Study Guide

For the Distance Course

NOM380

*INTERNATIONAL ECONOMIC LAW*

­­­­­ A picture containing ceramic ware, porcelain

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Paphos 2025

Learning is not a spectacle, it is a spiritual game of the search for knowledge. A game that challenges each person to think, explore, act

and create, while interacting with his/her peers. You are a valuable member of our scientific community.

*The ball is in your hands.*

***Let the game begin!***

*Disclaimer: The Study Guide may present variations for compatibility reasons of Neapolis University Pafos with the requirements issued by the Cyprus Agency of Quality Assurance and Accreditation in Higher Education (CYQAA) for distance learning programs of study.*

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# 1. Learning is social and personal

Let's get to know each other!

A person with blonde hair

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## 1.1. Who is behind the educational experience you are about to have?

*Welcome to the course NOM380, International Economic Law.*

*My name is Eleni Gavriil and I am a Lecturer in International Economic Law and Human Rights, in the Department of History, Politics and International Studies.*

*I hold a Ph.D from the European Law and Governance School of the European Public Law Organization. The title of my thesis is the “Interplay between International Investment Law and Human Rights”. I have obtained an LL.B. from the School of Law of the National and Kapodistrian University of Athens and later, an LL.M. in International and European Business Law from Neapolis University Paphos (awarded with Distinction).*

*My research interests include the fields of Public International Law, International Economic Law and European Law with an emphasis on international investment agreements, the promotion and protection of foreign investments and the protection of human rights.*

*Additional to the above I am an Attorney-at-Law with the Athens Bar Association and the Cyprus Bar Association.*

*My aim is to embark on this trip with and ensure that it will be an enjoyable and fulfilling experience for all of us. And because learning is both social and personal, I will be happy to meet you, guide you, answer your questions and hear feedback on the course and your experience.* ***So do not hesitate to contact me!***

**Email me:**

**Email address**

[**e.gavriil.2@nup.ac.cy**](mailto:e.gavriil.2@nup.ac.cy)

**Call me:**

**Telephone**

[**+357**](tel:+357%202684%203341) **2684 3614**

*To get to know my scientific thinking,* [*https://www.nup.ac.cy/faculty/eleni-gavriil/*](https://www.nup.ac.cy/faculty/eleni-gavriil/)

## 1.2. The other members of the team

Only the course coordinator, Eleni Gavriil is included in NOM380 course instructors’ team.

# 2. Learning has structure

## **2.1. Introduction**

To be effective in the study of the subject, you should know:

* *What you will study and why,*
* *what you will be able to do at the end of the semester that you cannot do now,*
* *how to study and how to acquire new skills.*

In addition, to accomplish your mission, you need to feel safe and confident that you will have assistance when you need it.

The guide you are browsing will serve the above needs and will cover your basic questions. Let us look at how to use it and its contents.

## 2.2. How is the study guide useful-How to use it

*The study guide is a navigator* who will guide you through each phase of the learning process. Proceeding to the following pages, you will find [*basic information*](#_3._H_μάθηση)for the specific course*,* [*its content and structure*](#_3._H_μάθηση_1) and you will be informed about [*basic procedures and rules*](#_6._Fair_play-). In addition, through the guide you will be introduced to the [*educational philosophy*](#_4._Η_μάθηση) of the programme, you will comprehend how you should organise your learning strategy, you will be informed [*how teaching is organised*](#_12._Η_μάθηση), but also how it relates to [*your responsibilities*](#_9._Η_μάθηση), and you will be able to understand why its success depends upon your active attitude. Finally, in the guide you will find useful [*study tips and instructions*](#_10._Η_μάθηση)on where to turn each time you encounter a problem*. Browse the guide per module. Make sure after reading it, that you have understood the context of the course and that you know your responsibilities. For any question, do not hesitate to contact us.*

# 3. Learning has a subject

**The course**

## 3.1. The identity of the course

The table below lists the course details

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **School** | **Social Sciences, Arts and Humanities** | | | | |
| **Department** | **History, Politics and International Studies** | | | | |
| **Course Title** | **International Economic Law** | | | | |
| **ECTS** | **6** | | | | |
| **Course Code** | **NOM380** | | **Semester** | | **4th** |
| **Course Level** (Delete what does not apply) | | Undergraduate | | | |
| **Teaching Language** (Delete what does not apply) | | English | | | |
| **Τype of Teaching** | | Distance☒ | | Conventional ☐ | |
| **Course Type** (Delete what does not apply) | | specialised general knowledge | | | |
| **Prerequisites or additional required courses** | | No | | | |
| **The cognitive subject is offered in ERASMUS** | | YES ☒ | | NO ☐ | |
| **Course coordinator** | | Eleni Gavriil | | | |

***What does this all mean?***

1. Title: the name of the course, which indicates its content, in other words what you will learn by studying it.
2. Course code: The course code is an alphanumerical identity, which will be useful to you to locate the course on the moodle e-learning platform and to refer to the course in communication with the secretariat, IT or tutor. The code is also used in the examinations, in order to identify the course and you must know it.
3. Course type: informs whether the course is compulsory or elective.
4. Course level: informs on the cycle of studies, that is whether the course is of undergraduate or postgraduate level.
5. Year: the academic year in which the course is being offered.
6. Semester: the study semester in which the course is being offered.
7. Credits (ECTS): ECTS is the credit system used in the European Higher Education Area (EHEA) and concerns all countries participating in the Bologna Process. ECTS credits express the workload required on average by students to achieve the expected learning outcomes. According to its rules, 60 credits (ECTS) correspond to the workload of one academic year, 30 credits (ECTS) to one semester and 20 credits (ECTS) to one quarter. The ECTS are awarded after a successful examination in the course and once all the academic obligations related to the course have been fulfilled.
8. Prerequisites or additional required courses: the courses that you should have successfully completed or which you must attend in parallel, as they are complementary.
9. Other recommended optional courses: courses which you are recommended to have attended or to attend, in order to have a complete view of the subject.
10. Teaching language: the language in which the courses is taught and examined.
11. Method of teaching: description of the method of teaching and the learning process that takes place.
12. Course coordinator: The tutor who has academic responsibility of designing the course and coordinating related issues.

## 3.2. The course

International economic law regulates the international economic order or economic relations among nations. However, the term ‘international economic law’ encompasses a large number of areas.

The primary goal of this course is to introduce you to International Economic Law. We will have the opportunity to study the two basic pillars of International Economic Law: International Trade Law and International Investment Law. More specifically, you will be taught the international legal framework that concerns the cross-border activity of goods, services, intellectual property in the context of the World Trade Organization and of bilateral and multilateral agreements.

In this context, the course aims to explore the law that governs international economic relations and transboundary economic conduct by States, international organizations and private actors.

Our objective is to:

1. Describe the notions, principles and rules of International Economic Law as well as the mechanisms of its interpretation and implementation.
2. Explain the international politics and global economy and the law produced by the cooperation among states, which aims at the production of wealth from the internationalization of economy.
3. Identify the contemporary shaping of International Economic Law.
4. Describe the World Trade Organisation in the context of International Trade Law and the regulation of cross-border activity.
5. Describe international investment Law and the explosive rise of foreign direct investments.
6. Explain the settlement of trade and investment disputes between States.

The course is directly linked with the following learning outcomes of the program:

PLO1. explain the basic features of the contemporary international system.

PLO4. describe the interdependence between international relations and security in the 21st century.

PLO5. identify the main sources of instability and insecurity in the international system.

PLO6. analyze international issues and formulate arguments in a clear, concise and effective manner, both orally and in writing.

***3.2.2. Specific Objective***

|  |  |
| --- | --- |
| 1. Knowledge | C.O.[1]. define the goals, values, principles and fundamental characteristics of international economic cooperation.  C.O.[2]. recognise the sources of International Economic Law.  C.O.[3]. describe the function of the World Trade Organization and its agreements that govern international economic relations.  C.O.[4]. identify the importance of investments, the regulatory framework for foreign direct investments and the basic notions of Investment Law. |
| 2. Skills | C.O.[5]. practice legal analysis and problem-solving |
| 3. Competencies  (Responsibility and autonomy) | C.O.[6] participate in a working group that reviews the challenges that International Economic Law faces that concern public law issues such as human rights and environmental issues |

***3.2.3. Key concepts and terms***

|  |  |
| --- | --- |
| **Term** | **Definition** |
| International Economic Relations | International economic relations focus on the economic interaction between countries. They include amongst others, international trade relations, international investment relations, international financial relations. |
| Legal principles | Legal principles are the norms that represent the general consensus on basic society understanding. The basic principles of the international economic order include the state’s autonomy in economic choices, trade liberalization, the fair treatment of foreign investors, non-discrimination, respect for human rights etc. |
| The World Trade Organisation (WTO) | The WTO the only global international organization dealing with the rules of trade between nations. It operates a global system of trade rules, it acts as a forum for negotiating trade agreements, it settles trade disputes between its members, and it supports the needs of developing countries. |
| The General Agreement on Trade and Tariffs | The GATT is a multilateral agreement that aims at liberalizing trade in goods through the reduction of tariffs and other trade barriers. |
| Intellectual property rights | Intellectual property rights are the rights given to persons over the creations of their minds. They are divided into copyrights and industrial property. |
| International Investment Agreements (IIAs) | IIAs are bilateral or multilateral treaties that commit state-parties to afford specific standards to foreign investors from the other state-parties. |
| Foreign investment | There is not a single definition of the term ‘foreign investment’. Based on the case-law the criteria that characterize a foreign investment are substantial commitment, a certain duration, assumption of risk, a significance for the host state’s development. |
| Expropriation of foreign property | Expropriation is the taking of property. It constitutes the most severe form of interference with property and it targets a specific business. All international investment agreements protect property from expropriation. |
| The non-discrimination principle | International investment law prohibits the discrimination of foreign investors and investments. The National Treatment and the Most Favoured Nation Treatment standards are a part of the non-discrimination principle. The purpose of the two treatment standards is to place all economic actors in an equal position |
| Political risks | Multinational corporation are exposed to commercial and political risks. Political risks are those related to the political and macroeconomic environment of the host country. They include political hostility, nationalistic concerns etc. |
| International Centre for Settlement of Investment Disputes (ICSID) | ICSID is the world’s leading institution devoted to international investment dispute settlement. ICSID provides a neutral forum for the settlement of disputes given that there is no interference from domestic political and judicial organs. |
| Conflicting norms | The rights of foreign investors often conflict with other areas of the law such as human rights and environmental rights. International investment agreements are often criticised for safeguarding the interests of foreign investors without establishing any obligations. This asymmetry has resulted to the conflict of human rights and international economic law. |

***3.2.4. Introductory remarks***

International Economic law focuses on the economic dimension of international law. The aim of this course is to study the function of the international economic system, the framework for international economic relations and the mechanism of resolving international economic disputes.

We will study a range of disciplines such as the World Trade Organizations and its fundamental agreements, International Investment Law, the standards of protection, the settlement of investment disputes. During our course we will also focus on the challenges of the field namely the conflict between international economic law and human right or environmental rights. The course has a theoretical and a practical dimension. We will study the most important textbooks in the field, international agreements and also cases that illustrate the relevant subjects.

During the following weeks, you will have to carefully study the different sources, the self-assessment activities and the interactive activities in order to fully comprehend the content of the course.

***3.2.5. Course content or what topics will we immerse ourselves in and in what order***

|  |  |
| --- | --- |
| **Week** | **Topic** |
| **1** | Introduction |
| **2** | International Economic Law as an Order of Rules and Principles |
| **3** | The World Trade Organization |
| **4** | The General Agreement on Trade and Tariffs |
| **5** | The General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights and Anti-Dumping Measures |
| **6** | International Investment Law |
| **7** | Definition of Foreign Investor and Foreign Investment |
| **8** | Standards of Protection I |
| **9** | Standards of Protection II |
| **10** | Risks in Foreign Investments and Risk Insurance |
| **11** | Settling Investment Disputes – The International Centre for Investment Disputes |
| **12** | The Emerging Issues of International Investment Law |
| **13** | **Revision** |

***3.2.6. Group Counselling Meetings/Teleconferences***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Number of Group Consultation Meetings/Teleconferences** | | **In total:**  **6** | **With physical presence:**  **0** | **Online:**  **6** | |
| **Meeting No** | **Description** | | | **Duration** | **ECTs** |
| Meeting 1 | A meeting to study and delve deeper into the first two learning modules:  1. Introduction  2. International Economic Law as an Order of Rules and Principles  During the teleconference, an interactive lecture will take place. We will approach the key points of the two modules by solving questions and using online quizzes and polls to test your understanding. At some points, you will need to interact with your fellow students (e.g. group activity and presentation). The teleconference is conducted using Microsoft Teams. The link to log in can be found in Moodle under the scheduled teleconference section. | | | 2 | **0.074** |
| Meeting 2 | A meeting to study and delve deeper into the third and fourth learning modules:  1. The World Trade Organization  2. The General Agreement on Trade and Tariffs  During the teleconference, an interactive lecture will take place. We will approach the key points of the two modules by solving questions and using online quizzes and polls to test your understanding. At some points, you will need to interact with your fellow students (e.g. debate, collaborative activity, etc.). The teleconference is conducted using Microsoft Teams. The link to log in can be found in Moodle under the scheduled teleconference section. | | | 2 | **0.074** |
| Meeting 3 | A meeting to study and delve deeper into the fifth and sixth learning units:  1. The General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights and Anti-Dumping Measures  2. International Investment Law  During the teleconference, an interactive lecture will take place. We will approach the key points of the two modules by solving questions and using online quizzes and polls to test your understanding. At some points, you will need to interact with your fellow students (e.g. group activity and debate). The teleconference is conducted using Microsoft Teams. The link to log in can be found in Moodle under the scheduled teleconference section. | | | 2 | **0.074** |
| Meeting 4 | A meeting to study and deepen the seventh and eighth learning modules:  1. Definition of Foreign Investor and Foreign Investment  2. Standards of Protection I  During the teleconference, an interactive lecture will take place. We will approach the key points of the two modules by solving questions and using online quizzes and polls to test your understanding. At some points, you will need to interact with your fellow students (e.g. group activity and presentation). The teleconference is conducted using Microsoft Teams. The link to log in can be found in Moodle under the scheduled teleconference section. | | | 2 | **0.074** |
| Meeting 5 | A meeting to study and delve deeper into the ninth and tenth learning units:  1. Standards of Protection II  2. Risks in Foreign Investments and Risk Insurance  During the teleconference, an interactive lecture will take place. We will approach the key points of the two modules by solving questions and using online quizzes and polls to check your understanding. At some points, you will need to interact with your fellow students (e.g. group activity). The teleconference is conducted using Microsoft Teams. The link to log in can be found in Moodle under the scheduled teleconference section. | | | 2 | **0.074** |
| Meeting 6 | A meeting to study and delve deeper into the eleventh and twelfth learning modules:  1. Settling Investment Disputes – The International Centre for Investment Disputes  2. The Emerging Issues of International Investment Law  During the teleconference, an interactive lecture will take place. We will approach the key points of the two modules by solving questions and using online quizzes and polls to test your understanding. At some points, you will need to interact with your fellow students (e.g. group activity). The teleconference is conducted using Microsoft Teams. The link to log in can be found in Moodle under the scheduled teleconference section. | | | 2 | **0.074** |

***3.2.7. Individual counselling sessions with the personal mentor***

During the semester, you should have individual consultation meetings with your assigned personal mentor professor to discuss academic or other concerns affecting your studies. The scheduling of these meetings is done after an arrangement with him/her.

***3.2.8. Workload***

The table below shows the average workload for successful completion of the course.

|  |  |  |  |
| --- | --- | --- | --- |
| **Activity** | **Amount** | **Time (hours)** | **Work Load (hours)** |
| Study Guide | 1 | 2 | 2 |
| Interactive Lectures | 6 | 2 | 12 |
| Basic Literature | 2 | 10 | 20 |
| Additional literature | 20 | 1 | 20 |
| Interactive activities | 12 | 3 | 35 |
| Self-evaluation exercises | 39 | 0,20 | 8 |
| Semester project | 1 | 31 | 31 |
| Study for Exams | 1 | 32 | 32 |
| Final examinations | 1 | 2 | 2 |
| **Total** | | | **162** |

# 4. Learning requires a method: Mode, Means and Tools of Teaching and Learning

## 4.1 What will be your educational experience

We learn better when we judge, analyse and discuss the subject matter, as well as when we act and practice new skills. For this reason, passive information retrieval, through lectures, is limited in order to emphasise group discussion, case studies workshops, collaborative learning, problem solving, and written assignments that require reflection and application of new knowledge. Simple memorization and reproduction of the theory, gives its place to the deepening of the subject matter. During the semester you will be encouraged with various activities, to discuss with your classmates what you have learned, commenting on its various dimensions, to relate the theory to your own experience and apply the knowledge in your daily professional and scientific life. Role-playing games, audio & video material, case studies, group projects, debates and peer reviews, are some of the interesting and challenging activities which you will be involved in, with the aim of making knowledge a part of you. After all, learning is not a spectacle!

## 4.2. How will we approach new knowledge?

The lesson is implemented with the logic of the flipped classroom using a training platform (Moodle) in which the lessons are organised, per lecture. This means that after studying the educational material there and being sufficiently prepared, you will come to the live lesson that follows in time, sufficiently prepared, in order — together now – to focus and deepen in the subject, solve questions and apply new knowledge.

On the course page, which as we have said is hosted on Moodle (**L**earning **M**anagement **S**ystem), you will find the following:

1. Contact details for your tutor, secretariat, ΙΤ (technical support).
2. Course announcements, where information related to the course will be published.
3. Course and tutor evaluation form, which will be good for you to complete at the end of the semester, in order for us to improve any of our weaknesses.
4. Learning objectives and outcomes of the course, which give a general view of what we intend to achieve in this semester.
5. Bibliography and additional educational material and sources, in order to deepen your knowledge in the subject.
6. Scheduled teleconferences, where you will find the dates and hyperlinks to connect with the live lesson, which occurs approximately every 15 days.
7. Time schedule of programmed activities, which informs you on the dates of mandatory submissions, graded activities and assignments.
8. Educational material per lecture and topic, including self-assessment activities and the mandatory graded activities with their submission link.

## 4.3. How to organise your study and use Moodle?

The topics we will study, have been organised on the learning management system - Moodle, on a weekly basis, so that you have a time schedule for your study. At this point, we should mention that in a distance course, the Learning Management System is a tool of crucial importance, which serves the systematisation of the learning process. Every week therefore, there is:

1. a short description of the topic,
2. the learning purpose and objectives, the learning outcomes
3. keywords
4. study aid,
5. recommended bibliography and sources,
6. self-assessment activities,
7. interactive activities and
8. question solving forum.

As we said, you are asked to approach new knowledge by utilising the educational material each week. The way the material has been formulated on the platform, aims to guide you in accessing it, by activating you.

Let’s be a little more specific:

1. Already after reading the title of the topic, the learning process begins each time. The title is not a decorative element. It informs and prepares for new knowledge. Try to make assumptions about the possible content. This will activate you and prepare your brain to process the information.
2. The description of the learning objectives and outcomes, function as a criterion for the effectiveness of the study. You need to keep them in mind throughout the learning process and attempt to make connections with the learning material and activities.
3. Keywords are actually the new concepts or important concepts that you will come across and which in the end you should be able to explain to others.
4. The study assistant contains the course notes, bibliography and additional sources. It is the material you need in order to gradually approach the new knowledge, starting from the basic information and deepening. Begin with the course notes to get the general picture and the basic knowledge and proceed with the study of the mandatory bibliography. Finally, look at the additional sources to obtain a complete picture and go into more detail.
5. The self-assessment activities will help you to check the level of comprehension of the new knowledge and make the necessary adjustments.
6. The interactive activities are designed to help you apply the new knowledge and expand your understanding, connecting the content of the lesson with real life.
7. The question-solving forum is a space that, in addition to its obvious use, is useful to practice explaining to others what you are learning, once again testing your level of comprehension. Furthermore, your tutor will look at this before the live lesson in order to establish your needs and focus on them during the lesson.

Follow the plan of each week and do not hesitate to express your queries.

# 5. Learning is action

## 5.1. Activities-Assignments and Grading

As we have already mentioned, there are activities and assignments that aim to help you achieve the learning outcomes of each module and ultimately of the course as a whole. Some of them are mandatory and are graded based on specific criteria, which will be communicated to you each time. These criteria, in the language of instruction, are called assessment rubrics and are given in table form.

Specifically, in the course you will find:

1. **Self-assessment activities**, which are not graded. Their purpose is to assist you in testing your level of comprehension.
2. **Interactive activities, which are not graded**. These aim to make you deepen in the subject matter and apply the new knowledge, interacting not only with the content of the course, but also with your classmates, broadening your perspective and exercising your communication skills.
3. **Interactive activities, which are graded with a 20% weight on the total grade of the course.**

With these, in addition to the above, the assessment of your progress and of the degree to which you complete the learning objectives is achieved, in order for your tutor to adjust the learning process. As a result, your team’s tutor will give you feedback and may come back to issues that you have not fully understood or need more practice on. In these activities, you will be given assessment rubrics as a guide on what you are required to do and to be able to proceed with self-assessment and self-regulation.

1. **The semester’s assignment, which is graded and corresponds to 20% of your final grade.** The semester assignment aims to make you delve deeper into the subject, training you in research, documentation and scientific discourse production skills.

**Regarding the graded interactive activities,** in this semester you will deal with the following:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Assignment week** | **Duration in weeks up to submission** | **Activity Type** | **Learning Outcomes** | | **Feedback** | **Grading** |
| **Course’s** | **Unit’s** |
| **1** | 1 | Group Activity | C.O.[1] | T.O.[1.1} | Yes | No |
| **2** | 2 | Group Activity | C.O.[2]  C.O.[6] | T.O.[2.2]  T.O[2.4] | Yes | Yes |
| **3** | 3 | Role play | C.O.[1]  C.O.[3] | T.O.[3.2] | Yes | No |
| **4** | 4 | Group Activity | C.O.[3] | T.O.[4.3] | Yes | No |
| **5** | 5 | Group activity | C.O.[1]  C.O.[6]  C.O.[7] | T.O.[5.2] | Yes | No |
| **6** | 6 | Debate | C.O.[4]  C.O.[7] | T.O.[6.2] | Yes | No |
| **7** | 7 | Group Activity and Presentation  You will be divided in 4 groups. Each group will make a presentation of a different ‘Salini’ criterion | C.O.[5]  C.O.[7] | T.O.[7.3]  T.O.[7.4] | Yes | Yes |
| **8** | 8 | Group activity | C.O.[5]  C.O.[6]  C.O.[7] | T.O.[8.1]  T.O.[8.2] | Yes | Yes |
| **9** | 9 | Group activity | C.O.[5]  C.O.[7] | T.O.[9.3] | Yes | No |
| **10** | 10 | Real world case  Peer Review | C.O.[4]  C.O.[7] | T.O.[10.1]  T.O.[10.2]  T.O.[10.3] | Yes | Yes |
| **11** | 11 | Forum Discussion | C.O.[5]  C.O.[7] | T.O.[11.1]  T.O.[11.4] | Yes | No |
| **12** | 12 | Forum discussion | C.O.[6] | T.O.[12.1]  T.O.[12.2]  T.O.[12.3]  T.O.[12.4] | Yes | No |

Regarding the semester’s assignment, this semester its topic will be:

**Topic:** The Protection of Foreign Direct Investments in Armed Conflicts

**Objective:**

Analyze the legal mechanisms for protecting Foreign Direct Investments (FDI) during armed conflicts. You will explore how international investment law addresses safeguarding investments during such periods of instability and violence.

1. Examine the legal standards in Bilateral Investment Treaties (BITs) and Multilateral Investment Agreements (MIAs) that protect foreign investments during times of conflict.
2. Analyse specific cases where international courts (e.g., ICSID or investment arbitration tribunals) have ruled on the protection of FDIs in armed conflicts.

The assessment criteria of the semester’s assignment are presented in the rubric below. During the course (refer to a specific week), you will be given detailed instructions.

(Installing an assignment rubric – an example follows)

**Assessment criteria – Assignment Rubric**

|  |  |
| --- | --- |
| **SECTION** | **MARKS** |
| **Content of ideas** | **40** |
| **Structure** | **15** |
| **Presentation** | **10** |
| **Language** | **10** |
| **Research** | **25** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **GUIDELINES** | **DESCRIPTION** | **WORDS** | **MARKS** | | **TOTAL MARKS** |
| **Content of ideas** | **Description of the goal** you have chosen. Analyze and develop the goal you have chosen. | **250** | **5** | | **40** |
| **Find an example (case study)** from international investment arbitration that is relevant to your chosen goal. You should describe the example, state why it relates to the goal you have chosen, and develop the key aspects of the example. | **500** | **10** | |
| **Analyze critically the available data** . Identify the advantages and disadvantages of the example in relation to the goal you have chosen. | **500** | **10** | |
| **Critically evaluate the example** you have chosen. | **500** | **10** | |
| **Conclusions,** discuss any difficulties encountered in gathering / analyzing information, make final comments on your work, and consider the theoretical and practical limitations of your work. | **250** | **5** | |
| **Research** | **State of the art/literature review**  The assignment should present unequivocal evidence of personal research. Scientific papers, books, journals, newspapers, internet articles etc. related to sustainability parameters and environmental design principles that should be taken into account in the real estate developments. The bibliography should be used as a mean to substantially enrich the subject with information, evidence & examples.  Workshop & Discussion Forum (guidelines of this are given separately) will help the students to develop the research part of this assignment. | **500 -1000** | **25** | | **25** |
| **Structure** | Understand and apply well the rules of structuring the assignment:   1. The assignment has a four main parts structure: 2. Introduction 3. Literature review 4. Main part/analysis 5. Conclusions   The structure should fully respond to the development needs and assignment tasks of the subject. Distribute correctly the material to the relevant sections, based on its importance and weight in the whole argument.  **Assignment Style**  Your work should be word processed in accordance with the following:   * Font style of your choice, font size 12 * 1.5 line spacing * The page orientation should be ‘portrait’ * Margins on both sides should be no less than 2.5 cm * Pages should be numbered * All figures and tables should be electronically constructed (hand-drawn figures and tables will not be accepted) * All figures and tables should indicate the source(s) of the data presented (immediately below the figure or the table) * Place headings and sub-headings in strategic points of the assignment, which contribute to easier access of the provided material.   **Referencing**  Use the “Chicago style notes and bibliography” for referencing.  **Word count**  The number of words should not include the summary (if any), the content, the reference list, the tables, and the appendices. You should provide the number of your words at the end of your report, as mentioned above.  The work should be about 2500-3000 words per person.  **Appearance**  The assignment presents a perfect typographical appearance, without inconsistencies and lack of aesthetics. | **N/A** | **15** | | **15** |
| **Presentation** | **Oran Presentation**  Oral presentation will take place online. Each person will have 10 minutes to present the assignment in a power point presentation. Presentation will be submitted after this workshop for assessment. At the end of the presentations there will be a Peer review by the students in relation to the content of the works. There will be commentary, analysis and creative criticism. | **10 min** | **10** | | **10** |
| **Language** | The language should be grammatically and syntactically fluent. The syntax is clear and easy to read. The speech is submissive and creative, but not overly long and chaotic. | **N/A** | **10** | | **10** |
| **Total Marks** (20% of the course grade) | | | | **100** | | |

## 5.2. Examinations

The final examination aims to assess whether you have achieved the learning outcomes and checks the comprehension of the key concepts, as well as the application of the theories presented in the course. Your score in the exam will represent **60% of the final grade**. The final exam requires your physical presence, in an examination centre, which you will be informed about in due time. Caution! Your success in the written assignment does not constitute a necessary condition for participation in the final exam of the course.

## 5.3. Grading

Based on what we have said so far, your grade will be formulated as follows:

|  |  |  |
| --- | --- | --- |
| **Type of assessment** | **Percentage % of the final grade** | |
| **Interactive activity 2** | 5 % | 20% |
| **Interactive activity 7** | 5 % |
| **Interactive activity 8** | 5 % |
| **Interactive activity 10** | 5 % |  |
| **Semester assignment** | 20% | |
| **Final exams** | 60% | |
| **Total** | 100% | |
| **Number of ECTS Credit Units** | 6 | |

## 5.4. Posting of scores

The scores of the written assignment and the interactive exercises are posted on the Moodle course platform, no later than two (2) weeks after the deadline for the completion of the activity assessment process of the module. In any case, scores must be posted onto Moodle no later than one day before the start of the University’s examination period. You will be notified automatically via email of your scoring.

## 5.5. Assessment Criteria

|  |  |
| --- | --- |
| **Numerical scoring** | **Descriptive scoring** |
| **85-100%** | Excellent |
| **65-84%** | Very good |
| **50-64%** | Good |
| **0-49%** | Rejection |

# 6. Fair play|Learning has rules

1. In order to successfully complete the course and to be credited with the corresponding ECTS, the following conditions must apply:
   1. You must have successfully completed the graded activities (base: 50%)
   2. You must have successfully completed the semester’s assignment (base: 50%)
   3. You must have successfully passed the examination of the course (base: 50%)
2. The assignments must be delivered on time. Failure to comply with this deadline for up to 2 days means a penalty of 10 points deducted from the initial score and up to 1 week, a penalty of 20 points deducted. A delay of more than 1 week leads to the submission of the assignment in the following period, including the midterm period. In cases of resubmission (with the exception of the relatively substantiated reasons of force majeure as stated in the study guide), the maximum score you can obtain is 64/100.
3. If you do not achieve a pass mark (50+) in any of the three elements of paragraph 1 (interactive activities, mid-term assignment, final examination) in your first attempt, you will be re-examined in the part of the assessment that you have failed. If you fail all three parts of the assessment then you are re-examined on all three parts. Find out the exact procedure and what is prescribed each time and from the 'Study Guide'.
   1. Please remember that you cannot use more than 20% of the total length of your previous work submitted in the context of the same or another Master's programme. You may also not make use of work submitted as part of an Undergraduate Programme of Study. Otherwise, the new work will not be considered and must be resubmitted with a max mark of 64.
   2. The above (paragraph 2 and 3) also apply to the graded interactive activities, which are also submitted within specified deadlines (one deadline for each graded activity). Please note that you are required to submit all graded activities regardless of the weighting of each activity.
4. Your assignments should be the product of your own intellectual work and you should use the correct citation system (Chicago citation style notes and bibliography), which you will learn about in the course. Your assignments are checked for plagiarism with the Turnitin system, which is a digital text-matching tool that checks the originality of your assignment. If plagiarism is detected the assignment receives a score of 0 and you risk being expelled from the programme.
5. During the examination you must comply with the regulations of the University, which will be notified to you and you must know. If an attempt to cheat is detected, the paper receives a score of 0 and you risk being expelled from the programme.
6. When communicating with your fellow students, but also with the other members of the University, you must follow the relevant rules (netiquette) and respect the personality of the people with whom you converse.

# 7. Learning requires tools

## 7.1. Μοοdle

As we have already said, the main tool in distance education is the Learning Management System (LMS). Our university uses Moodle to serve the needs and purposes of active and collaborative learning. With this platform, we organise the educational material and the learning process, communicate, collaborate and practice. All important information, announcements and study aids can be found on the course page, which is hosted on this system. At the start of the semester, the Distance Learning Unit ensures your training in the use of the platform which, as you will see, is user friendly.

## 7.2. Library

The University has a remarkable **library**, with access to rich sources and the capability for interlibrary loans. In addition to ten thousand titles of printed material, it has subscription access to three hundred thousand e-books and over five million electronic articles that cover all your needs to the fullest extent. You can search for Library material, either from the Ebsco Discovery Service or from the search engine.

## 7.3. NUP WEBTV

Who said the University is only for studying? Science is based on discussion and exchange of views, it has a pulse and it is alive. Through our channel, you can watch the broadcast of workshops, events and other important scientific moments and fermentations, in a live broadcast or recorded.

## 7.4. Online Lecture Series

We are far away, but we come together through the Teleconference system. With the University's digital tools, learning comes alive. We connect from the furthest corners of the world to delve into the subject matter, to converse on scientific issues, to share our enthusiasm, but also our concerns, and to apply what we learn, working together. Our community is digital, but it has life!

## 7.5. Forums

Scientific fermentation is achieved through discussion and exchange of views. Take part in the scientific debate, through the forums that you will find on the platform.

## 7.6. Bibliography and sources

**Required reading**

**With the key bibliography you acquire key knowledge of the subject and build the backbone of learning:**

1. M. Herdegen, Principles of International Economic Law (Oxford: Oxford University Press, 2016).

This textbook analyses the core subjects of international economic law in a comprehensive way. The textbook focuses on several issues such as WTO law, investment protection in context with human rights, environmental protection, good governance, and the needs of developing countries.

1. R. Dolzer and C. Schreuer, Principles of International Investment Law (3rd Edition, Oxford University Press, 2022).

This textbook outlines the fundamentals of international investment law and dispute settlement. It studies the principles of the field by analysing the jurisprudence of investment tribunals.

**Additional reading**

## M. Herdegen, Principles of International Economic Law (Oxford: Oxford University Press, 2016). This textbook focuses on the classic topics of international economic law, like WTO law, investment protection, commercial law and monetary law. It provides a comprehensive overview of the central topics in international economic law as well as the emerging issues of the field.

## M. Sornarajah, The International Law of Foreign Investment (5th Edition, Cambridge University Press, 2021). This textbook takes into account the newer types of treaties and looks at the current debates on legitimacy of the system and current efforts at reform of International Investment Law.

## R. Dolzer, U. Kriebaum and C. Schreuer, Principles of International Investment Law (3rd Edition, Oxford University Press, 2022). This textbook provides an overview of the principles shaping the international law of foreign investment and analyses the dispute settlement mechanisms in state-to state and investor-state arbitration.

## 7.8. Additional educational material

1. B. Legum, The Investment Treaty Arbitration Review (4th edition, Law Business Research 2019), <https://www.nera.com/content/dam/nera/publications/2019/NERA%20Makholm%20&%20Olive%20Investment-Treaty-Arbitration-Review%20Edition-4.pdf>

Chapter 15 of the Review analyses the fair and equitable treatment standard. Chapter 17 of the Review analyses the full protection and security. Both chapters analyse the standards of protection based on treaty language and the case-law of investment tribunals.

1. E. D. Brabandere, Human Rights and International Investment Law, Grotius Centre Working Paper Series No 2018/075-HRL <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3149387>

This paper analyses the interaction between foreign direct investment and human rights. It focuses on cases of investment arbitration where human rights issues were raised.

1. E. Gavriil The protection of foreign direct investments <https://open.spotify.com/episode/4FTVXQzCZ16I2ThOyqbbpN?si=0fGdgIINTcqY50G5X24rnw>

This podcast analyses *inter alia* the risks that foreign investment face and the protection of FDIs based on standards of protection.

1. K. J. Vandevelde, A Brief History of International Investment Agreements. *Journal of International Law & Policy,* 2005 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1478757>

This article focuses on the historical development of international investment agreements. The analysis illustrates the remarkable increase of investment treaties.

1. Legum, The Investment Treaty Arbitration Review (4th edition, Law Business Research 2019), <https://www.nera.com/content/dam/nera/publications/2019/NERA%20Makholm%20&%20Olive%20Investment-Treaty-Arbitration-Review%20Edition-4.pdf>

Chapters 1 and 2 of the Review focus on covered investments and investors. They analyse the definition of the two terms based on treaty language and arbitral jurisprudence.

1. M. Hirsch, Sources of International Investment Law. In A. Bjorklund and A. Reinisch. International Investment Law and Soft Law. (Edward Elgar, 2012). <https://www.researchgate.net/publication/228228142_Sources_of_International_Investment_Law>

The focus of this article is the sources of international investment law, mainly bilateral investment treaties.

1. M. Hossain and S. Rahi, International Economic Law and Policy: A Comprehensive and Critical Analysis of the Historical Development. Beijing Law Review 2018, <https://www.scirp.org/journal/paperinformation.aspx?paperid=87491>

This article analyses the development of international economic law and critically examines international economic relations between states and actors.

1. M. Motari et al, The role of intellectual property rights on access to medicines in the WHO African region: 25 years after the TRIPS agreement. 21 *BMC Public Health* 1, 2021. <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y>

This article analyses the challenges for public head due to the international intellectual property rights. It analyses the role of TRIPS on access to medicines in the African region.

1. OECD, “Indirect Expropriation” and the “Right to Regulate” in International Investment Law', International Investment Law: A Changing Landscape, 2005, <https://www.oecd.org/daf/inv/internationalinvestmentagreements/40077899.pdf>

This paper discusses the difference e between an indirect expropriation requiring compensation and a governmental measure impacting an investment but not requiring compensation (aiming at protecting the environment, health and human rights).

1. S. Charnovitzm, What is International Economic Law. Journal of International Economic Law 3 2011, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186540>

This article provides a general understanding of international economic law. It defines the field and focuses on its development.

1. UNCTAD, Most-favoured nation treatment, UNCTAD Series on Issues in International Investment Agreements II, <http://unctad.org/en/Docs/diaeia20101_en.pdf>

Part I of the paper explains the most-favoured-nation treatment standard. It focuses on its development, definition and legal nature.

1. UNCTAD, National treatment, UNCTAD Series on Issues in International Investment Agreements, <http://unctad.org/en/Docs/psiteiitd11v4.en.pdf>

Students will focus on the 1st part of the paper. This part analyses the nature and origin of the national treatment standard. It also analyses its scope and application and some exceptions to the standard.

1. Urbaser v Argentina <https://www.iisd.org/itn/en/2018/10/18/urbaser-v-argentina/>

This article of this website gives an overview of the case *Urbaser v Argentina*. It summarises the case and the legal issues of the case.

1. World Bank Group, Policy Options to Mitigate Political Risk and Attract FDI, 2020 <https://openknowledge.worldbank.org/bitstream/handle/10986/34380/Policy-Options-to-Mitigate-Political-Risk-and-Attract-FDI.pdf?sequence=1&isAllowed=y>

This volume analyses political risks. It focuses on how political risks can affect foreign direct investments and the practical tools that can help governments mitigate political risks.

1. World Trade Organization <https://www.wto.org/index.htmT>

his is the official website of the WTO. It contains all the information that relate to the organization.

1. WTO, General Agreement on Tariff and Trade, The WTO Agreement Series <https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf>

This paper explains the GATT. It contains an explanatory introduction and an analysis of the text of the agreement.

1. WTO, Understanding the WTO. <https://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf>

This paper gives an overview of the WTO. It analyses *inter alia* its fundamental characteristics and structure, its historical development, the relevant agreements, the system of investment dispute, new challenges and subjects related to developing countries.

1. Y. Banifatemi, Defending Investment Treaty Awards: Is There an ICSID Advantage? 2009, <https://www.shearman.com/-/media/Files/NewsInsights/Publications/2009/10/20091001_YB_Book-ICCA-Congress-series-14_Defending-Investment-Treaty-AwardsICSID-Advantage.pdf?la=en&hash=E9E5CEEB1493C184454ED13BDB5B3A438B35BC71>

This paper discusses the operation of ICSID arbitration and compares ICSID and non-ICSID arbitration.

1. Y. Levashova, The Right of Access to Water in the Context of Investment Disputes in Argentina: Urbaser and Beyond, 16 Utrecht Law Review 2, 2020 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3809389>

This article analyses the case *Urbaser v Argentina.* It analyses the conflict between the state’s right to regulate and the rights of the foreign investors in Argentina.

# 8. Learning requires guidance

## 8.1. Instructions and Advice:

In order to be effective, I recommend you:

**1. Keep to the time schedules**

Look in the guide how much time it takes to study each module and plan when you will deal with each part during the week. You can break the study down into smaller sections.

**2. Actively study**

Consider the title of the topic. Look carefully at the learning objectives and outcomes. When studying the material, try to consider how it relates to the learning objectives and how it will help you achieve the learning outcomes. Take notes, make a glossary of the terms you come across and create conceptual maps and blueprints. Think about how what you learn can relate to what you learned in previous modules and whether you can apply it to your daily professional and scientific life.

**3. Test your comprehension**

Knowledge cannot be applied if it is not comprehended. Use the self-assessment exercises, to check whether you understand the theory correctly. If you have questions, use the corresponding forums.

**4. Apply new knowledge**

Each module has activities that require the application (e.g. problem solving, case study) and deepening (critical analysis, assessment) of knowledge. Your preoccupation with these allows for in depth learning. The feedback you will receive will help you improve your skills and become more effective professionals and scientists.

**5. Communicate**

The exchange of views in the forums will help you see new aspects and perspectives, expanding your perception. Discuss with your classmates.

**6. Participate in the live lessons**

Live lessons give us the opportunity to interact and deepen in the topic, focusing on your needs. If you cannot participate live, actively watch the recording, performing the activities and contact us through the chat, e-mail or phone, to solve any questions you may have.

# 9. Learning requires discipline

Educational Contract

**What you can expect from me and your tutor**

During the semester we will make every effort to guide you in the learning process, offering you the conditions that will ensure your active participation and the achievement of the learning outcomes. We expect through the various educational activities to create the right incentives and to utilise your experiences, so that the educational process becomes meaningful for you. Our desire is to create a strong sense of teamwork that favors collaboration and to make each of you understand that his/her contribution to the lesson is unique. That is why we will listen to your suggestions for improvements with interest. We strongly recommend that you contact us in order to solve any questions. We will be happy to meet you and support you in your endeavor to develop your knowledge and skills. The best way to find us is by e-mail. We will answer you within 24 hours. In this way, we can also make an appointment, in order to speak live.

**What we expect from you**

Distance learning programmes provide a degree of freedom in terms of time and manner of study; however, this freedom can be a deterrent if not properly planned and managed. We expect you to attend the live lessons having studied the material of the respective modules, in order for the lesson to be productive. During the lessons, you must be active, participate in the discussions and activities and work harmoniously with your classmates. We emphasise that it is important to listen carefully and respectfully to your fellow students. Everyone is different, comes from a different environment and has different experiences. Pay attention to how you communicate with each other, especially in asynchronous conditions, such as when using forums or chat. It is easier to misinterpret someone's words or not to filter what you say when you do not know the other person and do not have him in front of you. Show empathy and encourage your classmates to express their views or concerns.

# 10. Learning requires support

Distance learning may at times make you feel lonely, insecure or stressed. It is reasonable to experience moments of pressure, to worry because you have not understood something or to feel the need of immediate feedback. It is also human, during the semester, for something to happen unexpectedly that will take you off schedule. The University is an institution, but they are also people, who will be by your side to support you. Both **your tutor**, and I as the **coordinator** of the course, will try to assist you in the difficulties that may arise, in relation to the course. As for the academic part, you should know that each of you has an **academic advisor**, who will guide you in matters related to your studies. In addition, our University operates the S.K.E.P.S.I. a unit, in which specialists, with sensitivity and confidentiality, will counsel and empower you, in order to overcome your difficulties. Furthermore, there is the **Centre for Special Educational Needs and Disabilities (C.S.E.N.D.),** so that your individual needs are met. Finally, you can contact the Student Affairs office and the **Programme Secretariat**, on procedural issues. What is important is that you are healthy, strong, optimistic and happy.

**Speak to your academic advisor for academic matters;** you have been notified of his/her details during your enrollment.

**Contact S.K.E.P.S.I.** for psychological support**:**

Send an email to [skepsi@nup.ac.cy](mailto:skepsi@nup.ac.cy)

Call +357 **2684-3425** | +357 **9641-7024**

**Contact the Centre for Special Educational Needs and Disabilities (C.S.E.N.D.),** for your individual educational needs.

**Address the School’s secretariat** for procedural issues**:**

Send an email to "Social Sciences School" socialsci\_school@nup.ac.cy

Call +357 26843303

As well as the **Student Affairs Office:**

Send an email to student.affairs@nup.ac.cy

Call +357 26843382

**Ask the IT department for help** on matters concerning technology and the use of software**:**

Send an email to it\_support@nup.ac.cy

Call +357 26843344

# 11. Learning is a right

In this course, each of you are a valuable member of the team. Race, gender, physical condition and anything else that differentiates each of you, is not an element of distinction but of uniqueness, which enriches our team. Pluralism is the element that favours dialogue and the investigation for truth, which is the goal of science. We are a community of knowledge exploration, where everyone has the right to express his/her opinion and be respected.

# 12. Learning has a schedule

Study the schedule and the structure of the learning process and prepare yourselves appropriately for the course, organising your time.

Week 0

**Adjustment week**

Training seminar (mentoring) with pedagogical and technical part, according to the provisions and policies of the University. Introduction to the platform and the study guide, analysis of the written assignment evaluation guide, the plagiarism policy, etc.

Estimated study time:

5 hours

## Week 1

**Introduction**

**Did you know that:**

* *The integration of national economies into a global economic system has been one of the most important developments of the last century?*
* *Trade liberalization improves economic efficiency**?*
* *Global foreign direct investment flows rebounded to USD 870 billion in the first half of 2021?*

**1.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* What is the focus of international Economic Law?
* What is Globalisation?
* What are the main areas of International Economic Law?
* What are the basic concepts of International Economic Law?
* What is the historical development of International Economic Law?
* Who are the actors of International Economic Law?

**1.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[1.1] **define** the content and the main areas of International Economic Law.

T.O.[1.2] **explain** the evolution of international economic order in the context of globalisation.

T.O.[1.3] **identify** the different actors of International Economic Law.

**1.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Globalisation | Economic relations | Actors of International Economic Law |
| International Trade Law | International Investment Law | Cross-border activity |
| The World Trade Organization | International Organizations | Non-Governmental Organizations |
| Developed countries | Developing Countries |  |

**1.4. How do we achieve the objectives?**

As you will see on the course platform, we will go through a presentation which will introduce you to the course terms. Before we proceed, we will discuss how you perceive the field of International Economic Law, and how do you think global economic relations are regulated. Through the interactive presentation we will discuss about the evolution of the field in the context of globalisation. Next, we will discuss about the different actors of the field in order to understand their role in International Economic Law. You will work together and try to describe the role of each actor of International Economic Law. The self-assessment exercises will help you check if you have understood the information. Once you have built the basic knowledge structure, you will study the additional sources to go deeper. Finally, you will work in groups in the interactive activity and you check if you have understood the information provided through the first lecture.

**1.5. What will you have to study?**

**Required reading**

* Tutor’s notes – presentation
* M. Herdegen, Principles of International Economic Law (Oxford: Oxford University Press, 2016). The relevant chapters for week 1 are “The Law of International Economic Relations: Contents and Structure”, “Past and Present of the International Economic Order”, “the Actors of International Economic Law” and “The Legal Sources of International Economic Law”.

**Supplementary**:

* M. Hossain and S. Rahi, International Economic Law and Policy: A Comprehensive and Critical Analysis of the Historical Development. Beijing Law Review 2018, <https://www.scirp.org/journal/paperinformation.aspx?paperid=87491>

This article analyses the development of international economic law and critically examines international economic relations between states and actors.

* S. Charnovitzm, What is International Economic Law. Journal of International Economic Law 3 2011, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186540>

This article provides a general understanding of international economic law. It defines the field and focuses on its development.

**1.6. Summary**

International Economic Law regulates the international economic order or economic relations among nations and it encompasses a large number of areas.

IEL is defined broadly to include a vast array of topics. It ecnompasses international trade law, regional economic integration (regional trade agreements), international investment lawand international monetary law. It also comprises areas related to trade and investments such as international commercial arbitration, double taxation agreements and international intellectual law, as well as international competition law. The emergence of modern International Economic Law occurred towards the end of the Second World War with cornerstones of its development the establishment of the 1948 GATT and the FCN treaties. The main actors that are found in the field are States, private enterprises, International Organizations, and Non-Governmental Organizations.

**1.7. Self-assessment exercises**

**Exercise 1** List and Briefly explain the main areas of International Economic Law. (Up to 200 words, 30 minutes)

**Exercise 2** Explain the call for a ‘New Economic Order’. (Up to 200 words, 30 minutes)

**Exercise 3** List and briefly analyse the actors of International Economic Law and their role. (Up to 200 words, 30 minutes)

**Exercise 4** List the main steps during the evolution of International Economic Law towards liberalisation. (Up to 100 words, 15 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**1.8. Interactive activity 1**

Video activity. First, you will watch the video <https://www.youtube.com/watch?v=sAkdVH8SGto> Then you will have a forum discussion where you will examine the call of developing countries for a New International Economic Order (NIEO) in relation to the Declaration on the Right to Development. In this context you will analyse the shift and the growing awareness of the international community concerning developing countries (200 words).

**Learning Outcome Related with the Interactive Activity are C.O.[1]**

**1.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 2

**International Economic Law as an Order of Rules and Principles**

**Did you know that:**

* *Legal sources are the origins of laws?*
* *Several principles govern international economic relations?*
* *International Economic law may conflict with the sovereignty of states?*
* *International economic law may conflict with human rights and environmental protection?*

**2.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* What are legal sources?
* What are the sources of International Economic Law?
* Which are the principles of International Economic Law?
* How does state sovereignty conflicts with International Economic Law?
* What is the relationship between human rights and International Economic Law?
* What is the relationship between environmental interests and International Economic Law?

**2.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[2.1] **identify** the legal sources of International Economic Law.

T.O.[2.2] **define** the fundamental principles that govern the international economic order.

T.O.[2.3] **explain** the relationship between sovereignty power and international economic law.

T.O.[2.4] **assess** how international economic relations affect human rights and the environment.

**2.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Legal sources | Legal principles | Customary international law |
| International Treaties | Tariffs | Non-tariffs barriers |
| Sustainable development | Human rights | Sovereignty |
| Jurisdiction | Exploitation of natural resources |  |

**2.4. How do we achieve the objectives?**

In this module will go through a presentation which will introduce you to content that applies to the different areas of International Economic Law. We will study International Economic Law in a general view, before focusing on the different areas of the legal field. We will examine the foundation of the field, such as the legal sources in order to understand the origin of the discipline. Further, we will analyse the basic principles that govern the field and its norms. In addition, we will discuss the subject of sovereignty which is increasingly challenged by the expansion of International Economic Law. In the final part of our presentation, we will discuss one of the current debates in the field: the conflict of International Economic Law with human rights and environmental interests. To this regard, we will have a critical discussion on the exploitation of natural resources. You will watch video concerning the subject of “Blood Diamonds” (<https://www.youtube.com/watch?v=b-vVAFWNTnA&t=2s>). After watching the video, you will answer some questions concerning how the world trade of diamonds can be in conflict with the human rights of the local population in Africa and further discuss possible solutions and responses by the international community. To this end, we will also have a conversation about the movie ‘Blood diamond’ (2006).

**2.5. What will you have to study?**

**Required reading**

- Tutor’s notes - presentation

- M. Herdegen, *Principles of International Economic Law* (Oxford: Oxford University Press, 2016).

The relevant chapters for week 2 are “Basic Principles of the International Economic Order”, “Sovereignty and International; Economic Relations”, “Human Rights and International Economic Relations”, “Environmental Protection and Sustainable Development”.

**Supplementary:**

* F. Grisel, The sources of Foreign Investments. In Z. Douglas, J. Pauwelyn, and J. E. Viñuales. *The Foundations of International Investment Law: Bringing Theory Into Practice* ( 1st edition Oxford University Press, 2014).

This chapter analyses the various sources of international investment law. It focuses on the sources that investment tribunals use when settling investment disputes.

**2.6. Summary**

The main objective of this session is to provide knowledge on the foundations of International Economic Law. Thus, it aims to analyse the legal sources and principles in order to provide a better understanding of the field. The knowledge of legal sources and principles are necessary because they help us understand the origin and the foundations of the filed.

In addition, week 1 will present the complex relationship between sovereignty and international economic relations. In addition, it will present the conflicting relationship between human rights and environmental rights with international economic law. In order to comprehend this conflicting relationship, we will also discuss some relevant cases. The cases will refer to conflicts that have been raised between indigenous communities and the exploitation of natural resources in the Inter-American Court of Human Rights. To conclude, we will discuss about the need to hold transnational corporations responsible for violations of human and environmental rights.

**2.7. Self-assessment exercises**

**Exercise 5**: Discuss customary international law as a legal source of International Economic Law. (up to 100 words, 15 minutes)

**Exercise 6:** Explain what are the favourable conditions for developing countries. (up to 200 words, 30 minutes)

**Exercise 7:** Explain the principle of non-intervention (up to 100 words, 10 minutes).

**Exercise 8:** Briefly list the criteria for exercising state jurisdiction. (Up to 100 words, 15 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**2.8. Interactive activity 2**

Forum discussion. You will engage in an online discussion forum to analsze and debate the responsibilities of states and corporations under the UN Guiding Principles on Business and Human Rights.

Instructions:

1. Group Assignment: Students will be divided into two groups:
   * Students in Group A will analyze the responsibility of states to protect human rights.
   * Studnts in Group B will analyze the responsibility of corporations to respect human rights.
2. Initial Post (200 words):
   * Each student will read the relevant sections of the UN Guiding Principles and submit a short post summarizing their assigned responsibility.
   * Posts should highlight key principles, provide real-world examples, and discuss potential challenges in implementation.
3. Engagement (50 words per response):
   * Each student must respond to at least one peer from the opposite group.
   * Responses should engage critically, ask questions, or challenge interpretations using evidence from the document or real-world cases.

The activity will be peer-reviewed.

**Learning Outcome Related with the Interactive Activity are C.O.[2] and** **C.O.[6]**

**2.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 3

**The World Trade Organization**

**Did you know that:**

* *The World Trade Organization has 164 members?*
* *The World Trade Organization has three functions?*

1. *It is a negotiationg forum where member states sort out the trade probmes they face with each other.*
2. *It operates as a system of trade agreements.*
3. *It settles dipsutes.*

**3.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module, you will gain clear knowledge and comprehension of

* What is the historical development of the WTO?
* What is the WTO?
* What is the structure of the WTO?
* Who are the organs of the WTO?
* How are decisions taken in the WTO?
* How are disputes settles between member states?

**3.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[3.1] **identify** the main historical phases in the evolution of the World Trade Organization

T.O.[3.2] **describe** the structure and function of the WTO

T.O.[3.3] **explain** the procedure of dispute settlement in the context the WTO

T.O.[3.4] **recognise** the link between the WTO and other regimes and the participation of Non-Governmental Organisations

**3.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Bretton Woods | Uruguay Round | GATT 1947 |
| Doha Declaration | Trade system | Ministerial conference |
| General Council | Dispute Settlement Body | Members of the WTO |
| Decision making process | Consensus | Plurilateral trade agreements |
| Multilateral trade agreements | Compensation | Countermeasures |
| NGO | Seattle ministerial conference |  |

**3.4. How do we achieve the objectives?**

In this module you will study the central organisation that deals with rules of trade between nations at a global level. First, we will watch a video (<https://www.youtube.com/watch?v=VnHtAvMLPLo>). After the video, a poll will take place in which you will answer how do you view the WTO, positively or negatively?

Then we will proceed with our presentation. The presentation is divided in four parts that will cover the study of the World Trade Organization in order to comprehend global trade. The presentation will discuss (a) the history and development of the WTO; (b) the WTO as an Organization; (c) the dispute settlement mechanism; (d) the interplay of the WTO with other regimes. Concerning the (d) student will watch a video that shows the demonstration against the WTO that took place at the Seattle Ministerial Conference in 1999. The mass demonstrations illustrate the tension between world trade, human rights and the differences between developed and developing countries (<https://www.youtube.com/watch?v=cOrLasoStes> ). Through this analysis you will gain a deep understanding of the Organization that regulates global trade activity through agreements in a broad context. In order see in practice the dispute settlement mechanism of the WTO you will study one of its most famous cases; “the EC-Hormones”. This case raises several questions that relate to international relations, international trade, cultural differences as trade barriers and the influence of politics on world trade. The goal Is to develop a critical, multi-scaled perspective about the World Trade Organization. Finally, in the interactive activity you will be involved in role play, divided into groups in order to understand the framework that covers the least developed countries.

**3.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* M. Herdegen, Principles of International Economic Law (Oxford: Oxford University Press, 2016).

The relevant chapters for week 3 are “History and Development of World Trade Law”, “the World Trade Organization” and “The Multilateral and the Plurilateral Agreement on Trade”.

**Supplementary**

* World Trade Organization <https://www.wto.org/index.htm>

This is the official website of the WTO. It contains all the information that relate to the organization.

* WTO, Understanding the WTO. <https://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf>

This paper gives an overview of the WTO. It analyses *inter alia* its fundamental characteristics and structure, its historical development, the relevant agreements, the system of investment dispute, new challenges and subjects related to developing countries.

**3.6. Summary**

During week three we will discuss about the historical background of the World Trade Law. Then, we will examine the WTO as an organization. We will discuss several of issues such as the members and organs of the World Trade Organization and the multilateral and plurilateral agreements on trade. Further, we will discuss how the WTO resolves trade disputes and therefore contributes to the stability of the global economy. Finally, we will examine the connection of the WTO with other regimes and the possible conflict between them. During this week you will gain the ability to comprehend the World Trade Organization, its functions and the way it regulates world trade.

**3.7. Self-assessment exercises**

**Exercise 9**: Briefly discuss how the Uruguay Round changed Global Trade Law. (up to 200 words, 30 minutes)

**Exercise 10:** Mention and briefly explain the functions of the two main organs of the WTO. (up to 100 words, 15 minutes)

**Exercise 11**: Explain the general decision-making process of the WTO. (up to 100 words 15 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**3.8. Interactive activity 3**

Role play and forum discussion - Graded

* 1. Role Assignment: You can choose which role you want to represent.
* Group A - Least Developed Ccountries Diplomats will rgue for special treatment and an extended implementation period for a new trade agreement. Justify the request based on WTO principles, economic constraints, and development needs.
* Group B - WTO Representatives will evaluate the request using WTO law, considering precedents, economic impact, and the balance of fairness for all members. Decide whether to grant, partially grant, or deny the extension.
  1. Initial Post
* Each student posts a position statement based on their assigned role.
* LDC diplomats must present arguments and evidence supporting their request.
* WTO representatives must provide a legal and economic analysis before making a decision.

**Learning Outcome Related with the Interactive Activity are C.O.[1] and** **C.O.[3]**

**3.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 4

**The General Agreement on Trade and Tariffs**

**Did you know that:**

* *The GATT 1994 is the most significant multilateral trade agreement?*
* *The GATT 1948 and the GATT 1994 are different?*
* *The GATT is only concerned with trade in goods?*

**4.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* What is the GATT 1994?
* What is difference between GATT 1948 and GATT 1994?
* What is the non-discrimination principle in the context of the GATT 1994?
* What are the basic rules of the GATT law?
* What are the exceptions to the GATT?

**4.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[4.1] **define** the objectives of the GATT.

T.O.[4.2] **explain** the fundamental principle of non-discrimination under the GATT.

T.O.[4.3] **describe** the basic rules of the GATT.

**4.3. Keywords**

|  |  |  |
| --- | --- | --- |
| The non-discrimination principle | The most-favoured-nation treatment | The national treatment standard |
| liberalisation | Reciprocity | Transparency |
| Likeness | Free trade areas | Exceptions |

**4.4. How do we achieve the objectives?**

Our aim this week is to analyse the General Agreement on Trade and Tariffs, its basic rules and principles. Through this analysis, this week will demonstrate how the GATT regulates cross-border activities. The objective of the GATT is trade liberalisation thought the elimination or restriction of trade barriers. To this end we will first watch a video that explain what tariffs are (<https://www.youtube.com/watch?v=HF7wbKXCyxM>). Then we will proceed with the presentation. First, you will be given an overview of the GATT. We will discuss about its fundamental principles including the non-discrimination principle. To this end, we will analyse the two basic parts of the non-discrimination principle: the most-favoured nation and the national treatment standards. In this context, we will refer to the exceptions to the MFN standard. Next, you will learn about other basic rules of the GATT law. Importantly, all measures all have general or specific exceptions. During this week we will discuss about the possible exception and the reasons of the exception based on the GATT law. In addition, during the class, you will go the agreement’s provisions (<https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm>). The self-assessment exercises and the interactive activity will enhance your knowledge concerning the GATT.

**4.5. What will you have to study?**

**Required reading**

- Tutor’s notes / presentation

- M. Herdegen*, Principles of International Economic Law* (Oxford: Oxford University Press, 2016). The relevant chapter for week 4 is “The GATT”.

**Supplementary**

* WTO, General Agreement on Tariff and Trade, The WTO Agreement Series <https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf>

This paper explains the GATT. It contains an explanatory introduction and an analysis of the text of the agreement.

**4.6. Summary**

The GATT 1994 is the most significant multilateral trade agreement. It aims at international trade liberalisation by progressively eliminating or restricting barriers to trade and other interferences with competition on the world and national markets. Week four will give you an overview of the GATT and the GATT law. Then we will analyse the objectives and principles and the GATT’s rules, including the non-discrimination principle. More particularly, we will discuss the rules regarding the most-favoured nation treatment, and the national treatment and we will further analyse the exceptions to specific provisions.

**4.7. Self-assessment exercises**

**Exercise 12**: List and briefly explain the fundamental principles of the GATT. (up to 200 words, 20 minutes)

**Exercise 13:** Explain the difference between the Most-Favoured-Nation Treatment and the National Treatment Standard. (up to 200 words, 20 minutes)

**Exercise 14:** List the criteria that determine if the imported and domestic goods are ‘like’. (up to 50 words, 5 minutes)

**Exercise 15:** Explain the security exceptions of Article XXI of the GATT. (up to 100 words, 15 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**4.8. Interactive activity 4**

Lumi exercise - on Article XX exceptions of the GATT. <https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art20_e.pdf>.

**Learning Outcome Related with the Interactive Activity is** **C.O.[3]**

**4.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 5

**The General Agreement on Trade in Services, The Agreement on Trade-Related Aspects of Intellectual Property Rights and Anti-Dumping Measures**

**Did you know that:**

* *Services are an increasingly important part of the global economy?*
* *Services are intangible because they cannot be seen, felt, tasted or smelled before they are purchased?*
* *Export services generated US$6.098 trillion from global sales during 2019?*
* *The top export services are travel, transport and miscellaneous business services?*
* *The TRIPS affects greatly the production of vaccines and other medicine?*
* *Champagne only comes from the region of Champagne in France?*

**5.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module, you will gain clear knowledge and comprehension of

* What is the scope of the GATS?
* Which are the modes of supplying services based on the GATS?
* What are the fundamental provisions of the GATS?
* What is the scope of the TRIPS?
* What are intellectual property rights and in which categories are they divided?
* When does dumping occurs and what are anti-dumping measures?

**5.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[5.1] **identify** the basic rules and the importance of the GATS

T.O.[5.1] **describe** the basic functions of the TRIPS and its role in connecting intellectual property and trade

T.O.[5.1] **recognise** when dumping occurs

**5.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Trade in Services | General obligations | Specific commitments |
| Transparency | Market access | National treatment |
| Sensitive sectors | Intellectual property rights | Copyright |
| Industrial property | Trademarks | Geographical indications |
| Patents | Compulsory licenses | Dumping |
| Anti-dumping measures | Anti-dumping investigation |  |

**5.4. How do we achieve the objectives?**

Through this module you familiarise yourselves with the understanding of the architecture and functions of the GATS, TRIPS and the Agreement on Anti-Dumping measures. You will understand how the Uruguay Round extended the application of the WTO to new areas. First, we will discuss about the GATS. To this end, we will watch a short video that explains trade in services (<https://www.youtube.com/watch?v=H6zQNgGsO_w>). Next, we will discuss about the TRIPS and several issues that relate to intellectual property rights. Concerning the TRIPS agreement, you will work in groups and answer to specific questions that relate to intellectual property rights. The questions will show you how intellectual property relates and enhances several aspects of our every-day life. Finally, we will discuss about the Agreement on Anti-Dumping measures which focuses on how governments can or cannot react to dumping. The video <https://www.youtube.com/watch?v=Oc2ONjGXA6I> will help you understand the meaning of dumping and anti-dumping. In this week, we will note that a number of complicated issues are raised in the context of the TRIPS in connection with public health. In order to understand the relationship between TRIPS and the human right to health, but also access to drugs in developing countries, in the interactive activity you will work in groups and study the issue of HIV/AIDS pandemic in South Africa and India. In this interactive activity you will particularly see how these issues concern developing countries, the role of the civil society and the respond of the WTO to these concerns.

**5.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* M. Herdegen, Principles of International Economic Law (Oxford: Oxford University Press, 2016). The relevant chapters for week 5 are “The General Agreement on Trade in Services (GATS)”, “The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)” and “Subsidies and Anti-dumping Measures”.

**Supplementary**

* M. Motari et al, The role of intellectual property rights on access to medicines in the WHO African region: 25 years after the TRIPS agreement. 21 *BMC Public Health* 1, 2021. <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y>

This article analyses the challenges for public head due to the international intellectual property rights. It analyses the role of TRIPS on access to medicines in the African region.

**5.6. Summary**

The Uruguay Round extended the application of the WTO to several new areas such as trade in services and intellectual properties, investment, agricultural and others. During week 5, we will discuss three of the most important agreements of the WTO. The General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Agreement on Anti-Dumping measures. The GATS establishes a multilateral framework of rules and principles for trade in services. It covers all services with two exception; services provided in the exercise of governmental authority and, in the air transport sector. Trade in services is increasing and has become an indispensable part of any trade deal.

The TRIPS is the most comprehensive multilateral agreement on intellectual property. It facilitates trade in knowledge and creativity and in resolving disputes over intellectual property and recognises the significance of links between intellectual property, trade and the need for a balanced IP system. Finally, we will discuss about dumping and anti-dumping measures. Dumping occurs when a company exports a product at a price lower than it normally charges on its own home market. Countries can rake anti-dumping measures in order to react to dumping. Anti-dumping measures are instrument of fair competition that provides relied to the domestic industry that has been injured by dumping. The agreement establishes a specific detail procedure including the conduction of an investigation.

**5.7. Self-assessment exercises**

**Exercise 16:** Briefly explain the objectives of the GATS. (up to 100 words, 10 minutes)

**Exercise 17:** List and briefly explain the four modes of supplying services of the GATS.(up to 100 words, 10 minutes)

**Exercise 18**: Discuss compulsory licenses under Article 31 of the TRIPS*.* (Up to 200 words, 20 minutes)

**Exercise 19:** Discuss the category geographical indications.(Up to 200 words, 20 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**5.8. Interactive activity 5**

Group activity and presentation. You will be divided into 2 groups. The first group will make a presentation on the HIV epidemic in South Africa. In the presentation you will analyse how intellectual property rights can conflict with public health issues, you will describe the relevant situation in South Africa and the response of the latter in this crisis.

The second group will make a presentation on the HIV epidemic in India. In the presentation you will analyse how intellectual property rights can conflict with public health issues, you will describe the relevant situation in India and the response of the latter in this crisis.

**Learning Outcome Related with the Interactive Activity are** **C.O.[1], C.O.[5] and C.O.[6].**

**5.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 6

**International Investment Law**

**Did you know that:**

* *In the first half of 2021, China was the leading foreign direct investment recipient worldwide?*
* *There is a difference between foreign direct investments and portfolio investments?*
* *The first Bilateral Investment Treaty was concluded in 1959 between Germany and Pakistan?*
* *Diplomatic protection was the only means of protection for foreign investors that were injured by host states?*

**6.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* What is the historical development of International Investment Law?
* What are the sources of International Investment Law?
* What is the nature of International Investment Law?
* Who are the actors in International investment Law?
* How are investment treaties interpreted?
* In what way does involvement protection interact with other areas of the law?

**6.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[6.1] **describe** theevolution of International Investment Law throughout the different eras

T.O.[6.2] **explain** the nature of International Investment Law

T.O.[6.3] **recognise** the sources of International Investment Law

T.O.[6.4] **identify** the main actors of international Investment Law

T.O.[6.5] **explain** the importance of Investment treaties and learn about their interpretation and application by investment tribunals

**6.3. Keywords**

|  |  |  |
| --- | --- | --- |
| International investment Agreements | Bilateral investment Treaties (BITs) | Host state |
| Home state | Colonial era | Postcolonial era |
| Global era | International Centre for Settlement of Investment Disputes Convention (ICSID) | Investment arbitration |
| The energy charter treaty (ECT) | Customary international law | Foreign investors’ obligations |
| Multinational corporations | Treaty interpretation |  |

**6.4 How do we achieve the objectives?**

This module is an introduction to International Investment Law; one of the basic pillars of International Economic Law. In order to comprehend the nature and the scope of the field we will discuss several matters. First, we will discuss the evolution of International Investment Law during three different eras. We will see how the field has exploded during the 20th century and how much the protection of foreign investors has improved over time. Next, we will discuss about the nature and purpose of investment law by discussing the different perspectives of foreign investors’ and of host states’. During this module we will identify together the actors that play a role in Investment Law. Since we are discussing about the foundation of the field, we will discuss also about investment treaties. Finally, in order to comprehend the field in a broader context, we will discuss about the interplay of investment protection with other legal fields. To this end, you will work in groups and perform a case-study of *Philip Morris v Urugua*y. You will work together with your peers and you will answer to specific questions that concern the potential conflict of IIL with the human right to health. Finally, in the interactive activity you will work again in groups and answer to questions given by the tutor that relate to investment protection.

**6.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* R. Dolzer and C. Schreuer, Principles of International Investment Law (3rd Edition, Oxford University Press, 2022). The relevant chapter for week 6 is “History, Sources and Nature of International Investment Law”.

**Supplementary**

* K. J. Vandevelde, A Brief History of International Investment Agreements. *Journal of International Law & Policy,* 2005 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1478757>

This article focuses on the historical development of international investment agreements. The analysis illustrates the remarkable increase of investment treaties.

* M. Hirsch, Sources of International Investment Law. In A. Bjorklund and A. Reinisch. International Investment Law and Soft Law. (Edward Elgar, 2012). <https://www.researchgate.net/publication/228228142_Sources_of_International_Investment_Law>

The focus of this article is the sources of international investment law, mainly bilateral investment treaties.

**6.6. Summary**

International Investment Law (IIL) is the field of international law that governs relationships between states and foreign investors and the resolution of disputes between foreign investors and states. Unlike WTO law, the system of international investment law has no central treaty or institution. This field of law comprises more than 3200 bilateral investment treaties (BITs) and investment chapters in preferential trade agreements. Investment treaties aim to attract foreign investment in order to promote economic development, by providing foreign investors and their investments with certain protections. International legal rules protecting foreign investors grew from the law of state responsibility for injuries to aliens. IIL recognises that investors are in a vulnerable position in relation to the state and thus protects them from arbitrary actions of the state.

**6.7. Self-assessment exercises**

**Exercise 20**: Briefly describe the evolution of International Investment Law during the postcolonial era. (Up to 300 words, 30 minutes)

**Exercise 21**: Explain the term ‘calvo doctrine’. (up to 200 words, 20 minutes)

**Exercise 22:** List one important sectoral and one important regional treaty as sources of International Investment Law. (up to 200 words, 20 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**6.8. Interactive activity 6**

Debate concerning the protection of foreign investors – peer review. You will be divided in three teams. The one side will support that foreign investors should receive special protection that is not granted to national investors. The other side will oppose the special protection given to foreign investors and will argue that this protective framework unfairly privileges foreign investors. The third group will evaluate the arguments of their peers (peer-review).

Debate starts with the affirmative team (the one that supports special protection to foreign investors) presenting their arguments. Then, the opposing team will follow (the one that it is against the protective framework). After both teams present their arguments, they will summarise their points. The debate timeline is at follows:

Step1: Brainstorm ideas

* Individual brainstorm: 5 minutes to write down two points.
* Group brainstorm: each group needs a paper in order to write down all the individual ideas.

Step 2: Organise ideas

* Each group will write down 5 main arguments.

Step 3: Structure the speeches.

Step 4: Peer review by the third team.

The winning team will receive a digital “award”.

**Learning Outcome Related with the Interactive Activity are** **C.O.[4]** **and C.O.[5]**

**6.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 7

**Definition of Foreign Investor and Foreign Investment**

**Did you know that:**

* *There is no single definition of the term ‘foreign investor’?*
* *There is no single definition of the term ‘foreign investment’?*
* *Each national legal system has a different way that establishes the nationality of corporations?*

**7.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* What activity is protected under investment treaties?
* What persons are protected under investment treaties?
* Who is the foreign investor?
* What is a foreign investment?
* What is the ‘salini test’?
* What are the criteria that establish the nationality of the foreign investor?

**7.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[7.1] **define** which persons are protected by investment agreements

T.O.[7.2] **explain** the role of the investor’s nationality

T.O.[7.3] **define** the interpretation of the term ‘investment’ in the case-law

T.O.[7.4] **explain** the definition of the term ‘investment’ in investment treaties

**7.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Foreign direct investment | Foreign investor | Scope of application |
| Salini criteria | Case-law | ICSID |
| natural persons | Legal entities | Nationality |
| Place of incorporation | Company seat | Denial of benefits |
| Shareholders |  |  |

**7.4 How do we achieve the objectives?**

This module will explain who and what activities are protected under investment agreements. You will explore the scope of protection of investment agreements by defining investors and investment. The definition of investor and investment is key to the scope of application of rights and obligations of investment agreements and to the establishment of the jurisdiction of investment treaty-based arbitral tribunals. First, you will learn about the definition of ‘foreign investment’. This will be achieved by analysing the relevant case-law and by analysing several investment agreements. Then, we will proceed with the analysis of the definition of ‘foreign investor’. Similarly, you will be able to identify who is the foreign investor by discussing the relevant case-law and provisions of investment agreements. As a part of the interactive activity, you will work in groups and analyse the ‘salini criteria’ that are used by investment tribunals when analysing the definition of foreign investments.

**7.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* R. Dolzer and C. Schreuer, Principles of International Investment Law (23rd Edition, Oxford University Press, 2022). The relevant chapter for week 7 is “Investors and Investments”.

**Supplementary**

* Legum, The Investment Treaty Arbitration Review (4th edition, Law Business Research 2019), <https://www.nera.com/content/dam/nera/publications/2019/NERA%20Makholm%20&%20Olive%20Investment-Treaty-Arbitration-Review%20Edition-4.pdf>

Chapters 1 and 2 of the Review focus on covered investments and investors. They analyse the definition of the two terms based on treaty language and arbitral jurisprudence.

**7.6. Summary**

The definition of investor and investment is key to the scope of application of rights and obligations of investment agreements and to the establishment of the jurisdiction of investment treaty-based arbitral tribunals. An investment agreement applies only to the investors and investments that are covered by the relevant provisions. In other words, only those covered may benefit from the protection of the investment agreements and be eligible to take a claim to dispute settlement. There is not a uniform definition of the two terms in International Investment Law. Consequently, both terms have been extensively interpreted in arbitration awards. Concerning investments, the term has changed over time together with the nature of international economic relations. The form of foreign investments became more diverse over time. Today, the term has a broad definition. Concerning investors, claims under investment treaties can be brought by physical persons or by corporations. Though claims have been brought by individuals or families, the large investors in the more important sectors of global business are multinational corporations.

**7.7. Self-assessment exercises**

**Exercise 23**: Briefly describe why is the definition of investor and investment important.

(up to 200 words, 20 minutes)

**Exercise 24:** List and describe the different nationality tests used by investment treaties to define the nationality of foreign investors. (up to 200 words, 20 minutes)

**Exercise 25:** Explain the denial of benefits clause. (up to 100 words, 10 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**7.8. Interactive activity 7**

Lumi execise-graded. The goal is to analyse the ‘Salini criteria’

This activity will be marked with 5% as is based on the framework of summative assessment. The assessment criteria are presented in the rubric below.

**Learning Outcome Related with the Interactive Activity are** **C.O.[4]** **and C.O.[5]**

**7.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 8

**Standards of Protection I**

**Did you know that:**

* *Better Investment protection helps host states attract more foreign investments?*
* *Foreign investors will choose to invest in the country that offers the strongest investment protection?*
* *None of the standards of protection have a single definition?*
* *The expropriation of alien property has been a central concern to foreigners?*

**8.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* How are investors protected from expropriation?
* What is the difference between direct and indirect expropriation?
* When is expropriation legal?
* What is the fair and equitable treatment standard?
* What is the full protection and security standard?

**8.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

C.O.[8.1] **describe** the importance of the standards in protecting the rights of foreign investors

C.O.[8.2] **explain** when the host state has the right to expropriate

C.O.[8.3] **define** the concept of fair and equitable treatment standard, its nature and function

C.O.[8.4] **explain** the protection that is granted through the full protection and security clause

**8.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Direct expropriation | Indirect expropriation | Fair and equitable treatment |
| Access to justice | Full protection and security | Physical security |
| Legal security | Proportionality principle | Effect of the measure |
| Due process | Legitimate expectations |  |

**8.4. How do we achieve the objectives?**

This module is the first part that will present standards of protection. In this module you will learn about three standards of protection: protection from expropriation, the fair and equitable treatment standard and the full protection and security standard. In order to understand the protection of these three standards, we will analyse each one differently. You will first learn about protection from expropriation. To this regard you will learn about the right of states to expropriate and the different forms of expropriation. Further, you will learn about the fair and equitable treatment standard. The standard is provided in most investment agreements and includes several other rights. Finally, we will discuss about the full protection and security standard. In order to have a broad understanding of the standards we will refer to several cases by investment tribunals that have interpreted the standards. In this way, you will see in a practical way how tribunals have interpreted the three standards of protection and how they have defined them. Through the interactive activity you will work together and research the proportionality principle in the context of investment arbitration. The cases illustrate the conflicting norms between investment protection and human rights. To this end, you will be able to research how tribunals have dealt with this tension.

**8.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* R. Dolzer and C. Schreuer, Principles of International Investment Law (3rd Edition, Oxford University Press, 202). The relevant chapters for week 8 are “Expropriation” and “Standards of Protection (Fair and Equitable Treatment, Full Protection and Security”.

**Supplementary**

* B. Legum, The Investment Treaty Arbitration Review (4th edition, Law Business Research 2019), <https://www.nera.com/content/dam/nera/publications/2019/NERA%20Makholm%20&%20Olive%20Investment-Treaty-Arbitration-Review%20Edition-4.pdf>

Chapter 15 of the Review analyses the fair and equitable treatment standard. Chapter 17 of the Review analyses the full protection and security. Both chapter analyse the subject based on treaty language and the case-law of investment tribunals.

* E. Gavriil The protection of foreign direct investments <https://open.spotify.com/episode/4FTVXQzCZ16I2ThOyqbbpN?si=0fGdgIINTcqY50G5X24rnw>

This podcast analyses *inter alia* the risks that foreign investment face and the protection of FDIs based on standards of protection.

* OECD, “Indirect Expropriation” and the “Right to Regulate” in International Investment Law', International Investment Law: A Changing Landscape, 2005, <https://www.oecd.org/daf/inv/internationalinvestmentagreements/40077899.pdf>

This paper discusses the difference e between an indirect expropriation requiring compensation and a governmental measure impacting an investment but not requiring compensation (aiming at protecting the environment, health and human rights).

**8.6. Summary**

By entering into an investment treaty, a state makes promises about the actions and behaviours it will take towards investments and investors. To achieve this goal, treaties define a standard to which host countries must conform in their treatment of investors and investments. International treatment standards are one of the most fundamental provisions that exist in International investment agreements. The expropriation of alien property has been of central concern to foreigners in general and to foreign investors in particular. Today, all modern investment agreements contain rules that cover expropriation. Whereas the main form of expropriation in the 1960s was the governmental seizure, in the later period this type of property taking became less common. Over the years, new forms of expropriation took place without the dispossession of the physical property of the foreign investors. The second standard found in most investment agreements is the fair and equitable treatment. Essentially, the purpose of the clause is to fill gaps which may be left by the more specific standards in order to obtain the level of investor protection intended by the treaties. Finally, based on the full protection and security standard, states have a duty to protects investors against physical violence and harassment. The duty to grant physical protection and security may operate in relation to violations by state organs or in relation to private acts.

**8.7. Self-assessment exercises**

**Exercise 26**: Briefly explain the difference between direct and indirect expropriation. (up to 200 words, 20 minutes)

**Exercise 27:** Briefly describe the purpose of the Fair and Equitable Treatment standard. (up to 200 words, 20 minutes)

**Exercise 28**: Explain the legal protection offered by the full protection and security standard. (up to 200 words, 20 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**8.8. Interactive activity 8**

Group Activity. This interactive activity is based on the protection from expropriation standards. Arbitral practice shows that in cases of conflict between investment protection and human rights tribunals have been using the proportionality principle to balance investment protection and human rights. However, tribunals have not applied the proportionality principle in the same fashion. You will be divided into 2 groups. The first group will read the award of the case *Tecmed v Mexico* (<https://www.italaw.com/sites/default/files/case-documents/ita0854.pdf>).

The second group will read the award of the case *Azurix v Argentina* (<https://www.italaw.com/sites/default/files/case-documents/ita0061.pdf>).

After reading the award, you will answer the following questions and upload your word document into moodle (up to 300 words).

1. how arbitrators used the proportionality principle in the specific cases?
2. why did they use proportionality?
3. how can the principle of proportionality balance IIL and answer to the criticism faced by the field?

The activity will be peer-reviewed. It will be marked with 5% as is based on the framework of summative assessment. The assessment criteria are presented in the rubric below.

**Learning Outcome Related with the Interactive Activity are C.O.[4], C.O.[5] and C.O.[6]**

|  |  |
| --- | --- |
| **SECTION** | **MARKS** |
| **Content of ideas** | **40** |
| **Structure** | **15** |
| **Presentation** | **10** |
| **Language** | **10** |
| **Research** | **25** |

**8.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 9

**Standards of Protection II**

**Did you know that:**

* *One of the fundamental goals of International Investment Law is that foreign investors must not be treated less favourable than national or other foreign investors in like circumstances?*
* *The national treatment and the most favoured nation treatment are established both in International Trade Law and International Investment Law?*
* *Access to foreign markets under non-discriminatory conditions is necessary for the world economy?*
* *Even before the establishment of the standards of protection, international law protected investors from arbitrary actions?*

**9.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* what is the national treatment standard?
* What is the most favoured nation treatment standards?
* What is the protection from arbitrary and discriminatory measures?
* What is the principle of non-discrimination in International Investment Law?

**9.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[9.1] **define** the general meaning and application of the national treatment standard

T.O.[9.2] **describe** the objective of the most-favoured-nation standard

T.O.[9.3] **explain** the protection of investors and investments from arbitrary or discriminatory measures

**9.3. Keywords**

|  |  |  |
| --- | --- | --- |
| National treatment | ‘like’ | Differentiation |
| Most-favoured-nation | At least as favourable | Third parties |
| Arbitrary measures | Discriminatory measures |  |

**9.4. How do we achieve the objectives?**

In this module, you will continue learning about standards of protection. In this module you will learn about three other standards of protection that relate to discrimination. These are the national treatment standard, the most-favoured-nation standard and protection from arbitrary and discriminatory measures. First, you will answer a poll in order to recall the national treatment and most-favoured nation standards as established in international trade law. Then, through the presentation you will gain knowledge on these three standards of protection in a theoretical and practical context. The analysis of several cases that have interpreted the three standards of protection will help you gain a deeper understanding of their content. During this session, you will be given some examples that concern either the national treatment or the most favoured nation treatment standard. To this end, you will work together, and you will have to identify whether the relevant examples concern a violation of the NT or the MFN standard. During the interactive activity you research and present the cases *Piero Foresti v South Africa* and *Von Pezold v Zimbabwe.*

**9.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* R. Dolzer and C. Schreuer, *Principles of International Investment Law* (3rd Edition, Oxford 2022).

The relevant chapter for week 9 is “Standards of Protection (Arbitrary or Discriminatory Measures, National treatment, Most-Favoured-Nation Treatment)”.

**Supplementary**

* UNCTAD, Most-favoured nation treatment, UNCTAD Series on Issues in International Investment Agreements II, <http://unctad.org/en/Docs/diaeia20101_en.pdf>

Part I of the paper explains the most-favoured-nation treatment standard. It focuses on its development, definition and legal nature.

* UNCTAD, National treatment, UNCTAD Series on Issues in International Investment Agreements, <http://unctad.org/en/Docs/psiteiitd11v4.en.pdf>

Students will focus on the 1st part of the paper. This part analyses the nature and origin of the national treatment standard. It also analyses its scope and application and some exceptions to the standard.

**9.6. Summary**

Based on the principle of non-discrimination, the investor operates free of competitive disadvantages and thus a favourable investment climate is established. The National Treatment and the Most Favoured Nation Treatment standards are a part of the non-discrimination principle. The purpose of the two treatment standards is to place all economic actors in an equal position aiming that this equality of treatment will foster economic growth. The national treatment and the most-favoured-nation standards do not prohibit all differences between the treatment of investors; they prohibit unreasonable discriminations. Furthermore, the prohibition of arbitrary treatment is one of the classical standards found in investment treaties. Protection from arbitrary and discriminatory measures are among the many causes of action often available to investors under bilateral and multilateral investment treaties. In practice, protection from arbitrary measures is often combined with prohibition of discrimination.

**9.7. Self-assessment exercises**

**Exercise 29:** Briefly explain the difference between the national treatment standard and the most-favoured-nation standard. (up to 300 words, 30 minutes)

**Exercise 30:** Describe the three steps of analysis that determine whether the National Treatment standard has been violated. (up to 200 words, 20 minutes)

**Exercise 31:** List the categories of measures found as arbitrary in the case-law of investment tribunals. (up to 200 words, 20 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**9.8. Interactive activity 9**

Video activity and forum discussion. First you will watch the video <https://www.youtube.com/watch?v=OukAIcCcWWc> that explains the oil crisis of the 1970s. Then, you will have a forum discussion where you will analyse how the changes that happened in the oil industry in the 1970s constituted a risk for foreign investments in the specific sector. In addition you will explain how this specific threat can be mitigated for future investment contracts in the oil sector (300 words).

This activity will be marked with 5% as is based on the framework of summative assessment. The assessment criteria are presented in the rubric below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Forum Discussion Rubric** | | | | |
| **Criteria** | **Very good/excellent**  **(75-100%)** | **Good**  **(50-74%)** | **Rejection**  **(0-49%)** | **Mark** |
| **Subject knowledge analysis**  20 marks | Discussions reflect  integration of  required readings and  supporting the key  issues and topics of  material. | Familiarity  with most  material and  principles in  the discussion. | Poor grasp of  material and  principles in  discussion. |  |
| **Critical analysis of topic**  20 marks | High level analysis. | Missed some of  the main issues. | Lacks analysis of  topic. |  |
| **Language**  20 marks | Correct word choice, correct spelling, correct grammar. | Ordinary, good writing. | Grammar, spelling, and/or word choice errors are frequent. |  |
| **Participation in the learning community**  20 marks | Discussion postings  actively stimulate and  sustain further discussion  by building on peers'  responses. | Discussion postings  sometimes contribute to  ongoing conversations. | Discussion postings do not  contribute to ongoing conversations or respond to  peers' postings. |  |
| **Timely and complete participation**  **Word limit**  20 marks | Posts on time  Within the word limit. | Post is late, or  adds little to  the discussion. | Posts are absent  or too late. |  |
|  |  |  | **Total** | **……/100** |

**Learning Outcome Related with the Interactive Activity are C.O.[4], C.O.[5] and C.O.[6].**

**9.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 10

**Risks in Foreign Investment and Risk Insurance**

**Did you know that:**

* *Canada is considered one of the safest countries for foreign investments?*
* *There is a list which assesses the investment risk of each country?*
* *There is a difference between political and commercial risks?*

**10.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* What are the risks that foreign investors are exposed to?
* What is the difference between commercial and political risks?
* What are country risks?
* What are the tools that help mitigate political risks?
* What kind of risks does investment insurance cover?
* What is the MIGA?

**10.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[10.1] **identify** the risks and threats that foreign investors face

T.O.[10.2] **explain** how international investment law protects investors from risks

T.O.[10.3] **explain** the political risk insurance

T.O.[10.4] **describe** the multilateral investment guarantee agency

**10.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Political risks | Commercial risks | Investment risk insurance |
| MIGA | Ideological hostility | Nationalism |

**10.4. How do we achieve the objectives?**

This module presents the risks and threats that foreign investors face when they make an investment. The objectives of this module will be achieved via learning the theoretical background of risks. Further, you will work in groups and make a list of the several different types of risks that you think foreign investors face. The relevant cases will help you understand in a more practical way political risks that are inherent with foreign investments. In addition, we will discuss about private and public insurance schemes aiming at protecting investors. The example of MIGA will illustrate how the organization encourages encourage foreign investment in developing countries by providing insurance for foreign investments against non-commercial risks. During our presentation you will discuss several subjects such as:

* Is doing business in developing countries riskier than doing it in developed countries?
* What factors might make it so?
* What are the factors investors should consider when considering whether or not to invest in a developing country?

Furthermore, during the interactive activity of this week, you will work in groups in order to achieve a better understanding of all the subjects discussed: risks and risk insurance.

**10.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* R. Dolzer and C. Schreuer, Principles of International Investment Law (3rd Edition, Oxford University Press, 2022).

This textbook outlines the fundamentals of international investment law and dispute settlement. It studies the principles of the field by analysing the jurisprudence of investment tribunals. The relevant chapter for week 10 is “Political Risk Insurance”.

**Supplementary**

* M. Sornarajah, The International Law of Foreign Investment (5th Edition, Cambridge University Press, 2021).

Section 4 “Risks in Foreign Investment” of Chapter 2 analyses the risks to foreign investments. It discusses the nature of the risks to foreign investment e.g., ideological hostility, nationalism etc.

* World Bank Group, Policy Options to Mitigate Political Risk and Attract FDI, 2020 <https://openknowledge.worldbank.org/bitstream/handle/10986/34380/Policy-Options-to-Mitigate-Political-Risk-and-Attract-FDI.pdf?sequence=1&isAllowed=y>

This volume analyses political risks. It focuses on how political risks can affect foreign direct investments and the practical tools that can help governments mitigate political risks.

**10.6. Summary**

During this module you will learn the different kind of risks of investment operations. The risks to foreign investment increased after the end of the colonial period. Importantly, each country has different risk. Thus, corporations perform risk analysis before they decide to place their assets in a specific country. The main risks to foreign investment come from either regime change or changes to the existing political and economic policies of the host state. Notably, risks are present elements in any investment. There are different kind of risks. The presentation will illustrate the most common risks that foreign investors face such as political hostility, nationalism and interventions by the government. In this module, you will also learn about the tools that investors use to minimize political risks. Finally, during this week, you will also learn about political risk insurance and the Multilateral investment Guarantee Agency which was established by the World Bank in 1985.

**10.7. Self-assessment exercises**

**Exercise 32**: Explain how nationalism pose a threat to foreign investments (up to 200 words, 20 minutes)

**Exercise 33:** Explain the purpose of the Multilateral Investment Guarantee Agency (up to 200 words, 20 minutes)

**Exercise 34**: Describe the difference between private and public insurers. (up to 100 words, 10 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**10.8. Interactive activity 10**

Real-world case. This module activity concerns all the subjects discussed during week 10. Imagine that you are the consultant of a multinational corporation that wants to proceed with a foreign investment. Study the risk ratings for countries at [www.credendo.com](http://www.credendo.com).

* 1. Pick a country with high or low risk rating, either developed or developing for your investment.
  2. Explain the reasons why you believe that the specific country is appropriate for the relevant project by considering risk factors.
  3. Discuss how you are going to manage potential risks.

The activity will be marked with 5% as is based on the framework of summative assessment. The assessment criteria are presented in the rubric below.

**Learning Outcome Related with the Interactive Activity are** **C.O.[4] and C.O.[5]**

**10.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 11

**Settling Investment Disputes – The International Centre For Settling Disputes**

**Did you know that:**

* *In 2020, at least 68 known treaty-based investor–State dispute settlement (ISDS) cases were initiated?*
* *The total investment arbitration case count had reached over 1,100 by the end of 2020?*
* *In the context of ICSID arbitration cases roughly 44% of ICSID cases are settled or discontinued before a final ruling is made?*
* *As far as the amounts claimed by investors are concerned, total claims since 1996 add up to US$ 145,8 billion?*

**11.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* How are investment disputes settled?
* How were investment disputes settled before investment arbitration?
* What is diplomatic protection?
* What are the different institutions and regimes for settling investment disputes?
* What is ICSID?
* How is consent to arbitration given?
* What is the procedure of investment arbitration?

**11.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[11.1] **explain** the investor-state dispute settlement system

T.O.[11.2] **identify** the basic functions of the ICSID

T.O.[11.3] **describe** the concept of subject-matter jurisdiction

T.O.[11.4] **identify** the parties to arbitration and who may institute arbitration

T.O.[11.5] **recognise** the significance to consent to jurisdiction and the different forms of consent

**11.3. Keywords**

|  |  |  |
| --- | --- | --- |
| Investor-state arbitration | The settlement of disputes | ICSID |
| Consent to arbitration | Parties to arbitration |  |

**11.4. How do we achieve the objectives?**

In this module you will learn about the settlement of investment disputes. After discussing about all the different subjects that concern investment law in previous modules, you will now learn what happens when there is a dispute between the foreign investor and the host state. This will happen through a presentation that will illustrate all the different subjects that concern investment arbitration. You will learn about the traditional method of settling investment disputes which is the exercise of diplomatic protection. To this end, you will learn about the disadvantages of diplomatic protection and the reason why the investment arbitration system was established. In order to achieve the objective of understanding how investment disputes are settled, we will focus on the ICSID. First, we will watch a video (<https://www.youtube.com/watch?v=UfcpTzMFdcU&t=20s>). We will also go through the website of ICSID (<https://icsid.worldbank.org/>) in order to understand better of its functions, objectives and rules. The interactive activity will involve the case-study of Yukos, where the foreign investors submitted claims against the host state in both a human rights court and an investment arbitration tribunal.

**11.5. What will you have to study?**

**Required reading**

* Tutor’s notes / presentation
* R. Dolzer and C. Schreuer, Principles of International Investment Law (3rd Edition, Oxford University Press, 2022).

This textbook outlines the fundamentals of international investment law and dispute settlement. It studies the principles of the field by analysing the jurisprudence of investment tribunals. The relevant chapter for week 11 is “Settling Investment Disputes”.

**Supplementary:**

* Y. Banifatemi, Defending Investment Treaty Awards: Is There an ICSID Advantage? 2009, <https://www.shearman.com/-/media/Files/NewsInsights/Publications/2009/10/20091001_YB_Book-ICCA-Congress-series-14_Defending-Investment-Treaty-AwardsICSID-Advantage.pdf?la=en&hash=E9E5CEEB1493C184454ED13BDB5B3A438B35BC71>

This paper discusses the operation of ICSID arbitration and compares ICSID and non-ICSID arbitration.

**11.6. Summary**

Where interests of foreign investors are involved, the traditional method for settlement is the exercise of diplomatic protection. However, it carries significant limitations and disadvantages for the investors and the states as well. International investment arbitration provides an attractive alternative to the traditional settlement of disputes through diplomatic protection. One of the most significant advantages that International investment Law offers is the access of foreign investors to investor-state arbitration. In week eleven you will learn how investment disputes are settled when there is a breach of an investment treaty. Further, you will learn about issues of investment arbitration such as the subject matter of the dispute, the parties to dispute and consent to arbitration. You will also be provided with an overview of the ICSID, which is the most prominent form of investment arbitration.

**11.7. Self-assessment exercises**

**Exercise 35**: Explain the meaning of the arbitration clause established in International Investment Agreements. (up to 250 words, 20 minutes)

**Exercise 36**: Explain the difference between the ICSID convention and ad hoc arbitration. (up to 200 words, 20 minutes)

**Exercise 37:** Describe the aim and the role of the ICSID. (up to 200 words, 20 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**11.8. Interactive activity 11**

Case-Study. The topic of this activity is to examine parallel proceedings. You will study the case Yukos v Russia that has been initiated bot in the Permanent Court of Arbitrating (PCA) and the European Court of Human Rights (ECtHR). You will study both judgments and then you will have a forum discussion where you will compare the two awards in regard with the expropriation of the investor’s property. In more details, you will particularly study the decision of the PCA and the ECtHR concerning the claim of Yukos that their property has been expropriated. In this way, you will see in a practical way the issue of parallel proceedings in different fora (300 words).

**Learning Outcome Related with the Interactive Activity are C.O.[4] and C.O.[5]**

**11.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 12

**The Emerging Issues of International Investment Law**

**Did you know that:**

* *Investment disputes are not mere private?*
* *The civil society calls for a more direct participation in investment arbitration?*
* *Host states are increasingly filing counterclaims against foreign investors?*
* *Critics of International Investment Law call for the imposition of foreign investors’ obligation?*

**12.1. What do we aim for through our engagement with the module (learning purposes and objectives)?**

By studying this module you will gain clear knowledge and comprehension of

* What are the public law issues that are raised in investment arbitration?
* What are amicus curiae?
* What are the emerging issues in investment law?
* How IIL may be in conflict with human rights?
* What are counterclaims?
* What are the obligations of foreign investors?

**12.2. What will you be able to do after completing the module** **(learning outcomes)?**

If you study systematically and involve yourselves in the scheduled educational activities, you will be able to:

T.O.[12.1] **recognise** how foreign direct investments can affect human rights

T.O.[12.2] **explain** the potential conflict between human rights and international investment law

T.O.[12.3] **describe** how foreign investors can be obliged to respect the huma rights of the local population of the host state

T.O.[12.4] **describe** the role of the Non-Governmental Organizations in International Investment Law

**12.3. Keywords**

|  |  |  |
| --- | --- | --- |
| The right to regulate | Conflicting norms | Human rights |
| Local population | Public law concerns | Foreign investors’ obligations |
| Amicus curiae | NGOs | counterclaims |

**12.4. How do we achieve the objectives?**

This is the last module for this course and its purpose is to highlight the emerging issues of International Investment Law that they also connect with the future of the field. To this regard, you will learn about several cases where the relevant issues were raised. You will have the opportunity to see in practice how international investment law may be in conflict with other areas of the field. In this way, you can understand the criticism that the field is receiving. In this context, you will learn about *amicus curiae* briefs and the calls for more transparency. Further, we will discuss about the possibility of holding foreign investors accountable for violations of the human rights of the local population of the host state. In addition, the interactive activity will involve a forum discussion on the right to water of the local population and its possible conflict with the rights of foreign investors.

**12.5. What will you have to study?**

**Required reading**

- Tutor’s notes / presentation

**Supplementary**

* E. D. Brabandere, Human Rights and International Investment Law, Grotius Centre Working Paper Series No 2018/075-HRL <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3149387>

This paper analyses the interaction between foreign direct investment and human rights. It focuses on cases of investment arbitration where human rights issues were raised.

* Urbaser v Argentina <https://www.iisd.org/itn/en/2018/10/18/urbaser-v-argentina/>

This article of this website gives an overview of the case *Urbaser v Argentina*. It summarises the case and the legal issues of the case.

* Y. Levashova, The Right of Access to Water in the Context of Investment Disputes in Argentina: Urbaser and Beyond, 16 Utrecht Law Review 2, 2020 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3809389>

This article analyses the case *Urbaser v Argentina.* It analyses the conflict between the state’s right to regulate and the rights of the foreign investors in Argentina.

**12.6. Summary**

This module outlines the practical foundations for understanding the emerging issues and the concerns that revolve around International Investment Law. Human Rights advocates criticise that investment tribunals ignore the impact of investments on human rights. The new wave in IIL is the reform of the field in order to ensure the responsibilities of foreign investors. In this module you will learn through the examination of several cases of the potential violation of the human rights of indigenous peoples, of the human right to water and of environmental rights due to the operation of multinational corporations. We will conclude with the ways that host states through counterclaims can hold foreign investors accountable for human rights violations. In more detail, we will discuss counterclaims as an entry point for investors’ obligations.

**12.7. Self-assessment exercises**

**Exercise 38**: Explain how foreign investors can be obliged to respect human rights. (up to 200 words, 20 minutes)

**Exercise 39:** Describe the participation of NGOs in investment arbitration through *amicus curiae.*

(up to 200 words, 20 minutes)

**The answers can be found in the module “Indicative answers to self-assessment exercises”.**

**12.8. Interactive activity 12**

After reading the case *Urbaser v Argentina* (<https://www.iisd.org/itn/en/2018/10/18/urbaser-v-argentina/>) you will have a forum discussion on the following issues (up to 300 words):

1. How can the right to water be affected by investment arbitration?
2. What is the role of the civil society in investment cases that affect human rights?
3. Whether some sectors of the economy should be reserved to the government.
4. How can International Investment Law prevent these conflicting situations?

**Learning Outcome Related with the Interactive Activity is** **C.O.[6]**

**12.9. How much time will you need to study?**

Assume that you will need to devote approximately 10-15 hours.

## Week 13

**Course revision**

In the last week, there will be a summary of what has been taught, questions will be solved and reflection will be made in relation to the learning process of each one.

Think and evaluate:

* Where they were when the lesson started.
* Improvement of knowledge and skills during the course.
* What went well.
* What went wrong.
* What was difficult for you.
* What seemed useful for you.
* What was interesting for you.

Upon completion of the 13th week study, students will be properly prepared to successfully participate in the final exams of the course.

**Few instructions or tips for the final study, as following:**

Examination time can be very stressful as it puts a lot of pressure on students to perform well. However, there are several things that you can do to prepare more effectively for your exams:

1. Start Your Preparation Early

Starting early with your exam preparation will give you ample time to review everything you have already studied. So do not leave anything for the last moment and make sure you understand your subject thoroughly. This will make revision much easier.

2. Organise your Space for Study

Before sitting down to prepare for your exams, make sure everything around you is organized. You should have enough space around you to keep your notes and textbooks. Also, you need to ensure that your chair is comfortable, there is enough lighting in your room, and there is nothing around you that might distract you like your video games.

3. Review and Practice

Reviewing and practicing is one of the most effective ways to learn how to prepare for exams. It helps you to familiarize yourself with the format and structure of the question paper.

4. Set Study Goals

For each study session, set yourself a goal to keep track of what you are studying or revising. You can note down your study goals as soon as you start with your study session or you can set them at the end of the session for the next one.

5. Make Use of Diagrams and Flowcharts

When revising or preparing for an exam, visual aids can turn out to be really useful. So first, try to make notes of everything you know about a particular topic and then when the exams are near, compress those notes to a one-page diagram.

6. Get Together with Friends for Study Sessions

Organising study sessions with your friends is one of the most crucial exam study tips for university students as it helps you get answers to all your questions and vice versa. However, you need to make sure that you do not waste time and stay focused on learning the importance of preparing for exams.

7. Describe your Answers to Others

Parents and your siblings do not always have to be irritating and annoying, especially around your exam time. To stop them from distracting you, use them to your advantage and start describing the answers that you have prepared to them. This will help you to retain things and know the areas where you are lacking and need more work.

8. Study to Suit your Learning Style

Your learning style will help you to know what are the best ways to prepare for an examination. For instance, if you are an auditory learner, you may benefit from recording your notes and then listening to them later, or you can even listen to lecture recordings.

9. Take Regular Intervals

While it may seem that studying for more hours may result in more productivity, it's actually the opposite, and it might just wholly drain you out, leaving you with no energy to study and retain knowledge. So it’s essential to take regular breaks for longer retention of information and to freshen up your mind.

10.Do Not Cram

Staying up all night and cramming will only make you more anxious and stressed out. So instead of trying to cover everything in your curriculum the day before the exam, it’s better just to review what you have already studied and sleep early.

11. Ask for Help

In case you face trouble understanding a specific concept or subject, then do not hesitate to ask for help. Talk to your mentor, teacher, tutor, or your friend to understand the concept better before it’s too late. Rather than trying to memorize or cram, taking guidance from someone can help you remember the concept for a longer time.

12. Plan your Exam Day and Sleep Well

Make sure you have everything ready way before the day of your exam and do not leave anything for the last day. Check all the requirements and make all the other necessary arrangements. Also, decide which route you will take on the day of the examination and see how much time it will take you to reach the destination. This will help you to arrive on time at the examination centre and avoid being late.

13. Do Not Evaluate Post Examination

After finishing your exam, if you realize that you have given an incorrect answer to one of the questions, it may cause anxiety.

14. Drink Lots of Water

As one of the most vital tips for exam day, always remember that keeping yourself hydrated will add to your overall positive mood and will make your brain work at its best. So, make sure to drink plenty of water while preparing for exams and even during the exam.

15. Choose Eating Nutritious Foods

Sometimes while studying, you may be tempted to eat junk food, but it can really impact your energy levels. So, avoid junk food and make sure you are eating nutritious and well-balanced meals that are good for your memory and concentration, such as seeds, nuts, fish, blueberries, and yogurt.

[based on <https://www.ozstudies.com/blog/australia-study-tips/top-exam-preparation-tips>].

# Answers to the self-assessment exercises

**Exercise 1** List and Briefly explain the main areas of International Economic Law.

The main areas of IEL are:

* + 1. International Trade Law: It concerns the exchange of goods and services across borders. The World Trade organization is the institutional basis for global trade. It aims at liberalizing trade by reducing tariffs and other barriers to trade.
    2. Free Trade Areas: they can multilateral or bilateral. They often overlap with the WTO.
    3. International antitrust and competition law
    4. International Investment Law: it covers the promotion and protection of foreign investments.
    5. International Monetary Law.
    6. Intellectual Property Law.
    7. international Commercial Law.

**Exercise 2** Explain the call for a ‘New Economic Order’.

The growing gap between industrialized and developing countries resulted to a demand for a more balanced international economic system. During the 1960s and the 1970s developing countries called for a new international economic order. Developing countries raised their concerns and called for national National sovereignty over a state’s recources, sovereign equality of states and discretion over foreign investments, economic and social development of poorer countries in trade and investment, lower standards for compensation of expropriated investments. These concerned have influenced the field of Economic Law. International Economic Agreements take into account the special needs for developing countries and they take measures in order to assist their development.

**Exercise 3** List and briefly analyse the actors of International Economic Law and their role.

(1) States: the most imporant subjects in international law and international economic relations. States exercise regulatory power over economic activities. They are free to choose their economic systems but international agreeements restrict their economic choices.

(2) states enterprises: states participate in economic transactions through governmental agencies for reasons of specialisation and efficiency. They are legally and organizationally independent of the state.

(3) international organizations: together with states they are the most relevant actors in international law. The majority of them established after the Second World War. They create legally binding rules.

(3) Non-Institutionalized Forums of Cooperation in Economic Relations: they response to economic globalisation.

(4) International Inter-Agency Cooperation.

(5) Non-Governmental organizations: Established by private actors under national law to pursue a particular agenda. NGOs that work in environmental protection and human rights are particularly important in International Economic Law.

(6) Private Enterpises and Standards for Transnational Corporations: Private transnational corporations (TNCs) play a vital role in international trade and investments.

**Exercise 4** List the main steps during the evolution of International Economic Law towards liberalisation.

18th century: Liberal writings of Adam smith, John Stuart Mill set the foundations for free trade movement.

19th century: The UK focused on liberalism and started experiencing the benefits for free trade. On the other hand, the US and the EU had a protectionist policy.

During the first World War, the liberal approach to free trade fell apart.

After the Second World War, the cornerstones for free trade were the establishment of the 1948 GATT and the FCN treaties that liberalised investments.

**Exercise 5**: Discuss customary international law as a legal source of International Economic Law.

Customary international law is constituted by the practice of states and international organisations as a sense of obligation or right. It refers to the international obligation that arise from established international practices. Customary international law also guides the interpretation of treaties. The formulation of new customary law is an extended process.

**Exercise 6:** Explain what are the favourable conditions for developing countries.

Favourable conditions for developing countries is one of the principles of International Economic Law. The principle is guided by the interest in raising the standard of living, increasing economic growth and solidarity towards developing countries. The WTO highlights the importance of considering the needs of developing countries. Less developed countries call for more fairness in international trade and investment but also for more regulatory freedom concerning their resources. The WTO establishes preferential tariffs, technology transfer, and grants several exceptions from general treaty obligations in order to facilitate developing countries and narrow the gap between developed and developing countries.

**Exercise 7:** Explain the principle of non-intervention

Based on the principle of non-intervention, sovereignty requires that states can freely determine their internal affairs without intervention from the outside. Economic pressure in principle is not classified as intervention; intevention requires physical element. The Charter of Economic Rights and Duties prohibits the use of economic pressure which aim at the subjection of one State to another in exercising sovereign rights. To this regard, economic measures must not affect the core of self-determination.

**Exercise 8:** Briefly list the criteria for exercising state jurisdiction.

The criteria that establish whether a state has jurisdiction are based on a sufficient link with the state. There are different criteria used by states. These are the effects doctrine, the principle of personality, the principle of control, principle of protection of national interests and the principle of universality.

**Exercise 9**: Briefly discuss how the Uruguay Round changed Global Trade Law.

During the Uruguay Round, the General Agreement on Tariffs and Trade (1947) transformed into the World Trade Organization. It established an institutional framework based on the WTO, a strong dispute settlement mechanism and a number of new agreements that extended the scope of world trade law. These agreements offer a wider scope and cover the service sector, intellectual property rights, foreign investment, anti-dumping measures, trade in the agricultural sector and others.

**Exercise 10:** Mention and briefly explain the functions of the two main organs of the WTO.

The main organs of the WTO are the following:

The ministerial conference: It is the supreme authority and establishes several committees with specific competences. It included representatives of all WTO members that meet at least once every two years.

The general council: It is the chief-decision making and policy body and meet on a more regular basis than the ministerial conference. It includes special councils for particular sectors and for day-to-day work operate under the General Council: Council for Trade in Goods, Council of Trade in Services, Council of Trade-Related Intellectual Property Rights.

**Exercise 11**: Explain the general decision-making process of the WTO.

The WTO bodies decide by consensus. Accordingly, decisions are made if no member formally objects to the proposed decision. This process has increased legitimacy, but it is time consuming. Today, consensus is more difficult due to the increase in numbers and the diversity of WTO members. New decision-making practices are in place in order to provide more transparency and allow broader participation.

**Exercise 12**: List and briefly explain the fundamental principles of the GATT.

The non-discrimination principle: it consists of the most-favoured nation principle and the national treatment principle. The principle contributes to ensuring fair and predictable international trade relations.

The principle of liberalisation: The principle concentrates on the restriction of tariffs as well as of non-tariff barriers to trade. Members undertake commitments in which they state the maximum level of import duty or other charge or restrictions that they will apply to imports on specified types of goods.

The principle of reciprocity: According to the principle, there is a balance of mutual benefits and obligation between contracting parties. Reciprocity creates a strong incentive to compliance. The principle suffers an exception in favour of developing countries. The principle, together with other exceptions in favour of developing countries, responds to pre-existing inequalities.

The principle of transparency: Based on this principle, member states are obliged to make public any adopted measures, laws and regulations that they may have an effect on free trade.

**Exercise 13:** Explain the difference between the Most-Favoured-Nation Treatment and the National Treatment Standard.

The MFN and the NT standards are the two parts of the non-discrimination principle. The MFN rule requires that if one GATT member grants to another country ‘more favourable treatment’, it must immediately and unconditionally give the same treatment to imports from all GATT members. Its objective is to ensure equality of opportunity to imports and exports to all WTO members.

**Exercise 14:** List the criteria that determine if the imported and domestic goods are ‘like’.

The criteria that determine if the imported and domestic goods are ‘like’ are:

(a) the products’ properties, nature and quality that are somewhat similar in every market.

(b) their end uses in a given market that may be different from the use in another market.

(c) consumers’ tastes and habits that may be different from tastes in another market.

(d) the tariff classification of the products based on the harmonized system.

**Exercise 15:** Explain the security exceptions of Article XXI of the GATT.

Based on security exceptions of Article XXI, WTO members can take measures in order to protect their security interests. The specific provision has a wide margin of appreciation and covers trade restriction in time of military confrontations and severe tensions. In addition, the article applies to restrictions of trade in response to breaches of International Law such as human rights violations. Article XXI further allows restrictions in order to respect the UN charter serving the maintenance of international peace and security.

**Exercise 16:** Briefly explain the objectives of the GATS.

The first objective of the GATS is to progressively liberalise trade in services through round of negotiations that aim at promoting the interests of all members of the WTO. The GATS also aims at encouraging economic growth and development through liberalisation of trade in services. Finally, one of its objectives is to increase the participation of developing countries in the world trade in services exports by developing their export capacity.

**Exercise 17:** List and briefly explain the four modes of supplying services of the GATS.

The GATS distinguishes between four modes of supplying services:

Cross-border supply: It covers sevices flows from the territory of one member into the territory of another members. E.g, banking services transmitted via telecommunications.

Consumption abroad:When a service consumer moves into another member’s territory to obtain a service. E.g., tourist or patient.

Commercial presence*:* When a service supplier of one member establishes a territorial presence, including through ownership or lease of premises, in another member's territory to provide a service. E.g., hotel chains.

Presence of natural persons:It concerns persons of one member entering the territory of another member to supply a service. E.g., accountants, doctors or teachers.

**Exercise 18**: Discuss compulsory licenses under Article 31 of the TRIPS*.*

Article 31 of the TRIPS governs the possible grant of compulsory licenses. Such compulsory licenses allow exploiting the patent on a product or a process without the consent of the right holder. The provision subjects complulsory licenses to a number of conditions, such as the use of a patent primarly serving as supply of the domestic market or an adequate compensation paid to the right holder. According to the TRIPS agreement, members may adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance.

**Exercise 19:** Discuss the category geographical indications.

Geographical indication is one of the categories of intellectual property rights. Sometimes, a name or indication is associated with a place which is used to identify a product. Article 22 of the TRIPS Agreement defines geographical indication as the name of a territory or locality that identifies a good as coming from that place and where the “quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. This “geographical indication” does not only say where the product comes from. It identifies the product’s special characteristics, which are the result of the product’s origins. E.g., champagne.

**Exercise 20**: Briefly describe the evolution of International Investment Law during the postcolonial era.

The second era began with the end of the WWII and continued until the collapse of the Soviet Union. During that era, states agreed to enter into treaties to protect foreign investments. The decolonisation had a negative impact on foreign investment since newly independent states in order to protect their sovereignty were hostile to foreign investments. Countries tried to attract additional foreign investment by granting more protection on the basis of treaties. There were two elements that resulted in the extension of foreign investments during the postcolonial era: (a) The policies promoted by the World Bank and the IMF that resulted to more open policies on foreign investments. (b) The signing of bilateral investment treaties between countries aiming to protect foreing investments from injuries made by host states. In 1965 the ICSID was founded by the World Bank. ICSID provides a neutral forum for the settlement of disputes given that there is no interference from domestic political and judicial organs. In 1959 the first BIT concluded and during the 1980s and 1990w the network of BITS exploded.

**Exercise 21**: Explain the term ‘calvo doctrine’.

The Calvo doctrine was developed by Carlos Calvo in 1868 in Argentina. According to the doctrine, the authority to settle international investment disputes resides in the government of the country in which that investment is located. Under the influence of the Calvo doctrine, opposition to investment treaties and the particular protection of foreign investors prevailed in Latin America for a considerable time. The Calvo Clause guided most Latin American states' attitudes toward international investment arbitration until the 1970s. In more recent years with the neoliberal turn of the 1980s, most Latin American countries changed their views and have concluded a considerable number of agreements on investment protection. However, some Latin American States have recently returned to the traditional approach of the 19th century and the principle of national treatment.

**Exercise 22:** Mention one important sectoral and one important regional treaty as sources of International Investment Law.

One of the most important sectoral treaty is the Energy charter Treaty. The ECT of 1994 was the first multilateral treaty that contained substantive rules on o foreign investments. It has a sectoral nature and is not meant for universal membership. The scope of the ECT is not limited to investments but covers a wide range of issues such as trade, transit, energy efficiency, and dispute settlement. The idea behind the ECT grew out of the desire of European states to cooperate closely with Russia and the new states in Eastern Europe and Central Asia in exploring and developing the energy sector, which is of crucial political, economic, and financial importance for both sides.

One important regional treaty is NAFTA. The NAFTA concluded in 1994 between Canada, Mexico and the US and addressed matters of both trade and investments. Chapter Eleven of the NAFTA addresses the treatment of investments. Chapter Eleven on investment amounted to a bold and innovative scheme as it tied Mexico as a developing country to its two northern developed neighbours against a history replete with conflict, especially in investment matters.

**Exercise 23**: Briefly describe why is the definition of investor and investment important.

From the perspective of a capital exporting country, the definition identifies the group of investors whose foreign investment the country is seeking to protect through the agreement.

From the capital importing country’s perspective, it identifies the investors and the investments the country wishes to attract. From the investor’s perspective, it identifies the way in which the investment might be structured in order to benefit from the agreements’ protection. In addition, the definition is important for the jurisdiction of the tribunals. Only foreign investors can bring a claim to an arbitration tribunal.

**Exercise 24:** List and describe the different nationality tests used by investment treaties to define the nationality of foreign investors.

Place of constitution in accordance with the domestic law is the first test that some BITs have adopted in order to determine the nationality of a legal person. Based on this test, the contracting parties to an agreement, make reference to the national law provisions of each contracting party in order to establish the legal persons entitled to protection.

The second test is the place of incorporation. Based on this test, a company has the nationality of the state in which it is incorporated. International law indicates a preference for the place of incorporation to determine the nationality of the corporation. The test of incorporation is used in the ICSID Convention.

The third nationality test is the company seat. The company seat requires that in order to qualify as an investor, a legal person should not only be constituted or incorporated in the host country but also have its seat and/or effective management there. This test intents of preventing “treaty shopping” by acquiring or establishing a shell company in a jurisdiction where a relevant BIT applies.

**Exercise 25:** Explain the denial of benefits clause.

Some treaties include a denial of benefits clause seeking in advance to avoid claims from certain entities to which they did not intend to offer treaty protection. Based on the clause, states have taken various measures in an attempt to ensure that techniques that try to manipulate the system are not successful. The denial of benefits provision permits a state to deny the benefits of the treaty to a company which is not controlled from the state of incorporation and have no economic connection with the state.

**Exercise 26**: Briefly explain the difference between direct and indirect expropriation.

Whereas the main form of expropriation in the 1960s was direct expropriation, meaning the governmental seizure, in the later period this type of property taking became less common. Indeed, new forms of expropriation took place without the dispossession of the physical property of the foreign investors. Governments in general use regulations, raise taxes or change the contracts and consequently the investor’s property rights are diminished. Such actions may be described as ‘indirect expropriation’ or as ‘regulatory taking’ and have become the most common type of intervention with property rights.

**Exercise 27:** Briefly describe the purpose of the Fair and Equitable Treatment standard.

The purpose of the clause is to fill gaps which may be left by the more specific provisions in order to obtain the level of protection the investor intended by the treaties. In practice the FET standard may offer redress where the facts do not support a claim for expropriation

**Exercise 28**: Explain the legal protection offered by the full protection and security standard.

In some cases, tribunals have held that the full protection and security standards protects not only against physical violence but also offers legal protection. For example, the tribunal in *Biwater v Tanzania* stated that the full protection and security standard “implies a State’s guarantee of stability in a secure environment, both physical, commercial and legal”. Tribunals have found that a change in law and administrative proceedings was in violation of the FPS standard. To this regard, A stable and secure legal and commercial environment counts as much, and is as important as, physical security to investors.

**Exercise 29:** Briefly explain the difference between the national treatment standard and the most-favoured-nation standard.

The standard of national treatment’s objective is to provide a level playing field between the foreign investor and the local competitor. In general, the relevant provision holds that the foreign investors and its investments are ‘accorded treatment no less favourable than that which the host state accords to its own investors’.

On the other hand, the objective of the most-favoured-nation treatment is to ensure that the relevant parties treat each other in a manner at least as favourable as they treat third parties. In practice, the effect of the MFN is to widen the rights of the investor

**Exercise 30:** Describe the three steps of analysis that determine whether the National Treatment standard has been violated.

The three-step analysis that determine if NT standard has been respected is: First, it has to be determined whether the foreign investor and the domestic investor are placed in a comparable 'like situation'. Secondly, it has to be determined whether the treatment accorded to the foreign investor is at least as favourable as the treatment accorded to domestic investors. Thirdly, in the case of treatment that is less favourable, it must be determined whether the differentiation was justified.

The three-step analysis that determine if NT standard has been respected is: First, it has to be determined whether the foreign investor and the domestic investor are placed in a comparable 'like situation'. Secondly, it has to be determined whether the treatment accorded to the foreign investor is at least as favourable as the treatment accorded to domestic investors. Thirdly, in the case of treatment that is less favourable, it must be determined whether the differentiation was justified.

**Exercise 31:** List the categories of measures found as arbitrary in the case-law of investment tribunals.

Based on the case-law of tribunal, the following categories constitute arbitrary measures:

1. a measure that inflicts damage on the investor without serving anyapparent legitimate purpose.
2. a measure that is not based on legal standards but on discretion, prejudice, or personal preference.
3. a measure taken for reasons that are different from those put forward by the decision maker.
4. a measure taken in willful disregard of due process and proper.

**Exercise 32**: Explain how nationalism pose a threat to foreign investments.

Particularly at times when the host economy is in decline, prosperous foreign investors who are seen to control the economy will be easy targets of xenophobic nationalism. Investments are easy targets for politicians who may take advantage of the situation. Nationalism plays a dominant role in the restriction the flow of investments in developing countries and developed states as well. Similar cases can be traced in Iran, Egypt and the US.

**Exercise 33:** Explain the purpose of the Multilateral Investment Guarantee Agency.

The purpose of the MIGA is to promote cross-border investment by providing guarantees to investors. These guarantees protect investments against noncommercial risks and can help investors obtain access to funding sources with improved financial terms and conditions. In other words, the MIGA provide protection against government actions that could disrupt projects, and assist in the resolution of disputes between investors and governments.

**Exercise 34**: Describe the difference between private and public insurers.

Private insurance seeks to diversify its own risk by schemes of mutual cooperation with other companies. Private insurers are able to tailor their products to the needs of the individual companies. They can price   
and accept or reject risk based on commercial considerations and are able to act speedily and flexible. Consequently, private insurance is more flexible than public insurance. Another difference is that the public sector offers coverage for up to 20 years, while private properties offer protection for much shorter periods.

**Exercise 35**: Explain the meaning of the arbitration clause established in International Investment Agreements.

An arbitration clause is included in IIAs in order to allow the choice of a neutral forum for the settlement of disputes which arise from the agreement. Investors prefer to claim their right to investment tribunals than in domestic courts because they are outside the host state, they are concerned only with investment disputes and tailor-made to the relevant dispute.

**Exercise 36:** Explain the difference between the ICSID convention and ad hoc arbitration.

ICSID is a specialist organisation tasked with the settlement of investment disputes and operates on the basis of an international convention. Other arbitral tribunals are either private bodies created by the immediate parties to a dispute, such as *ad hoc* tribunals. Even though ICSID has become the main forum for the settlemem of disputes berween a foreign investor and the host state it is not the only institution fur foreign investment arbitration.

**Exercise 37:** Describe the aim and the role of the ICSID.

ICSID is the world’s leading institution devoted to international investment dispute settlement. It Provides facilities for conciliation and arbitration of international investment disputes. The aim of the ICSID Convention is expressed in its Preamble. It aims to promote economic development through the creation of a favourable investment climate. ICSID provides a system of dispute settlement that is designed exclusively for investor-state disputes. It offers standard clauses for use by the parties, detailed rules of procedure, and institutional support.

**Exercise 38**: Explain how foreign investors can be obliged to respect human rights

In general, the field of investment law does not apply obligations to foreign investors. By establishing investor obligations in IIAs, the international investment law may be able to battle the conflict between human rights and international investment law.

**Exercise 39:** Describe the participation of NGOs in investment arbitration through *amicus curiae.*

NGOs’ concerns in regard with IIL, is that the field emphasises on protection of investment without taking into account human rights and environmental concerns. NGOs by submitting *amicus*, have sought to balance between investors’ rights and host states’ population rights. The acceptance of these *amicus* briefs can increase the transparency of the field but also help the field deal with human rights issues that are outside the arbitrators’ expertise.



Good luck!

The tutors and staff of the Distance Learning Unit wish you good progress and may you achieve your goals.