

International Investment Law & IP Rights

Responsible Faculty Instructor:
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- 1. Credits:** 4
- 2. Cross-registration:** Only for JGLS
- 3. Pre-requisites:** None required to attend this course. A foundational basis will be established from Week 1 to Week 5, covering both International Investment Law (IIL) and Intellectual Property Rights (IPR).
- 4. Course Description & Vision**

The elective, International Investment Law (IIL) & IP Rights, explores the evolving interface between international investment law and intellectual property rights (IPRs) and focuses on the mechanisms and standards that protect IP as a category of foreign investment. Students will explore how IPRs, such as patents, trademarks, and copyrights, are increasingly treated as “investments” under international investment agreements (IIAs), and how such rights can be enforced by foreign investors through Investor-State Dispute Settlement (ISDS).

The interaction and legal dynamics between the three key actors in the investment law regime: (a) the investor, (b) the host State, and (c) the home State, are discussed in detail as part of the structure of the course. It will begin by outlining the economic and legal context in which IP-related investment disputes arise, focusing on the sources of international investment law, including bilateral and multilateral treaties, domestic IP legislation, and international instruments like TRIPS.

To ensure a comprehensive understanding of theory and practice, the course will address substantive legal protections accorded to IP-based investments, including protection against expropriation, the fair and equitable treatment (FET) standard, national treatment (NT) and most favoured nation (MFN), and the scope of regulatory autonomy of host States. Particular emphasis will be placed on how arbitral tribunals have interpreted these protections in the context of IPR disputes.

Seminal and emerging investment case laws related to IPR will be studied in detail. The cases will provide practical insight into how tribunals address investor rights and public policy objectives, such as access to medicines, health, and judicial independence. The course will also introduce students to the institutional frameworks governing investor-State arbitration, with

special attention to dispute resolution under the World Bank's International Centre for Settlement of Investment Disputes (ICSID). By the end of the course, students will gain an in-depth understanding of the role and relevance of IPR protection within international investment law, and the growing influence of arbitral jurisprudence on both private innovation strategies and national regulatory frameworks. Elective positions itself as a critical intervention: not merely doctrinal, but attentive to the questions of sovereignty, development asymmetries, and the colonial legacies that shape contemporary IIL and IP regimes. The vision is to equip students with an understanding of technical doctrine and critical perspectives. The course builds competencies in treaty interpretation, arbitral doctrines and comparative legal analysis while fostering the ability to assess structural inequalities in global economic governance.

5. Teaching Methodology

The course uses a hybrid pedagogy that combines doctrinal teaching, case analysis, and critical engagement. To build a doctrinal foundation, each week contains treaty analysis and case law interpretation to train students in black-letter law. Landmark disputes (Philip Morris v. Uruguay, Eli Lilly v. Canada) will be analysed to highlight tensions between IIL and IP regulation. Students will engage with Third World Approaches to International Law (TWAIL) scholarship and development-focused critiques to understand asymmetries in treaty design and dispute outcomes.

6. Intended Learning Outcomes

By the end of the course, students will gain a comprehensive understanding of the doctrinal foundations of International Investment Law (IIL) and its relationship with Intellectual Property Rights (IPR). They will be equipped to critically analyse various jurisdictions in contexts where IPR has been protected as a valuable asset. The course will also explore how the IIL framework impacts state sovereignty and developmental strategies. Additionally, students will examine recent reforms in Investor-State Dispute Settlement (ISDS) and their implications for IPR. Finally, they will apply legal reasoning to hypothetical disputes related to IPR.

7. Essential Readings:

- a. Anghie A, *Imperialism, Sovereignty and the Making of International Law* (CUP 2004) (Select pages will be assigned from the book to examine the colonial foundations of International Investment Law (IIL)).

- b. Chimni B.S, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, CUP 2017)(select pages from the book to explore the critical TWAIL framework for IIL).
- c. _____, 'Hard patent regime completely unjustifiable' (1992) In *The Right to Development in International Law* (pp. 315-334). Brill Nijhoff)
- d. Gathii J.T, 'Strength in Intellectual Property Protection and Foreign Direct Investment Flows in Least Developed Countries' (2016) 44 *Georgia Journal of International & Comparative Law* 499. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2611369
- e. Gathii J.T and Ho CM, 'Regime Shifting of IP Lawmaking and Enforcement from the WTO to the International Investment Regime' (2017) 18 *Minnesota Journal of Law, Science & Technology* 427.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2914650
- f. OECD, *Trade and Investment: International Investment and Intellectual Property* (OECD Publishing 2019).
https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/02/trade-and-investment_c1593613/74205232-en.pdf
- g. *Philip Morris Brands Sàrl, Philip Morris Products SA and Abal Hermanos SA v Oriental Republic of Uruguay* (ICSID Case No ARB/10/7, Award, 8 July 2016).
<https://www.italaw.com/sites/default/files/case-documents/italaw7417.pdf>
- h. Ranjan P, *India and Bilateral Investment Treaties: Refurbishing the Model BIT* (OUP 2019). Relevant materials to understand the direct link between Intellectual Property Rights (IPR) and International Investment Agreements (IIA).
- i. Ranjan P, 'Compulsory Licences and ISDS in Covid-19 Times: Relevance of the New Indian Investment Treaty Practice' (2021) 16(1) *Journal of Intellectual Property Law & Practice* 60. <https://pmc.ncbi.nlm.nih.gov/articles/PMC8344783/>
- j. Sourarajah M. Sonarajah, *The International Law on Foreign Investment* (3rd Edn., CUP, 2010) 1-10 (Relevant Material)
- k. Subedi, Surya P., *International Investment Law in International Law* (5th ed., OUP 2016), pp. 123–150.
- l. Sattorova M, *The Impact of Investment Treaty Law on Host States: Enabling Good Governance?* (Hart Publishing 2018). (Select pages will illustrate how BITs and IIL limit regulatory autonomy in developing countries.)
- m. UNCTAD, *Intellectual Property and Investment Treaties* (UNCTAD 2007).
https://unctad.org/system/files/official-document/webiteia20071_en.pdf

8. Weekly outlines

MODULES	WEEK(S)
MODULE 1: Introduction: Investment Law & IP Interface Concept of Property - Critical writings of scholars in 1990s on IPRs	Week 1
MODULE 2: Introduction to International Investment Law and IP: Introduction to International Investment Law and IP - Nature and purpose of foreign investment - Key actors: Investor, Host State, Home State - Relevance of IPRs as foreign investments - Investment arbitration boom – a brief history	Week 2
MODULE 3: Defining 'Investment' and IPR as Investment - 'Investment' under ICSID and BITs - Criteria under Salini Test - Are IPRs covered? When and how? - Case intro: <i>Eli Lilly v. Canada</i> , <i>Philip Morris v. Uruguay</i>	Week 3
MODULE 4: Intellectual Property Rights in International Law (TRIPS, WIPO)	Week 4
MODULE 5: Standards of IP Protection in IIAs - Fair and Equitable Treatment (FET) - Full Protection and Security - National Treatment & MFN - TRIPS-plus standards in investment law	Week 5
MODULE 6: - Direct vs. indirect expropriation of IPRs - Regulatory expropriation and public interest - Bridging with domestic IP regimes - Case: <i>Philip Morris v. Australia</i>	Week 6
MODULE 7: Jurisdiction, Consent and Challenges in IP-Related Investment Disputes Consent in ISDS and how IP gets tied into it: treaties, licenses, and host state measures Fork-in-the-Road Clauses: Conflicts between domestic IP litigation and ISDS forums <i>Eli Lilly v. Canada</i> (Pharmaceutical Patents) case study	Week 7
MODULE 8: Denial of Benefits Clauses: How host States avoid unintended investor access Challenges in IP Arbitration: National court involvement vs. arbitral jurisdiction Critical Scholarship and Jurisdictional Overreach: TWAIL critique on jurisdiction abuse	Week 8
MODULE 9: Procedural Challenges in IP Arbitration: Disclosure obligations Confidentiality vs. transparency in IP-sensitive cases Third-party interventions (NGOs, amici curiae) <i>Philip Morris v. Uruguay</i> (Public Health & Trademarks) case study	Week 9
MODULE 10: Awards and Remedies - Types of relief: damages, compensation, restitution	Week 10

<ul style="list-style-type: none"> - Valuation of IP assets - Enforcement challenges - Case: Bridgestone v. Panama 	
<p>MODULE 11: Public Interest, Health & the IP-Investment Nexus</p> <ul style="list-style-type: none"> - Compulsory licensing and patent revocation - Public health exceptions - Case: Eli Lilly v. Canada, Indian patent cases <p>Philip Morris v. Uruguay (Public Health & Trademarks) case study</p>	Week 11
<p>MODULE 12: Reform Debates: ISDS Reform, Investment Facilitation, and IP Policy</p>	Week 12
<p>MODULE 13: Critical Approaches to Investment Law</p> <ul style="list-style-type: none"> - TWAIL perspective (Chimni, Anghie) - Sornarajah on legitimacy crisis - Structural imbalances and IP enforcement 	Week 13
<p>MODULE 14: Emerging Issues of IPR in IIA: Data (<i>Einarsson v. Canada</i>)& Digital Trade and Artificial Intelligence</p>	Week 14
<p>REVISION WEEK</p>	Week 15