Investments
International Standards

International Economic Law
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Goals

➢ Know different instruments of investment protection
  ▪ ICSID
  ▪ MIGA
  ▪ NAFTA Chapter 11
➢ Understand different legal approaches
➢ Identify current problems
Example: Philip Morris vs. Uruguay

- Bilateral Investment Treaty (BIT) Switzerland – Uruguay 1991
- Uruguay ratifies UN Tobacco Convention 2004
- New Uruguayan law on tobacco control 2008/09 contains i.a. provisions on packaging, product names
- Philip Morris brings claim against Uruguay under BIT Switzerland – Uruguay at World Bank’s Centre for the Settlement of Investment Disputes (ICSID): violation of trademark protection
- Case pending (Case No. ARB/10/7)

ICSID Convention (Text No. 36)

- Provides for conciliation and arbitration of international investment disputes between states and investors
  - Procedures
  - Binding effect
- Jurisdiction (Art. 25)
  - Home country of the investor and the host state must be parties to the convention
  - Consent of the parties to submit a specific dispute
### ICSID Convention (Text No. 36) (2/2)

- Applicable law (Art. 42)
  - Law as agreed by the parties
  - Law of the contracting state party to the dispute and international law
  - Effects of „stabilisation clauses“?
- Annulment of the award (Art. 52)
- Recognition and enforcement (Art. 53-55)
  - Binding effect of awards (Art. 53)
    - Binding on both parties
    - Award is final: no appeal
    - Enforcement in national (federal) courts
  - Immunity (Art. 55)
### Eligibility
- National of a member country other than the state party to the dispute
- Corporation, if
  - incorporated in a member state and
  - principle place of business in a member state or
  - majority of capital is owned by nationals of member countries
- State-owned companies if they operate on a commercial basis
- Cross-border investments
  - originating in a MIGA member country and
  - destined for a developing country

### NAFTA Chapter 11 (Text No. 37)

- „Fair and equitable treatment“ (Art. 1105)
  - National treatment and most favourite nation treatment
  - International minimum standard
    - Transparency
    - Predictability
- „Full protection and security“ (Art. 1105)
  - No attacks against investors and their investments including staff and facilities
  - Defending investors and their investments including staff and facilities against attacks
NAFTA Chapter 11 (Text No. 37) (2/3)

- Expropriation (Art. 1110)
  - Requirements
    - Public Purpose
    - Non-discriminatory
    - Due process
    - Compensation (fair market value)
  - Definition
    - Problem of measures which have effects similar to expropriation ("creeping expropriation")

Compensation

- Recourse to international practice
- Hull-Formula
  - Prompt
  - Adequate
  - Effective

Arbitration (Art. 1120)

- ICSID
- Additional Facility Rules of ICSID
- UNCITRAL
Current issues

- Intersection of human rights and investments
- Responsibility of multinational corporations
  - Investment protection conditional to compliance with human rights?
  - Jurisdiction of arbitration tribunals for human rights violations?