

## **SYLLABUS**

**Course: Transnational Investment Law and Arbitration**

**Professor Julian Cardenas**

[jcardena@central.uh.edu](mailto:jcardena@central.uh.edu)

Office: 713.743.2267

Office: 126 BLB

Office Hours: Tuesday 10:30 a.m. – 12:00 p.m. or by appointment

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### **COURSE DESCRIPTION**

The Transnational Investment Law and Arbitration course provides to JD and LLM students the tools to understand and to perform complex transnational investment transactions in globalized sectors of the world economy. The course covers the transnational regulation that governs long-term investments in transnational sectors such as oil and gas, mining, electricity, international construction projects and housing.

During the last 60 years, more than 3000 Bilateral Investment Treaties have been agreed between States in order to promote the development investment projects by providing special protection to private investors. Also, Multilateral Investment Treaties such as NAFTA, the Energy Charter Treaty or the most recent negotiated Trans-Pacific Partnership are creating a network of transnational standards that govern the business relations in a transnational community of States and foreign investors. During the last two decades, these transnational standards have been under the scrutiny of the special jurisdiction of international arbitration tribunals which have contributed to the development of a system of investment law and promoting a transnational legal practice for lawyers and corporations.

Therefore, in order to be part of the construction of this new system for transnational investment transactions, the course features special training on the interconnection of sources of law such as investment contracts, investment treaties, industry practices, national regulations and arbitration awards and decisions, and provides an overview of a transnational legal practice in a globalized economy.

This course features:

- 1) An overview of international investment arbitration: history and statistics.
- 2) The notion of investment, relations between foreign investors, shareholders, state and state companies.
- 3) The network of sources of law that govern transnational investment transactions.
- 4) The consent of international arbitration related to investment transactions: Contracts, Treaties, and National Law.
- 5) Rules of Jurisdiction: *ratione materiae*, *ratione personae* and *ratione temporis*. Treaty Shopping strategies.
- 6) Rules of Arbitration Procedure: The rules for arbitration of different institutions such as ICSID, UNCITRAL, ICC, LCIA, and SCC. The arbitrability of Disputes, objections of jurisdictions, and provisional measures.
- 7) The Applicable Law to the jurisdiction and merits phase of an investment dispute
- 8) Bilateral Investment Treaties Standards: Expropriation, fair and equitable treatment, national treatment, most favored nation treatment, security and protection clauses, umbrella clauses, survival clauses, and free transfer of funds.
- 9) The Arbitration Award.
- 10) The annulment of an arbitral award. The challenge of an award before national courts and ICSID Ad hoc Committee.
- 11) The transnational recognition and enforcement of arbitration awards.



## **COURSE REQUIREMENTS**

**Book Requirements:** Materials will be provided in class.

**Evaluation:** Final Paper

**Research Paper:** Each student will write a 20-22 page term paper on a topic related to a comment on an international investment arbitration award or decision, or topics in the applicability of Investment Treaty Standards or foreign investment transactions.

Papers may refer the following topics:

- 1) Protection standards for in the placement of foreign investment projects.
- 2) Enforcement of Investment Treaty standards of protection
- 3) The role of precedent in International Investment Arbitration.
- 4) Critics and conflicting approaches to the system of international investment arbitration.
- 5) Evolution of International Investment Arbitration
- 6) Empirical studies on international investment law and international arbitration.
- 7) Corporate planning and the practice of treaty shopping in international investment projects.

Other topics surrounded the above mentioned may be discussed with the Professor.

**Class discussions:** Class participation is necessary and mandatory. Students are expected to complete assigned readings and be prepared for class.

## **COURSE SCHEDULE**

### **Week 1**

The history and evolution of international investment law and arbitration, XX and XXI century.

### **Week 2**

The legal relation of an international investment.  
Foreign investors, shareholders, States and State owned companies.

### **Week 3**

The Notion Foreign Investment

Interpretation based in international treaties and Arbitral Jurisprudence  
International Oil and Gas Arbitration in Latin America.

### **Weeks 4**

Sources of Law that integrate the network of applicable law to  
International investment transactions (Part 1):

- International Contracts
- Administrative Authorizations.

### **Weeks 5**

Sources of Law that integrate the network of applicable law to  
International investment transactions (Part 2):

- Municipal Law
- International Law
- Non-State Sources of Law

**Week 6**

Bilateral Investment Treaty Standards (Part 1)

- Protection for cases of Expropriation
- Fair and Equitable Treatment

**Week 7**

Bilateral Investment Treaty Standards (Part 2)

- Umbrella Clause
- Arbitration and Dispute Resolution Provisions

**Week 8**

Bilateral Investment Treaty Standards (Part 3)

- Security and Protection standards
- Repatriation of Capitals clauses

**Week 9**

Bilateral Investment Treaty Standards (Part 4)

- Most Favorable Nation Treatment
  - a) Procedural standards
  - b) Substantive standards

### **Week 10**

The consent to international investment arbitration.

Contracts, Treaties, and Unilateral Declarations on Municipal Law.

### **Week 11**

Rules of Jurisdiction

- Ratione materiae, ratione personae and ratione temporis.
- Corporate Planning and Treaty Shopping practices.

### **Week 12**

#### **Procedural Rules for International Investment Arbitration**

ICSID, UNCITRAL, ICC, LCIA and SCC rules.

How they interact and have an effect on the applicable law of an international investment dispute.

### **Week 13**

#### **Applicable Law to the jurisdiction and merits in investment arbitration**

The Interaction of Sources of Law applicable to the interpretation and enforcement of an investment contract.

### **Week 14 -15**

#### **The Arbitration Award and Annulment Procedure**

Characteristics and structure of arbitration awards.

Analysis and preparation of commentaries.

Ways of annulment and preparation of the Annulment procedures.

ICSID Convention and New York Convention of 1958.

## PROFESSOR'S BIOGRAPHY



**Julian Cardenas Garcia**  
Research Assistant Professor

Julián Cárdenas is a Research Professor at the Center for Environment, Energy, and Natural Resources at the University of Houston Law Center, where he teaches the courses Transnational Petroleum Law; Transnational Investment Law and Arbitration; Global O&G Service and Procurement Agreements; and Diplomacy and Geopolitics of Oil and Gas. He is also a visiting professor at the Autonomous University of Nuevo León and the Externado de Colombia University. Prof. Cárdenas is the coordinator of the "Inter-American Dialogue of Hydrocarbon Regulators", an initiative of the University of Houston that promotes conferences and research on the transnational regulation of the oil and gas sector. He is a lawyer and an expert in international relations. He served as a career diplomat for the Venezuelan Ministry of Foreign Affairs, working multilateral affairs with the Organization of the American States (OAS) and the United Nations (U.N.) and bilateral affairs on sovereign boundary issues.

Professor Cardenas has been retained as an expert on Venezuelan law in international arbitrations regarding the upstream petroleum sector in Venezuela. He has also been involved in ICC, AAA and ICSID arbitration cases concerning downstream petroleum transactions, direct foreign investments, and international construction projects. He is a frequent speaker on oil and gas investment arbitration, best practices in the petroleum industry and oil and gas geopolitical matters, invited by oil and gas service companies, operators, government agencies, and universities. He has been a guest speaker at conferences on energy law in the U.S., Canada, France, Scotland, the Netherlands, Mexico, Brazil, Cuba, Ecuador, Colombia and Venezuela. He works effectively in Spanish, French and English, and has some working proficiency on Portuguese.

He holds a law degree and a B.A. in International Relations from the Universidad Central de Venezuela, a Master of Laws in Arbitration from the Sorbonne University - Paris II Pantheon-Assas, and a LL.M. with a Certificate in Energy, Environment & Natural Resources Law from the University of Houston Law Center. He was a Doctoral Fellow at the Research Center for Investment and International Trade Law (CREDIMI) at the University of Bourgogne, Dijon, France.

Professor Cárdenas is a violinist who has played with different symphony orchestras in Venezuela, France, and the U.S. He has performed at the *Berlin Philharmonie*, the Carnegie Hall, and the Sorbonne Amphitheatre, among other venues.

## COURSE BACKGROUND

The Transnational Investment Law and Arbitration class started to be taught at the Law Center of the University of Houston in the Fall Semester of 2013. The course aims to provide legal education from a transactional and a dispute resolution approach in the study of foreign investment. This approach is based on the methodology of transnational law based on the legal doctrine of the *lex mercatoria* developed by *L'Ecole de Dijon* and *le Groupe de Beaune*, and a vast research carried out at the University of Houston Law Center. The methodology is based on the notions of transnational investment standards included in Investment Treaties, but also rules and usages of transnational sectors of the global economy.

## **TRANSNATIONAL LAW AT UHLC**

The study of transnational law at UHLC can be found in this class and also in the Transnational Petroleum Law Program. The class focusing on transnational law have had students who have participated in writing competitions and international arbitration moot competitions with great results for the University of Houston.

### **Writing Competitions:**

- 1) UHLC student wins international writing competition (2013):  
<http://www.law.uh.edu/news/summer2013/0705RiggsAIPN.asp>
- 2) UHLC student wins World Bank writing award ( ICSID - 2014):  
<http://www.law.uh.edu/news/fall2014/1103World.asp>
- 3) UH Law Center LL.M. grad Bohmer wins international writing competition (ICSID - 2015)  
<http://www.law.uh.edu/news/fall2015/1110bohmer.asp>
- 4) UHLC 3L Hennessee to present paper on international treaty 'shopping' at Cornell conference (2016):  
<http://www.law.uh.edu/news/student-spotlight/2016-0411Hennessee.asp>

### **Investment Arbitration Moot Court Competitions:**

- 1) Moot court competition in Spanish takes UHLC students to Colombia (2017):  
<http://www.law.uh.edu/news/spring2017/0426Moot.asp>
- 2) UH Law Center competition teams show arbitration skills in two languages (2018):  
<http://www.law.uh.edu/news/spring2018/0420Investment.asp>
- 3) UH Law Center's Investment Arbitration team finishes among top four finalists in competition in Colombia  
<http://law.uh.edu/news/spring2019/0417UHLC.asp>

### **READINGS:**

The readings for the class will be provided online. You will enter to a folder corresponding the day of the class and will have a library of readings. The files marked as "M" means Mandatory Readings. The files marked as "R" means Recommended Readings. I will refer to both kinds of readings during the class. The Folder entitled "X FILES" will provide complementary readings on the topics.

Documents will be distributed through a dropbox website.