### DISCIPLINA
INTERNATIONAL INVESTMENT LAW (IIL): LAW, HISTORY & POLITICAL ECONOMY

### DOCENTE
JOSÉF OSTRANSKY

### CÓDIGO
GRDDIRATCE0691

### PERÍODO
-

### NATUREZA
ELETIVA

### CARGA HORÁRIA
30h

#### EMENTA

This course provides an overview of the international investment law (IIL) regime. It will overview the legal and institutional framework of the regime. However, it will also situate the existing regime within the broader historical and social context and discuss its political economy foundations.

The aims of the course are:

1. To understand the historical developments that led to the current version of the international law on foreign investments.
2. To understand and critically analyse various competing narratives about the regime’s history, desirability and efficiency.
3. To identify and familiarise students with the legal and institutional architecture of the current IIL regime: its dispute settlement as well as substantive legal aspects.
4. This, in turn, will lead to understanding of the main source of IIL, basic doctrines, legal concepts and principles applied in IIL practice.
5. To critically evaluate both the regime’s normative rationales as well as the existing evidence about its performance in achieving these rationales.
6. To understand the current debates about the reform of IIL and the stakes involved, in order to apprehend the prospects and possibilities of future IIL regimes.
7. To situate Brazil’s position and trajectory within the global IIL regime.

#### OBJETIVOS
To understand the current debates about the regime’s history, desirability and efficiency.

#### METODOLOGIA
The course adopts the participatory approach in teaching, thus prior preparation is necessary. This includes grasping the extended syllabus and prior reading. During the class, students are expected to engage in the discussions and to raise relevant reflections about the materials and discussed topics.

The course spans over 12 weeks and it is divided into four parts. Part 1 situates the current IIL regime into its historical context and presents the various explanations for its emergence and development. In this part, we will also introduce some of the main justifications that have been offered for the regime and its political economy.

In Part 2, we will introduce the institutional and procedural framework of the IIL regime, starting with institutions, dispute settlement mechanisms, and sources of IIL; then moving to the more technical discussions of investment treaty arbitration, such as jurisdiction and admissibility requirements.

Part 3 will be devoted to an overview of substantive investment law. Here, we will discuss the major investment treaty obligations and their interaction with other sources of law, such as contracts, national law and general and special international law, in the context of investment treaty arbitration.

Part 4 will conclude the course with critical discussion of the current place of IIL in international economic order and will take stock of the materials covered in the previous parts in order to critically engage with IIL’s political economy. We will discuss the most common criticisms, the existing evidence for the regime’s efficiency as well as evidence against the regime and its unintended consequences. This will lead us to the ongoing debates about the regime’s reform, such as the current UNCITRAL process and Brazil’s novel investment cooperation and facilitation agreements model.

For each lecture, students are required to read the assigned text and glance through the predefined objectives, complementary materials -- such as documentaries, websites and opeds -- recent news about the topic and the indication of all relevant treaties and arbitration case law relevant for a given theme. For those interested in advancing the study of any specific topic, complementary reading is listed and the files made available.

Prior familiarity with IIL is not required for this course. However, an understanding of basic concepts of public international law, private international law and international arbitration is desirable. All students, whatever their level of previous familiarity, are encouraged to enhance their understanding by reading newspapers with international coverage and keeping informed about current developments.

#### HABILIDADES
Interpret / apply the norms (principles and rules) of the national legal system, observing the comparative foreign experience, when appropriate, articulating theoretical knowledge with problem solving.
### Exigência MEC

| CNE/CES nº 5, 18 de dezembro de 2018 | X | Demonstrate competence in reading, understanding and drafting texts, acts and legal documents, whether business, procedural or normative, as well as the proper use of technical and legal standards. |
| X | Master instruments of legal methodology, being able to understand and apply concepts, structures and rationalities fundamental to the exercise of law. |
| X | Acquire the ability to develop legal reasoning and argumentation techniques in order to propose solutions and decide issues within the Law. |
| X | Develop a culture of dialogue and the use of consensual means of conflict resolution. |
| X | Understand hermeneutics and interpretative methods, with the necessary research and use of legislation, jurisprudence, doctrine and other sources of law. |
| X | Have competences to act in different extrajudicial, administrative or judicial instances, with the proper use of processes, acts and procedures. |
| X | Correct use of terminology and legal categories. |
| X | Accept diversity and cultural pluralism. |
|  | Understand the impact of artificial intelligence and new technologies in the legal field. |
|  | Possess the mastery of technologies and methods for permanent understanding and application of the Law. |
|  | Develop the ability to work in groups formed by legal professionals or interdisciplinary. |
|  | To apprehend deontological-professional concepts and develop transversal perspectives on international economic law. |
|  | Other: Discipline will be taught in English to help improve students’ legal English. |

### CONTEÚDO PROGRAMÁTICO

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<th>AULA</th>
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<td>1</td>
<td>Week 1. Introduction to the Course. How and Why IIL Originated?: Conventional Accounts.</td>
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<td>7</td>
<td>Week 7. IIL Substantive Law Framework: Fair and Equitable Treatment, and Full Protection and Security.</td>
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<td>Week 8. IIL Substantive Law Framework: Non-Discrimination Standards: Most-Favoured Nation and National Treatment.</td>
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<td>10</td>
<td>Week 10. IIL Substantive Law Framework: Defences, Exceptions, IIL linkage debates (IIL &amp; human rights, IIL &amp; the environment, IIL &amp; public health etc.).</td>
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<td>11</td>
<td>Week 11. The Effects of IIL: Intended and Unintended Consequences.</td>
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<td>Week 12. IIL Today: Debates and Prospects (UNCITRAL Reform Debate, Brazil’s CFIA programme).</td>
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### CRITÉRIOS DE AVALIAÇÃO

The course will be evaluated through two assessments:

- **Mid-Term Assessment (50%)**: students are required to select one of the four themes specified in the extended syllabus and write a short paper on a topic related to the chosen theme (they are encouraged to discuss the selection of the topic with the lecturer). The paper will be judged on the criteria of originality and clarity of the main argument, structure and the extent of research. Papers should be prepared considering the possibility of further publication in journals, newspapers or specialised websites. The article should be maximum 2000 words in length, including footnotes (bibliography excluded).

- **End of Term Assessment (50%)**: Students are required to complete a take-home exam, which will assess their knowledge and critical understanding of the field of IIL, having as reference the topics assessed during the course.

### BIBLIOGRAFIA BÁSICA

The course will not be based on a single book or manual. The extended syllabus will indicate the required and complementary readings for each class. The course is organised on the ECLASS FGV platform (https://eclass.fgv.br). Reading materials for each class will be made available in advance, there will be suggestions for complementary readings and activities, as well as suggestions for movies and websites relevant to each topic.
DO NOT GET DISCOURAGED BY THE FOLLOWING LISTS! THE EXTENDED SYLLABUS WILL SPECIFY THE EXACT PAGE EXCERPTS FROM THE LITERATURE.

Basic bibliography – Excerpts from:


BIBLIOGRAFIA COMPLEMENTAR

Excerpts from:

SORANARAJAH, M., *Resistance and Change in the International Law on Foreign Investment* (CUP 2015)

TZOUVALA, Ntina, ‘The Ordoliberal Origins of Modern International Investment Law’ (Forthcoming)


SCHNEIDERMAN, David, ‘The Coloniality of International Investment Law’, SSRN


RATTON SANCHEZ, Michelle, MOROSINI, Fabio (eds.), *Reconceptualizing International Investment Law from the Global South* (CUP 2017).


