

**Carleton University****Department of Law and Legal Studies  
Course Outline**

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<b>COURSE:</b>	<b>LAWS 4200 A – International Economic Law</b>
<b>TERM:</b>	<b>Winter 2021</b>
<b>PREREQUISITES:</b>	<b><u>LAWS 2908</u>, 0.5 credit from <u>LAWS 3207</u> or <u>LAWS 3208</u>, and fourth-year Honours standing</b>
<b>CLASS:</b>	<b>Day &amp; Time: Please check Carleton Central for current Class Schedule. Room: All Courses in the Winter 2021 term are offered online. This course will be delivered in hybrid format. You will find the recorded materials posted at CU Learn. The “live” sections of the class will be administered online via Zoom. The link will be posted at CU Learn.</b>
<b>INSTRUCTOR:</b>	<b>Ksenia Polonskaya</b>
<b>CONTACT:</b>	<b>Office Hrs: 10 am – 11 am on Fridays via Zoom Telephone: N/A Email: Ksenia.polonskaya@carleton.ca</b>

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**CALENDAR COURSE DESCRIPTION****LAWS 4200-A 13583 8:35 am-11:25 am**

Selected topics in international economic law. May include: the legal regulation of international economic activity; methods of dispute settlement; standardization and development of an autonomous international trade law; and selected conventions and institutions governing international economic law.

Prerequisite(s): LAWS 2908, 0.5 credit from LAWS 3207 or LAWS 3208, and fourth-year Honours standing.

Seminars three hours a week.

## **COURSE DESCRIPTION**

This course will provide you with the general overview of the key topics in the subfields of international economic law (IEL). Specifically, you will learn the general principles and overall structure of international investment law, international trade law, and international financial law.

**In the Schedule, you will see that the subject-areas generally will include the sessions on:**

- General Overview: Key Principles
  - Jurisdiction and Admissibility
  - Selective Substantive Standards
  - Dispute Resolution
- The Backlash (critiques of these principles and structures)
  - The critical overview of the theoretical discourse
- Reform (the pathway forward)
  - Various proposals for reforming the system

Each lecture in this course will be organized around three pillars, namely “legal instruments”, “contexts” and “networks”. Exclusive focus on the legal instruments, without due appreciation of how context and professional fields shape such instruments, can create a perception that law is given and static rather than an evolving social institution. Accordingly, this course demonstrates the evolution of the law in the relevant historical, political and social contexts, and the influence of various participants of IEL that shape and re-shape the legal rules.

## **COURSE DELIVERY**

In the schedule, you will see that our course will be conducted in the hybrid format. What does this mean? It means that you will get a set of recorded materials for each lecture. The length will vary depending on the topic but generally speaking the recordings (including the third-party materials) will be around 30-45 minutes. Some recorded materials may be longer or shorter than others, depending on the topic so deviations from the indicated timeframe of 30-45 minutes are possible. I will do my best to post the recorded materials one day before the class. Please plan your schedule accordingly. Please note that some sessions may require you to review a movie, listen to a podcast, and/or a webcast.

Our first class will be introductory and will not include recorded materials. You will be expected to complete the mandatory readings for our first class to participate in the discussion. During our first lecture, a guest-lecturer will attend our live session. Please refer to the section “Schedule” for further particulars.

Please note that the recorded materials include all the core materials to understand the basic concepts in IEL. For some lectures, the recorded materials can include my interview with a scholar who has a particular subject-matter expertise in the area. This interview may cover certain aspects of this scholar’s work. Please note that some materials would be uploaded as the narrated PowerPoints; other materials can be uploaded as recorded videos. Please do not email me with the requests to re-record the materials in some different format. The narrated PowerPoints ensure accessibility of the materials for everyone, including students who may not have access to high-speed internet and uninterrupted secured connection.

I will do my best to upload the materials at least two days prior to our live session. Please note that to succeed in this course, you **must** complete the readings to complement the lectures. The recorded lectures will be in place to provide an overall structure, they **cannot** substitute for the readings. All of your readings will be accessible online via Carleton library except the textbook.

During the “live” component of the class, we will focus on students’ presentations and guided discussions of the mandatory readings that will include scholarly works, cases, and international treaties. For some classes, I may introduce practical exercises and/or questions for the discussion. Please note that our course is a seminar that requires your participation and engagement. I do not intend to lecture during the “live” component. Please refer to the Evaluation section of this Syllabus for further particulars.

### Structure of our “Live” Sessions

**Our in-class time is an opportunity to engage in critical reflections and discussions that relate to relevant legal concepts. Our “live” seminar will include two components:**

<p><b>Critical Reflections (CR), beginning week 3 (27 January 2020)*</b></p>	<ul style="list-style-type: none"> <li>• CRs are oral presentations concerning an assigned reading.</li> <li>• CRs are <u>GRADED (12 min per student+10 minutes for questions)</u>. They must be completed during the “live” sessions.</li> <li>• You must complete the CR individually. Please sign up for a particular timeslot during the live session at CU</li> </ul>
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	<p>Learn. Please note that you can choose only one paper.</p> <ul style="list-style-type: none"> <li>• You will find the selection of the papers in this syllabus, section “Schedule”, subsection “Live Component”</li> <li>• Please refer to the section on Evaluation for further particulars.</li> </ul>
<p><b>Guided discussions if timing permits (20 minutes)</b></p>	<ul style="list-style-type: none"> <li>• Non graded. I will prepare the questions for the discussion on the basis of the presentations we heard. I may introduce some practical exercises.</li> <li>• The practical exercises are in place to help you to develop the problem-solving skills and apply the theory you learn in this course in practice.</li> </ul>

\*please note that our first two weeks, we will dedicate the “live” lectures to discussing the introductory legal concepts. I will share certain strategies on developing legal arguments and discuss appropriate strategies for how to conduct legal research in IEL. These two weeks will serve as a “buffer” for you to sign up and prepare for the Critical Reflection presentations.

### **LEARNING OUTCOMES**

- Students will develop understanding of the core legal concepts in IEL
- Students will develop an ability and flexibility to critically engage with the core legal concepts of IEL and analyze these concepts from various theoretical perspectives
- Students will acquire advanced understanding of the core theoretical and policy debates in IEL
- Students will develop ability and flexibility to analyze legal issues, build argumentation and counter-argumentation
- Students will further advance their research, writing and presentation skills by completing the assignments in this course

### **REQUIRED TEXTS**

**Textbook:** David Collins, *Foundations of International Economic Law* (Edward Elgar Publishing, 2019) [referenced as “Collins”]. You can order the book from Elgar directly, online via Google Books and the Carleton University Bookstore. Please note that Google books provides the cheapest option (32 CAD, digital copy of the book only).

There are several good textbooks available on international economic law, I chose Collins for two reasons. First, it is the most recent textbook on IEL. Second, it is the most affordable option on IEL.

In addition, the schedule specifies additional mandatory reading and video/audio materials. These materials are accessible online: via the Carleton library online search database, free of charge on the websites as specified. You are expected to review all materials in the section "Mandatory Readings & Materials" (see the schedule) prior to each class.

**Note on mandatory readings:** for some classes, you will be required to read significantly less than for others to manage the materials successfully. I expect you to review the recorded materials and complete the mandatory readings prior to each class.

The mandatory readings are absolutely essential at this stage of your education for three reasons. First, you need to develop a good grasp of some basic concepts in IEL. Second, you need to learn how to think critically about the development of legal rules and institutions in IEL. It is only possible if you read and analyze cases. My pre-recorded materials will be helpful for you to provide the structure; they, however, cannot substitute for the readings. Third, cases are essential. However, you also will have to read relevant scholarly commentaries to understand how the cases fit in the broader context. As you will see, the international courts and tribunals themselves rely on scholarly works. Accordingly, when I ask you to review a particular scholarly work, please do not dismiss it as the mere legal theory that has no practical application; instead, try to think about theories as your toolkit for resolution of practical problems in IEL.

Please note that some mandatory readings include online links so by clicking you can easily access a particular case or paper. However, other mandatory readings do not embed such links. This is a deliberate choice. The reason for it is that I would like you to learn how to navigate the search system, and how to work with the library database to successfully access the source. Our time demands you to develop an ability and flexibility to navigate the databases (including but not limited to the library databases) to be successful in your chosen career.

**Useful Websites:**

<b>Investment Policy Hub (UNCTAD)</b>	<a href="https://investmentpolicy.unctad.org/">https://investmentpolicy.unctad.org/</a>
<b>SSRN</b> (free access to scholarly papers and commentaries)	<a href="https://www.ssrn.com/index.cfm/en/">https://www.ssrn.com/index.cfm/en/</a>

<b>ITA Law</b> (search: investment law cases)	<a href="https://www.italaw.com/">https://www.italaw.com/</a>
<b>WTO Disputes</b> (search: WTO disputes)	<a href="https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm">https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm</a>
<b>International Economic Law and Policy Blog</b>	<a href="https://ielp.worldtradelaw.net/about.html">https://ielp.worldtradelaw.net/about.html</a>
<b>International Institute for Unification of Private Law</b> (UNIDROIT)	<a href="https://www.unidroit.org/contracts">https://www.unidroit.org/contracts</a>

## EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Please note that this course has no final examination. The course presentation (critical reflection) and the mid-term paper constitute the two major assessments for this course, together with the other assessments listed below.

Please note that it is your responsibility and duty to review all the available instructions for this course, including the Syllabus and the instructions posted at the CU Learn Announcement Board. You must stay up to date with the course materials. Please note that for this course you need high-speed Internet access and a computer.

Short mid-term paper – 30% (due 15 Feb 2020, 5 pm at CU Learn)	<ul style="list-style-type: none"> <li>You will prepare and deliver a short mid-term paper. The paper must be in the range of 1000-1200 words (exclusive of footnotes). You must include footnotes (please do not use end notes). Please note that I will not mark assignments less than 700 words.</li> <li>The formatting requirements: Times New Roman, 12 font, 1.5 spacing. I do not require a bibliography for the paper, but you must include the footnotes formatted in accordance with the McGill Guide. If you do not have a copy of McGill Guide, you can</li> </ul>
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	<p>find the key rules for the citations here: <a href="https://guides.library.queensu.ca/legalcitation-mcgill-9th">https://guides.library.queensu.ca/legalcitation-mcgill-9th</a>. Please review CU Learn for further particulars. You will find the instructions at the Mid-Term Paper: FAQ document. The rubric will be provided for you.</p> <ul style="list-style-type: none"> <li>• This assignment is crucial to develop practical skills in legal writing and case-law analysis as well as master appropriate terminology</li> <li>• Please review the paper by Professor Allison Christians, "<a href="#">Really Basic Rules for Writing Good Papers in Law School</a>" (2020), before you begin working on your writing assignments. Professor Christians discusses papers. However, I find that her advice is very useful for any type of writing. You can access this paper at SSRN.</li> <li>• Please monitor the CU Learn Announcement Board. I will post the question/topic for the mid-term paper and the instructions.</li> <li>• Please note that to complete this assignment you may be required to consult the sources outside of the materials in the syllabus. I will provide additional sources you may wish to consult to complete this assignment.</li> </ul>
<p>Presentation: Critical Reflection – 30% (throughout the term, please sign up at CU Learn)</p>	<ul style="list-style-type: none"> <li>• Reflections are critical analytical presentations that students complete during the live sessions of the class. You will need to review a particular scholarly work and engage with me/ other students during the live component.</li> <li>• CRs are <u>GRADED (12 min per student+10 minutes for questions)</u>. They must be completed during the "live" sessions.</li> <li>• You must complete this activity individually. You are expected to review the paper, analyze the key points and be prepared to answer the questions about the paper. Please note that you will see a number near the date of our live session in the section "Schedule" starting 27 January 2021. This number indicates the maximum number of presenters during this session. The presenters must choose one of the papers indicated in the section "live lecture".</li> <li>• I will post a Survey at CU Learn so you can sign up for the date of our lecture that will work for you and select the work you would</li> </ul>

	<p>like to discuss. Please note that you must complete this assignment during the “live” component of the lecture. Unfortunately, I cannot accommodate the completion of the critical reflections in any other times/dates.</p> <ul style="list-style-type: none"><li>• From a pedagogical perspective, it is essential for you to master the presentation skills, including by Zoom and develop an ability and flexibility to engage with your peers in critical ways. Critical reflections, as a method of evaluation, will help you to achieve it.</li><li>• If for equitable reasons (care obligations, any form of disability, illness), you cannot participate in this exercise at any point during the term, you will need to contact me by email and let me know about it <b>within first two weeks of our class</b>. The exceptions are allowed only in the most extraordinary circumstances. Please note that lack of access to high-speed internet is not considered to constitute such circumstances.</li><li>• <b>For your critical reflection, you should:</b><ul style="list-style-type: none"><li>▪ prepare a short presentation/ provide a summary of a particular work and your assessment</li><li>▪ demonstrate analytical engagement with the scholarly work by questioning the key argument of the paper/ identifying the gaps in the argument/ proposing a counterargument</li></ul></li><li>• <b>I will grade your reflective activity on the following basis:</b></li><li>• 10% - the student prepared a short overview/ summary of the paper by preparing PowerPoints. Alternatively, the students developed an alternative way present the scholarly work. The delivery is well-structured and clear.</li><li>• 10% - the student demonstrated confidence in identifying and summarizing the key arguments of the scholarly work correctly. The student can appropriately link the scholarly work to the relevant case-law, policy changes in the field or to the broader theoretical discourse.</li><li>• 10% - the students can answer the questions in a respectful and</li></ul>
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	<p>analytical way that demonstrates solid knowledge of the scholarly work and understanding of the relevant terminology.</p> <ul style="list-style-type: none"> <li>• <b>Please note that I do not need a copy of your PowerPoint (if you choose to use it) in advance.</b></li> </ul>
<p>Quizzes – 30% (6*5%) (due 31 March 2020, 11:59 PM)</p>	<ul style="list-style-type: none"> <li>• Multiple choice quizzes that cover the core principles, concepts and cases in IEL. You do not need to do any outside research to complete these quizzes. They are based on the materials of this course (pre-recorded and mandatory readings). You will have 6 quizzes total. Each quiz will include 5 questions and will weight 5% each. The quizzes will be open during the full term. <b>Please note that there is no extension policy for quizzes.</b></li> <li>• <b>Quizzes will be available on 27 January 2021 via CU Learn.</b></li> </ul>
<p>Forum post– 10% (due 14 April 2020, 5:00 pm)</p>	<ul style="list-style-type: none"> <li>• By the end of the course, you will be provided with the passage for the critical theoretical reflection. You will be required to provide the answer in the range between 200-250 words. The goal of this short assignment is to engage your critical thinking about the concepts we learned in this course.</li> <li>• Please note that I will evaluate the forum posts on the pass/fail basis. In other words, if you submit your post where you not only express your opinion about the passage but also rationalize it, you will automatically obtain 10%. In my assessment, I am looking to review your opinions about the passage and your ability to rationalize your opinions. This exercise intends to help you to develop an ability to “closely” read the short theoretical passage. This passage will relate to IEL.</li> </ul>

### **ONLINE SUBMISSIONS**

You must make all submissions via the Cu Learn platform by the deadline indicated above unless you obtained an extension. All the marking and feedback will be delivered via CuLearn as well. **Please, keep copies of your assignments until you receive your final grade.**

### **LATE PENALTIES AND REQUESTS FOR EXTENSIONS**

#### **EXTENSIONS**

The granting of extensions is determined by the instructor, who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date. [https://carleton.ca/registrar/wp-content/uploads/COVID-19\\_Self-declaration.pdf](https://carleton.ca/registrar/wp-content/uploads/COVID-19_Self-declaration.pdf) **Extensions for longer than 7 days will normally not be granted.** In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days). Please make sure you submit the extension request at least 2 days before the assignment is due. For your extension to be given full consideration, you must download the form, fill the form, explain the reasons for an extension, sign the form and email it to me at least two days before the deadline. **The extension requests submitted after this deadline (except in the direst of circumstances of true emergencies) would not be given any consideration. Please note that I process the extension requests only during regular working hours (8 am to 5 pm) during weekdays.**

**Please note that you cannot take advantage of the extension policy for the critical reflections i.e. your presentations except in the extraordinary circumstances. If you cannot complete the presentation after you signed up for it, you must notify me at least 3 days in advance and I will do my best to accommodating the rescheduling. If you notify me after this timeframe, the rescheduling will likely be impossible so you will lose an opportunity to complete this assignment.**

**Quizzes. Please note that this extension policy does not apply to quizzes.** You will have the whole term to complete the quizzes. They are in place to ensure that you complete the mandatory readings and review the course-materials.

#### **B. PENALTIES**

**Penalties:** if you submit a mid-term late without an extension, you will lose 5% of the mark PER DAY. It does not matter if you are late by 1 second, 30 minutes or 12 hours. The standard is objective i.e., if you are late, you will lose 5%. I will accept the mid-term papers only 3 days past deadline. The same policy applies to the forum posts. If I receive the mid-term paper and the forum post 3 days after the respective deadlines, you will be awarded 0.

**SCHEDULE**

<b>January 11, 2021</b>	<b>Classes Begin</b>
<b>February 15, 2021</b>	<b>Statutory Holiday, University Closed</b>
<b>February 15 – 19, 2021</b>	<b>Winter Break, No Classes</b>
<b>April 9, 2021</b>	<b>Winter Term Ends</b>
	<b>Classes follow a Monday Schedule</b>
<b>April 11 – 23, 2021</b>	<b>Formally Scheduled Final Exams</b>

Please note that you will need to purchase the textbook by Collins, all other sources indicated in this schedule are accessible online via Carleton University Library. The librarians may add certain sources to Ares.

I may need to adjust the timing for the live sessions to accommodate the guest-lecturers within the scheduled timeslot for this course i.e., 8:35 am to 11:25 am on Wednesdays. If any adjustment is needed, I will notify the class in advance via general email and the CU Learn Announcement Board. Otherwise, please refer to the schedule, it provides the particulars when our sessions will run. Please note that we will use Zoom for administering our live sessions. I will post the Zoom link at the CU Learn Announcement Board.

**Jan 13**

- **Seminar 1: “Introduction: International Economic Law as a Professional Field and Discipline”**
- **Please note that there will be no recorded materials for our first class.**
- **We will meet from 9 am to 11:15 am for our introductory class.**

<b>Live Component</b>	<b>Mandatory readings</b>
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<ul style="list-style-type: none"> <li>• <b>Introductory class</b> -discussing research databases in IEL and sources; - reading strategies and syllabus. - discussing basic rules of legal interpretation and sources - Q&amp;A</li> <li>• <b>Guest Lecture:</b> Maria Panezi, Assistant Professor, University of New Brunswick, Q&amp;A</li> </ul>	<ul style="list-style-type: none"> <li>• Collins 1-27,</li> <li>• Rafael Lima Sakr, “Beyond History and Boundaries: Rethinking the Past in the Present of International Economic Law” (2019) 22:1 Journal of International Economic Law 57-91.</li> <li>• Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field” 38 Hastings Law Journal (1987) 810- 815.</li> <li>• Umut Özsu, “Hydrocarbon Humanitarianism: Ibrahim Shihata, ‘Oil Aid’, and Resource Sovereignty” (see Ares).</li> <li>• <i>Vienna Convention on the Law of Treaties</i> (VCLT), article 31.</li> <li>• Statute, International Court of Justice (ICJ), article 38.</li> </ul>
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**International Investment Law (IIL)**

Jan 20

- **Seminar 2: “History of IIL: Why Does it Matter for Studying IIL?”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 10:30 am.**

Live Component	Mandatory readings
<ul style="list-style-type: none"> <li>• Gunboat Diplomacy</li> <li>• ICSID Convention                             <ul style="list-style-type: none"> <li>○ Taylor St John, <i>The Rise of Investor-</i></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Collins 187-214,</li> <li>• “The Standard of Civilization in International Law: Politics, Theory, Method” in Ntina Tzouvala, <i>Capitalism as Civilisation: A History of International Law</i> (Cambridge</li> </ul>

<p><i>State Arbitration: Politics, Law, and Unintended Consequences</i> (Oxford University Press, 2018), the Chapter “Gunboats and Diplomacy: Antecedents of the ICSID Convention”.</p> <ul style="list-style-type: none"> <li>• Questions for the guided discussions on the basis of the mandatory readings</li> <li>• Strategies on reading cases</li> </ul>	<p>University Press, 2020).</p> <ul style="list-style-type: none"> <li>• John Linarelli, Margot E. Salomon &amp; Muthucumaraswamy Sornarajah, <i>The Misery of International Law: Confrontations with Injustice in the Global Economy</i> (Oxford University Press, 2018), see chapter “Foreign Investment: Property, Contract, and Protecting Private Power”.</li> </ul> <p>UN, Charter of Economic Rights and Duties of States, GA Res 3281 (XXIX), 29th Sess, UN Doc. A/9631.</p> <p>Declaration on the Establishment of a New International Economic Order, G.A.Res.3201 (S-VI) of May 1, 1974, 13 ILM 715.</p> <p>Program of Action on the Establishment of a New International Economic Order, GA Res 3201 (S-VI) of May 1, 1974 13 ILM 720.</p>
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**Jan 27 (3 CRs)<sup>1</sup>**

- **Seminar 3: “Jurisdiction and Admissibility: Key Concepts”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 10:30 am.**

<b>Live Lecture</b>	<b>Mandatory Readings</b>
<ul style="list-style-type: none"> <li>• Critical Reflections</li> <li>• Discussing writing and research strategies: how to build and</li> </ul>	<ul style="list-style-type: none"> <li>• Rudolf Dolzer &amp; Christoph Schreuer, <i>Principles of International Investment Law</i> (Oxford University Press, 2012) 44-60 (see Ares)</li> </ul>

<sup>1</sup> Please note that you will see a number near the date of our live session. This number indicates the maximum number of presenters during this session. The presenters must choose one of the papers indicated in the section “live lecture”.

<p>develop a legal argument</p> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Emmanuel Gaillard, “Abuse of Process in International Arbitration” (2017) ICSID Rev 1.</li> <li>• Yuka Fukunaga, “Abuse of Process under International Law and Investment Arbitration” (2018) 33:1 ICSID Review 181.</li> <li>• Mavluda Sattorova, “Defining Investment Under the ICSID Convention and BITs: Of Ordinary Meaning, Telos, and Beyond” (2012) Asian Journal of International Law 267.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Convention on the Settlement of Investment Disputes between States and Nationals of Other States</i> (1965), 5 ILM 532, 575 UNTS 159 [ICSID Convention], article 25 and the preamble.</li> <li>• <i>Philip Morris Asia Limited v The Commonwealth of Australia</i> (2015), Award on Jurisdiction and Admissibility, PCA Case No. 2012-12 (Permanent Court of Arbitration) (Arbitrators: Gabrielle Kaufmann-Kohler, Don McRae, Karl-Heinz Böckstiegel)</li> </ul>
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**Feb 3 (3 CRs)**

- **Seminar 4: “Substantive Standards: General Principles”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 10:30 am.**

Live lecture	Mandatory readings
<ul style="list-style-type: none"> <li>• Critical Reflections</li> <li>• Discussing <i>Bilcon</i></li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Michael Reisman, “Canute Confronts the Tide: States versus</li> </ul>	<ul style="list-style-type: none"> <li>• Collins 158-187,</li> <li>• Martins Paparinskis, <i>The International Minimum Standard and Fair and Equitable Treatment</i> (OUP, 2013) chapter 4 “Content of the Modern International Standard” (see Ares)</li> </ul>

<p>Tribunals and the Evolution of the Minimum Standard in Customary International Law” (2015) 30:3 ICSID Rev 616.</p> <ul style="list-style-type: none"> <li>○ Caroline Henckels, “Indirect Expropriation and the Right to Regulate: Revisiting Proportionality Analysis and the Standard of Review in Investor-State Arbitration” (2012)15:1 J Intl Econ L 223.</li> <li>● Simon Batifort &amp; J. Benton, “Heath, The New Debate on the Interpretation of MFN Clauses in Investment Treaties: Putting the Brakes on Multilateralization” (2018) 111:4 AJIL 873.</li> </ul>	<ul style="list-style-type: none"> <li>● <i>Agreement between the Government of Australia and the Government of the Independent State of Papua New Guinea for the Promotion and Protection of Investments</i> (1991), article 3 and the preamble.</li> </ul> <p><i>Comprehensive Economic and Trade Agreement between EU and Canada</i>, art.8.10, para.2.</p> <ul style="list-style-type: none"> <li>● <i>Bilcon v Canada</i>, Award on Jurisdiction and Liability (2015), pp.23-35, 124-176</li> </ul>
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**Feb 10 (4 CRs)**

- **Seminar 5: “Backlash: Legitimacy Deficits in IIL”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 11:00 am.**

Live lecture	Mandatory readings
<ul style="list-style-type: none"> <li>● Critical Reflections</li> <li>● Discussing key legitimacy critiques</li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>● Stavros Brekoulakis,</li> </ul>	<ul style="list-style-type: none"> <li>● Muthucumaraswamy Sornarajah, “Disintegration and Change in the International Law on Foreign Investment” (2020) 23:2 Journal of International Economic Law 413.</li> </ul>

<p>“Systemic Bias and the Institution of International Arbitration: A New Approach to Arbitral Decision-Making” (2013) 4:3 <i>Journal of International Dispute Settlement</i> 553.</p> <ul style="list-style-type: none"> <li>• Wolfgang Alschner, “The Impact of Investment Arbitration on Investment Treaty Design: Myth versus Reality” (2017) 42:1 <i>Yale J Intl L</i> 1.</li> <li>• David Schneiderman, “Investment Arbitration As Constitutional Law: Constitutional Analogies, Linkages, and Absences” in Thomas Schultz &amp; Federico Ortino, <i>The Oxford Handbook of International Arbitration</i> (Oxford University Press, 2020) 421.</li> <li>• Asha Kaushal, “Revisiting History: How the Past Matters for the Present Backlash against the Foreign Investment Regime” (2009) 50 <i>Harv. Int’l L.J.</i> 491.</li> </ul>	<ul style="list-style-type: none"> <li>• Freya Baetens, “The Rule of Law or the Perception of the Beholder? Why Investment Arbitrators are under Fire and Trade Adjudicators are not: A Response to Joost Pauwelyn”, 109 <i>AJIL Unbound</i> (2016) 302.</li> </ul> <p><i>Vattenfall AB and others v Germany</i>, Decision on the <i>Achmea</i> Issue (2018), pp.4-16, 24-52, 66-69.</p> <p><i>Bear Creek Mining Corporation v Peru</i> (2017), Partial Dissenting Opinion by Professor Philip Sands.</p>
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- **Seminar 6: “Reform of IIL”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 10:30 am.**

Live Lecture	Mandatory Readings
<ul style="list-style-type: none"> <li>• Critical Reflections, Q&amp;A</li> <li>• Discussing possible avenues and approaches to reform</li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Makane Moise Mbengue &amp; Stefanie Schacherer, “Africa and the Rethinking of International Investment Law” in Anthea Roberts et al, eds, <i>Comparative International Law</i> (Oxford: Oxford University Press, 2018).</li> <li>• Gabrielle Kaufmann-Kohler and Michel Potestà, “Can the Mauritius Convention Serve as a Model for the Reform of Investor-State Arbitration in Connection with the Introduction of a Permanent Investment Tribunal or an Appeal Mechanism? Analysis and Roadmap” CIDS 4.</li> <li>• Wendy Miles &amp; Merryl</li> </ul>	<ul style="list-style-type: none"> <li>• Sergio Puig and Gregory Shaffer, “Imperfect Alternatives: Institutional Choice and the Reform of Investment Law” (2018) 112:3 <i>American Journal of International Law</i> 361.</li> <li>• Anthea Roberts and Taylor St John, (24 October 2019) UNCITRAL and ISDS Reform: Visualising a Flexible Framework, <a href="https://www.ejiltalk.org/uncitral-and-isds-reform-visualising-a-flexible-framework/">https://www.ejiltalk.org/uncitral-and-isds-reform-visualising-a-flexible-framework/</a>.</li> </ul> <p style="text-align: center;">UN GA, Report of Working Group III (Investor-State Dispute Settlement Reform) on the Work of its Resumed Thirty-Eighth Session (28 January 2020), A/CN.9/1004/Add.1</p> <ul style="list-style-type: none"> <li>• Optional: <a href="#">you can review the following call for consultation by Australia on ISDS reform</a></li> </ul>

<p>Lawry-White, “Arbitral Institutions and the Enforcement of Climate Change Obligations for the Benefit of all Stakeholders: The Role of ICSID” (2019) 34:1 ICSID Review 1.</p>	
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### International Trade Law (ITL)

- **Seminar 7: “History of ITL and Overview of the System”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 10:30 am.**

### March 3 (3 CRs)

Live Lecture	Mandatory Readings
<ul style="list-style-type: none"> <li>• Critical Reflections</li> <li>• Discussing trade in context</li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Pascal Lamy, “The Place of the WTO and its Law in the International Legal Order”, (2006) 17 <i>European Journal of International Law</i> 969-984.</li> <li>• Nicolas Lamp, “The Club Approach to Multilateral Trade Lawmaking” (2014) 49:1 <i>Vanderbilt Journal of Transnational Law</i> 7.</li> <li>• Andrew Mitchell &amp; Neha Mishra, “Data at the</li> </ul>	<ul style="list-style-type: none"> <li>• Collins 27-52,</li> <li>• Michael Fakhri, <i>Sugar and the Making of International Trade Law</i> (Cambridge University Press, 2014) 3-10, 28-41, 165-169.</li> <li>• Sven Beckert, <i>Empire of Cotton: A Global History</i> (Vintage Books, 2015) 3-29.</li> </ul>

<p>Docks: Modernizing International Trade Law for the Digital Economy” (2017) 20 Vand. J. Ent. &amp; Tech. L. 1073.</p>	
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### March 10 (4 CRs)

- **Seminar 8: “General Principles of the WTO Law”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 11:00 am.**

Live Lecture	Mandatory Readings
<ul style="list-style-type: none"> <li>• Critical Reflections</li> <li>• Discussing MFN and NT</li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Joel Trachtman, “Bananas, Direct Effect and Compliance” (1999) 10:4 EJIL 655.</li> <li>• Anwar Shaikh, <i>Capitalism: Competition, Conflict, Crises</i> (Oxford University Press, 2016) 11 (I-III).</li> <li>• Jeffrey Dunoff and Mark Pollack, “The Application of “The Judicial Trilemma” to the WTO Dispute Settlement System Part of “The Judicial Trilemma” (2017) 111 AJIL 359-363.</li> <li>• Harlan Grant Cohen, “What Is International</li> </ul>	<ul style="list-style-type: none"> <li>• Andrew D. Mitchell, <i>Legal Principles in WTO Disputes</i> (Cambridge University Press, 2008) 2.1.-2.5.</li> <li>• <a href="#">WTO Basics</a></li> <li>• Michael J. Trebilcock &amp; Joel Trachtman, <i>Advanced Introduction to International Trade Law</i> (Edward Elgar Publishing, 2020) 3.4.-3.5., 5.1.-5.5.</li> <li>• George Abi-Saab, “The Appellate Body and Treaty Interpretation” in M. Fitzmaurice, Olufemi Elias &amp; Panos Merkouris (eds), <i>Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years on</i> (Brill, 2010) 97-109.</li> </ul>

<p>Trade Law For?” (2019) AJIL 326.</p>	
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**March 17 (3 CRs)**

- **Seminar 9: “Exceptions”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 10:30 am.**

Live Lecture	Mandatory Readings
<ul style="list-style-type: none"> <li>• Critical Reflections</li> <li>• Discussing exceptions</li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Michael Fakhri, “The WTO, Self-Determination, and Multi-Jurisdictional Sovereignty Part of WTO EC-Seal Products Case” (2014) AJIL Unbound 287.</li> <li>• Paola Conconi &amp; Tania Voon, “EC–Seal Products: The Tension between Public Morals and International Trade Agreements” (2016) 15:2 World Trade Review 211.</li> <li>• Robert Howse &amp; Joanne Langille, “Permitting Pluralism: The Seal Products Dispute and Why the WTO Should Accept Trade Restrictions Justified by Noninstrumental Moral</li> </ul>	<ul style="list-style-type: none"> <li>• Caroline Henckels, Permission to Act: The Legal Character of General and Security Exceptions in International Trade and Investment Law (2000) 69 ICLQ 557</li> <li>• Russia-Measures Concerning Traffic in Transit, Report of the Panel (2019) WT/DS512/R</li> <li>• European Communities, Measures Prohibiting the Importation and Marketing of Seal Product (2014) WT/DS400/AB/R, pp 13-17, 129-139,174,175.</li> </ul>

Values” (2012) 37 Yale Journal of International Law 367.	
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### March 24 (3 CRs)

- **Seminar 10: “WTO: Backlash and the Reform of Dispute Settlement”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 10:30 am.**

Live Lecture	Mandatory Readings
<ul style="list-style-type: none"> <li>• Critical Reflections</li> <li>• Discussing the challenges before the multilateral trade system</li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Robert Howse, “Making the WTO (Not So) Great Again: The Case Against Responding to the Trump Trade Agenda Through Reform of WTO Rules on Subsidies and State Enterprises” (2020) 23:2 Journal of International Economic Law 371.</li> <li>• Anne van Aaken &amp; Jürgen Kurtz “Beyond Rational Choice: International Trade Law and The Behavioral Political Economy of Protectionism” (2019) 22:4 Journal of International Economic Law 601.</li> <li>• Nicolas Lamp, “How Should We Think about the Winners and Losers from</li> </ul>	<ul style="list-style-type: none"> <li>• Collins 52-76,</li> <li>• Bernard M Hoekman, Petros C Mavroidis, “To AB or Not to AB? Dispute Settlement in WTO Reform” (2020) 23:3 Journal of International Economic Law 1.</li> <li>• Michael J. Trebilcock &amp; Joel Trachtman, <i>Advanced Introduction to International Trade Law</i> (Edward Elgar Publishing, 2020) 17.1-17.2.</li> <li>• <a href="#">Reform of the WTO</a></li> <li>• <a href="#">EU, Multilateralism in International Trade</a></li> </ul>

<p>Globalization? Three Narratives and Their Implications for the Redesign of International Economic Agreements” 30 <i>European Journal of International Law</i>, (2019) 1359.</p>	
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### March 31 (3 CRs)

- **Seminar 11: “Trade at the Intersection: Gender, Environment, IP, Indigenous Rights”**
- **Please review the recorded materials for this seminar at CU Learn.**
- **We will meet for our live session from 9 am to 11:15 am.**

Live Lecture	Mandatory Readings
<ul style="list-style-type: none"> <li>• Critical Reflections</li> <li>• <b>Guest-Lecture: TBA</b></li> </ul> <p><b>For critical reflections, you can choose:</b></p> <ul style="list-style-type: none"> <li>• Rochelle Dreyfuss &amp; Susy Frankel, “From Incentive to Commodity to Asset: How International Law is Reconceptualizing Intellectual Property” (2015) 36 Mich J Intl L 557.</li> <li>• Laurence Helfer, “Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking” 29:1 Yale Journal of International Law (2004) 1.</li> </ul>	<ul style="list-style-type: none"> <li>• Collins 101-120,</li> <li>• John Borrows &amp; Risa Schwartz (eds), <i>Indigenous Peoples and International Trade: Building Equitable and Inclusive International Trade and Investment Agreements</i> (Cambridge University Press, 2020) 9-25.</li> <li>• <a href="#">OECD, “Labour Provisions in International Trade Agreements” (2019)</a></li> </ul>

<ul style="list-style-type: none"> <li>Elen t'Hoen, "TRIPS, Pharmaceutical Patents, and Access to Essential Medicines: A Long Way from Seattle to Doha" (2002) 3 Chicago Journal of International Law 27.</li> </ul>	
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## International Financial Law

April 7

- Seminar 12: "IMF & World Bank: Critical Legal Perspectives"**
- Please review the recorded materials for this seminar at CU Learn.**
- We will meet for our live session from 9 am to 11 am.**

Live Lecture	Mandatory Readings
<ul style="list-style-type: none"> <li>In class discussion</li> <li>Concluding Remarks</li> </ul>	<ul style="list-style-type: none"> <li>Collins 214-239</li> <li>Chris Brummer, "Why Soft Law Dominates International Finance—and not Trade" (2010) 13;3 Journal of International Economic Law 623.</li> </ul>

## **IMPORTANT POINTS ON COURSE DELIVERY: TEACHING AND COVID-19**

COVID-19 significantly disrupted our lives in 2020-2021 so we cannot pretend that the Winter term will be business as usual. Accordingly, teaching and learning will require us to adjust the process as we proceed in this course.

My goal is for you to succeed and feel comfortable engaging with the materials as well as your peers throughout the term. Please be patient, understanding, and polite to everyone around you as we make our way through this course.

I will do my best to ensure smooth and structured course delivery throughout the term. To achieve this goal, I will need you to keep in mind the following features of the course this term, and certain basic points of order.

**Structure of our “live” sessions:** as specified above, our first lecture will include no recorded materials so you will need to attend the live lecture. The guest-lecturer, Professor Maria Panezi (University of New Brunswick, Faculty of Law) will attend our first lecture. Except for the first seminar, all other subsequent live seminars will run for no longer than 1 hour 15 minutes.

**For our first class, we will meet from 9:00 am to 11:15 am for our introductory class. Please refer to the section “Schedule” to verify the time of the class each week. Please note that you will need an access to high-speed Internet to complete this course.**

- **Points of Order.** For “live” session of the class to run smoothly please follow these rules:
  - Please raise your hand virtually to ask a question or make an intervention. You can also ask your questions in the chat at any time during the session. I will do my best to monitor the chat during our “live” session.
  - Be polite and considerate in all circumstances, particularly in all your written and oral communications with your peers and myself. Please remember about the rules on professional communication when you interact with me and your colleagues.
  - I do not require you to turn on the camera, but it is highly encouraged.

Do not panic if our online session discontinues, please use the link provided to you to rejoin the session. In the circumstances, if you cannot rejoin the session, get in touch with Carleton IT immediately so we can troubleshoot. Online disruptions such as Zoom bombing and alike are possible. If it is impossible to resume the session due to a major disruption, we will adjust our next session to accommodate the student CR presentatons from the disrupted session. Everyone will have an opportunity to prepare and deliver the critical reflection.

- **Etiquette:** Please be polite in all of your written and oral communications with me, your TAs, and your peers.
- **Emails:** please get in touch with me via CuLearn. The timeframe for the reply is 48 hours. If I did not get back to you within this timeframe, you could resend your



inquiry. Please note that I do not reply to emails outside of the regular working hours (8 am to 5 pm) and on the weekends. Please plan all your communications accordingly.

- **Office hours:** I will hold my office hours Friday 10 am to 11 am. Please check the CU Learn Announcement Board for the Zoom link.
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## **ACADEMIC ACCOMMODATIONS**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

### **Pregnancy obligation**

Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

### **Religious obligation**

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

### **Academic Accommodations for Students with Disabilities**

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) <https://carleton.ca/pmc>

### **Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may

be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>

### **Survivors of Sexual Violence**

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/studentsupport/svpolicy/>

### **Accommodation for Student Activities**

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>

### **Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<https://carleton.ca/law/current-students/>