



APEC-UNCTAD REGIONAL TRAINING COURSE ON THE CORE ELEMENTS OF INTERNATIONAL INVESTMENT AGREEMENTS IN THE APEC REGION

FINAL REPORT

Kuala Lumpur, Malaysia
15-19 June 2009



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Organized jointly by the
Secretariats of the Asia-Pacific Economic Cooperation (APEC) and of the
United Nations Conference on Trade and Development (UNCTAD), and the
Ministry of International Trade and Industry (MITI), Malaysia



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OUTCOME

The Regional Training Course on the Core Elements of International Investment Agreements (IIAs) in the APEC Region, held in Kuala Lumpur, Malaysia, from 15 to 19 June 2009, was organized jointly by the Secretariats of APEC and UNCTAD, and hosted by the Ministry of International Trade and Industry (MITI) of the Government of Malaysia.

Course Background

The training course constituted the third phase of the APEC Investment Expert Group (IEG) Core Elements Project, jointly undertaken in cooperation with UNCTAD. Phase I of the project included a stocktaking of core elements in 28 intra-APEC IIAs. It investigated the core elements by analysing the way in which they may assist in liberalising, protecting and facilitating investment in and between the Parties to the agreements.

Phase II further enhanced the work with a significant analytical exercise, the mapping of a sample of 200 investment treaties. This work allowed identifying investment principles that are addressed in a consistent way and consistently included by economies in IIAs.

Phase III is the technical assistance part of the project and is based on the research undertaken under phases I and II. This training course is the first activity of phase III. It aimed at fostering APEC-wide understanding among investment treaty negotiators and investment policy makers of key elements in investment liberalization, protection and facilitation.

Participants and Resource Persons

The course brought together 62 participants (35 women and 27 men) from 16 economies of the APEC region (Australia, Brunei Darussalam, Chile, People's Republic of China, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russian Federation, Singapore, Chinese Taipei, Thailand, Viet Nam). The list of participants is included in the report. The course was delivered in English.

Participants benefited from presentations of experienced resource persons, who were former or actual negotiators of IIAs, legal practitioners, academics and experts from UNCTAD. The list of resource persons and their biographical notes is attached.

Most participants were involved in the negotiation of investment agreements. Some assume other functions relevant to the issue, such as handling investment disputes. The quality of participants allowed for an in-depth coverage of topics, interesting discussions, sharing of experiences among participants and a rich dialogue with the resource persons.

At the end of the course, participants became member of the UNCTAD's network of IIA experts, which allows for continued interactive discussion and dissemination of information on IIA issues and investment disputes.

Training Methodology

The course curriculum and material was prepared by UNCTAD's work programme on IIAs to enable the participants in obtaining the necessary expertise on the negotiation and implementation of IIAs. The programme of the training course is attached.

After an introduction on the universe of IIAs and the definition of investment, substantive issues were addressed through three sessions: investment liberalization, investment protection and investment facilitation. The course ended with a full day of a negotiation simulation.

Each topic was addressed in the following way: the presentation of the issue by a key expert, comments by national experts discussing relevant treaty practice or giving a country-specific perspective on the issue, and a discussion with all the participants to better illustrate the topic through an exchange of practices and experiences.

The final simulation exercise on the negotiation of an investment treaty gave a practical dimension to this learning process. The group was divided into ten negotiating teams resulting in five negotiations. It allowed participants to put into practice knowledge acquired during the course. Two resource persons provided the necessary coaching. Negotiations were followed by brief presentations by the negotiating teams and a debriefing session in which resource persons provided useful comments and advice to the participants. At the end of the course, participants received a certificate of attendance.

The course was tailored to APEC member economies and made use of examples from the region, including treaty texts and arbitration cases. This was exemplified by comments made on specific country experiences. Commentators were from Chile, China, Australia, Thailand, Japan, Malaysia and Peru. A representative from the Attorney General's Chambers of Malaysia also made a presentation.

Training material

Participants received the training material in the form of a CD-Rom which contains UNCTAD's main publications on investment, selected IIAs (including treaties signed by their respective economies), selected dispute settlement cases and a bibliography. The table of contents of the CD-Rom is included. Key publications were also distributed during the training course, as well as copies of all presentations.

The presentations will be posted in the APEC website for further consultations.

Opening Ceremony

The training course was opened by Ms. Datuk Dr Rebecca Fatima Sta Maria, Deputy Secretary General (Trade), MITI. Ms. Dariatul Bai da Dzulkiyly, Assistant Resident Representative, UNDP Malaysia and Ms. Anna Joubin-Bret, Course Director, Senior Legal Advisor, Policies and Capacity-building Branch, Division on Investment and Enterprise (DIAE), UNCTAD, also participated.

Evaluation and Follow-up

UNCTAD and APEC evaluations of the training courses show very good results. Consolidation of the UNCTAD's questionnaire showed that the course fully reached the expectations of 74% of the participants. In addition, participants rated the efficiency and the usefulness of the course to their official duties as excellent (42%) and good (50%).

The UNCTAD secretariat has been asked to intensify its technical assistance work with APEC and its member economies through further activities, especially in the context of the Core Elements Project. This course provided an excellent opportunity for the UNCTAD secretariat and APEC to enhance their working relationship. Planning is now underway to organize two other advanced capacity-building activities on investor-State dispute settlement and investment dispute prevention policies in 2009. Future activities could include follow-up training courses on IIAs on an annual basis.

Side Event

At the request of the Attorney General's Chambers of Malaysia, a half-day workshop on Investor-State Dispute Settlement and Dispute Prevention Policies took place on 19 June 2009. The event provided a venue for presentations and open discussions on the trends and implications of investor-State dispute settlement, on dispute avoidance, prevention and alternative dispute resolution, and on the pros and cons of adopting a concise vs. comprehensive ISDS model text. The programme of the event is attached.

Course Organization

The regional training course was organized by Ms. Ho Soo Quen, Ms. Atasha Mohd Noh, Ms. Norshahida Zolkiaply and Mr. Muhd Ikram Zulkurnain from the APEC Division, MITI, Ms. Roeslina Abbas, Ms. Gheeta Devi Rengasamy and Mr. Vinodh Mariappa from the International Cooperation Division, Malaysian Industrial Development Authority (MIDA), Ms. Anna Joubin-Bret, Ms. Marie-Estelle Rey and Mr. Jan Knoerich from the International Agreements Section, Division on Investment and Enterprise (DIAE), UNCTAD, and Ms. Hiroko Taniguchi and Ms. Norlita Mohd Ali from the APEC Secretariat.



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COURSE PROGRAMME

Background and objectives:

This activity constitutes the third phase and the technical assistance component of an ongoing APEC IEG project on the core elements of investment agreements. It follows completion of Phase II encompassing a report on "investment principles" and the mapping of 200 international investment agreements (IIAs) and builds on the earlier Phase I report, "Identifying Core Elements in Investment Agreements in the APEC Region".

The regional training course on the core elements of IIAs is designed for government officials and policy-makers from the APEC economies involved in negotiations on investment or in the management of investor-State disputes.

The aim of the workshop is to deepen knowledge and understanding of the key and emerging issues in investment liberalization, protection and facilitation. The course will explain the key issues, provide a stocktaking of treaty provisions, analyse the different approaches and the recent treaty practice, present cases of jurisprudence, identify options for negotiators, and study interactions between issues and concepts. The course will end with a simulation exercise of a negotiation allowing participants to put into practice the knowledge acquired. Examples of treaty provisions and arbitration cases will be linked to the practice and experience of the APEC region and economies. In addition, comparisons in approaches between APEC IIAs and APEC investment instruments will be provided when relevant.

Resource persons will be experienced negotiators, UNCTAD experts, university professors, arbitrators and practitioners.

Host economy: Malaysia

Venue: Sheraton Imperial Kuala Lumpur Hotel

Coordination:

Project overseer: Ms. Ho Soo Queen, Senior Principal Assistant Director, APEC Division, Ministry of International Trade and Industry Malaysia

UNCTAD secretariat:

Ms. Anna Joubin-Bret, Senior Legal Advisor, Policies and Capacity-building Branch, Division on Investment and Enterprise (DIAE)

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Mr. Jan Knorrich, Associate Expert, Work Programme on International Investment Agreements, Policies and Capacity-building Branch, DIAE

Monday 15 June

- 09:00 **Opening Session**
Datuk Dr Rebecca Fatima Sta Maria, Deputy Secretary General (Trade), MITI
Daratul Bai Dzulkiily, Assistant Resident Representative, UNDP Malaysia
Anna Joubin-Bret, Course Director, Senior Legal Advisor, Policies and Capacity-building Branch, Division on Investment and Enterprise (DIAE), UNCTAD
- 09:30 Coffee break
- 10:00 **INTRODUCTION:**
International investment rule-making: trends and emerging issues
- FDI: trends and implications
 - Objectives of the legal investment framework
 - Trends in IIAs
 - Features and challenges
- Jan Knöerich, Course Coordinator, Associate Expert, Work Programme on International Investment Agreements, DIAE, UNCTAD
- 11:15 **Scope and definition of investment and investor**
- FTA approach (investment and services)
 - BIT approach
 - ASEAN approach
 - Treaty practice and case law
- Presentator: Anna Joubin-Bret, Course Director, Senior Legal Advisor, DIAE, UNCTAD
Commentator: Raimundo Gonzalez, Legal Advisor of Service, Investment and Air Transport Department, DIRECON, Chile
- 13:00 Lunch
- 14:30 **SESSION 1: INVESTMENT LIBERALIZATION**
- Admission and establishment of investment**
- Presentation of the concept
 - Treaty practice
 - Case law
 - Regional perspectives
- Presentator: Anna Joubin-Bret, DIAE, UNCTAD
Commentator: Raimundo Gonzalez, Legal Advisor of Service, Investment and Air Transport Department, DIRECON, Chile
- 16:00 Coffee break

16:15

National treatment

- Presentation of the concept
- Ex ceptions
- Tr eaty practice
- Ca se law

Presentator: Alejandro Fay a, Consultant, Professor of Law, Universidad Iberoamericana and Universidad nacional autónoma de México, former Chief Negotiator of investment treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico

Commentator: Wenhua Shan, Professor, Xi'an Jiaotong University, China, and Oxford Brookes University, England

18:00

End of the working day

Tuesday 16 June

- 09:00 **Most-favoured-nation treatment**
- Presentation of the concept
 - Interactions and scope
 - Treaty practice
 - Case law
- Presentator: Alejandro Fayá, Consultant, Professor of Law, Universidad Iberoamericana and Universidad Nacional Autónoma de México, former Chief Negotiator of investment treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico
- Commentator: Michael Gardner, Policy Analyst, Foreign Investment & Trade Policy Division, Department of Treasury
- 11:00 Coffee break
- 11:15 **MFN (cont'd)**
Discussions
- 11:45 **Transfer of funds**
- Presentation of the concept
 - Treaty practice and relevant case law
- David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State
- Anna Joubin-Bret, DIAE, UNCTAD
- 13:00 Lunch
- 14:30 **SESSION 2: INVESTMENT PROTECTION**
- Fair and equitable treatment**
- Presentation of the concept
 - Interactions with other standards
 - Treaty practice
 - Case law
- Presentator: David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State
- Commentator: Wenhua Shan, Professor, Xi'an Jiaotong University, China, and Oxford Brookes University, England
- 18:00 End of working day

Wednesday 17 June

- 09:00 **Expropriation and compensation**
- Presentation of the concept
 - Treaty practice
 - Case law
- Presentator: Alejandro Fayá, Consultant, Professor of Law, Universidad Iberoamericana and Universidad Nacional Autónoma de México, former Chief Negotiator of investment treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico
- Commentator: Vilawan Mangklatanakul, Department of International Economic Affairs, Ministry of Foreign Affairs, Thailand
- 11:00 Coffee break
- 11:15 **Expropriation (cont'd)**
Discussions
- 11:45 **Scheduling of reservations**
- Presentation of the positive and negative lists approaches and other approaches
 - Country experience
- Presentator: Masafumi Sugano, Deputy Director, Economic Partnership Division, Trade Policy Bureau, Ministry of Economy, Trade and Industry, Japan
- 13:00 Lunch
- 14:30 **Dispute settlement in IIAs**
- State-State vs. investor-State dispute settlement
 - ISDS mechanisms and rules (ICSID, UNCITRAL...)
 - Recent innovations in dispute settlement
- Anna Joubin-Bret, DIAE, UNCTAD
- Management of investment treaty disputes
- David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State
- 16:30 Coffee break
- The experience of Thailand in ISDS
- Vilawan Mangklatanakul, Department of International Economic Affairs, Ministry of Foreign Affairs, Thailand
- The experience of Malaysia with ICSID
- Osman Affendi, Attorney General Chambers of Malaysia
- 18:00 End of working day

Thursday 18 June

- 09:00 **Coherence and consistency in IIAs**
- Ex planation
 - Analysis of ASEAN and APEC FTAs and BITs
- Presenter: Anna Joubin-Bret, DIAE, UNCTAD
Commentators:
Sufian Jusoh, NCCR Research Fellow, World Trade Institute (WTI),
Berne, Switzerland
Masafumi Sugano, Deputy Director, Economic Partnership Division,
Trade Policy Bureau, Ministry of Economy, Trade and Industry,
Japan
- 11:00 Coffee break
- 11:15 Preparation of the simulation exercise
- 13:00 Lunch
- SESSION 3: INVESTMENT FACILITATION**
- 14:30 **The generations of investment facilitation**
- Liberalization of FDI regimes
 - Marketing of economies
 - Investor targeting
- Anna Joubin-Bret, DIAE, UNCTAD
- 15:30 **Investment facilitation provisions in international investment agreements**
- Anna Joubin-Bret, DIAE, UNCTAD
- 16:15 Coffee break
- 16:30 **Alternative dispute resolution and dispute prevention policies**
- David Pawlak, Consultant - International Arbitration, Washington
D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal
Adviser, US Department of State
- 17:15 **The institutional framework for investment protection and promotion**
- National experiences
 - Technical assistance
- Anna Joubin-Bret, DIAE, UNCTAD
Country experts: Vanessa Rivas Plata Saldarriaga, Legal Adviser,
Office of International Economy, Competition and Private Investment
Affairs & David Barrientos Gonzales, Third Secretary, Ministry of
Foreign Affairs, Peru
- 18:00 End of working day

Friday 19 June

09:00	SESSION 4: SIMULATION EXERCISE Negotiation of a high-standard investment agreement Coaches: Alejandro Fay a, Consultant, Professor of Law, Universidad Iberoamericana and Universidad nacional autónoma de México, former Chief Negotiator of investment treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico Jan Knöerich, Course Coordinator, Associate Expert, Work Programme on International Investment Agreements, D IAE, UNCTAD Preparation of the negotiations in small groups
11:00	Simulation of negotiations
13:00	Lunch break as part of the practical exercise
14:30	Cont'd
16:00	Debriefing: presentation by each group of the results of the negotiation
17:00	Closing session
17:30	End of the training course



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APEC-UNCTAD Regional Training Course on the Core Elements of International Investment Agreements in the APEC Region

15-19 June 2009
Kuala Lumpur, Malaysia

Organized by the Secretariats of the Asia-Pacific Economic Cooperation (APEC) and of the United Nations Conference on Trade and Development (UNCTAD) and the Ministry of International Trade and Industry (MITI), Government of Malaysia



BIO NOTES OF KEY SPEAKERS

Alejandro Faya-Rodriguez

Consultant on economic law, with a focus on foreign investment, treaties and regulation. He majored on law from the *Universidad Iberoamericana* of Mexico City, and has a Master in Law from the *University of Oxford* and a Master in Compared Public Policies from the *Latin-American Faculty of Social Sciences*.

In the private sector, he was a member of the law firms *Camil Abogados* and *Lopez Velarde, Heftye y Soria*, where he participated in several investment projects (foreign and national) and corporate transactions.

From 2003 to 2009 he worked for the Ministry of Economy of Mexico, where he was Director of Legal Affairs and Deputy Director-General of International Affairs of the Directorate-General for Foreign Investment, as well as Senior Legal Advisor for competitiveness projects. Among others, he negotiated the last ten international investment treaties entered into by Mexico and gave legal opinion on bills and proposals on investment, including their consistency with treaties; also, on issues related to competition, regulatory improvement and competitiveness.

He works for governments and public entities, international organizations and think tanks. He is Professor of Law, at postgraduate level, in the *Universidad Iberoamericana* and the *Universidad Nacional Autónoma de México*, where he teaches law on foreign investment, treaties and economic regulation. He has several publications and has been speaker in numerous seminars on investment and international law issues.

Anna Joubin-Bret

Ms. Anna Joubin-Bret is Senior Legal Adviser with the Division on Investment and Enterprise of the United Nations Conference on Trade and Development (UNCTAD) in Geneva.

She is an expert on national and international investment legal frameworks. She is providing expertise to developing countries through the delivery of technical assistance and capacity-building activities (training courses and advisory services) and participation in national, regional and international conferences and seminars. She also contributes to and oversees the publications of the Division, in particular the *Series on issues in international investment agreements*, the *Series on International Investment Policies for development*, the *seminal studies on international investment rule-making*, and the *investment policy reviews*.

Ms. Joubin-Bret holds a post-graduate degree in Private International Law from the University of Paris I, Panthéon-Sorbonne. She graduated in International Economic Law and in Political Science.

She has been Legal Counsel in the legal department of the Schneider Group; General Counsel of the KIS Group and Director-Export of Pomagalski S.A.. She has been appointed judge at the Commercial Court in Grenoble (France).

Jan Knoerich

Mr. Jan Knoerich is an Associate Expert in international investment law and policies in the Division on Investment and Enterprise of the United Nations Conference on Trade and Development (UNCTAD). He joined UNCTAD's Work Programme on International Investment Agreements in 2008, where he works as a researcher in the area of investment policy analysis and as a coordinator of technical assistance and training activities. He contributes to the *UNCTAD Series on International Investment Policies for Development* and supports the intergovernmental activities of the programme. His main expertise is in the area of foreign direct investment and its development implications, as well as outward foreign direct investment from emerging economies.

Mr. Knoerich holds a Master's Degree in Diplomacy and International Relations from Seton Hall University, New Jersey, USA, and is candidate for a PhD in Economics at the School of Oriental and African Studies, University of London, United Kingdom.

David Pawlak

David Pawlak, an attorney admitted to the bar of the State of New York, provides advisory and representation services in international arbitration matters with a focus on investor-State disputes.

Mr. Pawlak has represented clients in arbitration matters under the rules of the United Nations Commission on International Trade Law (UNCITRAL); the International Centre for Settlement of Investment Disputes (ICSID) Additional Facility; the International Arbitral Center of the Austrian Federal Economic Chamber, Vienna (VIAC); and the International Chamber of Commerce (ICC).

Mr. Pawlak's recent engagements include, among other matters, serving as lead counsel to the Slovak Republic in defense of a multi-million Euro investment treaty claim. He also led the defense of a multi-million dollar claim brought against Poland under the UNCITRAL Arbitration Rules and the Poland-U.S. bilateral investment treaty. He has been retained to advise the Ukraine in connection with two ICSID investment treaty matters.

Mr. Pawlak also has assisted the Colombian government in the implementation of its investment treaty obligations. UNCTAD has called upon him to provide training on investment treaty matters for officials from dozens of governments at courses in Ukraine, Belarus and Peru. He also has provided technical assistance to Morocco on the investment provisions of the Morocco-US Free Trade Agreement.

Until August 2005, Mr. Pawlak served as an Attorney-Adviser in the Office of the Legal Adviser at the US Department of State. He was a key member of the US legal team dedicated exclusively to investment treaty matters. The US team has prevailed in every investor-State arbitration that has been decided to date. He also advised on the drafting and negotiation of investment and dispute resolution provisions in BIT and investment chapters of FTAs.

Prior to beginning work with the US Department of State in 2001, Mr. Pawlak was an associate at Milbank, Tweed, Hadley & McCloy in New York. Prior to Milbank Tweed, he held the position of Assistant District Counsel in the US Department of Justice Honors Program.

Mr. Pawlak earned the US Department of State's Meritorious Honor Award for his work on investment treaty arbitration. He received the *Pro Bono Publico* Award from the law firm Milbank Tweed Hadley & McCloy.

Mr. Pawlak is a graduate of the University of Pittsburgh's joint-degree program offered by the School of Law and Graduate School of Public and International Affairs (JD/MPIA) and holds a graduate certificate from the University's Center for Latin American Studies. He also undertook graduate studies at the Johns Hopkins School for Advanced International Studies. Mr. Pawlak earned his undergraduate degree from the University of Michigan at Ann Arbor.

Mr. Pawlak has written on international arbitration and trade and investment treaty issues, including a book chapter entitled *Managing Investment Treaty Obligations And Investor-State Disputes: A Guide for Government Officials* (Kluwer International Law 2008).

Wenhua Shan

Professor Wenhua Shan is the Dean and Tengfei Professor of International Law at the School of Law of Xi'an Jiaotong University, PR China. He is also Professor of International Law at Oxford Brookes University, UK. Graduated with PhDs from both the University of Cambridge and Xiamen University, Professor Shan has written extensively on international investment law and arbitration and has advised various governments and investors on investment treaty negotiations and arbitration cases. His recent publications include *Chinese Investment Treaties: Policies and Practice* (co-authored with Ms Norah Gallagher, OUP 2009), *The Legal Framework of EU-China Investment Relations: A Critical Appraisal* (Hart Publishing 2005) and *Redefining Sovereignty in International Economic Law* (Hart Publishing 2008). He was recently awarded the title of "State Council Special Allowance Expert" by the State Council of PR China.



UNCTAD



Asia-Pacific
Economic Cooperation

Workshop on Investor-State Dispute Settlement And Dispute Prevention Policies

**Attorney General's Chambers, Malaysia
19 June 2009, Training Room, 4th Floor**

Programme

09:00 **Welcome address**

09:15 **Investor-State dispute settlement: trends and implications**

This module will present recent trends in the conclusion of international investment agreements (IIAs), highlight interpretations given by arbitral tribunals of key concepts of investment protection, and present recent developments in investor-State dispute settlement. It will discuss systemic issues, especially related to existing inconsistencies in the decisions made by international arbitral tribunals. Substantive issues, e.g. related to definitions, fair and equitable treatment and expropriation, will be reviewed through the analysis of particular case studies.

10:15 **Open discussion**

10:30 **Coffee / tea break**

10:45 **Dispute avoidance / prevention and alternative dispute resolution**

This module will address the issue of dispute avoidance, understood as the possibilities for early intervention to prevent a potential dispute from escalating to international arbitration. It will also discuss various approaches to the use of alternative dispute resolution methods once a dispute has already emerged. The experiences of Malaysia and other countries in the APEC region with both dispute avoidance and alternative dispute resolution are analyzed.

11:45 **Pros and cons of adopting a concise vs. comprehensive ISDS model text**

NAFTA-based ISDS introduced a comprehensive dispute settlement mechanism which has been adopted into the model investment texts of countries such as the US, Canada and Australia. This has been seen as attempting to replicate dispute settlement provisions which are already contained in the ICSID Arbitration Rules or UNCITRAL Arbitration Rules. An analysis of the relevant policy considerations in adopting comprehensive NAFTA-based ISDS provisions will be discussed in this module.

12:45 **Open discussion**

This interactive session provides a venue for further discussion of Malaysia's particular experiences with investor-State dispute settlement, dispute avoidance and alternative methods of dispute resolution.

13:00 Lunch

Resource persons:

Ms. Anna Joubin-Bret,

Senior Legal Advisor, Division on Investment and Enterprise, UNCTAD

Mr. David Pawlak

International Arbitration, Washington DC & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State

Dr. Vilawan Mangklatanakul

Department of International Economic Affairs, Ministry of Foreign Affairs, Thailand



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TRAINING MATERIAL

1) UNCTAD publications

- Bilateral Investment Treaties 1995-2006: Trends in Investment Rulemaking
- Investment Provisions in Economic Integration Agreements
- Preserving Flexibility in IIAs: The Use of Reservations
- Investment Promotion Provisions in International Investment Agreements
- International Investment Rule-Making: Stocktaking, Challenges and the Way Forward
- Dispute Settlement: Investor-State Dispute Arising from Investment Treaties
- Investor-State Dispute Settlement and Impact on Investment Rulemaking
- The REIO Exception in MFN Treaty Clauses
- International Investment Agreements in Services
- South-South Cooperation in International Investment Agreements
- International Investment Agreements: Trends and Emerging Issues
- Assessing the Impact of the Current Financial and Economic Crisis on Global FDI Flows
- World Investment Report 2008: Transnational Corporations and the Infrastructure Challenge
- IIA MONITORS:
 - Latest Developments in Investor-State Dispute Settlement
IIA Monitor No. 1 (2009), UNCTAD/WEB/DIAE/IA/2009/6/Rev1.
 - Recent Developments in International Investment Agreements
IIA Monitor No. 2 (2008), UNCTAD/WEB/DIAE/IA/2008/1.

2) Selected International Investment Agreements

a. Bilateral Investment Treaties (BITs)

APEC Economy	Partner Economy
Australia	Argentina, Chile, China, Czech Republic, Egypt, Hong Kong (China), Hungary, India, Indonesia, Lao People's Democratic Republic, Lithuania, Mexico, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Romania, Sri Lanka, Uruguay, Viet Nam
Brunei Darussalam	China, Republic of Korea, Oman
Canada	Argentina, Armenia, Barbados, Costa Rica, Croatia, Czech Republic, Ecuador, Egypt, El Salvador, Hungary, Latvia, Lebanon, Panama, Peru, Philippines, Poland, Romania, Russian Federation (USSR), Slovakia, South Africa, Thailand, Trinidad and Tobago, Ukraine, Uruguay, Venezuela
Chile	Argentina, Australia, Austria, Belgium and Luxembourg, Bolivia, Brazil, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Indonesia, Republic of Korea, Lebanon, Malaysia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland,

	Tunisia, Turkey, Ukraine, United Kingdom, Uruguay, Venezuela, Viet Nam
China	Albania, Argentina, Australia, Austria, Bahrain, Belgium and Luxembourg, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cambodia, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guyana, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Lao PDR, Latvia, Lebanon, Lithuania, Macedonia TFYR, Madagascar, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, Uruguay, Viet Nam
Hong Kong China	Australia, Austria, Belgium and Luxembourg, Denmark, France, Germany, Italy, Japan, Republic of Korea, Netherlands, New Zealand, Sweden, Switzerland, Thailand, United Kingdom
Indonesia Algeria,	Australia, Bangladesh, Belgium and Luxembourg, Cambodia, Chile, China, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, India, Italy, Jamaica, Jordan, Kyrgyzstan, Lao PDR, Malaysia, Mauritius, Mongolia, Morocco, Mozambique, Netherlands, Norway, Pakistan, Romania, Singapore, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, Ukraine, United Kingdom, Uzbekistan, Viet Nam, Yemen, Zimbabwe
Japan	Bangladesh, China, Egypt, Hong Kong (China), Republic of Korea, Mongolia, Pakistan, Russian Federation, Sri Lanka, Turkey, Viet Nam, United States
Republic of Korea	Albania, Algeria, Argentina, Austria, Bangladesh, Belarus, Belgium and Luxembourg, Bolivia, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Chile, China, Congo DR, Costa Rica, Czech Republic, Denmark, Egypt, El Salvador, Finland, France, Germany, Greece, Guatemala, Honduras, Hong Kong (China), Hungary, India, Indonesia, Islamic Republic of Iran, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Lao PDR, Latvia, Lebanon, Lithuania, Malaysia, Mauritania, Mexico, Mongolia, Morocco, Netherlands, Nicaragua, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, Uzbekistan, Viet Nam
Malaysia	Austria, Cambodia, Chile, Czech Republic, Denmark, Egypt, Ethiopia, Finland, France, Germany, Ghana, Hungary, Indonesia, Italy, Jordan, Kazakhstan, Korea DPR, Republic of Korea, Kyrgyzstan, Lebanon, Mongolia, Netherlands, Norway, Pakistan, Peru, Saudi Arabia, Spain, Sweden, Switzerland, Turkey, United Arab Emirates, United Kingdom, Uruguay, Viet Nam, Brunei/Indonesia/Malaysia/Philippines/Singapore/Thailand

Mexico	Argentina, Australia, Austria, Belgium and Luxembourg, Cuba, Denmark, Finland, France, Germany, Greece, Iceland, Republic of Korea, Netherlands, Portugal, Spain, Sweden, Switzerland, Uruguay
New Zealand	Argentina, Chile, China, Hong Kong (China)
Papua New Guinea	Australia, Germany, United Kingdom
Peru	Argentina, Australia, Belgium and Luxembourg, Bolivia, Canada, Chile, China, Colombia, Cuba, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Italy, Republic of Korea, Malaysia, Netherlands, Norway, Paraguay, Portugal, Romania, Singapore, Spain, Sweden, Switzerland, Thailand, United Kingdom, Venezuela
Philippines	Argentina, Australia, Austria, Bangladesh, Belgium and Luxembourg, Cambodia, Canada, Chile, China, Czech Republic, Denmark, Finland, France, Germany, Italy, Republic of Korea, Myanmar, Netherlands, Pakistan, Portugal, Romania, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom
Russia	Argentina, Austria, Belgium and Luxembourg, Canada, Cyprus, Egypt, Ethiopia, France, Germany, Greece, Hungary, Italy, Japan, Republic of Korea, Lebanon, Lithuania, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, United States
Singapore	Cambodia, China, Czech Republic, Egypt, France, Germany, Hungary, Indonesia, Jordan, Mauritius, Mongolia, Netherlands, Pakistan, Peru, Sri Lanka, Switzerland, United Kingdom, Viet Nam
Chinese Taipei	Belize, Macedonia TFYR, Marshall Islands, Swaziland, Thailand
Thailand	Argentina, Bahrain, Bangladesh, Belgium and Luxembourg, Bulgaria, Cambodia, Canada, China, Croatia, Czech Republic, Egypt, Finland, Germany, Hong Kong (China), Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Jordan, Korea DPR, Netherlands, Peru, Philippines, Poland, Russian Federation, Slovenia, Sri Lanka, Sweden, Switzerland, Chinese Taipei, United Kingdom, Viet Nam, Zimbabwe, OPEC
United States	Albania, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bulgaria, Cameroon, Congo, Republic of the Congo, Ecuador, Egypt, El Salvador, Estonia, Georgia, Grenada, Haiti, Honduras, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Republic of Moldova, Mongolia, Morocco, Mozambique, Nicaragua, Panama, Poland, Romania, Russian Federation, Rwanda, Senegal, Slovakia, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Uruguay, Uzbekistan
Viet Nam	Australia, Austria, Belarus, Belgium and Luxembourg, Bulgaria, Cambodia, Chile, China, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Indonesia, Italy, Japan, Republic of Korea, Latvia, Malaysia, Netherlands, Poland, Romania, Singapore, Sweden, Switzerland, Tajikistan, Thailand, United Kingdom

b. Model BITs

- Canadian Model BIT
- United States Model BIT

c. Free Trade Agreements and other investment instruments: selection

- APEC Non-binding Investment Principles
- Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies
- APEC Transparency Standards on Investment
- ASEAN Comprehensive Investment Agreement
- C AFTA Investment Chapter
- FTA between ASEAN, Australia and New Zealand
- FTA between Australia and Thailand
- FTA between Canada and Colombia Investment Chapter
- FTA between Canada and EFTA
- FTA between Chile and Canada
- FTA between Chile and Peru
- FTA between Chile and Mexico
- FTA between Chile and China
- FTA between China and New Zealand
- FTA between China and Peru
- FTA between China and Singapore Investment Chapter
- FTA between Japan and Brunei
- EPA between Japan and Indonesia
- FTA between Japan and Malaysia
- FTA between Japan and Mexico
- FTA between Japan and the Philippines
- FTA between Japan and Thailand
- FTA between Japan and Singapore
- FTA between Korea and Singapore
- FTA between Malaysia and Pakistan
- FTA between Mexico and Bolivia
- FTA between Mexico, Guatemala, El Salvador and Honduras
- FTA between Singapore and Australia
- FTA between Singapore and India
- FTA between Singapore and New Zealand
- FTA between Singapore and Panama
- FTA between Thailand and New Zealand
- FTA between the United States and Colombia
- FTA between the United States and Korea
- FTA between the United States and Peru
- FTA between the United States and Chile
- FTA between the United States and Singapore
- N AFTA Investment Chapter

3) Teaching Material - Excerpts from UNCTAD Course on Dispute Settlement

1. General Topics

1.2 International Court of Justice (*Mr. P. S. Rao*)

1.3 Permanent Court of Arbitration (*Ms. B. Shifman, Mr. H. Holtzmann*)

2. International Centre for Settlement of Investment Disputes

2.1 Overview (*Mr. C. Schreuer*)

2.2 Selecting the Appropriate Forum (*Mr. A. Reinisch*)

2.3 Consent to Arbitration (*Mr. C. Schreuer*)

2.4 Requirements Ratione Personae (*Ms. M. Al-Sharmani*)

2.5 Requirements Ratione Materiae (*Mr. A. Escobar*)

2.6 Applicable Law (*Mr. G. S. Tawil*)

2.7 Procedural Issues (*Mr. E. Schwartz, Mr. R. Mohtashami*)

2.8 Post-Award Remedies (*Ms. D. Wang*)

2.9 Binding Force and Enforcement (*Ms. D. Wang*)

4) International Treaties on Arbitration and Related Instruments

ICSID

Convention on the Settlement of Investment Disputes between States and Nationals of Other States

Including:

- Administrative and Financial Regulations
- Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules)
- Rules of Procedure for Arbitration Proceedings (Arbitration Rules)
- Rules of Procedure for Conciliation (Conciliation Rules)

UNCITRAL

- UNCITRAL Arbitration Rules (1976)
- UNCITRAL Conciliation Rules (1980)
- UNCITRAL Model Law on International Commercial Arbitration (1985)
- UNCITRAL Model Law on International Commercial Conciliation (2002)
- UNCITRAL Notes on Organizing Arbitral Proceedings (1996)

ICC

Rules of Arbitration of the International Chamber of Commerce

Including:

- Statutes of the International Court of Arbitration of the ICC
- Internal Rules of the International Court of Arbitration of the ICC

NY Convention

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958)

5) Bibliography

Aguilar Alvarez, Guillermo, and Reisman, Michael W.: *The Reasons Requirement in International Investment Arbitration: Critical Case Studies*, Martinus Nijhoff Publishers, 2008.

Alexandrov, Stanimir A.: "The 'Baby Boom' of Treaty-Based Arbitrations and the Jurisdiction of ICSID Tribunals: Shareholders as 'Investors' and Jurisdiction *ratione temporis*." In: *The Law and Practice of International Courts and Tribunals* 4: 19-59, 2005.

Antonietti Aurelia, "The 2006 Amendments to the ICSID Rules and Regulations and the Additional Facility Rules", *ICSID Review, Foreign Investment Law Journal*, Vol. 21, No 2, 2006, pp. 427-448.

Bishop, R.D., Crawford, J., Reisman, W.M.: *Foreign Investment Disputes*, Kluwer Law International 2005.

Faya Rodriguez, Alejandro: *A Quince Años del Capítulo XI del TLCAN: Un Análisis Económico y Jurídico. (forthcoming 2009 - available)*

Faya Rodriguez, Alejandro: "The Most-Favored-Nation Clause in International Investment Agreements: A Tool for Treaty Shopping?", in *Journal of International Arbitration*, Volume 25, No 1, 2008, pp. 89-102. (*available*)

Gaillard, Emmanuel: "Establishing Jurisdiction Through a Most-Favored-Nation Clause", *International Arbitration Law*, in *The New York Law Journal*, Volume 233, No 105, June 2005. (*available*)

Gaillard, Emmanuel: "Treaty-Based Jurisdiction: Broad Dispute Resolution Clauses", *International Arbitration Law*, in *The New York Law Journal*, Volume 234, No 68, October 2005. (*available*)

Garcia-Bolivar, Omar E.: "Investor-State Disputes in Latin America: A Judgment on the Interaction Between Arbitration, Property Rights Protection, and Economic Development", in *Law and Business Review of the Americas*, Volume 13, No 1, Winter 2007, pp. 67-96. (*available*)

Legum, Barton: "Options to Establish an Appellate Mechanism for Investment Disputes." In: *Appeals Mechanism in International Investment Disputes* 231-239 (Karl P. Sauvant, ed. 2008).

Paulsson, Jan: "Avoiding Unintended Consequences." In: *Appeals Mechanism in International Investment Disputes* 241-265 (Karl P. Sauvant, ed. 2008).

Paulsson Jan: "The Conduct of Arbitral Proceedings Under the Rules of Arbitration Institutions, The WIPO Arbitration Rules in a Comparative Perspective", *Conference on Rules for Institutional Arbitration and Mediation*, (Articles 48 to 58 and 73 to 76), Geneva, Switzerland, 1995. (*available*)

Sacerdoti, Giorgio: Investment Arbitration Under ICSID and UNCITRAL Rules: Prerequisites, Applicable Law, Review of Awards, 19 ICSID Rev. - FILJ 1, 2004.

Sornarajah, M.: The International Law on Foreign Investment, Second Edition, Cambridge University Press, 2004.

Schreuer, Christoph H.: Fair and Equitable Treatment in Arbitral Practice. Offprints of The Journal of World Investment and Trade, Vol. 6 No. 3, Geneva, June 2005.

Schreuer, Christoph H.: Three Generations of ICSID Annulment Proceedings. In: Annulment of ICSID Awards 17-42 (Emmanuel Gaillard & Yas Bani fatemi, eds. 2004).

Schreuer, Christoph H.: The ICSID Convention: A Commentary, Cambridge University Press 2001.

Schreuer, Christoph H.: Travelling the Bit Route—Of Waiting Periods, Umbrella Clauses and Forks in the Road, 5 The Journal of World Investment and Trade 231 (2004).

Teitelbaum, Who's Afraid of Maffezini? Recent Developments in the Interpretation of Most Favored Nation Clauses, 22 Journal of International Arbitration 225 (2005).

Wälde, T., The "Umbrella" Clause on Investment Arbitration—A Comment on Original Intentions and Recent Cases, 6 Journal of World Investment and Trade 183 (2005)

6) Case Study Material

Aguas del Tunari Case Study (*decision on jurisdiction*)

Autopista Concesionada de Venezuela Case Study (*introductory note*)

Autopista Concesionada de Venezuela Case Study (*decision on jurisdiction*)

Autopista Concesionada de Venezuela Case Study (*decisión sobre competencia*)

Autopista Concesionada de Venezuela Case Study (*award of tribunal*)

Autopista Concesionada de Venezuela Case Study (*laudo del tribunal*)

CMS Case Study (*ancillary claims /objection of jurisdiction*)

CMS Case Study Key (*ancillary claims/ objection of jurisdiction*)

CMS Case Study (*expropriation*)

CMS Case Study Key (*expropriation*)

Luchetti Case Study (*jurisdiction ratione temporis*)

Luchetti Case Study Key (*jurisdiction ratione temporis*)

Agreement between Peru and Chile (*Spanish*)

Maffezini Case Study (*MFN Treatment*)

Maffezini Case Study Key (*MFN Treatment*)

Maffezini Case Study (*Spanish*) (*MFN Treatment*)

Maffezini Case Study Key (*Spanish*) (*MFN Treatment*)

Agreement between Argentina and Spain
Agreement between Chile and Spain

Metalclad Case Study (*expropriation*)
Metalclad Case Study Key (*expropriation*)
Metalclad Case Study (*Spanish*) (*expropriation*)
Metalclad Case Study Key (*Spanish*) (*expropriation*)

Methanex Case Study (*place of proceedings*)
Methanex Case Study Key (*place of proceedings*)
Methanex Case Study (*amicus curiae*)
Methanex Case Study Key (*amicus curiae*)
Methanex, letter on *non-disputing party participation*
Statement of the Free Trade Commission on *non-disputing party participation*

Milhaly Case Study (*ratione materiae*)
Milhaly Case Study Key (*ratione materiae*)
BIT between the US and Sri Lanka

Olguin Case Study (*expropriation*)
Olguin Case Study Key (*expropriation*)
Olguin Case Study (*Spanish*) (*expropriation*)
Olguin Case Study Key (*Spanish*) (*expropriation*)

Salini Case Study (*amicable dispute settlement*)
Salini Case Study Key (*amicable dispute settlement*)
Salini Case Study (*procedures for the initiation of a claim*)
Salini Case Study Key (*procedures for the initiation of a claim*)
Salini Case Study (*ratione materiae*)
Salini Case Study Key (*ratione materiae*)

Saluka Investments Case Study (*partial award*)

SGS Pakistan Case Study (*contract vs. treaty claims*)
SGS Pakistan Case Study Key (*contract vs. treaty claims*)
SGS Pakistan Case Study (*procedures for the initiation of a claim*)
SGS Pakistan Case Study Key (*procedures for the initiation of a claim*)
BIT between Switzerland and Pakistan

SGS Philippines Case Study (*contract vs. treaty claims*)
SGS Philippines Case Study Key (*contract vs. treaty claims*)
SGS Philippines Case Study (*procedures for the initiation of a claim*)
SGS Philippines Case Study Key (*procedures for the initiation of a claim*)
BIT between Switzerland and the Philippines

Tecmed Case Study (*fair and equitable treatment*)
Tecmed Case Study Key (*fair and equitable treatment*)
Tecmed Case Study (*Spanish*) (*fair and equitable treatment*)
Tecmed Case Study Key (*Spanish*) (*fair and equitable treatment*)
BIT between Spain and Mexico

Tokios Case Study (*Jurisdiction ratione personae*)
Tokios Case Study Key (*Jurisdiction ratione personae*)
Tokios Case Study (*Introductory Note*)
Tokios Case Study (*Procedural Order No.1*)
Tokios Case Study (*Decision on Jurisdiction*)
Tokios Case Study (*Dissenting Opinion*)
Tokios Case Study (*Procedural Order No.3*)

Vivendi Case Study Key (*replacement disqualification of arbitrators*)
Vivendi Case Study Key (*replacement disqualification of arbitrators*)
Vivendi Case Study Key (*initiation of a claim*)
Vivendi Case Study Key (*initiation of a claim*)

7) Selection of Cases

Please consult http://www.unctadxi.org/templates/Startpage_718.aspx for further reference on selected dispute settlement cases.

Metalclad Corporation v. United Mexican States (ICSID Case No. ARB(AF)/97/1)

- Award of the Tribunal (August 30, 2000) (PDF)
National Court Decision:
- Supreme Court of British Columbia, Reasons for Judgment of May 2, 2001, *The United Mexican States v. Metalclad Corporation*, 2001 BCSC 664 (PDF)
- Supreme Court of British Columbia, Supplementary Reasons for Judgment of October 31, 2001, *The United Mexican States v. Metalclad Corporation*, 2001 BCSC 1529.

Robert Azinian and others v. United Mexican States (ICSID Case No. ARB(AF)/97/2)

- Award of the Tribunal (November 1, 1999) (PDF)

Emilio Agustín Maffezini v. Kingdom of Spain (ICSID Case No. ARB/97/7)

- Decision on Jurisdiction (January 25, 2000) (PDF)
- Award of the Tribunal (November 13, 2000) (PDF)
- Rectification of the Award (January 31, 2001) (PDF)

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/00/2)

- Award of the Tribunal (March 15, 2002) (PDF)

SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan (ICSID Case No. ARB/01/13)

- Decision of the Tribunal on Objections to Jurisdiction (August 6, 2003) (PDF)

SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (Case No. ARB/02/6)

- Summary of the Decision

- Decision of the Tribunal on Objections to Jurisdiction (January 29, 2004) (PDF)
- Declaration by one of the arbitrators (January 29, 2004) (PDF)

Ceskoslovenska Obchodni Banka, A.S. (COSB) v. The Slovak Republic (ICSID Case No. ARB/97/4)

- Decision on Objections to Jurisdiction (May 24, 1999) (PDF)
- Decision on the Further and Partial Objection to Jurisdiction (December 1, 2000) (PDF)

Mondev International Ltd. v. United States of America (ICSID Case No. ARB(AF)/99/2)

- Award of the Tribunal (October 11, 2002) (PDF)

Tradex Hellas S.A. v. Albania (ICSID Case No. ARB/94/2)

- Decision on Jurisdiction, 24 December 1996. (PDF)
- Final Award, 29 April 1999. (PDF)

Plama Consortium Limited v. Bulgaria (ICSID Case No. ARB/03/24 (Energy Charter Treaty))

- Decision on Jurisdiction, 8 February 2005. (PDF)
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