

International Investment Arbitration in the MENA Region

INTENSIVE COURSE

6 – 9 December 2015
The Diplomat Radisson Blu
Manama, Bahrain

Day 1

Sunday 6 December 2015

GENERAL OVERVIEW

09:00 **Introduction/Welcome**

09:30 **Foreign Direct Investment, the Law and Policy**

Instructors:

N. Jansen Calamita, *Investment Treaty Forum, BIICL, London*

Hussein Haeri, *Withers, London*

- Evolution of foreign investment flows: size, direction, composition.
- Foreign investment law as an interdisciplinary subject.
- The settlement of disputes between foreign investors and their host States (investor-State disputes) as central to the framework for foreign investment and its promotion.

10:45 **Sources of Law – Domestic Law, Treaties and Customary International Law**

Instructors:

Nassib G. Ziadé, *BCDR-AAA, Manama*

Devashish Krishan, *Court of HRH the Crown Prince of Bahrain, Manama*

- Key issues with respect to the treatment of foreign investors:
 - International minimum standard of treatment;
 - Non-discrimination;
 - Expropriation and compensation.
- Historic challenges to Western views on international investment law (socialist challenges, Latin American challenges, post-colonial challenges).
- Key issues with respect to the resolution of investor-state disputes:
 - The evolution of consent (from contracts to investment legislation and treaties): *SPP v. Egypt / AAPL v. Sri Lanka*;
 - The evolution of thinking about applicable law.

12:00

Coffee/tea break

12:30

Developments in the Second Half of the 20th Century

Instructors:

Adnan Amkhan Bayno, *MENA Chambers, Manama*

Hussein Haeri, *Withers, London*

Antonio R. Parra, *World Bank, Washington*

- The creation of the International Centre for Settlement of Investment Disputes (ICSID).
- Bilateral efforts – the rise of BITs:
 - General structure of investment treaties.
- Multilateral efforts – mixed results:
 - Failed efforts at a multilateral regime (OECD 1967; MAI; WTO);
 - Some success at regional agreements (NAFTA, Arab States' Investment Agreement, Organization of the Islamic Conference Agreement);
 - Sectoral agreements (Energy Charter Treaty).

14:00

Lunch

15:00

More Recent Global Trends

Instructors:

Adnan Amkhan Bayno, *MENA Chambers, Manama*

N. Jansen Calamita, *Investment Treaty Forum, BIICL, London*

Devashish Krishan, *Court of HRH the Crown Prince of Bahrain, Manama*

- Post-NAFTA shift in approach to treaty drafting – more detailed, longer, more complex (eg, US/Canada 2004 models; ASEAN Comprehensive Investment Agreement 2009; EU post-Lisbon).
- Increasing transformation of investment treaties into investment chapters.
- Renewed move to regionalization (TPP; EU negotiating as a unit; ASEAN; SADC).
- Opting Out? (eg, South Africa, Brazil, Indonesia, Venezuela).

16:30

Coffee/tea break

17:00

The State of Play in the Middle East and North Africa

Instructors:

Mohamed Abdel Raouf, *Cairo Regional Centre for International Commercial Arbitration, Cairo*

Nassib G. Ziadé, *BCDR-AAA, Manama*

18:00

End of First Working Day

Day 2
Monday 7 December 2015

THE SETTLEMENT AND MANAGEMENT OF INVESTOR-STATE DISPUTES

09:00 The Management of Foreign Investment Relations and the Prevention of Foreign Investment Disputes

Instructors:

Mohamed Abdel Raouf, *Cairo Regional Centre for International Commercial Arbitration, Cairo*

Adnan Amkhan Bayno, *MENA Chambers, Manama*

N. Jansen Calamita, *Investment Treaty Forum, BIICL, London*

- Understanding the State's obligations (with an emphasis on fair and equitable treatment and expropriation).
- Identifying potential sources of liability for the state.
- Information dissemination, training, capacity-building.
- Intra-governmental processes and procedures.

11:00 Coffee/tea break

11:30 Preparing for Investor Claims Before They Happen

Instructors:

N. Jansen Calamita, *Investment Treaty Forum, BIICL, London*

Hussein Haeri, *Withers, London*

Devashish Krishan, *Court of HRH the Crown Prince of Bahrain, Manama*

- Establishing institutional arrangements to advise on claims and, if necessary, defend a case.
- Setting up an in-house team.
- Internal or inter-agency cooperation for fact-finding.

13:30 Lunch

14:30 Procedures for Resolving Investor-State Disputes

Instructors:

Mohamed Abdel Raouf, *Cairo Regional Centre for International Commercial Arbitration, Cairo*

Antonio R. Parra, *World Bank, Washington*

Celeste E. Salinas Quero, *Arbitration Institute of SCC, Stockholm*

- Negotiation, mediation and conciliation: pros and cons.
- Possible fora for the resolution of investment disputes (national courts, International Court of Justice, international commercial arbitration, investor-State arbitration).
- National court litigation: pros and cons.
- Different forms of arbitration: national and international, *ad hoc* and institutional, advantages and disadvantages of each.
- Main forms of investor-state arbitration: UNCITRAL, SCC, PCA and ICSID (Convention and Additional Facility).

16:30 **Coffee/tea break**

17:00 **Open Discussion – Questions and Answers**

17:30 **End of Second Working Day**

Day 3
Tuesday 8 December 2015

**THE CONDUCT OF INVESTOR-STATE ARBITRATION PROCEEDINGS UNDER
SELECTED ARBITRATION RULES**

09:00 Engaging with Counsel: Government, Local, International

Instructors:

Raéd Fathallah, *Bredin Prat, Paris*

Fatma Khalifa, *Egyptian State Lawsuits Authority, Cairo*

Andrea Menaker, *White and Case LLP, Washington*

- Selecting and managing counsel.
- Budgeting for fees, expenses, charges of arbitration centers, etc.
- Seeking costs: quantification of in-house costs.

10:45 Coffee/tea Break

11:15 Initiation of Proceedings

Instructors:

Mohamed Abdel Raouf, *Cairo Regional Centre for International Commercial Arbitration, Cairo*

Antonio R. Parra, *World Bank, Washington*

Celeste E. Salinas Quero, *Arbitration Institute of SCC, Stockholm*

- Notice of Arbitration.
- Statement of Claims.
- Arbitration Rule Requirements.
- Treaty-based Requirements: Waiting Periods, Forks-in-the-Road.

13:00 Lunch

14:00 Constitution of Tribunals

Instructors:

Brooks Daly, *Permanent Court of Arbitration, The Hague*

Antonio R. Parra, *World Bank, Washington*

Celeste E. Salinas Quero, *Arbitration Institute of SCC, Stockholm*

- Who and how to choose?
- Establishment and composition of the arbitral tribunal.
- Default procedures.
- Disclosure of possible conflicts of interest.

15:45 Coffee/tea break

16:15

Challenges of Arbitrators

Instructors:

Brooks Daly, *Permanent Court of Arbitration, The Hague*

Iain Maxwell, *Herbert Smith Freehills, London*

Nassib G. Ziadé, *BCDR-AAA, Manama*

- Replacement and disqualification of arbitrators.
- Grounds for challenge and strategic considerations.
- Key cases: *Perenco Ecuador Ltd. v. Ecuador*, Decision on Challenge (8 Dec. 2009); *Telekom Malaysia Berhad v. Republic of Ghana* (Hague Dist. Ct.); *Vito Gallo v. Canada*, Decision on Challenge (14 Oct. 2009); *Urbaser v. Argentina* (12 Aug. 2010); *Tidewater v. Venezuela* (23 Dec. 2010).

18:00

End of Third Working Day

Day 4
Wednesday 9 December 2015

**AWARDS, POST-AWARD REMEDIES, AND RECOGNITION AND ENFORCEMENT
OF AWARDS**

09:00 **The Award**

Instructors:

Andrea Menaker, *White and Case LLP, Washington*

Jan Paulsson, *Three Crowns, Washington*

Georgios Petrochilos, *Three Crowns, Paris*

- Drawing up and rendition of the award.
- Formal requirements.
- Summary of outcomes in investor-State arbitrations.

10:45 **Coffee/tea break**

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11:15 **Remedies & Costs**

Instructors:

Adnan Amkhan Bayno, *MENA Chambers, Manama*

Raéd Fathallah, *Bredin Prat, Paris*

Iain Maxwell, *Herbert Smith Freehills, London*

- Restitution; compensation; injunctive relief.
- Awards of costs and fees.

13:00 **Lunch**

13:45 **Lunch Address: UNCITRAL Work on Transparency in Treaty-based
Investor-State Arbitration**

Timothy Lemay, *UNCITRAL, Vienna*

14:00 **Recourse against an Award – National Courts and ICSID Annulment
Committees**

Instructors:

N. Jansen Calamita, *Investment Treaty Forum, BIICL, London*

Dany Khayat, *Mayer Brown, Paris*

Antonio R. Parra, *World Bank, Washington*

- Rectification.
- Interpretation.
- Revision.
- Annulment.
- Possibility of an appeal mechanism.

15:30 **Coffee/tea break**

Sponsored by Three Crowns

16:00 **Recognition and Enforcement under the New York and the ICSID Conventions**

Instructors:

Andrea Menaker, *White and Case LLP, Washington*

Georgios Petrochilos, *Three Crowns, Paris*

Nassib G. Ziadé, *BCDR-AAA, Manama*

- Relevant awards and court cases.
- Record to date.

17:30 **End of Fourth Working Day**