

Law & Global Political Economy

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Course Syllabus

Course Description

This course aims to provide an introduction and overview to the field of international economic law. It places international economic law in a broad historical context, in which ideological and theoretical debates have played a fundamental role. As such, the course devotes significant attention to ideas and theories about (international) economics, the role of the state, and various views related to (economic) development. The course takes a relatively broad perspective on what ‘economics’ means, just as it takes a broad perspective on what ‘law’ is about, looking beyond formal authority to governance and governmentality. Throughout, the course interrogates these notions, as it also encourages reflexivity on the meaning of the ‘international’, inviting students to situate the various themes and knowledge within a context that is never entirely local, never entirely national, and never entirely international or global, and always a bit of all of them.

The overall focus of the course will be on the role of international law and institutions in developing and managing the international economic system, and on the more general question of sovereignty and authority. In particular, the course will explore the so-called Bretton Wood Institutions (World Bank and the International Monetary Fund) and the overall monetary and financial regulatory framework, the World Trade Organization and the international trade regime under General Agreement on Tariffs and Trade, as well as the rapidly developing field of international investment law. Attention will be given to regionalism and to regional integration as one approach to economic integration. We will examine labor and labor rights in the context of globalizing supply chains, as well as the role of transnational corporations and the question of their accountability.

Throughout, the course will connect specific legal technical questions with broader formal and institutional structures, as well as with deeper ideological questions of legitimacy, citizenship, and identity.

Course Objectives

As a general objective, and in accordance with the policies for undergraduate teaching set out by the School of Law, this course aims for *the development of legal research skills*, so that the student 1) is able to confront learning challenges in an independent way; 2) is able to seek and find sufficient and pertinent information, using different methods, for systematization and analysis for the purpose of description, critique, and application; in addition, to be able to contribute to the development of new knowledge; 3) has the ability to elaborate and develop research projects; and 4) is able to integrate the different areas of law and to engage these as well as social reality, from diverse epistemological perspectives.

As to the specific objectives, students who successfully complete this course will have acquired:

- A critical understanding of the most important recent historical developments that have shaped, and continue to shape, international economic law.
- A basic understanding of economics discourse and economic analysis.
- A general sense of the historical processes of 'globalization' in which public international law is currently taking shape.
- A critical understanding of the historical, ideological, and institutional context of the international economic system.
- A basic understanding of the structure and functions of the Bretton Woods institutions.
- Basic knowledge and understanding of various projects of regional integration and their systemic dimensions.
- A general understanding of the global trade regime and the role therein of the World Trade Organization.
- A critical understanding of the regime of international investment law and its various challenges and complexities.

Methodology

This course combines a number of methodologies. In the introductory classes, as we situate international economic law in the broader scheme of things, in particular in historical and ideological contexts, teaching will take place in the shape of general lectures, briefly interspersed with questions to students on the substance of the readings. As the course substance becomes more doctrinal, students will be prompted to play a more active role, by having to engage in class discussions, being asked to articulate an argument, legal or economic, or illustrate how a particular institution, policy or rule may be critically analyzed.

This course has a markedly interdisciplinary dimension, which may be evidenced in two ways. Primarily, much emphasis will be put on the main features of economic thinking that lay behind the development of the broader international economic legal regime and its institutions. This dimension of economic thought, as well as some of the critiques thereof, will be interlaced throughout the course, even as we delve into the more legal doctrinal topics. Secondly, and in view of the fact that economic thought is deeply imbedded in the ideology and politics of historical events, we will continuously examine the political & ideological dimensions of specific debates and controversies about international economic law and governance. Throughout this

process, students will be called upon to make these connections, and to critically assess the ideological background of the institutional and normative regimes.

Course Schedule

This course will take place in face-to-face mode. The specific modality may change, depending on university policies during the semester. Classes will take place **Tuesdays and Thursdays, at 11:00 am** in classroom **O-401**. Please be mindful of any possible changes. Contact the professor or Teaching Assistant in case of doubt.

Assessment

Students' performance is to be assessed in the following ways:

- End-of-Class Quizzes (20%): students will occasionally have to answer, at the end of class, one or two short questions.

- One In-Class exam (30%): students will have to answer a number of factual or conceptual questions related to class discussions.

- Two take home exams (2x 25%): Each of the exams will consist of a limited number of questions related to the topics examined in the classes, and will allow students to test their research skills, knowledge, and understanding. These are take-home exams, with research assignments intended to have students develop their research, analytical, and writing skills. More detailed instructions will be given for each exam.

Course Rules

- Students are expected to diligently prepare the readings for class. The various readings throughout the course will be assumed to be knowledge in the elaboration of the various assignments.
- Students are expected to be in class on time. If lateness becomes a regular feature, you may be asked to account for that and may be put on a stricter regime (e.g., no attendance after 5 or 10 minutes).
- Laptops or tablets are not allowed in class. Having alternative means to take notes is the student's responsibility;
- Phones may not be used in class, neither for making or receiving calls, nor for Internet or social media purposes. They must be stored away during class. The mere visible presence of a phone (or tablet) in class will result in a deduction of 0.1 points of the final grade upon the first offence, 0.2 points upon the second, and 0.2 points upon the third and subsequent offences. Should there be a specific reason why you absolutely need to attend to the phone, please discuss this with the course instructor.
- All participants are expected to behave respectfully to each other, to not engage in activities or behavior that is distracting or disruptive, and to otherwise comply with university regulations.
- Course assignments are to be the sole product of each individual student, unless they are meant to be the result of a joint or group effort. University rules on copying and plagiarism apply and will be rigorously enforced.

COURSE OVERVIEW & TOPICS

Part I Economics, Ideology, & History

Session 1: What is Economics? Introducing the OP

Sessions 2 and 3: A history of “the economy” and of economic thinking

Sessions 4 and 5: The OP in global perspective

Part II Legal and Institutional Context

A: The State

Session 6: The Developmental State

Session 7: Neoliberalism and the Regulatory State

B: International Organizations

Session 8: Organs with Competences

Session 9: International Law, IOs, and Governance

Session 10: Regional Integration Organizations

C: Transnational Law

Session 11: Background norms: the case of labor

Session 12: The Corporation as a Legal Form

Part III Global Financial Governance

Session 13: Film: Life and Debt

Session 14: Money, Credit, Capital: A history of contemporary financialization

Session 15: Financial markets & the problem of sovereign default

Session 16 & 17: UNGA Res. 69/315 and the challenge posed by Vulture Funds

Part IV International Trade Law

Session 18: Why Trade? Introduction & Overview

Session 19: The GATT & WTO Institutional Framework

Sessions 20 & 21: The GATT

Session 22: SPS & TBT

Sessions 23: Intellectual Property and the TRIPS Agreement

Session 25: Intellectual Property and the Covid-19 Pandemic

Session 26: Other Regional Free Trade Agreements

Part V International Investment Law

Session 27: History and Political Economy

Session 28: Legal Context and Overview, and Enforcement

Sessions 29 & 30: The Substance of International Investment Law

Session 31: The Investment Cases against Colombia

Session 32: International Economic Law – Past, Present, and Future

COURSE OUTLINE & READINGS

PART I ECONOMICS, HISTORY, & IDEOLOGY

In the first couple of weeks, we will set the stage with a focus on three key dimensions of the international economic order. In this part our work will be interdisciplinary. How should we understand economics? I will develop the notion of *the organization of production* (OP) as the key concept for this course, and which will allow us not only to focus on economic processes in an essential historical perspective, but which will also allow us to include a perspective on their ideological dimensions. Economics is not only about the organization of production, it's about the organization of society and about the role of its institutions. And so, before we focus on law, we must set the stage in which law and legal institutions operate.

Session 1: What is Economics? Introducing the OP

Watch, if possible, on Netflix: *American Factory* (documentary from 2019).

Required materials:

+ Ha-Joon Chang, *Economics: The User's Guide* (2015), chapter 2.

Sessions 2 and 3: A history of “the economy” and of economic thinking

Topics: Economic theories, political economy, the historical perspective.

Required materials:

+ Ha-Joon Chang, *Economics: The User's Guide* (2015), chapters 3 & 4.

+ Robert Heilbroner, *The Worldly Philosophers*, (1953), chapter ii.

+ Slavoy Zizek, *The Unknown Knowns*:

<https://www.youtube.com/watch?v=e8diRggDUic>

Sessions 4 and 5: The OP in global perspective

Topics:

. Recent history. The 20th Century: War Economy and the Welfare State

. Trade and Financialization

. Global Value Chains

. Contemporary history. The Rise and Fall (?) of Neoliberalism

Required materials:

+ The IGLP Law and Global Production Working Group, ‘The role of law in global value chains: a research manifesto’, *London Review of International Law* (2016), vol. 4 (1), p. 57-79.

+ Ha-Joon Chang, *Economics: The User's Guide* (2015), chapter 5, p. 124-144.

+ John Williamson, *A Short History of the Washington Consensus* (2004).

PART II

LEGAL AND INSTITUTIONAL CONTEXT

Section A: The State

In the second part of the course, we focus on the role of legal institutions and on law itself. By far the most important legal institution is the State. How should we think of the State, especially if we want to understand its role in the global economic order? Focusing on the State as a historically contingent articulation of the ideological as well as technological dimensions of society allows us to understand its current role as the key legal institution for the organization of production. A historical analysis that focuses on the State as an ideologically determined institution will allow us to understand the developmental and welfare States that dominated until the Washington Consensus

Session 6: The Developmental State

Topics: Decolonialization, the idea of development, Import-Substitution and Industrialization (ISI)

Required materials:

+ Luis Eslava & Sundhya Pahuja, The State and International Law: a Reading from the Global South, in: *Humanity: An International Journal of Human Rights, Humanitarianism and Development* (forthcoming, vol.10, 2019) Special Issue, Technologies of Stateness, p. 1.

Additional materials:

+ Sundhya Pahuja, Laws of Encounter: A Jurisdictional Account of International Law, 1 *London Review of International Law* 63 (2013).

Session 7: Neoliberalism and the Regulatory State

Topics: The Colombian Constitution of 1991, the Regulatory State, Neoliberalism & markets

Required Reading:

+ Braithwate, *The Regulatory State*

Section B: International Organizations

Beginning in the 19th Century, the last 150 years have seen the appearance and enormous growth of a specific type of legal institution: the international (governmental) organization (IOs). There are currently more IOs than there are States, and they come in many different shapes and sizes. From a legal perspective however, they should be understood in relatively simple terms, which is as an organ or set of organs, to which the members have given competences. Beyond the legal dimension however, international organizations play many different and often essential roles in international affairs in general, and in the global economic order more specifically.

Session 8: Organs with Competences

Topics: What are IOs? Where do they come from? Why are there so many? Which of them matter, and how?

Required materials:

- + Rob Reinalda, *Routledge History of International Organizations: From 1815 to the Present Day* (2009), p. 5-16.
- + Jan Klabbers, International Institutions, in James Crawford and Martti Koskenniemi, *The Cambridge Companion to International Law* (2012), p. 229-243.

Session 9: International Law, IOs, and Governance

Topics: Do IOs legislate? If so, then how? If not, are there other ways in which they govern?

Required materials:

- + The New International Economic Order (NIEO)
- + Davis, Kingsbury, and Engle Merry, Indicators as a Technology of Global Governance, *Law and Society Review*, 2012, p. 71-100.

Session 10: Regional Integration Organizations

Topics: Regionalism, regional integration, supranational organizations

Required materials:

- + Pampillo Baliño, La Integración Jurídica Latinoamericana. Retrospectiva, perspectiva y prospectiva. *Revista Jurídicas*, 2014, p. 13-29
- + Borchardt, ABC of EU Law, 2017, pp. 37-83, 89-110, 133-141.

Section C: Transnational Law

Sometimes law moves across borders and legal institutions may become very similar in different States, generally in a combination of geopolitical imposition and ideological assimilation. We will look at two examples of this phenomenon, at two instances of legal institutions that have become global, even if they have been legislated at the national level. First, we look at the legal organization of labor, and how this has evolved since Industrialization. Second, we will focus on the corporation, which has been a crucial vehicle in the development of the current global economic order.

Session 11: "Background Norms": the case of labor

Topics: the legal organization labor, global value chains, outsourcing and offshoring

Required materials:

- + Excerpts from: Sven Beckert, *The Empire of Cotton* (2017)

Session 12: The Corporation as a transnational legal form

Topics: Corporate law, corporate accountability, human rights, due diligence

Required materials:

- + Various readings – to be determined.

Additional material: Note: Organizational Irrationality & Corporate Human Rights Violations, *Harvard Law Review* Vol.122, p.1931-1952.

PART III

GLOBAL FINANCIAL GOVERNANCE

A key element of any economic order relates to money and credit. The global economy has a complex monetary landscape that is more centralized than people think and in which individual States are more interdependent than is usually realized. In this system the role of credit (and debt) plays a key role. However, States cannot always pay their debts. When this happens, the whole system may become unstable. After WWII, the international community considered the maintenance of international financial and monetary stability a key condition for international peace and stability, and so the established an international financial system known as the Bretton Woods System. In this system, the International Monetary Fund (IMF) plays a key role. In this part of the course, we will try to answer the question: *what is the role of international law in situations of sovereign default?*

Session 13: Film: Life and Debt

We will watch a renowned documentary that explains how one country (Jamaica) got into financial trouble and in order to avoid default required assistance from international financial institutions. This happened at the height of the Washington Consensus, and so there was very little Jamaica could do. This documentary offers a fascinating look at what happens in these situations.

Session 14: Money, Credit, Capital – A history of contemporary financialization

Topics: What is money? What is credit? What is capitalism? How does money relate to the GOP? What do we refer to as “financialization”?

Required materials:

+ David Graeber Debt: The First 5000 Years. Read the introduction

Session 15: Financial markets & the problem of sovereign default

Topics: What do banks do? How do States borrow money? What is a sovereign default? Does this happen often? What is usually the consequence? Whose problem is a sovereign default?

Required materials:

+ Jerome Roos, Why not default? The political economy of sovereign debt, Princeton UP 2019, chapters 5-7.

Session 16 & 17: UNGA Resolution 69/315 and the challenge posed by Vulture Funds

Topics: UNGA Resolutions, international financial institutions, global bond markets, vulture funds.

Required materials:

+ UNGA Resolution 68/315.

PART IV

INTERNATIONAL TRADE LAW

International trade is at the heart of the process of globalization that accelerated during the colonial eras and with Industrialization. Wars have been waged over trade and over its role in the global economic order. After the Second World War, the Western Allies considered the liberalization of Trade a key element of international peace. Efforts to include it in the Bretton Woods system failed, but in 1949 they adopted the General Agreement on Trade and Tariffs (GATT). This system, which sought the liberalization of international trade, was expanded in 1994 with establishment the World Trade Organization (WTO). The WTO includes a series of additional agreements on a range of topics, such as technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), and most importantly intellectual property. We will study the global trade regime, its institutional framework, and we will devote special attention to the topic of intellectual property.

Session 18: Why Trade? Introduction & Overview

Topics: What is trade and why or when is it good? For whom is trade good? Trade and its role in domestic and international affairs. Trade and the Washington Consensus. Trade after Covid-19.

Required materials: Trebilcock & Howse, pages 1-20.

Session 19: The GATT & WTO Institutional Framework

Topics: What is the institutional framework established with the WTO? What is the importance of the Dispute Settlement Body (DSB) and how does it work? How are rules enforced in the WTO context? Related question: What are "countermeasures"?

Required materials: Matsushita and others

Sessions 20 & 21: The GATT

Topics: What is the GATT? What is the "Most Favoured Nation" (MFN) rule about? How does the "national treatment" principle work in the context of GATT? Are there exceptions? When may states limit trade?

Required materials: Articles I, II, III and XX of the GATT.

Session 22: SPS & TBT

Topics: Technical Barriers to Trade, Sanitary and Phytosanitary Measures

Required materials: SPS & TBT Agreements

Sessions 23 & 24: Intellectual Property and the TRIPS Agreement

Topics: Intellectual Property, Patents, Copyright, genetic patents in agriculture, ownership of cultural and scientific knowledge, Global Commons, Open Access

Required materials: Mitsuo Matsushita, Thomas J. Schoenbaum, Petros C. Mavroidis, Michael Hahn, The World Trade Organization: Law, Practice, and Policy (third edition, 2015), Chapter 17, p. 633-673.

Session 25: Intellectual Property and the Covid-19 Pandemic

Topics: Patenting vaccines, WHO, WTO.

Required materials: To be determined.

Session 26: Other Regional Free Trade Agreements

Topics: Free Trade Agreements, GATT Art. XXIV

Required materials: Colombia-US FTA.

PART V INTERNATIONAL INVESTMENT LAW

International investment law has become in recent years a very significant area in international (economic) law. At its core it deals with the question of how international law protects the assets of private persons in a foreign jurisdiction. We will explore how this question was first addressed in the 19th Century, in a legal discussion involving Latin American lawyers that still has relevance today. In this context it will be important to analyze the political economy of international investment throughout history. Where does it fit in the context of 19th Century decolonization? How does it connect with 20th Century decolonization and ISI approaches to development? How does it fit within the Washington Consensus? What is the legal form for this protection? Initially rules and principles were sought in customary international law. However, since the 1957 agreement between West Germany and Pakistan bilateral investment treaties (BITs) have become widespread, as well as the investment clauses in Free Trade Agreements (FTAs). Efforts in the 1990s to create a multilateral regime for the protection of foreign investment failed, and so international investment law is now what some have called the “spaghetti bowl” of more than 3000 agreements.

Session 27: History and Political Economy

Topics: Calvo doctrine, ISI, Decolonization and Nationalizations, Debt Crisis, Washington Consensus.

Required materials: M. Sornarajah, *The International Law on Foreign Investment* (3d ed. 2010), Chapter 1

Session 28: Legal Context and Overview, and Enforcement

Topics: ISDS, Colombia-US FTA, Arbitration vs. Adjudication, New York Convention, ISDS-Reform

Required materials: David Collins, *An Introduction to International Investment Law: Chapter 8: Dispute Settlement*, 2017, p. 214-249.

+ Anthea Roberts, *The Shifting Landscape of Investor-State Arbitration: Loyalists, Reformists, Revolutionaries and Undecideds*, *EJIL-Talk: Blog of the European Journal of International Law*, 15 June 2017.

Additional material: Robert Howse, *International Investment Law and Arbitration: A Conceptual Framework*, *IILJ Working Paper 2017/1* (MegaReg Series).

Sessions 29 & 30: The Substance of International Investment Law

Topics: Fair and Equitable Treatment, Expropriation, Due diligence

Required materials: To be determined.

Session 31: The Investment Cases against Colombia

Topics: Fair and Equitable Treatment, Protection

Required materials: To be determined.

Session 32: International Economic Law – Past, Present, and Future

Topics: Overview of the course and identification of key challenges.

Required materials: To be determined.