



# **International Trade Law**

## Module Handout

2019-20

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### **Module Introduction**

The purpose of this course is to examine the economic interaction between States as well as the economic relationships between states and non-government entities. It aims to critically examine not only the law governing these relationships but also the different law-making processes. The main goal is to provide an overview of the legal and institutional foundations of international trade law. It covers issues such as multilateral and regional trade law principles/doctrines, international monetary relations, investment, sustainable development (energy and IP), and regional economic integration principles. The module also covers GATT/WTO, thus analysing the basic law of the world trading system.

The module offers an analysis of international trade law governing foreign investments and its relationship to public policy. Firstly, it identifies and examines the sources, scope and content of the substantive international law rules that determine investor-State relationships and discusses their application in practice. Secondly, it explores from a theoretical and a practical perspective the role and policy goals of international trade law, focusing on the relationship between investment promotion and protection. This module is suitable for students interested in acquiring a thorough and deep understanding of international trade law, as well as critically assessing the role and objectives of international investment law and their balancing against other regulatory interests. It also provides the theoretical and practical knowledge necessary for legal practitioners in the field and for those seeking to advise governmental bodies, private companies or civil society organisations on matters related to international investment law and policy.

### **Teaching arrangement**

Dr Andrea Miglionico is the main lecturer and course co-ordinator. Teaching will be by seminar method, whereby material is prepared in advance and made available online for class discussion. You are strongly advised to attend all classes. You will make the most out of the course if you have adequately studied recommended material relevant to each lecture. This will strengthen your understanding of the more specialist issues which normally follow later in the academic year. Adequate essay preparation entails a full understanding of the subject-matter.

### **Preparing for the exam**

- Use your handouts and slides presentations as a starting point
- Read essential readings for all topics
- Active reading, with the learning outcomes / guiding questions in mind
- Note differences between primary sources of information (e.g. treaties, legislation, cases, etc.) and secondary sources of information (doctrinal comments about primary sources of information included in books, journal articles, etc.)
- Practice answering questions under essay conditions
- Study group

### **Exam structure**

#### Planning

- Read the question carefully
- What are you being asked to do? Compare / explain / discuss / assess / comment on a provocative statement, etc.
- Plan your answer accordingly
- Identify the key points that should be covered
- Are there main concepts I need to define? Any particular piece of information I need to refer to?
- Are there controversial issues / conflict of interests at stake I need to balance?

## Content

- Structure your answer: introduction, development and conclusion.
- Use signposts.
- Introductory and concluding paragraphs are crucial.
- Answer what you have been asked and not what you would have liked to be asked.
- Support your argument with evidence: legislation, cases, declarations of international organisations, policy documents, authors' opinions, facts, etc.
- Do not be afraid of expressing your personal opinion but stay away of sweeping generalisations.

## **Teaching schedule**

<b>DAY</b>	<b>TIME</b>	<b>PLACE</b>	<b>WEEK</b>
<b>Spring Term</b>			
Wednesday Thursday	16.00-17.30 11.15-12.45	Luiss Viale Romania	1-11
Office Hours:	Wednesday/Thursday after class		

- Please note that changes to this schedule will be communicated on website.

## **Module weekly syllabus (Second Semester)**

<b>Week</b>	<b>Commencing</b>	<b>Lecturer</b>	<b>Subject</b>
<b>1</b>	13 February 20	AM	Principles of International Economic and Trade Law
<b>2</b>	14 February 20	AM	Economic sovereignty, global economy and regional trade agreements
<b>3</b>	19 February 20	AM	International Corporations
<b>4</b>	20 February 20	AM	WTO, GATT, GATS
<b>5</b>	26 February 20	AM	TRIPs and IP developments
<b>6</b>	27 February 20	AM	Environmental protection and Art XX of the GATT
<b>7</b>	4 March 20	AM	Trade Law and Energy
<b>8</b>	5 March 20	AM	Investment Arbitration

<b>9</b>	11 March 20	AM	Money laundering in global commerce
<b>10</b>	12 March 20	AM	Corporate Social Responsibility
<b>11</b>	17 March	AM	Student Group Presentation
<b>12</b>	18 March	AM	Student Group Presentation

### **Assessable Learning Outcomes**

On completion of the module, students will be expected to be able to:

- demonstrate knowledge of the key institutions/structures, principles and concepts of international trade law and their relevance to international economic relations;
- identify the relevant sources of international trade law and their relationship to domestic legal systems;
- demonstrate a clear understanding and critical appreciation of the legal, economic and political issues involved in structures of global economic governance;
- carry out competent and independent research into some aspects of the law relating to international regulatory institutions;
- present and communicate their research findings effectively;
- critically assess the different approaches to the problems and issues raised and, where appropriate, to review critically the relationship of law to economics in this area.

### **Additional Outcomes**

In addition to those listed in the School's 'core skills statement', the module will encourage the development of:

- High-level oral communication skills through reflective, analytical class discussion;
- Advanced critical reading skills in relation to primary and/or secondary sources;
- High-level writing skills through close and critical analysis of both primary and secondary source material;
- An ability to apply theoretical and contextual knowledge to practical problems that face people working in the field.

## Reading List

In order to cover all relevant issues on a very dynamic topic there is no single book that covers all the topics in a current fashion. Materials for each class will be made available to students through the course website. An indicative list of key textbooks, treatises and specialist books on International Trade Law, which cover several of the subjects, include:

### Main textbooks

- Robert Howse and Antonia Eliason, *The Regulation of International Trade* (4<sup>th</sup> edn., Routledge, 2017).
- Van Den Bossche, P., *The Law and Policy of the World Trade Organization Text, Cases and Materials* (4<sup>th</sup> edn., Cambridge University Press, 2017).
- S. Lester, B. Mercurio, R. Davies, *World Trade Law. Texts, Materials and Commentary* (2<sup>nd</sup> edn., Hart Publishing 2012).
- Lowenfeld, A. *International Economic Law* (2<sup>nd</sup> edn. Oxford University Press, 2008).

### Additional books

- Cottier, Thomas (ed) *The Prospects of International Trade Regulation* (Cambridge University Press, 2011).
- Guzman, Andrew T. and Joost H.B. Pauwelyn, *International Trade Law* (2<sup>nd</sup> edn, Wolters Kluwer, 2012).
- Hoekman, B. and M. Kostecki, *The Political Economy of the World Trading System. From GATT to WTO* (3<sup>rd</sup> edn, Oxford University Press, 2009).
- Jackson, J. H., *The World Trading System: Law and Policy of International Economic Relations* (Cambridge, MA, MIT, 1997).
- Jackson, J. H., W. J. Davey, et al., *Legal Problems of International Economic Relations. Case, Materials and Text on the National and International Regulation of Transnational Economic Relations* (5<sup>th</sup> edn, St Paul, Minnesota, West Group, 2008).
- Lester, Simon and Bryan Mercurio, *World Trade Law, Text, Materials and Commentary* (Hart, 2008).
- Matsushita, M., P. Mavroidis and T. J. Schoenbaum, *The World Trade Organization: Law, Practice and Policy* (2<sup>nd</sup> edn, Oxford University Press, 2006).
- Trebilcock, M. and R. Howse, *The Regulation of International Trade* (4<sup>th</sup> edn, Routledge, 2012).
- Leal-Arcas, R. et al., *International Energy Governance: Selected Legal Issues*, (Edward Elgar, 2014).
- Leal-Arcas, R., *Climate Change and International Trade*, Edward Elgar, 2013.
- Leal-Arcas, R., *International Trade and Investment Law: Multilateral, Regional and Bilateral Governance* (Edward Elgar, 2010).
- Cottier, T., Nartova, O., & Bigdeli, S. (eds.) *International Trade Regulation and the Mitigation of Climate Change* (Cambridge University Press, 2009).
- Pauwelyn, J. (ed.) *Global Challenges at the Intersection of Trade, Energy and the Environment*, Geneva: Centre for Trade and Economic Integration, 2010.

- Hufbauer, G., Charnovitz, S. & Kim, J., *Global Warming and the World Trading System*, Washington, DC: Peterson Institute for International Economics, 2009.
- Audley, J. Green, *Politics and Global Trade: NAFTA and the Future of Environmental Politics* (Georgetown University Press, 1997).
- Esty, D., *Greening the GATT: Trade, Environment, and the Future*, Institute for International Economics, 1994.
- Sampson, G. & Chambers, W. (eds.) *Trade, Environment, and the Millennium*, United Nations Press, 2000.
- Sampson, G. *Trade, Environment, and the WTO: The Post-Seattle Agenda*, Overseas Development Council, 2000.
- Brack, D., *International Trade and Climate Change Policies*, Earthscan, 2000.
- Epps, T. and Green, A. *Reconciling Trade and Climate - How the WTO Can Help Address Climate Change* (Edward Elgar Publishing, 2010).



## STRUCTURE OF THE COURSE AND SUGGESTED READING LISTS

### Note

Reading materials are assigned to each lecture. This list along with the materials available online, is extensive to allow students to have ample sources of reference.

The readings for each lecture can be found under the summary of each lecture unless instructed otherwise by the lecturer. Most readings are split into two categories:

**Essential readings** – essential reading to prepare for the lecture and the exam serving also as good basic reading material to familiarise with the topic.

**Further suggested readings** – students may wish to familiarise themselves with these materials if they want to get more in depth knowledge of the topic.

The handout for each lecture as well as the new materials complementing the syllabus reading list will be also available online.

### Useful website/Journals

- WTO Agreements and Documents
  - WTO legal texts
  - WTO documents online
  - WTO Case law
  - WTO panel and appellate body reports
  - WTO Analytical Index - Guide to WTO Law and Practice
  - GATT Analytical Index
  - WTO cases commentaries
  - World Bank-WTO Dispute Settlement Database
- 
- Journal of World Trade
  - International Trade Law and Regulation
  - Journal of World Investment and Trade
  - World Trade Review
  - Journal of International Economic Law
  - Legal Issues of Economic Integration
  - Law and Business Review of the Americas

## Lecture 1 - Principles of International Economic and Trade Law

### Aims and Objectives

The seminar discusses the general background and main sources of International Economic and Trade Law. It covers issues such as the legal principles/doctrines, basic principles governing international organizations, international monetary relations, investment and competition, sustainable development, the New International Economic Order/Washington Consensus, and regional economic integration principles.

The seminar also gives an overview of the historic development of the International Monetary Fund (IMF) and explains its main functions. Organisational structure of the IMF and a comparative analysis of the institution's functions and other international organisations will be examined. The terms of financial assistance provided by the IMF will be discussed. The lecture will explain how conditionality, surveillance and technical assistance work in practice. Finally, the governance of the IMF will be also analysed. In this context, it is examined the role and functions of the World Bank (WB). By the end of the lecture and after having done your readings you should be able to: (1) describe the functions, structure, governance and sources of funding of the World Bank Group; (2) discuss the concerns about governance and accountability of WB; (3) understand the lending criteria and financing terms used by the IBRD and IDA; and (4) discuss current challenges faced by the World Bank, including the recent creation of 'rival' Multilateral Development Banks.

### **Essential readings**

- A. Segura-Serrano, 'International economic law at a crossroads: global governance and normative coherence' (2014) 27(3) *Leiden Journal of International Law*, 677-700.
- Ngaire Woods, 'Making the IMF and the World Bank More Accountable' (2001) 77(1) *International Affairs*, 83-100.
- Sean Hagan, 'The Role of Law - and Lawyers - in the International Monetary Fund' in Asif H. Qureshi and Xuan Gao (eds), *International Economic Organizations and Law. The Perspective and Role of the Legal Counsel* (Wolters Kluwer 2012) Chapter 2.

### **Legislation**

- IMF, 'The Liberalization and Management of Capital Flows: An Institutional View' (14 November 2012).
- IMF, 'Guidelines on Conditionality' (25 September 2002).
- IMF, Articles of Agreement, <https://www.imf.org/external/pubs/ft/aa/>.
- International Bank for Reconstruction and Development, 'Articles of Agreement' ([http://siteresources.worldbank.org/EXTABOUTUS/Resources/IBRDArticlesOfAgreement\\_links.pdf](http://siteresources.worldbank.org/EXTABOUTUS/Resources/IBRDArticlesOfAgreement_links.pdf)).

### **Further suggested readings**

- K. Alexander, 'International economic law and macro-prudential regulation', in Thomas Cottier, Rosa M. Lastra and Christian Tietje (eds) *The Rule of Law in Monetary Affairs. World Trade Forum* (CUP, 2014) Chapter 20.



- F.J. Garcia, *Global Justice and International Economic Law. Three Takes* (CUP, 2013) Chapter 1.
- Scott Morris and Madeleine Gleave, 'The World Bank at 75', Center for Global Development, Policy Paper 058, March 2015.
- Martin Ravallion, 'The World Bank: Why It Is Still Needed and Why It Still Disappoints', Center for Global Development, Working Paper 400, April 2015.

### *Questions for consideration*

- What is the meaning of International Economic and Trade Law?
- What is the link between law reform and legal transformation?
- Are law reforms dependant on economic reforms or vice versa?
- Which institutions are key in international economic governance?
- What are the main functions of IMF?
- IMF conditionality has been the subject of much controversy over the years. Critically discuss the rationale of conditionality and explain the link between conditionality and stand-by arrangements.
- What is the legal structure of the World Bank?
- What are the main differences between World Bank and IMF?

## **Lecture 2: Economic sovereignty, global economy and regional trade agreements**

### Aims and Objectives

This lecture provides a critical analysis of the Regional Trade Agreements (RTAs). A regional trade agreement is one made between two or more contracting parties that share some common denomination known conceptually as "region". The trend of RTAs is one of the most economically significant, politically important and, for some, troubling developments within the world trading system since the WTO Agreements entered into force in 1995. In particular, the stalling of the Doha Development Round trade negotiations has resulted in bilateral and regional free trade agreements (BRTAs) becoming an important alternative. These agreements have proliferated in recent years, and now all of the major trading countries are engaging in serious bilateral trade negotiations with multiple trading partners. RTAs have increased markedly in number however, despite their importance, little study has been performed to analyse the effects of RTAs on international trade. In this context, the lecture discusses the difference between RTAs and WTO.

### **Essential readings**

- Paolo Gerbaudo, Post-neoliberalism and the politics of sovereignty, 4 November 2016, available at <https://www.opendemocracy.net/paolo-gerbaudo/post-neoliberalism-and-politics-of-sovereignty>
- James Thuo Gathii, 'The neoliberal turn in regional trade agreements' (2011) 86(3) *Washington Law Review*, 421-474.
- J. Gray, 'Domestic Capacity and the Implementation Gap in Regional Trade Agreements' (2014) 47(1) *Comparative Political Studies*, 55-84.

### Further suggested readings

- K. Raustiala, 'Rethinking the sovereignty debate in international economic law' (2003) 6(4) *Journal of International Economic Law*, 841-878.
- 'The Relationship between the Law of World Trade Organization and the Regional Trade Agreements', in Malebakeng Agnes Forere, *The Relationship of WTO Law and Regional Trade Agreements in Dispute Settlement*, Global Trade Law Series, Volume 50 (Kluwer Law International 2015) 95-126.
- Michael N. Jacobs, 'The Offensive Power of Regional Trade Agreements' (2011) 45(4) *Journal of World Trade*, 767-784.
- Louise Eva Mossner, 'The WTO and Regional Trade: a family business? The WTO compatibility of regional trade agreements with non-WTO-members' (2014) 13(4) *World Trade Review*, 633-649.
- Rudolf Adlung, 'The Trade in Services Agreement (TISA) and its compatibility with GATS: an assessment based on current evidence' (2015) 14(4) *World Trade Review*, 617-641.

### Questions for consideration

- Are RTAs the centre of gravity of the international trading system? Or is the multilateral trading system the centre of gravity?
- 'With the creation of the World Trade Organization (WTO) in 1995, the pyramidal design of the international trading system placed multilateralism at the top of the pyramid, regionalism/bilateralism in the middle, and the domestic trade and economic policies of WTO Member States at the bottom of the pyramid.'
- Given the tremendous proliferation of regional trade agreements in recent years and the fact that the WTO is losing its centrality in the international trading system, would you agree that the above statement is still accurate? Discuss.

## Week 3: International Corporations

### Aims and Focus

The seminar examines the scope of application of the different sources of international investment law. It analyses the different definitions of investment and foreign investor, evaluating the implications of their different breadth for investment protection and their importance for investment arbitration. It will be considered:

- the meaning of investor and investment in economic and legal terms;
- the definition of protected investments under BITs and the ICSID Convention;
- the definition of protected investors under BITs and the ICSID Convention;
- the ramifications of different approaches to defining the scope of investment agreements.

### Essential readings

- J. Salacuse, *The Law of Investment Treaties* (2<sup>nd</sup> edn., Oxford University Press, 2015) Chapter 7.
- R. Dolzer and C. Schreuer, *Principles of International Investment Law* (2<sup>nd</sup> edn., Oxford University Press, 2012) Chapter 3.

### Further suggested readings

- M. Feldman, 'Setting Limits on Corporate Nationality Planning in Investment Treaty Arbitration' (2012) 27 *ICSID Review*, 281-302.
- K. Schefer, *International Investment Law - Text, Cases and Materials* (Edward Elgar, 2013) 59-165.
- E. Cabrol, 'PrenNreka v. Czech Republic, The notion of investment under bilateral investment treaties: Does investment really mean "every kind of asset"?' in Sauvart (ed.) *Yearbook of International Investment Law and Policy* 2009-2010 (Oxford University Press, 2010) 217-231.
- C. Marian, 'Who is Afraid of Nottebohm? Reconciling the ICSID Nationality Requirement for Natural Persons with Nottebohm's "Effective Nationality" Test' (2011) 28 *Journal of International Arbitration*, 313-326.

### Cases

- *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, Decision on Jurisdiction of 23 July 2001, ICSID Case No. ARB/00/4.
- *Malaysian Historical Salvors v. Malaysia*, Decision on the Application for Annulment of 28 February 2009, ICSID Case No ARB/05/10.
- *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, Award of 24 July 2008, ICSID Case No ARB/05/22.
- *Phoenix Action, Ltd. v. The Czech Republic*, Award of 15 April 2009, ICSID Case No. ARB/06/5.
- *Tokios Tokelés v Ukraine*, Decision on Jurisdiction, 29 April 2004, ICSID Case No. ARB/02/18.

### Questions for consideration

- Why are definitions of investor and investment important? What do they reflect economic reality?
- Which are the sources of the different definitions and how do they interact?
- Should investments be defined narrowly or broadly?
- What is nationality planning? Should it be limited, why and how?

## Lecture 4: WTO, GATT, GATS

### Aims and Objectives

The aim of this seminar is: (1) to discuss the institutions and multilateral treaties regulating International Trade Law- WTO (GATT and GATS); (2) to demonstrate knowledge of the underlying principles governing the WTO multilateral trading

system; and (3) to carry out independent research on International Trade Law related issues.

### **Essential readings**

- World Trade Organization, Understanding the WTO (2015): [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](https://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf).
- Simon Lester et al, World Trade Law: Text, Materials and Commentary (2<sup>nd</sup> ed., Hart Publishing 2012) 147-219.
- US- Upland Cotton  
[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds267\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm).

### **Further suggested readings**

- Understanding the WTO:  
[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](https://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf).
- Understanding on Rules and Procedures Governing the Settlement of Disputes:  
[https://www.wto.org/english/docs\\_e/legal\\_e/28-dsu\\_e.htm#ftnt1](https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm#ftnt1).
- A. Lowenfeld, *International Economic Law* (2<sup>nd</sup> edn, Oxford University Press 2008).
- P. Van Den Bossche and W Zdouc, *The Law and Policy of the World Trade Organization Text, Cases and Materials* (3<sup>rd</sup> edn, Cambridge University Press 2013).
- S. Lester et al., *World Trade Law. Texts, Materials and Commentary* (2<sup>nd</sup> edn, Hart Publishing 2012).

### ***Questions for consideration***

- Discuss the GATS, its basic definitions, obligations and concepts. Where possible, compare GATS and GATT rules, indicating the similarities and differences between the two agreements.
- Comment on the achievements and challenges of the WTO Dispute Settlement System.

## **Lecture 5: Environmental protection and Article XX of the GATT**

### Aims and Objectives

This lecture examines the role of International Economic Law in International Law by taking into consideration how climate change regulation and environment protection interact with the economic order. Climate change presents an unprecedented global challenge and impacts upon a wide range of human economic activity. The issue of how to address climate change in developing countries has provoked international political controversy and the urgent need for effective international responses has become increasingly apparent. By examining international economic law, and particularly the relevant WTO agreements, it will be discussed the areas of potential conflict between international trade law and international law on climate mitigation and, where possible, suggested ways to strengthen mutual supportiveness between the two regimes.

## Essential readings

- Fiona Smith, 'Natural resources and global value chains: What role for the WTO?' (2015) 11(2) *International Journal of Law in Context*, 135-152.
- Bradley J. Condon and Tapen Sinha, *The Role of Climate Change in Global Economic Governance* (Oxford: OUP 2013) Chapter 3.
- Thomas Cottier and Sofya Matteotti-Berkutova, 'International environmental law and the evolving concept of 'common concern of mankind' in Thomas Cottier, Olga Nartova and Sadeq Z. Bigdeli (eds), *International Trade Regulation and the Mitigation of Climate Change World Trade Forum* (Cambridge: CUP 2009) Chapter 3.

## Further Suggested Readings

- Rafael Leal-Arcas, *Climate Change and International Trade* (Edward Elgar 2013) Chapters 2-3.
- Erich Vranes, *Trade and the Environment: Fundamental Issues in International Law, WTO Law, and Legal Theory* (Oxford: OUP 2009) Chapter 6.
- Chris Wold et al., 'Climate change, international trade, and response measures: options for mitigating climate change without harming developing country economies' (2014) 46(3) *George Washington International Law Review*, 531-569.

## Questions for consideration

- How can we make best use of the international trading system experience to aim at a global climate change agreement?
- Does Article XX of the GATT 1994 leave WTO Members sufficient freedom to define and pursue environmental policy objectives?
- Assess the role of the major players in climate change negotiations (such as the US, the EU, China and India) in shaping the creation of a new global climate change agreement in light of the latest developments at the most recent Conferences of the Parties.

## Lecture 6: TRIPs and IP developments

### Aims and Focus

This seminar focuses on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement and IP developments. The TRIPS Agreement has been in force since 1995 and is to date the most comprehensive multilateral agreement on intellectual property. Further the TRIPS Agreement introduced global minimum standards for protecting and enforcing nearly all forms of intellectual property rights (IPR), including those for patents. The TRIPS Agreement now requires all WTO members, with few exceptions, to adapt their laws to the minimum standards of IPR protection. In addition, the TRIPS Agreement also introduced detailed obligations for the enforcement of intellectual property rights. In terms of patent protection, the TRIPS Agreement requires WTO Members to provide protection for a minimum term of 20 years from the filing date of a patent application for any invention including for a pharmaceutical product or process.

### Essential readings

- Matthew Kennedy, *WTO Dispute Settlement and the TRIPS Agreement. Applying Intellectual Property Standards in a Trade Law Framework* (Cambridge: CUP 2016) Chapter 4.
- Antony Taubman, Hannu Wager and Jayashree Watal, *A Handbook on the WTO TRIPS Agreement* (Cambridge: CUP 2012) Chapter 1.
- Carlos M. Correa, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (Oxford: OUP 2007) Chapter 1.

### Further Suggested readings

- Matthew Kennedy, *WTO Dispute Settlement and the TRIPS Agreement. Applying Intellectual Property Standards in a Trade Law Framework* (Cambridge: CUP 2016) Chapter 5.
- Ping Xiong, *An International Law Perspective on the Protection of Human Rights in the TRIPS Agreement: An Interpretation of the TRIPS Agreement in Relation to the Right to Health* (International Studies in Human Rights Series, Volume 108, Nijhoff 2012) Chapter 3.
- Carolyn Deere, *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries* (Oxford: OUP 2008) Chapter 4.

### Legislation

- Agreement on Trade-Related Aspects of Intellectual Property Rights, available at [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf)
- WTO, Trade-Related Aspects of Intellectual Property Rights, available at [https://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/trips_e.htm)
- WTO, Overview: the TRIPS Agreement, available at [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)
- Convention Establishing the World Intellectual Property Organization (as amended on September 28, 1979) available at <https://wipolex.wipo.int/en/treaties/textdetails/12412>

### Questions for consideration

- What are the main aims of TRIPs agreement and WIPO Convention?
- The 2001 Doha Declaration on TRIPS and Public Health affirmed that intellectual property protection and public health objectives do not contradict each other (“We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health”). Critically discuss highlighting the relationship between TRIPs clauses and public health issues.
- The TRIPS Agreement should be amended to require patent applicants to disclose the origin of genetic resources and any traditional knowledge used in the inventions. Critically discuss.
- The effective procedures for enforcement the TRIPs agreement raise main concerns on the controversial debate about the implementation of new standards more stringent than those in TRIPS. Critically discuss.

## Lecture 7: Trade Law and Energy

### Aims and focus

The lecture examines international investment law in the context of the energy sector. States contract legal relationships with one another in all manner of configurations e.g., bilateral, multilateral, regional or on the basis of specific shared interests (e.g., the Energy Charter Treaty and the energy sector). The explosion in bilateral investment treaties (BITs) makes this phenomenon a significant element of the putative global investment protection governance system in that it provides a further layer of investment protection to the extent that an interstate relationship may also be conditioned by the existence of a BIT. International law as it stands today is not well equipped to handle international energy governance issues fully. This legal deficiency affects energy security negatively. If the currently fragmented and multi-layered international energy governance regime were streamlined for greater legal cohesiveness and international political and economic cooperation, it would promote energy security.

### **Essential readings**

- Rafael Leal-Arcas and Andrew Filis, ‘The fragmented governance of the global energy economy: a legal-institutional analysis’ (2013) 6(4) *Journal of World Energy Law and Business*, 348-403.
- Elizabeth Whitsitt and Nigel Bankes, ‘The Evolution of International Investment Law and its Application to the Energy Sector’ (2013) 51(2) *Alberta Law Review*, 207-247.
- Rafael Leal-Arcas, ‘The EU and Russia as Energy Trading Partners: Friends or Foes?’ (2009) 14 (3) *European Foreign Affairs Review*, 337-366.

### **Further suggested readings**

- Rafael Leal-Arcas, Juan Alemany Rios and Costantino Grasso, ‘The European Union and its energy security challenges’ (2015) 8(4) *Journal of World Energy Law and Business*, 291-336.
- Rafael Leal-Arcas, Andrew Filis and Ehab S. Abu Gosh, *International energy governance: selected legal issues* (Edward Elgar 2014) Chapters 1 and 2.
- Ferdinand E Banks, *The Political Economy of World Energy* (World Scientific 2007) Chapters 1 and 9.

### ***Questions for consideration***

- ‘International trade allows energy supply to expand and travel transnationally. Despite this link between trade and energy, it is surprising that the trade regime has not dealt with energy issues more directly. At the international level, there is no truly universal framework exclusively governing global trade, let alone governing global trade in energy. In its absence, a multi-layered patchwork of regimes has emerged, the largest cog of which is the WTO. If one were to take this patchwork to amount to an overarching global energy trade governance system, it would surely contain various elements including: the WTO, the trade aspects of various preferential trade arrangements (PTAs)—e.g., amongst others, the EU, the North American Free Trade Agreement (NAFTA), and the Association of Southeast Asian Nations (ASEAN)—along with the trade aspects of organizations with a specific

focus on energy, an example par excellence being the Energy Charter Conference. In that respect, none of these institutions possesses vertical exclusive competence over global energy trade, or over one another. Rather, it is more their interplay that one might consider to provide a degree of global governance over energy trade, with each component's scope limited to its specific membership.'

Answer BOTH questions:

- a. What is wrong with the governance of energy trade?
- b. How can we fix it?

## Lecture 8: Investment Arbitration

### Aims and Focus

The seminar examines the investment arbitration, analyzing the perspectives of disputing parties, third parties, non-disputing state parties and arbitral tribunals. Key areas of discussion include: (1) the instruments under which investment disputes arise; (2) the legal basis of treaty arbitration; (3) dispute resolution and parallel proceedings; (4) who is a foreign investor, including nationality issues and foreign control; (5) what is an investment; investors' substantive rights, including fair and equitable treatment; expropriation; and, (6) compensation and remedies. An arbitration clause in an investment treaty represents an offer made by those states to arbitrate disputes with investors. When investors accept that offer, the consent to arbitrate becomes perfected and cannot be withdrawn unless both parties to the arbitration—the investor and the host state—agree. This conclusion is based on the principle of irrevocability of the consent to arbitrate, which is a pillar of arbitration law and also is established in Article 25 of the ICSID Convention. Moreover, the applicable law to the dispute would be the law that was binding on the parties at the moment of the acts that created the dispute. The same principle applies in state responsibility disputes.

### Essential Readings

- Campbell McLachlan, Laurence Shore and Matthew Weiniger, *International Investment Arbitration: Substantive Principles* (Oxford University Press 2007) Chapters 3 and 6.
- ICSID Convention, Regulations and Rules, ICSID/15 April 2006.

### Cases

- *Tokios Tokeles v Ukraine* (ICSID Case No. ARB/02/18), paragraphs 21-82.
- *Malaysian Historical Salvors SDN BHD v The Government of Malaysia*, annulment decision (ICSID Case No. ARB/05/10), paragraphs 56-82.
- *Malaysian Historical Salvors SDN BHD v The Government of Malaysia*, Dissenting opinion of Judge Shahabuddeen.
- *Pantechniki v Rep of Albania* (ICSID Case No. ARB/07/21), paragraphs 50-68.
- *Vivendi v. Argentina* (Compania de Aguas del Aconquija S.A. and Vivendi Universal S.A. v Argentine Republic) (ICSID Case No. ARB/97/3) Decision on Annulment, July 3 2002, paras 61-116.



### Further suggested readings

- David D. Caron, 'Framing the Work of ICSID Annulment Committees' (2012) 6 *World Arbitration & Mediation Review*, 173-199.
- Jan Paulsson, 'Arbitration Without Privity' (Fall 1995) 10(2) *ICSID Review – Foreign Investment Law Journal*, 232.
- Rudolph Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2<sup>nd</sup> ed., OUP 2012) Section II.

### Questions for consideration

- What is the main distinction about arbitrating with States compared to arbitrating with private companies?
- On what grounds can you challenge an ICSID award?
- How would you ascertain the nationality of corporate investors? Consider *Tokios Tokelés v Ukraine*.

## Lecture 9: Money laundering in global commerce

### Aims and Focus

The aim of the class is to provide a working knowledge of the UK money laundering regime in its international context. The seminar considers the interaction of these provisions at national level, and how they interrelate with the FATF Recommendations and EU money laundering measures. It also examines the FCA's risk-based approach to the implementation of the money laundering provisions and the implications on investment law.

### Essential readings

- M Goldby, 'Anti-Money Laundering Reporting Requirements Imposed by English Law: Measuring Effectiveness and Gauging the Need for Reform' (2013) *Journal of Business Law*, 367-397.
- Financial Conduct Authority, 'Anti-money laundering annual report', July 2014.
- Michael J. Anderson and Tracey A. Anderson, 'Anti-money laundering: history and current developments' (2015) 30(10) *Journal of International Banking Law and Regulation*, 521-531.

### Legislation

- EU Commission: [http://ec.europa.eu/internal\\_market/company/financial--crime/index\\_en.htm](http://ec.europa.eu/internal_market/company/financial--crime/index_en.htm).
- Financial Action Task Force materials: <http://www.fatf-gafi.org>.
- Financial Services Authority materials: <http://www.fsa.gov.uk>.
- International Money Laundering Information Network: <http://www.imolin.org/>.
- Serious Organised Crime Agency materials: <http://www.soca.gov.uk>.

### Further suggested readings

- S. Lander, *Review of the Suspicious Activity Report Regime* (The SARs Review), Serious Organised Crime Agency, March 2006.
- V. Mitsilegas, *Money Laundering Counter-Measures in the European Union* (Kluwer, 2003) Chapter 2.
- D. Singh, *Banking Regulation of UK and US Financial Markets* (Ashgate 2007) Chapter 4.
- Lovina Otudor and Mahmood Bagheri, 'Anti-money laundering laws: the possibility of global convergence' (2016) 31(1) *Journal of International Banking Law and Regulation*, 37-43.
- Shahien Nasiripour, 'US lawmaker attacks HSBC settlement', *Financial Times*, 7 March 2013.
- Susannah Cogman, 'The devil is in the detail: the Fourth Money Laundering Directive in practice' (2014) 29(5) *Journal of International Banking and Financial Law*, 308.

### Questions for consideration

- What is money laundering?
- What harm is the State and the international community attempting to protect against by prohibiting it?
- Should we be asking for more objective information?
- Should we be relying on the suspicions of people with no experience of law enforcement?

## Lecture 10: Corporate Social Responsibility

### Aims and focus

The seminar examines the Corporate Social Responsibility (CSR) considering whether and how standards on socially responsible investments can be promoted through international investment law. In particular, the seminar discusses: (1) the concept of CSR and standards of responsible investment; (2) the importance of CSR standards for MNEs; and (3) the interaction between CSR and international investment law.

### Essential readings

- D. McBarnet, "Corporate Social Responsibility beyond law, through law, for law" [available on SSRN].
- S. McLeod, "Reconciling Regulatory Approaches to Corporate Social Responsibility: The European Union, OECD and United Nations Compared", in (2007) 13 *European Public Law* 671.
- J. Hepburn and V. Kuuya, "Corporate Social Responsibility and Investment Treaties" in M.-C. Cordonier Segger, M. Gehring & A. Newcombe (eds) *Sustainable Development in World Investment Law* (Kluwer, 2011) pp. 585-611.

### Further suggested readings

- Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN Doc A/HRC/17/31, 2011.
- P. Muchlinski, ‘Corporate Social Responsibility and International Law: The Case of Human Rights and Multinational Enterprises’, in McBarnet, Voiculescu & Campbell (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (CUP, 2007) pp. 431- 441.
- S. Robinson, ‘International Obligations, State Responsibility and Judicial Review Under the OECD Guidelines for Multinational Enterprises Regime’, in (2014) 38 *Utrecht Journal of International & European Law* 68.
- P. Muchlinski, *Multinational Enterprises & the Law* (2<sup>nd</sup> ed, OUP, 2006), chapter 4.

### Questions for consideration

- What does Corporate Social Responsibility mean? Identify the main categories of CSR standards that are relevant for MNEs.
- Why is CSR particularly important for FDI and the activities of MNEs?
- How does investment law interact with CSR? Should investment agreements include binding provisions on CSR?

### Lecture 11-12: Student Group Presentation

The student group presentation focuses on the topics covered during the course. The whole group will be split in 8 teams to discuss the relevant aspects examined in the module. These sessions are useful to prepare the final exam.