PROTECTION OF FOREIGN INVESTORS AND INVESTMENT UNDER INTERNATIONAL LAW

ONE CREDIT/CERTIFICATE COURSE

OFFERED BY NATIONAL LAW UNIVERSITY ODISHA(NLUO) CENTER FOR INTERNATIONAL TRADE LAW (CITL)

COURSE TEACHER- SHEELA RAI
PROFESSOR OF LAW, NLUO

INTRODUCTION

Foreign investment is necessary for the sustenance and development of the national economy in the globalized world. Foreign investors expect more protection than that given to national investors as their risk is higher. International Investment Law is shaped for the protection of foreign investors. Since the middle of the 20th century, the issue of the clash between the interests of foreign investors and the regulatory powers of the sovereign states has been the focal point of international investment law. Compelled by the need for foreign investment, States have signed a growing number of BITs, conceding a number of protections to foreign investors. However, with the new Indian model BIT, it seems that sovereign States are not yet ready to concede the sovereign space and national interest in the name of investor protection. Hence, International Investment Law, as revealed through history and tribunal decisions, is a tussle between the legitimate regulatory powers of sovereign states and the interests of foreign investors.

Arbitration practice in international investment law has gained considerable importance. The course will be beneficial for the law students and young lawyers who are planning career in international investment arbitration. It will introduce the students to the subject and provide a basic understanding of the issues and legal norms involved.

COURSE OBJECTIVES:

1. To make the students aware of the issues relating to the position and rights of foreign investors under international law.
2. To sensitize the students about the conflict between the economic interest of investor and public interest in the host state.
3. To make the students aware of the struggle between the developed and developing countries in the development of international law for the protection of foreign investors.

COURSE OUTCOMES:

1. The students will be able to analyse the provisions of an International Investment Agreement.
2. The students can recognize the conflicting values and suggest ways to bring a balance between the conflicting values.
3. The students can recognize the power-play in the international investment regime and can suggest measures to remedy the same.

MODULE 1: GENERAL INTRODUCTION

Introduction to the international law for protection of foreign investors

MODULE 2: MEANING OF INVESTMENT AND FOREIGN INVESTOR

- Foreign Direct and portfolio investment.
- Meaning of investment under ICSID.
- Meaning of Investor: Whether Shareholder investor?
- Determination of nationality of foreign investor: Natural Persons and Corporations.
- Nationality Planning and Treaty Shopping

Cases: Fedax v Venezuela; Salini v Morocco; Joy Mining v Egypt; MHS v Malaysia and its Annulment Decision; Biwater Gauff v Tanzania, Genin v Estonia, CMS v Argentina; Champion Trading v Egypt, Feldman v Mexico, Nottebohm case1

MODULE 3: EXPROPRIATION AND COMPENSATION

- History-Hull formula vs. Calvo doctrine
- General Assembly resolutions.
- Direct, Indirect and creeping expropriation.
- Determination of Compensation.

Cases: Wena Hotels v Egypt, Feldman v Mexico; Waste Management v Mexico; Pope & Talbot v Canada; Metalclad v Mexico; Tecmed v. Mexico; Oscar Chinn case; Charzow Factory case.

MODULE 4: PRINCIPLES OF NON-DISCRIMINATION

- National Treatment: Like situation, necessity of intention to discriminate, support to domestic industry as discrimination
- Most Favoured Nation (MFN) Treatment: Jurisdiction of international tribunal on the basis of MFN clause, Substantive protection of MFN clause

Cases: Occidental v Canada; Feldman v Mexico; SD Myers v Canada; Maffezini v Spain; Salini v Jordan; Plama v Bulgaria; White Industries v Republic of India

MODULE 5: OTHER PROTECTIONS TO FOREIGN INVESTORS

- Full protection and security.
- Umbrella Clause.
- Transfer of money.
- Denial of justice.
- Fair and Equitable treatment
- Investment Facilitation

  Cases: CME v Czech Republic; SGS v Pakistan; SGS v The Philippines; El Paso v Argentina; Metalclad v Mexico; SGS v Paraguay; Waste Management v Mexico, AAP v. Srilanka, Neer Case (US v. Maxico), ELSI Case (US v. Italy).

Module 6: Defences Available with the Host State Against the Claims of Foreign Investor

- Force Majeure
- Necessity
- National Security

Cases: AAP v. Srilanka, Davos v. Republic of India, CMS V. Argentina, LG&E v. Argentina, Devas v. Republic of India

MODULE 7: ADJUDICATION OF DISPUTES

- State vs. State dispute: diplomatic protection.
- Investor vs. State dispute: UNCITRAL and ICSID.

RECOMMENDED BOOKS

1. Dolzer, Rudolf and C. Schreuer (2012). *Principles of International Investment Law* (Oxford University Press: Oxford: 2nd edition),
2. M Sornarajah (2004). *The International Law on Foreign Investment* (Cambridge University Press: 2nd edition: Cambridge).
3. Report No. 260 of Law Commission of India titled “Analysis of the 2015 Draft Model Indian Bilateral Investment Treaty”, August 2015.
4. Prabhash Ranjan, India and Bilateral Investment Treaties (OUP, 2019)
5. Sheela Rai, “More than Investment Facilitation” *International Trade Law Regulation* Issue 3, 2022: 143-152.

WEB SOURCES

1. https://icsid.worldbank.org/apps/ICSIDWEB/Pages/default.aspx
2. http://unctad.org/en/Pages/DIAE/Transnational-corporations-(TNC).aspx
3. https://www.italaw.com/

Lecture No.	Topic	Readings
Lecture 1	Module 1	M Sornarajah, *The International Law on Foreign Investment*

Lecture 2	Meaning of investment	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 3	Determination of Nationality of investor (natural persons)	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 4	Determination of nationality of investors (corporate persons) and nationality planning	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 5	Shareholders as investors – customary international law and treaty law	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 6	Expropriation	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 7	Expropriation	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 8	MFN	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 9	National Treatment	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 10	Protection against arbitrariness and denial of justice and other protection	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 11	Fair and equitable treatment and Investment Facilitation	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 12	Umbrella Clause	Dolzer, Rudolf and C. Schreuer, *Principles of*

		International Investment Law
Lecture 13	Defences available to the host State	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*
Lecture 14	Compensation	M Sornarajah, *The International Law on Foreign Investment*
Lecture 15	Dispute Settlement	Dolzer, Rudolf and C. Schreuer, *Principles of International Investment Law*

COURSE -REQUIREMENTS

Attendance: 75%
Evaluation: Examination at the end of the course for 50 Marks
Exam Timing: 2 Hours

Mode of Teaching- Online through google meet.

Duration of the Course: The course will be conducted from January 2 to January 13, 2025 Monday to Friday 7 pm to 9 pm

Examination will be on January 22, 2025 in online mode.

Declaration of Results- February 3, 2025

Issue of Certificates- By February 17, 2025

Registration Fee- Rs. 1000/- (See payment guidelines for online payment) https://docs.google.com/document/d/1GnXmGdC-ARKtaBGllZtq1d4eX8xLgCbWiysfbQmx_ZM/edit?usp=sharing

Google Form for Registration: https://docs.google.com/forms/d/162IGW2DoBU3EloJ-eeydPHvppSe6KtIlSdfy5XhfMAg/edit

Last Date for Registration: December 30, 2024

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ABOUT NATIONAL LAW UNIVERSITY ODISHA

The National Law University Odisha (NLUO) has made a place for itself in the field of legal education in a very short time. It is ranked among the top 10 under the 'Top 10 Law Colleges' category in India Today's Best Colleges Ranking of 2022, being at no. 9. This category is for the highest-scoring colleges among those set up in or after 2000. NIRF Ranking for 2022 ranked the National Law University Odisha at twenty-fifth rank amongst all categories of law colleges of the country and Tenth among NLUs. University's faculty research output has always been of a very high standard. Faculty publications in several top-tier international publications bespeak their subject expertise and scholarship.

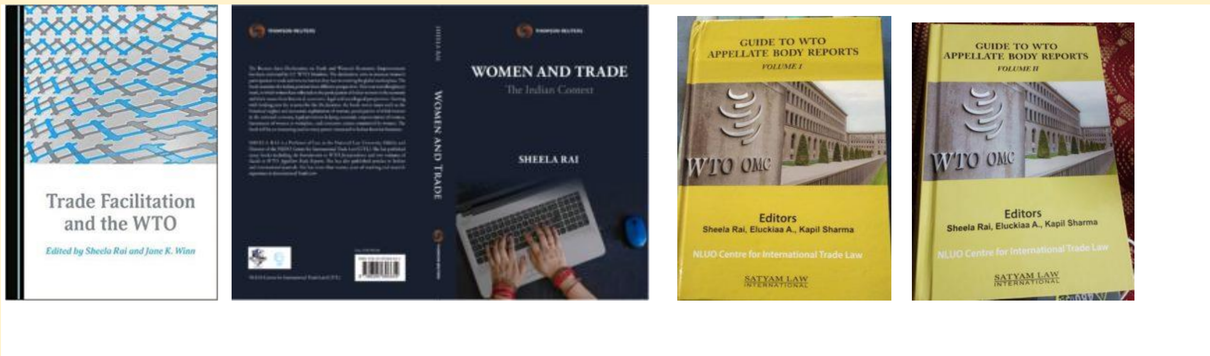
ABOUT NLUO CENTER FOR INTERNATIONAL TRADE LAW (CITL)

The Centre for International Trade Law is a research centre of the National Law University Odisha, established in 2015. The Centre is geared primarily towards research. The Centre strives to produce high-quality and cutting-edge research in the field of International Trade Law and International Investment Law. The Centre is regularly publishing books on issues relating to WTO and international trade. It is in the process of publishing an edited version of all the WTO Appellate Body decisions. Two volumes are already published. This work is unique and a valuable addition to the literature on WTO jurisprudence. Find about more about CITL https://nluo.ac.in/centre/centre-for-international-trade-law/.

UPCOMING INTERNATIONAL CONFERENCE

CITL is hosting an international conference on "Role of International Trade in Global Energy Transition" on 20-21 September 2025. Find out more about the conference on https://nluo.ac.in/international-conference-on-role-of-international-trade-in-global-energy-transition-september-20-21-2025/

CITL Publications



ABOUT THE RESOURCE PERSON

The Course is offered by Prof. Sheela Rai. Sheela Rai is Professor of Law at the National Law University Odisha. She teaches International Trade Law and International Investment Law. She has published four books- *An Introduction to WTO Jurisprudece (*Thomson Reuters South Asia Pvt. Ltd. 2022), *Antidumping Measures: Policy, Law and Practice in India* (Partridge: A Penguin Random House Company, 2014), *Recognition and Regulation of Safeguard Measures under GATT/WTO* (London & New York: Routledge, 2011), *Recognition and Regulation of Antidumping Measures under GATT/WTO* (Lucknow : Eastern Book Company, 2004). In addition to the above she has published edited volumes- *Trade Facilitation and the WTO* (Co-edited with Prof. Jane K. Winn of Washington Law School) (Cambridge Scholars Press, 2019), *Women and Trade: The Indian Context* (Thomson Retuers, 2024), *Guide to WTO Appellate Body Reports Volumes 1 and 2 (Satyam International, 2021 & 2023).* She has also published articles in Indian and international journals. She has more than 20 years of teaching and research experience in International Trade Law.