
Kluwer Arbitration Blog

Global Perspectives on Teaching International Investment Arbitration: Teaching International Investment Law and Arbitration at SOAS University of London

Emilia Onyema (SOAS, University of London) · Tuesday, January 31st, 2023 · Institute for Transnational Arbitration (ITA)

The [School of Law at SOAS University of London](#) is unique among Law Schools in London. We have a distinct ‘Southern’ perspective in our course content, and we take a socio-legal dimension in our engagement with the law and how we teach law to our students. We bring these to our teaching on the [international investment law module](#). The module is taught on our postgraduate programmes in international law (LLM for those with a legal background and MA for those who do not have an undergraduate degree in law), by [Emilia Onyema](#) (academic and independent arbitrator), [Baiju Vasani](#) (SOAS Senior Fellow and arbitrator/counsel), and [Hussein Haeri](#) (SOAS Senior Fellow and arbitrator/counsel). This post sets out the pedagogical principles adopted in the teaching and delivery of international investment law at SOAS.

Centring Diverse and Critical Perspectives in Teaching International Investment Law

We recognise that international investment Law and dispute settlement is a growing area of the law. The increase in the numbers of bilateral investment treaties (BITs); the inclusion of investment chapters in Regional Trade Agreements (RTAs); the growth in South-South investments; and the increase in the numbers of investment disputes, make this an important field of study and legal practice. International investment law raises very fundamental questions such as the constraint on the regulatory powers of the state; limitations on the principles of sovereignty; legitimate expectations of investors and their investments as businesses for profit; investment protections and substantive provisions of investment treaties and laws; the judicialisation of arbitration and its decision makers; the balance between attraction of investments and sustainable development of states; and the impact of these issues on the citizens of states. Most international investment law and dispute resolution courses interrogate the issues arising from this field primarily from the perspective of capital exporting states and foreign investors. It is important in addition, to interrogate the same issues from the perspective of capital importing states, and the citizens of these states who are impacted by the activities of investors, actions of their states and investment awards. Our module aims to equip our students with a clear understanding of these issues and the ability to critically engage with these issues from a legal perspective and particularly as it relates to developing and capital importing states.

Our module therefore examines the nature of international investment and its legal regimes; the impact of foreign and domestic investment on the economic development of states; the protections afforded investors and their interpretations, the role of states and the impact of investment law on their regulatory powers; and the ICSID dispute resolution mechanism for investment related disputes between foreign investors and states. This module is taught as two-hour seminars over ten weeks which means very limited time to engage with all issues or topics relevant to international investment law. We made a strategic choice to critically engage with the core issues as set out above. Our students generally struggle with understanding how the regulatory powers of the state can be so constrained by their undertakings under IIAs and the impact of the actions of the state and investors on their citizens. This helps us to open up the debate on the nature of investors and their investments and the undertakings given by states, and the IIL regime being primarily a state-driven system, the role of the Bretton Woods institutions in IIL. Our students do not have any difficulties in understanding the role of arbitrators and generally agree with arbitrators deciding international investment disputes, as a balanced system that does not give the state procedural advantage against the investors. They also understand the role that some types of investment play in the economic development of states. The key question for our students is how we can harness the best of these two worlds for the benefit of citizens.

We very much encourage in class debates by our students on these issues and this helps our students better appreciate the constraints of the opposing side (usually investor v state). One major input we intend to adopt from next academic year is to invite state officials, representatives from civil society organisations and representatives of foreign investors to engage with our students on these issues. Such engagement with the actors involved the transactions and decision making will provide our students with unparalleled insight into the thought processes of the different actors beyond information from textbooks and our in-class analysis.

Teaching Method

As already mentioned, we run a total of ten seminars of two hours per week during which we cover the evolution of international investment law, the concept of property and state responsibility, investment treaties, agreements and state contracts, jurisdictional issues, standards of investment protection, ICSID arbitration and the future of investment law and arbitration. Our students engage with these issues from the study of particular investment treaties relevant to their home jurisdictions or jurisdictions of interest to them which they choose themselves and contribute from in class discussions. Some of the IIAs that our students have examined over the years, include, model BITs from the USA, India, The Netherlands; Pan African Investment Code, Canada-EU Trade Agreement, first, second and third generation BITs between specific countries including UK/Kenya BIT, Swiss/Pakistan, Germany/Pakistan, Nigeria/Morocco, South Africa Investment Act, Thailand/Vietnam.

We avoid a rote-style learning format and adopt primarily the Socratic method by which we encourage active student participation (for which they are rewarded as part of our summative assessment). We therefore do not use one textbook for our module but refer to investment treaties, conventions, laws, arbitral awards, court decisions, published commentaries and textbooks, as relevant to our discussion.

Assessment

We summatively assess the participation of students in the class discussions (20%) and through a research essay of three thousand words on a topic and research question of their choice relevant to the module content (80%). Withers LLP also awards a one-month internship prize to our overall best performing student on the module. This award enables the awardee to experience the decisions that go into preparing for an investment related arbitration or advise work and to put into practice their learning on the module. It is an excellent opportunity for the awardee to further develop their interest (or not) in this field of practice, and makes for a more interesting curriculum vitae for future job applications..

Students

Over the years, our module attracts postgraduate students from across different disciplines in SOAS, and particularly from politics, economics, and development studies. Our non-law students bring different thought processing and knowledge to our discussions and their approach to the issues are coloured by their disciplinary background. In addition, our students come from very diverse backgrounds and jurisdictions but all with a strong sense of ‘justice’ and their understanding of justice. We also attract some students working in the development/civil organisation sectors. With such a diverse group, the discussions around the political economy of investment law (for example) are interesting and engaging but we find ourselves reminding our students that it is a law module and we effectively need to centre the role of law. Our readings list is inclusive, but we do not adopt any particular textbooks. At SOAS, decolonisation of our curriculum is embedded in our teaching practice and this enables students (as co-learners) to contribute reading materials or authors relevant to the issues we engage with. Our students with professional experience find this very helpful and inclusive.

We have consistently received very strong and positive feedback from our students on the course content and engagement of the teachers and fellow students with the discussions in class.

Conclusion

For us, as teachers, we are very pleased with the depth of knowledge and careful deliberation that our students acquire at the end of teaching as compared or measured against the first few weeks of term. We strive and succeed in helping our students explore and think through the various thorny and contentious issues that arise in international investment law, as they strive to balance the interest of the state, the investor and the citizens of these states. We note that at the end of module, our students have more relevant and dispassionate knowledge though their hearts may continue to beat in favour of states or investors, which leaves us satisfied, knowing that future generations of investment lawyers are being prepared to consider the tripod of interests as they engage with the issues we discuss in the module.

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This entry was posted on Tuesday, January 31st, 2023 at 8:12 am and is filed under [Teaching International Investment Arbitration Series](#)

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