



EXECUTIVE COURSE

**INTERNATIONAL
INVESTMENT LAW
AND ARBITRATION**

SEPTEMBER 2021



School of International Arbitration

 Queen Mary
University of London

Centre for Commercial Law Studies

**Centre for Commercial Law Studies
 School of International Arbitration**

**Executive Course in International Investment Law and Arbitration
 Summer 2021**

Syllabus

Course Directors	Dr. Rémy Gerbay Email: r.gerbay@qmul.ac.uk Phone: +1 347 758-0743	Prof. Stavros Brekoulakis Email: s.brekoulakis@qmul.ac.uk
Coordinator	Thomas Lehmann Email: t.g.p.lehmann@qmul.ac.uk Phone: +44 77375 83436	Dr. Mary Mitsi Email: m.mitsi@qmul.ac.uk
Course Content	This 10-week executive education course offers a comprehensive study of international investment law and arbitration. The course examines both the substantive standards and the procedural issues arising in investment arbitrations. The course offers an integrated programme of state-of-the-art research and practice-based knowledge, legal awareness, and directly applicable skills. It is designed primarily for Governmental officials wishing to build their capacity to handle arbitrations involving foreign investors (i.e., government lawyers, representatives from governmental institutions and local authorities, judges, and treaty negotiators). It is also open to academics, and professionals working in international and non-governmental organizations.	
Learning outcomes	After successful completion of the course, the participant will be able to: 1) Understand the legal, economic, political, and historical context of investment treaty arbitration. 2) Comprehend jurisdictional issues arising from an investment claim. 3) Comprehend the relevant substantive standards of protection, and how they apply to investment claims. 4) Understand the different procedural and strategic considerations at play at various stages of investment arbitration, including key defences available to States. 5) Understand the principles governing damages quantification. 6) Understand the basics of enforcement of arbitral awards.	
Forms of Instruction	This course is spread over 10 consecutive weeks. One topic is taught each week. Each week's content is taught through the same 4 tools: - Bespoke lecture notes designed by Queen Mary academics summarizing the key concepts. - Curated readings (journal articles and book chapters from the leading textbooks and scholarly works). - Live lectures (webinars) with highly experienced guest speakers from private practice and Government. - Live interactive tutorials (webinars) lead by Queen Mary academics to discuss the weekly topic.	
Main Course Platform	Bespoke online course platform (QM+) Access to relevant law databases available on QMUL's law library (e.g., Kluwer Arbitration, Oxford Uni. Press, Hein Online, Westlaw, Practical law etc.)	
Assessment	This is a non-degree granting program. No taking of exams is required.	

Weekly Program

Week	Main Subject	Learning outcomes	Core readings	Guest speaker	Dates
-	Introductory seminar	<ul style="list-style-type: none"> • Introduction to the Executive Investment Course with Presentation of each Participant and Course Reader 	-	Dr. Rémy Gerbay Professor Stavros Brekoulakis Thomas Lehmann	03.09.2021
1.	Introduction to the History and Legal Framework of Investment Law	<ul style="list-style-type: none"> • Understand the economic and historical context of investment treaty arbitration • Distinguish between investment treaty arbitration and commercial or interstate arbitration • Understand the factors contributing to the ‘crisis of legitimacy’ in investment treaty arbitration • Understand the significance and scope of arbitration under the ICSID Convention and the ICSID Additional Facility Rules 	<p>Chapter 1: Foreign Investment Disputes in Reisman and others (eds), Foreign Investment Disputes: Cases, Materials and Commentary (Kluwer Law International 2014) 1-20</p> <p>Chapter 2: Treaty Arrangements for Bilateral Investment Disputes in Reisman and others (eds), Foreign Investment Disputes: Cases, Materials and Commentary (Kluwer Law International 2014) 21-47</p>	Benjamin Garel (ICSID)	<p><i>Week commencing 20.09.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>
2.	Jurisdiction (1)	<ul style="list-style-type: none"> • Comprehend the meaning and importance of jurisdiction in the context of ICSID Arbitration • Determine if a party has consented to arbitration under the ICSID Convention • Understand the significance of a party’s consent to ICSID Arbitration 	Christoph Schreuer, ‘Consent to Arbitration’ in Peter Muchlinski, Federico Ortino and Christoph Schreuer (eds), The Oxford Handbook of International Investment Law (OUP 2008) 830-867.	Professor Makane Moïse Mbengue (University of Geneva) & Emilie Gonin (Doughty Street Chambers)	<p><i>Week commencing 27.09.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>

3.	Jurisdiction (2)	<ul style="list-style-type: none"> • Jurisdiction under Article 25 of the ICSID Convention • Understand the three categories of jurisdictional requirements that must be met under the ICSID Convention are consent, jurisdiction <i>ratione personae</i> and jurisdiction <i>ratione materiae</i> • Comprehend the outer limits of the ICSID Convention ('jurisdiction') and the terms of the parties' consent to arbitration ('competence') 	David Williams, 'Jurisdiction and Admissibility' in Peter Muchlinski, Federico Ortino and Christoph Schreuer (eds), <i>The Oxford Handbook of International Investment Law</i> (OUP 2008) pp. 868-905	Epaminontas Triantafilou (Quinn Emmanuel)	<p><i>Week commencing 04.10.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>
4.	Expropriation	<ul style="list-style-type: none"> • Understand the meaning of expropriation (direct, indirect, creeping) under international law • Identify the conditions under which expropriation is lawful • Understand the different factors that must be taken into account to determine if a governmental measure amounts to indirect expropriation • Be aware of the principles governing the payment of compensation in the event of expropriation 	<p>Josefa Sicard-Mirabal and Yves Derains, 'Chapter 5: Expropriation', in <i>Introduction to Investor-State Arbitration</i> (Kluwer Law International 2018) 115 – 132</p> <p>Andrew Newcombe and Lluís Paradell, 'Chapter 7 - Expropriation', in <i>Law and Practice of Investment Treaties: Standards of Treatment</i> (Kluwer Law International 2009) paras 7.36-7.53 (Compensation)</p>	Manish Aggarwal (Three Crowns)	<p><i>Week commencing 11.10.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>
5.	Fair and Equitable Treatment & Full Protection and Security	<ul style="list-style-type: none"> • Identify the investment treaty provisions containing the fair and equitable treatment standard • Understand the relevance of the minimum standard of treatment in 	Nicolas Angelet (2011), ' Fair and Equitable Treatment ' in <i>Max Planck Encyclopedia of Public International Law</i> (OUP 2011)	Professor Maria Chiara Malaguti (Professor at Catholic University of Rome and Of Counsel at Gattai, Minoli, Agostinelli, Partners)	<p><i>Week commencing 18.10.2021</i></p> <p><i>Guest speaker to specify date and</i></p>

		<p>customary international law to the fair and equitable treatment</p> <ul style="list-style-type: none"> Identify the different criteria Tribunals take into account when decided whether there has been a breach of the fair and equitable treatment protection Understand the scope of the full protection and security standard 	<p>Christoph Schreuer, 'Full Protection and Security', Journal of International Dispute Settlement, (2010) 1-17</p>		<p><i>time for 90-minute lecture</i></p>
6.	Umbrella Clauses	<ul style="list-style-type: none"> Understand the meaning and purpose of umbrella clauses Analyse the various issues that arise in the application of umbrella clauses in investment treaty arbitration Comprehend the relationship between treaty claims and contract claims 	<p>Jeswald Salacuse, 'Treatment of State Obligations (the 'Umbrella Clause')' in <i>The Law of Investment Treaties</i> (2nd edn, OUP 2015) 299-312</p>	<p>Dr. Rémy Gerbay (Queen Mary University, CCLS)</p>	<p><i>Week commencing 25.10.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>
7.	National Treatment & Most-Favoured-Nation Treatment	<ul style="list-style-type: none"> Understand the historical origins and meaning of the national treatment (NT) and most-favoured-nation (MFN) treatment standards Identify the different types of investment treaty provisions dealing with these contingent standards of treatment Learn how the NT and MFN standards are applied in investment treaty arbitrations 	<p>Rudolf Dolzer and Christoph Scheuer, 'Standards of Protection' in <i>Principles of International Investment Law</i> (2nd edition, OUP 2012) pages 198-213</p> <p>Zachary Douglas, 'The MFN Clause in Investment Arbitration: Treaty Interpretation Off the Rails', JIDS</p>	<p>Simon Batifort (Curtis, Mallet-Prevost, Colt & Mosle LLP)</p>	<p><i>Week commencing 1.11.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>
8.	State Defences	<ul style="list-style-type: none"> Identify the defences relied on by States in investment treaty 	<p>Wei Wang, 'The Non-Precluded Measure Type Clause in International Investment Agreements:</p>	<p>Christina Hioueras (Foley Hoag)</p>	<p><i>Week commencing 08.11.2021</i></p>

		<p>arbitrations including counterclaims</p> <ul style="list-style-type: none"> • Understand the distinction between State defences based on express exceptions in investment treaties and State defences based on customary international law • Understand the meaning and scope of exceptions and reservations in investment treaties and describe the principal issues that arise in the interpretation of these exceptions • Comprehend the notion of circumstances precluding wrongfulness by the State under customary international law 	<p>Significances, Challenges, and Reactions’, ICSID Review - Foreign Investment Law Journal, Volume 32, Issue 2, 1 May 2017, 447–456</p> <p>Josefa Sicard-Mirabal and Yves Derains, 'Chapter 7: General Defenses on the Merits', in <i>Introduction to Investor-State Arbitration</i>, (Kluwer Law International 2018) 161 – 170</p>		<p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>
9.	Quantification, Assessment & Damages	<ul style="list-style-type: none"> • Comprehend the principal sources of law on the consequences of investment treaty violations • Understand the forms of reparation in international law and their application to investment treaty arbitration • Review the principal rules governing the award of interest and the allocation of costs • Analyse the techniques of valuation used by investment treaty tribunals to determine the quantum of compensation 	<p>Mark Friedman and Floriane Lavaud (2018), 'Damages Principles in Investment Arbitration', in <i>The Guide to Damages in International Arbitration - Second Edition</i> (Law Business Research Ltd 2018) 93-110</p> <p>Manuel Conthe (2017), 'Damnum emergens, lucrum cessans and moral damages - How to avoid double counting?', ICC Institute Advanced Level Training, Assessment of Damages by Arbitrators, 15th ICC Miami Conference (5 November 2017)</p>	<p>Ermelinda Beqiraj & Ian Clemmence (PwC)</p>	<p><i>Week commencing 15.11.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>

10.	Enforcement and State Immunity	<ul style="list-style-type: none"> • Understand the difference between the recognition and the enforcement or execution of arbitral awards in the context of investment treaty arbitration • Comprehend the process of recognition and enforcement of awards under the ICSID Convention and outside the framework of the ICSID Convention • Analyse the defence of State immunity from execution as it applies to the enforcement of arbitral awards 	<p>Lucy Reed and others (2010), 'Chapter 6: Recognition, Enforcement and Execution of ICSID Awards', in <i>Guide to ICSID Arbitration</i>, (Kluwer Law International 2010) 179 – 190</p>	<p>Ali Malek QC, Christopher Harris QC, Cameron Miles (3vB)</p>	<p><i>Week commencing 22.11.2021</i></p> <p><i>Guest speaker to specify date and time for 90-minute lecture</i></p>
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Further Reading

Week 1 – Introduction

- Chapter 1 – Historical Development of Investment Treaty Law in Andrew Newcombe and Lluís Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* (Kluwer Law International 2009) 1-74
- Collier JG and Lowe AV, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford University Press 1999) Chapters 1 (pp 1-16) and 3 (pp 19-44)

Additional resources:

1. Note by Aron Broches to the General Counsel transmitted to the Executive Directors: ‘Settlement of Disputes between Governments and Private Parties’, SecM 61-192 (28 August 1961) 1, ICSID, History, vol 2, part 1
2. JW Salacuse, *The Law of Investment Treaties* (2nd edn, OUP 2015), 392-435
3. Vandeveld, K., ‘A Brief History of International Investment Agreements’ in Sauvants and others (eds), *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows* (OUP 2009)

Week 2 – Jurisdiction (1)

- UNCTAD, ‘Course On Dispute Settlement - Module 2.3. ICSID: Consent to Arbitration’, 10 March 2003 http://unctad.org/en/Docs/edmmisc232add2_en.pdf
- Jan Paulsson, ‘Arbitration Without Privity’ (1995) 10 ICSID Rev–FILJ 232

Additional resources:

1. ICSID Model Clauses, Doc ICSID/5/Rev.2 of 1993, reproduced in 4 ICSID Reports 357 <<http://www.worldbank.org/icsid/model-clauses-en/main.htm>> accessed 6 September 2018]
2. Christoph Schreuer and others, ‘Jurisdiction’ in *The ICSID Convention: A Commentary* (Cambridge University Press 2009)
3. Christoph Schreuer and others, ‘Exclusive Remedy’ in *The ICSID Convention: A Commentary* (Cambridge University Press 2009)
4. Christoph Schreuer, ‘Belated Jurisdictional Objections in ICSID Arbitration’ TDM 1 (2010) <www.transnational-dispute-management.com/article.asp?key=1533> accessed 25 September 2018

5. Andrew Newcombe, 'The Question of Admissibility of Claims in Investment Treaty Arbitration', <<http://arbitrationblog.kluwerarbitration.com/2010/02/03/the-question-of-admissibility-of-claims-in-investment-treaty-arbitration/>> accessed 10 October 2018
6. Gerold Zeiler, 'Jurisdiction, Competence and Admissibility of Claims in ICSID Arbitration' in Binder and others (eds), *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (OUP 2009)
7. Michael Waibel, 'Investment Arbitration: Jurisdiction and Admissibility', University of Cambridge Faculty of Law Research Paper No. 9/2014 (31 January 2014), <<https://ssrn.com/abstract=2391789>> accessed 25 September 2018
8. Hanno Wehland, 'Jurisdiction and Admissibility in Proceedings under the ICSID Convention and the ICSID Additional Facility Rules' <https://www.lenzstaehelin.com/uploads/tx_netvlsldb/Hanno_Wehland_Jurisdiction_and_Admissibility.pdf> accessed 10 September 2018
9. Jan Paulsson, 'Jurisdiction and Admissibility', in Gerald Aksen and Robert Briner (eds), *Global Reflections on International Law, Commerce and Dispute Resolution* (ICC Publishing 2005) 611
10. For a novel approach to the distinction between jurisdiction and admissibility see Michael Hwang and Si Cheng Lim, 'Chapter 16: The Chimera of Admissibility in International Arbitration', in Neil Kaplan and Michael J. Moser (eds), *Jurisdiction, Admissibility and Choice of Law in International Arbitration: Liber Amicorum Michael Pryles*, (Kluwer Law International 2018) 265 – 288
11. Christoph Schreuer, 'Travelling the BIT Route: Of Waiting Periods, Umbrella Clauses and Forks in the Road', 5 *The Journal of World Investment & Trade* 231 (2004)
12. Douglas Z, 'Consent to the Arbitration of Investment Disputes' in *The International Law of Investment Claims* (Cambridge University Press 2009)

Week 3 – Jurisdiction (2)

- 'Investors and Investments' in Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (OUP 2012) pp. 44-77

Additional resources

1. Christoph Schreuer and others, 'Jurisdiction', in *The ICSID Convention: A Commentary* (Cambridge University Press 2009)
2. Campbell McLachlan and others, '[Investment](#)' in *International Investment Arbitration: Substantive Principles* (OUP 2017)
3. Christoph Schreuer (2009), '[What is a Legal Dispute?](#)', accessed 31 October 2018
4. Noah Rubins, '[The Notion of "Investment" in International Investment Arbitration](#)' in Norbert Horn and Stephen Kröll (eds), *Arbitrating Foreign Investment Disputes: Procedural and Substantive Legal Aspects*, Studies in Transnational Economic Law, Volume 19 (Kluwer Law International, 2004)
5. '[Chapter 3: The Protection of Arbitral Awards in the Global Context of Investment Treaty Interpretation](#)', in Maximilian Clasmeier, *Arbitral Awards as Investments: Treaty Interpretation and the Dynamics of International Investment Law*, International Arbitration Law Library, Volume 39 (Kluwer Law International 2016)

Week 4 – Expropriation

- L. Yves Fortier, '[Caveat Investor: The Meaning of “Expropriation” and the Protection Afforded Investors under NAFTA](#)', (2003) 20(1) News from ICSID, 1
- LY Fortier and SL Drymer, '[Indirect Expropriation in the Law of International Investment: I Know it When I See it, or Caveat Investor](#)' (2004) 19 ICSID Rev-FILJ 293

Additional resources

1. Campbell McLachlan and others, '[Expropriation](#)' in *International Investment Arbitration: Substantive Principles* (2nd edition, OUP 2017)
2. Ursula Kriebaum, '[Partial expropriation](#)' in *The Journal of World Investment and Trade* 8(1) 69–84
3. UNCTAD (2012), '[Expropriation : A Sequel](#)', UNCTAD/DIAE/IA/2011/7, UNCTAD Series on International Investment Agreements II (United Nations 2012) 78 – 94 Borzu Sabahi, '[Compensation](#)' in *Compensation and Restitution in Investor-State Arbitration: Principles and Practice* (OUP 2011) 91-133
4. Rudolf Dolzer, '[Indirect Expropriations: New Developments?](#)', 11 N.Y.U. Env'tl L.J. 64 (2002)

Week 5 – Fair and Equitable Treatment and Full Protection and Security

- Camp Campbell McLachlan and others (2011), '[Treatment of Investors](#)' in *International Investment Arbitration: Substantive Principles* (2nd edition, OUP 2017) paras 7.01 – 7.98
- Andrew Newcombe and Lluís Paradell (2009), '[Chapter 6 – Minimum Standards of Treatment](#)', in *Law and Practice of Investment Treaties: Standards of Treatment* (Kluwer Law International 2009), paras 6.3-6.11

Additional resources:

1. UNCTAD (2012), '[Fair and Equitable Treatment : A Sequel](#)', UNCTAD/DIAE/IA/2011/5, UNCTAD Series on International Investment Agreements II (United Nations 2012)
2. OECD (2004), '[Fair and Equitable Treatment Standard in International Investment Law](#)', OECD Working Papers on International Investment (2004/03)
3. Patrick Dumberry (2017), '[Shopping for a better deal: the use of MFN clauses to get “better” fair and equitable treatment protection](#)', *Arbitration International*, Volume 33, Issue 1, March 2017, 1–16
4. Hussein Haeri (2011), '[A Tale of Two Standards: “Fair and Equitable Treatment” and the Minimum Standard in International Law: The Gillis Wetter Prize](#)', *Arbitration International*, Volume 27, Issue 1, 1 March 2011, 27–46
5. J. C. Thomas (2002), '[Reflections on Article 1105 of NAFTA: History, State Practice and the Influence of Commentators](#)', *ICSID Review - Foreign Investment Law Journal*, Volume 17, Issue 1, Spring 2002, 21–101

6. Scott Vesel (2014), '[A 'Creeping' Violation of the Fair and Equitable Treatment Standard?](#)', *Arbitration International*, Volume 30, Issue 3, 1 September 2014, 553–564
7. Michele Potesta, '[Legitimate Expectations in Investment Treaty Law: Understanding the Roots and Limits of a Controversial Concept](#)' (2013) 28 *ICSID Rev–FILJ* 88
8. Nartnirun Junngam (2018), '[The Full Protection and Security Standard in International Investment Law: What and Who Is Investment Fully \[?\] Protected and Secured From?](#)', in *American University Business Law Review*, Vol. 7, No. 1, 1
9. George Foster (2012), '[Recovering "Protection and Security": The Treaty Standard's Obscure Origins, Forgotten Meaning, and Key Current Significance](#)' in *Vanderbilt Journal of Transnational Law*, Vol. 45, 1095
10. Mahnaz Malik (2011), '[The Full Protection and Security Standard Comes of Age: Yet another challenge for states in investment treaty arbitration?](#)' IISD Best Practices Series, November 2011
11. Stephen Vasciannie, '[The Fair and Equitable Treatment Standard in International Investment Law and Practice](#)' (1999) 70 *BYIL* 100
12. Carlo Focarelli, '[Denial of Justice](#)' in *Max Planck Encyclopedia of Public International Law* (OUP 2013)

Week 6 – Umbrella Clauses

- James Crawford (2008), '[Treaty and Contract in Investment Arbitration](#)', *Arbitration International*, Volume 24, Issue 3, 1 September 2008, 351–374

Additional resources

1. Taida Begic Sarkinovic (2012), '[Umbrella Clauses and Their Policy Implications](#)', *Hague Yearbook of International Law* (Vol. 24, 2011)
2. Anthony Sinclair, '[The Origins of the Umbrella Clause in the International Law of Investment Protection](#)', *Arbitration International*, Volume 20, Issue 4, 1 December 2004, 411–434
3. Thomas Wälde, '[The "Umbrella" \(or Sanctity of Contract/Pacta sunt Servanda\) Clause in Investment Arbitration: : A Comment on Original Intentions and Recent Cases](#)', (2004) *TDM* 4
4. Raul Pereira de Souza Fleury (2017), '[Closing the umbrella: a dark future for umbrella clauses?](#)', *Kluwer Arbitration Blog* (13 October 2017)
5. Monique Sasson (2017) '[Chapter 6: Treaty Versus Contract Claims, and Umbrella Clauses: When a Contract Breach May Become a Treaty Breach](#)', in *Substantive Law in Investment Treaty Arbitration: The Unsettled Relationship between International Law and Municipal Law*, International Arbitration Law Library, Volume 21 (2nd edn, Kluwer Law International 2017) 199-242
6. Jarrod Wong (2008), '[Umbrella Clauses in Bilateral Investment Treaties: Of Breaches of Contract, Treaty Violations, and the Divide between Developing and Developed Countries in Foreign Investment Disputes](#)', *George Mason Law Review*, Vol. 14, 2006.
7. John P Gaffney and James L Loftis (2008), '[The Effective Ordinary Meaning of BITs and the Jurisdiction of Treaty-Based Tribunals to Hear Contract Claims](#)' (2007) 8(1) *J World Investment & Trade* 5

8. Stephan W. Schill (2008), '[Enabling Private Ordering - Function, Scope and Effect of Umbrella Clauses in International Investment Treaties](#)', IILJ Working Paper 2008/9
9. Elnur Kərimov, '[Umbrella Clauses Within Energy Charter Treaty](#)', Baku State University Law Review, Volume 4:1, 79-92

Week 7 – National Treatment and Most-Favoured-Nation Treatment

- Jarrod Wong (2008), '[The Application of Most-Favored-Nation Clauses to Dispute Resolution Provisions in Bilateral Investment Treaties](#)', Asian Journal of WTO & International Health Law and Policy, Vol. 3, No. 1, pp. 171-198
- <https://www.iisd.org/sites/default/files/publications/mfn-most-favoured-nation-clause-best-practices-en.pdf>

Additional resources:

1. UNCTAD (2004), '[International Investment Agreements: Key Issues, Volume I](#)', UNCTAD/ITE/IIT/2004/10 (Vol.I)
2. UNCTAD (2010), '[Most-Favored-Nation Treatment A Sequel](#)', UNCTAD Series on Issues in International Investment Agreements II, UNCTAD/DIAE/IA/2010/1 (United Nations 2010) 21-33
3. International Law Commission (2015), '[Study Group on the Most-Favoured Nation clause: Final Report](#)' UN Doc A/CN.4/L.852
4. UNCTAD (1999), '[National Treatment](#)', UNCTAD/ITE/IIT/11 (Vol. IV), UNCTAD Series on Issues in International Investment Agreements, (United Nations 1999)
5. OECD (2004), '[Most-Favoured-Nation Treatment in International Investment Law](#)', OECD Working Papers on International Investment, 2004/02, OECD Publishing.
6. Robin Geiß and Meinhard Hilf (2014), '[Most-Favoured-Nation Clause](#)' in *Max Planck Encyclopedia of Public International Law* (OUP 2014)
7. Raúl Emilio Vinuesa (2011), '[National Treatment, Principle](#)', in *Max Planck Encyclopedia of Public International Law* (OUP 2011)

Week 8 – State Defenses

- Federica Paddeu (2014), 'Circumstances Precluding Wrongfulness', in *Max Planck Encyclopedia of Public International Law* (OUP 2014)
- International Law Commission (2001), '[Chapter V : Circumstances Precluding Wrongfulness](#)' in *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (United Nations, A/56/10)
- Andrew Newcombe and Lluís Paradell, '[Chapter 10 – Defences](#)', in *Law and Practice of Investment Treaties: Standards of Treatment* (Kluwer Law International 2009) 481 – 528

Additional resources

1. Mary Mitsi, *The decision-making process of Investor-State Arbitration Tribunals* (Kluwer Law International 2019).
2. James Crawford, '[Historical Development](#)' in *State Responsibility* (Cambridge University Press 2013) 3 – 44.
3. Borzu Sabah, '[A Concise History of the Law of State Responsibility and Reparation in International Law](#)' in *Compensation and Restitution in Investor-State Arbitration* (OUP 2011) 7 – 42
4. Monique Sasson, '[Chapter 10: The Applicable Law and the ICSID Convention](#)', in Crina Baltag (ed.), *ICSID Convention after 50 Years: Unsettled Issues*, (Kluwer Law International 2016) 273 – 300
5. William Burke-White and Andreas von Staden. "[Investment Protection in Extraordinary Times: The Interpretation and Application of Non-Precluded Measures Provisions in Bilateral Investment Treaties](#)." *Virginia Journal of International Law* 48 (2008): 307–410.
6. Glyn Ayres and Andrew Mitchell, '[General and Security Exceptions under the GATT and GATS](#)' in Indira Carr, Jahid Bhuiyan & Shawkat Alam (eds), *International Trade Law and WTO* (Federation Press, 2012)
7. World Trade Organisation, '[Exceptions to WTO Rules: General Exceptions, Security Exceptions, Regional Trade Agreements \(RTAs\), Balance of Payments \(BOPs\) & Waivers](#)', WTO-M8-R1-E
8. Iryna Bogdanova, '[The WTO Panel Ruling on the National Security Exception: Has the Panel 'Cut' the Baby in Half?](#)' (last accessed 20 April 2019)
9. UNCTAD, *Taxation*, UNCTAD Series on issues in international investment agreements, UNCTAD/ITE/IIT/16 (United Nations, 2000) at 33-65 (last accessed 12 March 2019)
10. Andrea K. Bjorklund, '[Emergency Exceptions: State of Necessity and Force Majeure](#)' in Peter Muchlinski and others (eds), *The Oxford Handbook of International Investment Law* (OUP 2008) 459-520
11. Investor-State Law Guide, '[Necessity \(at customary international law\) and treaty provisions providing exceptions for essential security interests](#)' (last accessed 12 March 2019)
12. Antoine Martin, '[Investment Disputes after Argentina's Economic Crisis: Interpreting BIT Non-precluded Measures and the Doctrine of Necessity under Customary International Law](#)', (2012) 29J.Int.Arb. 1
13. Alexis Martinez (2010), '[Invoking State Defenses in Investment Treaty Arbitration](#)', in Michael Waibel and others (eds), *The Backlash against Investment Arbitration*, (Kluwer Law International)
14. Amit Kumar Sinha, '[Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries](#)' (2017) 7 Asian Journal of International Law 227
15. Lowe, Vaughan. '[Precluding Wrongfulness or Responsibility: A Plea for Excuses](#)', *European Journal of International Law* 10.2 (1999): 405–411.
16. August Reinisch (2010), '[Necessity in Investment Arbitration](#)' in F. Dekker and E. Hey (eds.), *Netherlands Yearbook of International Law*, Volume 41
17. Hege Elisabeth Kjos, '[The Scope of the Arbitration Agreement: Claims and Counterclaims of a National and/or International Nature](#)' in *Applicable Law in Investor-State Arbitration: The Interplay Between National and International Law* (OUP 2013) 105-155

Week 9 – Quantification, Assessment & Damages

- UNCTAD (2012), '[Expropriation: A Sequel](#)', UNCTAD/DIAE/IA/2011/7, UNCTAD Series on International Investment Agreements II (United Nations 2012) 40 – 51

Additional resources

1. Christoph Schreuer (2004), '[Non-Pecuniary Remedies in ICSID Arbitration](#)' (2004) 20(4) Arb Int'l 325
2. Christoph Schreuer (2016), '[Alternative Remedies in International Arbitration](#)', in 3 *Journal of Damages in International Arbitration* 1 (2016)
3. Borzu Sabahi (2011), '[Restitution](#)' in *Compensation and Restitution in Investor-State Arbitration: Principles and Practice* (OUP 2011)
4. Patrick Dumberry and Sebastien Cusson (2014), '[Wrong Direction: 'Exceptional Circumstances' and Moral Damages in International Investment Arbitration](#)', 1(2) *Journal of Damages in International Arbitration*
5. Campbell McLachlan and others, *International Investment Arbitration: Substantive Principles* (2nd edition, OUP 2017)
6. Sergey Ripinsky, '[Assessing Damages in Investment Disputes: Practice in Search of Perfect](#)' (2009) 10 *J World Investment & Trade* 5
7. Guiguo Wang, '[Issues of Compensation for Non-Expropriatory Breaches in International Investment Law](#)', 11 *Manchester J. Int'l Econ. L.* 156 (2014)
8. Chen Feng (2016), '[Compensation for Non-Expropriatory Breaches](#) (Ph.D. thesis) (City University of Hong Kong 2016)
9. James Chen, '[Discounted Cash Flow \(DCF\)](#)' (last accessed 24 June 2019)
10. Stephan Wittich (2008), '[Compensation](#)' in *Max Planck Encyclopedia of Public International Law* (OUP 2008)
11. Attila Tanzi (2013), '[Restitution](#)' in *Max Planck Encyclopedia of Public International Law* (OUP 2013)
12. Cristina Hoss (2011), '[Satisfaction](#)' in *Max Planck Encyclopedia of Public International Law* (OUP 2011)
13. World Bank, '[Report to the Development Committee and Guidelines on the Treatment of Foreign Direct Investment](#)' (1992) 31 ILM 1366

Week 10 – Enforcement and State Immunity

- Jan Kleinheisterkamp (2008), '[Recognition and Enforcement of Foreign Arbitral Awards](#)' in *Max Planck Encyclopedia of Public International Law* (Oxford University Press)
- Peter-Tobias Stoll (2011), '[State Immunity](#)' in *Max Planck Encyclopedia of Public International Law* (Oxford University Press)
- ICCA (2011), '[Request for the Recognition and Enforcement of an Arbitral Award](#)', in *ICCA's Guide to the Interpretation of the 1958 New York Convention: A Handbook for Judges*, (International Council for Commercial Arbitration 2011) 68 - 111

Additional resources:

1. '[Chapter 5 : A Review of the Sources: Treaties and Projects for Codification](#)' in Hazel Fox and Philippa Webb (2015), *The Law of State Immunity* (Oxford University Press) 101]

2. [‘Chapter 16 : State Immunity from Enforcement: General Aspects’](#) in Hazel Fox and Philippa Webb (2015), *The Law of State Immunity* (Oxford University Press) at p. 106
3. Xiaodong Yang, [‘The History of State Immunity’](#), in *State Immunity in International Law* (Cambridge University Press 2012)
4. Xavier Nyssen and Emile Hu (2017), [‘State immunity and arbitration in France’](#), (Lexis PSL Arbitration 2017) (last accessed 15 February 2019)
5. For a detailed analysis of the *travaux préparatoires* of Articles 53, 54 and 55 of the ICSID Convention, please see : Aron Broches (1987), [‘Awards Rendered Pursuant to the ICSID Convention: Binding Force, Finality, Recognition, Enforcement, Execution’](#), ICSID Review – F.I.L.J., Volume 2, Issue 2, 287–334
6. Georges Delaume (1983), [‘Arbitration with Governments: Domestic v International Awards’](#), 17 *The International Lawyer* 687
7. Aron Broches (1993), [‘Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 Explanatory Notes and Survey of its Application’](#), in Albert Jan van den Berg (ed), *Yearbook Commercial Arbitration 1993 - Volume 18* (Kluwer Law International 1993) 627 – 715
8. ICSID (2018), [‘Designations of Courts or Other Authorities Competent for the Recognition and Enforcement of Awards Rendered Pursuant to the Convention’](#) ICSID/8-E (last accessed 5 February 2019)
9. Franz Matscher (1999), [‘Experience with Bilateral Treaties’](#), in Albert Jan van den Berg (ed), *Improving the Efficiency of Arbitration Agreements and Awards: 40 Years of Application of the New York Convention*, ICCA Congress Series, Volume 9 (Kluwer Law International 1999) 452 – 460
10. Marzorati OJ (2006), [‘Enforcement of Treaty Awards and National Constitutions \(the Argentinean Cases\)’](#) 7(2) *Bus L Int'l* 226
11. Practical Law (2019), [‘State Immunity and arbitration’](#)
12. F. M. Maniruzzaman (2017), [‘Sovereign Immunity and the Enforcement of Arbitral Awards Against State Entities : Recent Trends and Practice’](#) in *ICDR Handbook on International Arbitration Practice* (2nd edn, JurisNet, LLC 2017) 379 -395
13. Nicolás Gamboa-Morales (2010), [‘Remarks on the Sovereign Immunity from Execution and Its Interpretation By Some Systems and Their Courts’](#), in Miguel Angel Fernandez-Ballester and David Arias (eds), *Liber Amicorum Bernardo Cremades*, (Wolters Kluwer España 2010) 471 - 493
14. Hazel Fox and Philippa Webb (2015), [‘The Law of State Immunity’](#) (Oxford University Press)
15. Muthucumaraswamy Sornarajah (2000), [‘Chapter 9 – The Award and its Enforcement’](#) in *The Settlement of Foreign Investment Disputes* (Kluwer Law International)
16. Samarth Sagar (2014), [‘Waiver of Sovereign Immunity’ Clauses in Contracts: An Examination of their Legal Standing and Practical Value in Enforcement of International Arbitral Awards’](#), *Journal of International Arbitration*, Volume 31 Issue 5 (Kluwer Law International 2014, Volume 31 Issue 5) 609 – 650
17. Gillis Wetter (1985), [‘Pleas of Sovereign Immunity and Act of Sovereignty before International Arbitral Tribunals’](#), *Journal of International Arbitration*, Volume 2 Issue 1 (Kluwer Law International 1985, Volume 2 Issue 1) 7 – 20