Georgetown University Law Center
ICSID Arbitration: Jurisdiction and Core Procedural Aspects
Spring 2016
Mondays, 9:00 am to 11:00 am
Room: McDonough 411
(Revised January 24, 2016)

I. Credits: 2

II. General Class Description: The International Centre for Settlement of Investment Disputes, ICSID, is one of the five organizations of the World Bank Group and the arbitral institution most commonly used for the resolution of international investment disputes. ICSID case law has played a major role in the development of modern international investment law.

This course will provide students with a practical understanding of an ICSID arbitration proceeding from the moment of the submission of a request for arbitration through the issuance of the award and post-award remedies.

After a short introduction on the creation of ICSID and its development, students will receive a basic overview of the modern investment treaty regime and its substantive standards of protection. The course will then focus primarily on the jurisdictional thresholds that are at the heart of an ICSID arbitration, including the existence of a dispute arising out of an “investment”, nationality requirements, and consent to arbitration under the ICSID Convention. Special procedures, including summary dismissal of the claim under ICSID Arbitration Rule 41(5), provisional measures, intervention of non-disputing parties, such as NGO’s or multilateral organizations in the proceedings, transparency requirements and post-award remedies will also be addressed.

The course will be taught by current ICSID Counsel, and will benefit from other guest lectures, including ICSID’s Secretary General.

III. Textbook: No textbook or casebook is required for this course.

IV. Pre-requisites:
- International Law I
- Introduction to International Commercial Arbitration
- International Arbitration

V. Recommended Courses:
- Advanced Topics in International Investment Arbitration (Fall 2015)
- Investor-State Dispute Resolution Seminar
- Investment Treaty Arbitration, Public International Law, and Landmark Judgments of the ICJ
VI. **Course Requirements:**
- Complete reading assignments.
- Class participation. Be prepared to present or answer questions on the reading assignments when called by the professor.
- Take final exam.

VII. **Evaluation:** In-class exam.

VIII. **Grading:**
- Exam: 60%
- In-class participation: 20%
- Moot: 20%

IX. **Course Outline:**

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<tr>
<th>Date</th>
<th>Topic</th>
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<tbody>
<tr>
<td>1. February 1, 2016</td>
<td>Introduction: The Investor-State Dispute Settlement System (“ISDS”) and the International Centre for Settlement of Investment Disputes (“ICSID”)</td>
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<td></td>
<td>Description:</td>
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<td>- Origins and purpose of ICSID.</td>
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<td>- Origins and purpose of the ICSID Additional Facility.</td>
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<td>Overview of the Investment Treaty Regime and an ICSID Arbitration Procedure</td>
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<td>Description:</td>
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<td>- Basic features of investment treaties and substantive standards of protection.</td>
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<td>- The course of an ICSID Arbitration: overview of a procedure from filing of a Request for Arbitration (RFA) to an Award.</td>
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<td>2. February 8, 2016</td>
<td>Jurisdiction <em>Ratione Materiae</em> – Part I</td>
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<td>Description:</td>
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<td>- The requirement of an investment under Article 25 of the ICSID Convention and the instrument of consent.</td>
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<td>- Notion of an investment: methodological approaches.</td>
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3. **February 18, 2016**

**Jurisdiction Ratione Materiae – Part II**

**Description:** Additional criteria to define or identify an investment under Article 25 of the ICSID Convention:
- Contribution to the economic development of the State.
- The legality of the investment and the requirement that the investment be made “in accordance with the host State law”.
- Distinction between legality as an element of a protected investment and legality of the investment as an element of a valid consent.

4. **February 22, 2016**

**Jurisdiction Ratione Personae – Part I**

**Description:** The parties to the dispute: an ICSID Contracting State and a national of another ICSID Contracting State.
- Contracting State:
  - ICSID Member States.
  - Constituent subdivisions or agency designated to the Centre by that State.
- National of another Contracting State:
  - *Natural Persons:* (i) the law applicable to determining the nationality; (ii) the critical date; (iii) dual nationality; (iv) the principle of effective nationality.
  - *Juridical Persons – Part I:* (i) applicable criteria to determining nationality; (ii) the critical date.

5. **February 29, 2016**

**Jurisdiction Ratione Personae – Part II**

**Jurisdiction Ratione Temporis**

**Description:**
- The negative nationality test in Article 25(2)(b) of the ICSID Convention and the “foreign control” test.
- Indirect shareholder claims.
- Restructuring of investments.
- Temporal aspects of jurisdiction.

6. **March 14, 2016**

**Jurisdiction Ratione Voluntatis: Consent – Part I**

**Description:**
- Giving consent:

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1 No classes meet on Monday, February 15, 2016. Class will meet on Thursday, February 18, 2016.
2 No classes meet on Monday, March 7, 2016 (Spring Break).
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<tr>
<th>Date</th>
<th>Subject</th>
<th>Description</th>
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<tr>
<td>March 21, 2016</td>
<td>Jurisdiction <em>Ratione Voluntatis</em>: Consent – Part II</td>
<td>Expanding, restricting and withdrawing consent to arbitrate:</td>
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<td>- Applicability of Most Favored Nation clauses to dispute resolution provisions.</td>
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<td>- Denial of benefits.</td>
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<td>- Counterclaims.</td>
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<td>- Denunciation of the ICSID Convention.</td>
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<td>March 28, 2016</td>
<td>Arbitrators: Selection, Tribunal Constitution and Disqualification Proposals</td>
<td>Selection of arbitrators and method of constituting an arbitral tribunal under the ICSID Convention.</td>
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<td>- The ICSID Panel of Arbitrators.</td>
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<td>- Disqualification proposals and conflicts of interest.</td>
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<td>The scope of application of Rule 41(5), and the procedure for preliminary objections under Rule 41(5).</td>
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X. Reading Assignments

Reading assignments per class will be posted via Canvas.4

XI. Other General Reading Materials and Reference Sources

A. Books

No textbook or casebook for this course. Below are some text books that may be referred to for further reading on the subjects covered in this class:


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3 The Georgetown Academic calendar provides for 13 weeks of classes in the Spring 2016 Semester. As no class was held on January 25, 2016 the day reserved for re-scheduled classes will be used.

4 For assigned reading materials available in Kluwer Arbitration, note that the Georgetown has access to the site. Please access through the library catalog at [Library Catalog](http://library.georgetown.edu).
• LITIGATING INTERNATIONAL INVESTMENT DISPUTES, C. Giorgetti (ed.) (Brill, Nijoff, 2014).

B. Decisions and Awards

Some of the most commonly used website for access to public decisions and awards are:

• https://icsid.worldbank.org
• http://www.italaw.com
• http://www.investmentclaims.com (subscription required for some features)
• http://www.investorstatelawguide.com (subscription required)

C. Treaties and Rules

• Some commonly used websites for online access to bilateral investment treaties are:
  o UNCTAD, International Investment Agreements Navigator http://investmentpolicyhub.unctad.org/IIA
- United Nations Treaty Collection
- See also, ICSID Database of Bilateral Investment Treaties
  https://icsid.worldbank.org/apps/ICSIDWEB/resources/Pages/Bilateral-Investment-Treaties-Database.aspx