I. COURSE OVERVIEW

This module examines the evolving regime for the regulation and protection of multinational enterprises (MNEs) in international law. Although MNEs remain creations of domestic law, the cross-border activities of MNEs increasingly come within the scope of instruments creating obligations and/or rights in international law. In assessing the challenges faced by states and MNEs alike with respect to such transnational regulation, the module takes a rounded and interdisciplinary view of the issues involved, addressing both the commercial and social dimensions of MNE action.

Students will begin by considering MNEs as global actors, examining the varied scope of MNE operations around the world and the varied impacts of those operations in different states and societies. Thereafter, students will consider the available scope for regulating MNEs under the law of the MNE’s ‘home’ state and the law of the ‘host’ states in which its operations take place, noting the limits to unilateral, extraterritorial regulation by these states under public international law. Next, the module explores the developing range of obligations and rights for MNEs which have been created in public international law, through a variety of instruments on human rights, labour conditions, environmental protection, taxation and investment. In examining this emerging regime, we will note the commonalities and dissimilarities across the various areas in which international regulatory instruments are presently operating. Moreover, we will look beyond mechanisms for formal, legal regulation, to examine the development of transnational systems of self-regulation in various sectors of economic activity.

Objectives and learning outcomes of the module

- An interdisciplinary overview of the business and legal organisation of MNEs and of the regulation of their activities;
- An appreciation of the complexity of the regulatory environment for international business as a product of national, regional and multilateral policies and rules;
- A critical understanding of the overlaps and limits of home and host state regulatory and enforcement jurisdiction with respect to MNEs;
- An awareness of the extent and limits of MNE’s obligations under international human rights, labour, environmental protection, and taxation; the mechanisms for enforcement and challenge; and the role of non-legal mechanisms in bringing about compliance;
- An understanding of how MNE activities can implicate rights and obligations in other spheres of international law, even when the MNE may not directly hold a right or obligation, e.g., international law relating to social welfare and development, international human rights; international environmental law;
• A critical appreciation of the position of the MNE in international investment law, including the relationship between foreign direct investment and state sovereignty, substantive standards of protection owed to the MNE and dispute settlement mechanisms.

II. BASIC TEXTS

There is no wholly satisfactory text covering the full scope of the module. As a result, assignments will look to a variety texts, articles, treaties, guidelines, and decisions from international courts and tribunals. Of frequent reference are likely to be:


III. SELECTED ONLINE RESOURCES

• **International Finance Corporation (IFC):** IFC, a member of the World Bank Group, is the largest global development institution focused exclusively on the private sector in developing countries. IFC’s products include loans and financing and advice. IFC's projects and programs are evaluated by the Independent Evaluation Group. Accountability is ensured by the independent Office of the Compliance Advisor Ombudsman.

• **International Centre for the Settlement of Investment Disputes (ICSID):** Established in 1965 under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID or the Washington Convention) with over 140 member States. The ICSID Convention sets forth ICSID’s mandate, organization and core functions. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes. The ICSID website is a source for arbitral awards for disputes settled under the ICSID Convention. Site: icsid.worldbank.org/

• **Multilateral Investment Guarantee Agency (MIGA):** MIGA is a member of the World Bank Group. Its mission is to promote foreign direct investment (FDI) into developing countries to help support economic growth and reduce poverty. MIGA provides political risk insurance guarantees to private sector investors and lenders. Since its inception in 1988, MIGA has issued more than $28 billion in political risk insurance for projects in a wide variety of sectors, covering all regions of the world.


• **United Nations Working Group on Business and Human Rights:** The UN Guiding Principles on Business and Human Rights are a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. They were endorsed by the UN Human Rights Council in June 2011. At the same time, the Human Rights Council established the [UN Working Group on Business & Human rights](https://www.ohchr.org/EN/HRBodies/HRC/WGBusinessHumanRights/Pages/WGBusinessHumanRights.aspx). The current work of the Working Group focuses on developing tools for further implementation of the Guiding Principles.

### IV. Teaching Conventions

This module will be taught through lecture and directed class discussion. Students are expected to have read the assigned materials in advance of class and be prepared to participate. Class participation will be an assessed component of the grade in this module.

**Method of assessment**

- Class participation (10%)
- Written assignment (25%)
- 6-hr Take-home Exam (65%)

### V. Outline of Sessions

1. **Understanding Multinational Enterprises**
   a. The Business and Legal Organisation of MNEs
   b. Major Trends in Legal Structures and Economic Organisation
      i. Global Value Chains
      ii. State-owned enterprises (SOEs)
   c. The Social Dimension of MNEs
   d. MNEs and Sustainable Development

2. **Essential Background: Understanding Public International Law**
   a. Sources of International Law
b. Subjects of International Law  
c. Relationship between International Law and Domestic Law  
d. The International Rules on State Responsibility  

3. Regulating MNEs through Domestic Law and the Limits Set by International Law  
   a. The Issues of Jurisdiction in International Law Generally  
   b. The Problem of Extraterritoriality and Prescriptive Jurisdiction  
      i. Competition/Antitrust Law as a Case Study  
   c. Establishing Personal Jurisdiction over Complex MNE Networks  

4. Controlling the Entry and Establishment of MNEs into the State  
   a. The Scope of Host State Discretion and Techniques to Restrict Entry  
   b. The Unilateral Encouragement of Inward Direct Investment by Host States  
   c. International Law Commitments to Dismantle Barriers to Investment  

5. The Evolving Position of MNEs in International Law  
   a. The Question of the International ‘Legal Personality’ of MNEs  
   b. The Attribution of MNE Activity to States  
   c. The Standing of MNEs to Raise Claims and Owe Obligations in International Law  

6. The Role of MNEs in Global Governance  
   a. Participation in International Organizations  
   b. Self-regulation by MNEs  
   c. The Role of MNEs in Setting International Standards  
   d. Legitimacy and Accountability  

7. International Human Rights Law and ‘Soft Law’ Instruments as a Source of MNE Obligations  
   a. The Scope of the International Human Rights Regime  
   b. The Potential Human Rights Impact of MNEs Operations  
   c. The Basis of Human Rights Obligations for MNEs  
   d. What Human Rights Obligations Do MNEs Have?  
   e. Monitoring and Enforcement through Domestic Courts and Specialised Mechanisms  

8. International Human Rights Law (and Other Instruments) as a Source of MNE Rights  
   a. UN Human Rights Instruments  
   b. Inter-American Convention on Human Rights  
   c. European Convention on Human Rights  
   d. Specialised Instruments: UN Law of the Sea Convention  

9. The International Regime for the Protection of Foreign Investment  
   a. Foreign Investment Risk Exposure  
   b. Political Risk Insurance  
   c. The Development of Bilateral and Multilateral Treaties for the Protection of the Investment
d. Balancing the Rights and Obligations of Investors and Host States

10. The Scope of Coverage of Investment Treaties: ‘Investors’ and ‘Investments’
   a. Investment and Development
   b. Who is a Covered Investor?
   c. Is All Economic Activity in the Host State an Investment?
   d. Are “Illegal” Investment Protected by Investment Treaties?
   e. Abuse of Process and Denial of Benefit

11. Challenges for the 21st Century: Issues of Corporate Taxation
   a. Double Taxation Treaties
   b. Transfer pricing within MNEs
   c. Jurisdictional issues raised by transfer pricing
   d. OECD Transfer Pricing Guidelines for Multinational Enterprises
   e. OECD/G20 BEPS – International Collaboration to End Tax Avoidance

12. Challenges for the 21st Century: Globalisation and Its Backlash