INTERNATIONAL LAW OF FOREIGN INVESTMENT (ILFI)

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SYLLABUS

SUMMER 2007

Required texts in the course are:


Supplementary reading materials may be distributed throughout the semester.

29 May  Introduction. The legal framework of foreign investment: sources of ILFI, municipal investment laws, and investment contracts. Some choice of law issues. Read:

• Texaco Overseas Petroleum Company / California Asiatic Oil Company v. Government of the Libyan Arab Republic, Award on the Merits (19 January 1977);¹ and

• The 2004 US Model BIT.²

✓ Also read the entire section written by Wälde in the Kahn & Wälde book during the first week of class. Students who understand French are encouraged to read the section written by Kahn in the Kahn & Wälde book.

4 June  Protected investors and investments. Read:

• Chapters 2, 3, and 4 of Weiler’s book.

¹ Published in 17 International Legal Materials 1 (1978).

² Available at: http://www.ustr.gov/assets/Trade_Sectors/Investment/Model_BIT/asset_upload_file847_6897.pdf.
5 June  International responsibility under ILFI: breach of an international obligation, state attribution, state immunity, and defenses. Read:

- Chapter 1 of Weiler’s book; and

- LG&E Energy Corp., LG&E Capital Corp., and LG&E International Inc. v. Argentine Republic (ICSID Case No. ARB/02/1), Decision on Liability (3 October 2006).³

11 June  BIT standards (I): fair and equitable treatment, full protection and security, treatment no less favorable than that required by international law, arbitrary treatment, and expropriation. Read:

- Stephen Fietta, “Expropriation and the ‘Fair and Equitable’ Standard: The Developing Role of Investors’ ‘Expectations’ in International Investment Arbitration,” 23 Journal of International Arbitration 375 (2006); and

- Occidental Exploration and Production Company v. Republic of Ecuador (London Court of International Arbitration Administered Case No. UN 3467), Final Award (1 July 2004).⁴

12 June  BIT standards (II): umbrella clauses, discrimination, currency transfer, national treatment, and most-favored nation treatment. Read:

- Chapters 9, 10, and 15 of Weiler’s book; and

- Nobel Ventures, Inc. v. Romania (ICSID Case No. ARB/01/11), Award (12 October 2005).⁵

18 June  Customary international law standards: minimum standard of treatment – NAFTA. Read:

- Chapter 18 of Weiler’s book; and

- Waste Management, Inc. v. United Mexican States (ICSID Case No. ARB(AF)/98/2), Award (2 June 2000).⁶

³ Available at http://www.worldbank.org/icsid/cases/awards.htm#awardARB0415.

⁴ Available at: http://www.investmentclaims.com/oa1.html.

⁵ Available at: http://ita.law.uvic.ca/documents/Noble.pdf.

⁶ Available at: http://www.worldbank.org/icsid/cases/awards.htm#awardARB0415.
19 June Settlement of investment disputes (I): negotiations, diplomatic protection, litigation in municipal courts, State-to-State dispute resolution mechanisms, and international arbitration. Read:

- Consortium Groupement L.E.S.I. - DIPENTA v. Algeria (ICSID Case No. ARB/03/8), Award (January 10, 2005);[^7]

- Banro American Resources, Inc. and Société Aurifère du Kivu et du Maniema S.A.R.L. v. Democratic Republic of Congo (ICSID Case No. ARB/98/7), Award (1 September 2000);[^8] and

- Occidental Exploration and Production Company v. Republic of Ecuador, Queen’s Bench Decision (9 September 2005), and Second Queen’s Bench Decision (2 March 2006).[^9]

25 June Settlement of investment disputes (II): ICSID. Read:

- Chapter 7, 8, and 20 of Weiler’s book; and

- CMS Gas Transmission Company v. Argentine Republic (ICSID Case No. ARB/01/8), Award (12 May, 2005).[^10]

26 June Review class and discussion of latest trends in ILFI.

[^7]: Available at: [http://www.worldbank.org/icsid/cases/awards.htm#awardARB0415](http://www.worldbank.org/icsid/cases/awards.htm#awardARB0415).


[^9]: Available at: [http://www.investmentclaims.com/oa1.html](http://www.investmentclaims.com/oa1.html).

[^10]: Available at: [http://www.worldbank.org/icsid/cases/awards.htm#awardARB0415](http://www.worldbank.org/icsid/cases/awards.htm#awardARB0415).