



International Investment Law and Dispute Settlement

Reading Materials for Session No. 5

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Session No. 5 **Jurisdiction, Admissibility and Applicable Law**

1. Jurisdiction

a. Consent: with and without privity

- Doc. 1: ICSID Convention, Article 25
<https://icsid.worldbank.org/en/Pages/process/Arbitration.aspx>
- Doc. 2: UK-Albania BIT 1994
<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/38/download>

b. *Ratione materiae*: (lawful) investment

- Doc. 1 (ICSID Art. 25) and Doc. 2 (BIT Article 1)
- Doc. 3: EU-Canada Free Trade Agreement (CETA), Articles 8.1, 8.18 ff.
http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf
- Doc. 4: *Abbaclat v. Argentina* and dissenting opinion G. Abi-Saab
<http://www.italaw.com/sites/default/files/case-documents/ita0236.pdf>
<https://www.italaw.com/sites/default/files/case-documents/italaw4085.pdf>

c. *Ratione loci*: in the territory of the host State

- Doc. 4: *Abbaclat v. Argentina* and dissenting opinion G. Abi-Saab

d. *Ratione personae*: nationality

- Docs. 1, 2, 3

e. *Ratione temporis*

- Doc. 5: *Ping An v. Belgium*
<https://www.italaw.com/sites/default/files/case-documents/italaw4285.pdf>
- Doc. 2: UK-Albania BIT Article 14
- Doc. 6: Tania Voon, Andrew Mitchell and James Munro, "Parting Ways: The Impact of Mutual Termination of Investment Treaties on Investor Rights": annex

f. Fork-in-the-road clauses

- Doc. 7: Japan-Jordan BIT, Article 23.8.b
<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5808/download>
- Doc. 8: *CMS v. Argentina*, Decision on jurisdiction, esp. para 80.
<https://www.italaw.com/sites/default/files/case-documents/ita0183.pdf>

g. Jurisdiction and MFN

- Doc. 2 : UK-Albania BIT, Article 3.3
- Doc. 7: Japan-Jordan BIT, note to Article 4
- Doc. 9: M. Paparinskis, "MFN Clauses and International Dispute Settlement ...": annex

h. Treaty shopping

- Doc. 10: *Philip Morris v. Australia*
https://www.italaw.com/sites/default/files/case-documents/italaw7303_0.pdf

2. Admissibility

- On jurisdiction v. admissibility, see *Abbaclat, diss. op. Abi-Saab*
- On prior attempts at amicable settlement: see Doc. 7, Article 23.1/2
- On time-bars: see Doc. 3, CETA Article 8.19.6

3. Causes of action, applicable law

- Comp. Doc. 2, Doc. 3 (CETA Article 8.31) and Doc. 7 (Article 23.2)
- Doc. 11: European Court of Justice, Opinion 1/17, §136
<http://curia.europa.eu/juris/liste.jsf?num=C-1/17>

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