associate Professor Jean HO

Course Outline and Aims:

International investment law is currently the most prominent, dynamic, and profiled branch of international law. The shifts and vacillations from custom-based, to contract-based, to treaty-based protection for foreign investment, contextualise and recontextualise the theoretical, legal and practical considerations shaping the international law on investment protection. As the vast majority of investment disputes are submitted to arbitration, the law has largely developed through arbitral awards. This course studies the origins, the facets, and the evolution of international investment law, as well as its transmission and entrenchment through arbitration, in order to capture the contribution of arbitral *jurisprudence* to the substantive law and procedure governing international investment claims.

The course will be divided into three parts. Part 1 outlines the evolution of investment protection, from diplomatic protection, to contract- and treaty-based protection, and beyond. Part 2 details the jurisdiction, merits, and annulment phases of investor-State dispute settlement under investment treaties. Part 3 explores emerging issues in and mechanisms for investor-State dispute settlement.

At the end of the course, students should be able to:

1. Acquire a firm grasp of international investment law and be able to apply it to a variety of hypothetical scenarios;
2. Explain the significance of arbitral awards as a source of international law vis-à-vis other sources of international law;
3. Critically evaluate the findings of arbitral tribunals and situate these findings within the broader corpus of international law;
4. Demonstrate familiarity with the content of customary and treaty protection for foreign investment;
5. Appreciate the controversies and debates that both enrich and emasculate international investment law.

Mode of Assessment:

Students will be assessed on the basis of class participation (**10%**), two in-class case presentations consisting of a media presentation OR a 1000-word comment on an assigned case (20% x 2 = **40%**), and a 6000-word research paper (**50%**). There is no in-class or take-home exam for this course.

Case presentations are a very important part of each seminar. Each student is required to do two case presentations during the course. Starting from Week 3 (add/drop period ends and class roster is confirmed), students will be able to sign up electronically, on a first-come-first-served basis, to present the Awards of his or her choice. As all the Awards have been carefully chosen for interest and importance, no Award is a “better” pick than another. The purpose of each presentation is to set forth the student’s/students’ views on what the relevance, value, and/or contribution of an

Award is to the overarching topic. Students may start off by briefly introducing the facts, then dissecting the grounds of decision, and finally, discussing the legal impact of the Award including but not limited to the norm or rule creation or articulation. Alternatively, students may wish to challenge the status of an Award as landmark or important by using the presentation as a platform for dissent. *Please note that case presentations are not case summaries. Restating the facts and grounds of decision, without thoughtful analysis of highlighted facts or grounds, is not enough.* For greater clarity, quality sample case presentations are available in Files.

The research paper is a test of analytical, argumentative, research and writing skills. Students are encouraged to treat the assigned course materials and in-class discussions as a starting point for further reflection and further research. The research paper can build on an idea or ideas canvassed in the case presentations or explore something completely different.

Course format:

The seminar will begin with a 75-minute lecture on the day's topic which aims to impart the key principles, concepts, and, where applicable, doctrinal and practical controversies, that animate the topic. There will be a 15-minute break after the lecture. The next 30-45 minutes will be allocated to student presentations on the two key Awards that are often discussed in conjunction with, and on occasion, establish, the day's topic. The last 30-45 minutes will take the form of a facilitated class discussion that builds on, refines, challenges and defends the points raised in the lecture and presentations.

Course Materials:

The textbook for this course is Jean Ho et al, *International Investment Law and Arbitration* (2nd edition, Cambridge University Press 2021), available for purchase from the Amazon.sg. Additionally, one copy of the textbook is available for 2-hour loans from the library's RBR collection, while one copy is available for in-library use. Please inquire at the library reception. Finally, the e-book version is available on LINC.

Only required and further optional readings that are unpublished or without e-copies will be reproduced and uploaded to Files. All other readings in the reading list are freely accessible online or from the library's e-resources. Students are encouraged to make full and regular use of costly subscription databases such as KluwerArbitration (available on LINC), Investor-State Law Guide (available on LINC) and IAREporter (available on LINC) to not only obtain reading materials, but also to keep abreast of the latest developments in international investment law and arbitration. Free and useful databases include investmentpolicyhub.unctad.org/IIA (a vast repository of bilateral and multilateral investment treaties, searchable by geographical region or country) and www.italaw.com (a vast repository of investment arbitration awards – ICSID, NAFTA, SCC, and others, searchable by claimant or respondent).

Students taking this course are expected to possess a basic understanding of international law. The uninitiated should turn to James Crawford (ed), *Brownlie's Principles of Public International Law* (9th ed. Oxford University Press 2019) for background reading. The e-book version is available on LINC.

Syllabus and Reading List (subject to modification):

The reading list was designed to be used in a flexible way. Students who are not presenting an Award on a given topic and wish to do the basic reading load are advised to read the one or two required reading(s) more closely, and skim the Awards before class. If the class presentations and subsequent class discussion pique their interest in a certain issue or issues, they may always re-read

the Awards after class, focusing on the specific points which caught their interest. Students who are not presenting an Award on a given topic but wish to participate more actively during the class discussion are advised to read both the required reading(s) and the assigned Awards before class. Students who are not presenting an Award on a given topic but who wish to explore the topic thoroughly are advised to read the required readings and Awards before class, and follow up with the further optional readings after class.

Week 1 (12 January 2026): Introduction to the course

Screening of award-winning documentary – Under Rich Earth, which chronicles the dispute between a Canadian mining company and Ecuador that led to *Copper Mesa Mining Corporation v Republic of Ecuador*, Award (Veeder, Cremades, Simma), 15 March 2016 (PCA No. 2012-2). [online, italaw.com]

There will be no readings or case presentations for Week 1.

PART 1 – THE EVOLUTION OF INVESTMENT PROTECTION

Week 2 (19 January 2026): The search for international standards in the age of diplomacy

Required reading(s):

* Kate Miles, *The Origins of International Investment Law* (Cambridge University Press 2013) Chapter 1. [PDF copy in Files]

Awards:

* *Neer Claim*, (*USA v United Mexican States*) (1926) IV Reports of International Arbitral Awards 60. [online, www.un.org/law/riaa]

* *Shufeldt Claim*, (*Guatemala v United States*) (1930) II Reports of International Arbitral Awards 1079. [online, www.un.org/law/riaa]

Further optional reading(s):

* Martins Paparinskis, *The International Minimum Standard and Fair and Equitable Treatment* (Oxford University Press 2013) Chapter 2. [online, LINC]

* Jean Ho, *State Responsibility for Breaches of Investment Contracts* (Cambridge University Press 2018) Chapter 1. [online, LINC]

Week 3 (26 January 2026): From contract-based to treaty-based investment protection

Required reading(s):

* Ho et al, *International Investment Law and Arbitration* (2nd edition, Cambridge University Press 2021) Chapters 2 and 3.

* 1993 China-Laos Bilateral Investment Treaty [online, investmentpolicyhub.unctad.org]

* 2009 ASEAN Comprehensive Investment Agreement [online, www.asean.org]

Awards:

* *The Lena Goldfields Award*, translated and excerpted in Arthur Nussbaum, “The Arbitration Between the Lena Goldfields, Ltd and the Soviet Government” (1950/51) 36 Cornell Law Quarterly 31 (read pages 42-53, skim the rest). [online, LINC]

* *Texaco Overseas Petroleum Company/ California Asiatic Oil Company v The Government of the Libyan Arab Republic*, Award on the Merits, 19 January 1977, (1978) 17 International Legal Materials 1. [online, LINC]

Further optional reading(s):

- * V V Veeder, “The Lena Goldfields Arbitration: The Historical Roots of Three Ideas” (1998) 47 International and Comparative Law Quarterly 747. [online, LINC]
- * Jean Ho, “Investment Protection Under Successive Treaties” (2017) 32(1) ICSID Review – FILJ 58. [online, LINC]
- * Jean Ho, “Circumstantial Indicia in Treaty Interpretation” (2018) 33(1) ICSID Review – FILJ 67. [online, LINC]

PART 2 – JURISDICTION, MERITS AND ANNULMENT IN INVESTMENT TREATY ARBITRATION

Week 4 (2 February 2026): Jurisdiction in ITA: Protected investments and investors

Required reading(s):

- * Ho et al, *International Investment Law and Arbitration* (2nd edition, Cambridge University Press 2021) Chapters 10 and 11.
- * ICSID Convention, Art. 25
[online, icsid.worldbank.org/en/Documents/resources/2006%20CRR_English-final.pdf]

Awards:

- * *Malaysian Historical Salvors Sdn Bhd v Government of Malaysia*, Award on Jurisdiction (Hwang), 17 May 2007 (ICSID Case No. ARB/05/10). [online, italaw.com]
- * *Philip Morris Asia Limited v The Commonwealth of Australia*, Award on Jurisdiction and Admissibility (Böckstiegel, Kaufmann-Kohler, McRae), 17 December 2015 (PCA Case No. 2012-12). [online, italaw.com]

Further optional reading(s):

- * Jean Ho, “The Meaning of Investment in ICSID Arbitrations” (2010) 26(4) Arbitration International 633. [online, LINC]
- * Jean Ho, “Passive Investments” (2020) 35(4) ICSID Review – FILJ. [PDF copy in Files]
- * Michael Waibel, “Investment Arbitration: Jurisdiction and Admissibility” in Marc Bungenberg et al (eds), *International Investment Law: A Handbook* (CH Beck 2015) 3. [PDF copy in Files]

Week 5 (9 February 2026): Merits in ITA 1: Expropriation

Required reading(s):

- * Ho et al, *International Investment Law and Arbitration* (2nd edition, Cambridge University Press 2021) Chapter 14.
- * Mavluda Sattorova, “Denial of Justice Disguised?: Investment Arbitration and the Protection of Investors from Judicial Misconduct” (2012) 61(1) International and Comparative Law Quarterly 223. [online, LINC]
- * 2009 ASEAN Comprehensive Investment Agreement, Annex 2(1) [online, www.asean.org]

Awards:

- * *Saipem S.p.A. v. The People’s Republic of Bangladesh*, Award (Kaufmann-Kohler, Schreuer, Otton), 30 June 2010 (ICSID Case No. ARB/05/07). [online, italaw.com]
- * *Philip Morris Brands Sàrl & Ors. v. Oriental Republic of Uruguay*, Award (Bernadini, Born (concurring and dissenting), Crawford), 8 July 2016 (ICSID Case No. ARB/10/7). [online, italaw.com]

Further optional reading(s):

* Zachary Douglas, “Property, Investment and the Scope of Investment Protection Obligations” in Zachary Douglas, Joost Pauwelyn & Jorge E Viñuales (eds), *The Foundations of International Investment Law: Bringing Theory into Practice* (Oxford University Press 2014) 363. [online, LINC]

Week 6 (16 February 2026): Merits in ITA 2: Fair and equitable treatment

Required reading(s):

* Jeremy K Sharpe, “The Minimum Standard of Treatment, *Glamis Gold*, and *Neer’s* Enduring Influence” in Meg Kinner et al (eds), *Building International Investment Law: The First 50 Years of ICSID* (Kluwer Law International 2015) 269. [online, LINC: KluwerArbitration]

* Jarrod Hepburn, “The Legal Justification for the Doctrine of Legitimate Expectations in International Investment Law (2025) 36(1) European Journal of International Law 43. [online, Open Access]

* 2018 EU-Singapore Investment Protection Agreement (signed 19 October 2018, entered into force 21 November 2019), Art. 2.4 [online, trade.ec.europa.eu]

Awards:

* *Waste Management v Mexico* (No. 2), Award (Crawford, Civiletti, Gómez), 30 April 2004 (ICSID Case No. ARB(AF)/00/3). [online, italaw.com]

* *Saluka Investments BV v The Czech Republic*, Partial Award (Watts, Fortier, Behrens), 17 March 2006 (UNCITRAL, Czech-Netherlands BIT)

Further optional reading(s):

* Stephen Vasciannie, “The Fair and Equitable Treatment Standard in International Investment Law and Practice” (1999) 70(1) British Yearbook of International Law 99. [online, LINC]

RECESS WEEK (23 February – 1 March 2026)

Week 7 (2 March 2026): Merits in ITA 3: Umbrella clauses

Required reading(s):

* Anthony Sinclair, “The Origins of the Umbrella Clause in the International Law of Investment Protection” (2004) 20(4) *Arbitration International* 411. [online, LINC]

* Jean Ho, *State Responsibility for Breaches of Investment Contracts* (Cambridge University Press 2018) Chapter 5. [online, LINC]

* 1991 US-Argentina Bilateral Investment Treaty, Art. II(2)(c) [online, investmentpolicyhub.unctad.org], cf. 2018 EU-Singapore Investment Protection Agreement (awaiting signature and ratification), Art. 2.4(6) [online, trade.ec.europa.eu]

Awards:

* *SGS v Philippines*, Decision of the Tribunal on Objections to Jurisdiction (El-Kosheri, Crawford, Crivellaro (partially dissenting)), 29 January 2004 (ICSID Case No. ARB/02/6). [online, italaw.com]

* *Joy Mining Machinery Limited v. Egypt*, Award on Jurisdiction (Orrego Vicuña, Craig, Weeramantry), 6 August 2004 (ICSID Case No. ARB/03/11). [online, italaw.com]

Further optional reading(s):

* Yuval Shany, “Contract Claims vs. Treaty Claims: Mapping Conflicts Between ICSID Decisions on Multisourced Investment Claims” (2005) 99(4) *American Journal of International Law* 835. [online, LINC]

Week 8 (9 March 2026): Merits in ITA 4: National treatment and Most-Favoured-Nation (MFN) treatment

Required reading(s):

- * Ho et al, *International Investment Law and Arbitration* (2nd edition, Cambridge University Press 2021) Chapter 13; see also Chapter 3 pp. 69-70.
- * Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP/TPP-11, signed 8 March 2018), Art. 9.5 [online, dfat.gov.au]

Awards:

- * *Plama Consortium Limited v Bulgaria*, Decision on Jurisdiction (Salans, van den Berg, Veeder), 8 February 2005 (ICSID Case No. ARB/03/24). [online, italaw.com]
- * *EDF International SA & Ors v Argentina*, Award (Park, Kaufmann-Kohler, Remón), 11 June 2012 (ICSID Case No. ARB/03/23), particularly pp. 221-235. [online, italaw.com]

Further optional reading(s):

- * Yannick Radi, “The Application of the Most-Favoured-Nation Clause to the Dispute Settlement Provisions on Bilateral Investment Treaties: Domesticating the “Trojan Horse” (2007) 18(4) European Journal of International Law 757. [online, LINC]
- * Simon Batifort & Benton Heath, “The New Debate on the Interpretation of MFN Clauses in Investment Treaties: Putting the Brakes on Multilateralization” (2017) 111(4) American Journal of International Law 873. [online, LINC].

Week 9 (16 March 2026): Award annulment in ITA

Required reading(s):

- * ICSID Convention, Art. 52. [online, icsid.worldbank.org/en/Documents/resources/2006%20CRR_English-final.pdf]
- * ICSID Secretariat, “Updated Background Paper on Annulment”, March 2024. [online, icsid.worldbank.org/resources/publications/background-papers-annulment]

Awards:

- * *Klöckner v. Republic of Cameroon*, Decision of the Ad Hoc Committee (Lalive, El-Kosheri, Seidl-Hohenveldern), 21 October 1983 (ICSID Case No. ARB/81/2). [PDF copy in Files]
- * *Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines*, Decision on the Application for Annulment (Tomka, Hascher, McLachlan), 23 December 2010 (ICSID Case No. ARB/03/25). [online, italaw.com]

Further optional reading(s):

- * Christoph Schreuer et al, *The ICSID Convention – A Commentary* (2nd ed. Cambridge University Press 2009) Art. 52. [online, LINC]

Week 10 (23 March 2026): Guest Lecture

Emmanuel Jacomy, Partner, A&O Shearman

PART 3 – EMERGING ISSUES AND THE FUTURE OF INTERNATIONAL INVESTMENT LAW

Week 11 (30 March 2026): Substantive reform - investor responsibility?

Required reading(s):

- * Jean Ho et al, “Investor Responsibility – The Next Frontier in International Investment Law”, (2019) 113 American Journal of International Law 1-37 [PDF copy in Files]
- * United Nations Guiding Principles for Business and Human Rights, [online, www.unglobalcompact.org]

Awards:

- * *Copper Mesa Mining Corporation v Republic of Ecuador*, Award (Veeder, Cremades, Simma), 15 March 2016 (PCA No. 2012-2). [online, italaw.com]
- * *EBL (Genossenschaft Elektra Baselland) & Anor v. Kingdom of Spain*, Award (Kalicki, Nilsson, Ruiz Fabri), 11 January 2024 (ICSID Case No. ARB/18/42). [online, italaw.com]

Further optional reading(s):

- * Jean Ho & Mavluda Sattorova (eds.), *Investors’ International Law* (Hart 2021). [online, LINC]
- * International Court of Justice, Advisory Opinion on the *Obligations of States in Respect of Climate Change*, 23 July 2025. [online, www.icj-cij.org]

Week 12 (6 April 2026): Systemic reform - the only constant is change

Required reading(s):

- * M Sornarajah, *Resistance and Change in the International Law on Foreign Investment* (Cambridge University Press 2015) Chapter 8. [online, LINC]
- * August Reinisch, “Will the EU’s Proposal Concerning an Investment Court System for CETA and TTIP Lead to Enforceable Awards? – The Limits of Modifying the ICSID Convention and the Nature of Investment Arbitration” (2016) 19(4) Journal of International Economic Law 761. [online, LINC]
- * 2016 Comprehensive Economic and Trade Agreement, Arts. 8.27, 8.28, 8.29. [online, ec.europa.eu]
- * “Battle royal over EU’s bilateral investment treaties”, 13 September 2019, Financial Times. [PDF copy in Files]
- * Mavluda Sattorova, Jonathan Bonnitcha, Yuliya Chernykh & Josef Ostránský, “Preventing, Mitigating and Managing Investor-State Disputes”, ISDS Concept Paper 2021/1. [online, www.jus.uio.no]

Further optional reading(s):

- * Case C-284/16 *Slovak Republic v Achmea BV*, Judgment of the Court (Grand Chamber of the European Court of Justice), 6 March 2018. [online, ec.europa.eu]

There will be no case presentations for Week 12.

Research paper due on [X April 2026] (X), at 9 AM.

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