

Course Goals

The goal of the course is to gain an understanding of the interpretation of treaties from the perspective of general international law and in more specialised legal systems, in particular world trade law. The first part of the course will focus on the role of the Vienna Convention of the Law of Treaties in the practice of different international courts and other independent bodies. Pertinent recent work on the UN International Law Commission will be discussed, in particular in relation to WTO Appellate Body jurisprudence. The second part of the course will consist of lectures, exercises and activities applying the treaty interpretation principles discussed during the first two days. There will be a special focus on WTO disputes. In this regard, the Wednesday and Thursday morning lectures will focus on treaty interpretation applied in the specific context of WTO disputes. On Thursday afternoon, participants will be grouped into three teams for an *interpretation game exercise*: Each team on the basis of the interpretation principles previously discussed will prepare the relevant argumentation to support its interpretation of treaty provisions in its chosen area (e.g. trade, investment, human rights and environmental law). The results of the exercises will be discussed collectively on Friday morning / afternoon and students will be graded on the basis of their participation in this exercise.

Lecturer



Georg Nolte is Professor of International Law at Humboldt University Berlin (since 2008). He is a Member of the International Law Commission of the United Nations (since 2007, Chair in 2017) and an Associate Member of the *Institut de Droit International*. His research interests lie in general developments in the field of international law and he pursues them, in part, in the Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?"
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Course Content

General principle of treaty interpretation

A. Treaty interpretation – the general framework

1. Interpretation
2. The Vienna Convention's rules on treaty interpretation
3. The ideas behind those rules

Course Content

B. In particular: the role of subsequent practice as a means of interpretation

4. The work of the International Law Commission
5. The role of agreement among the parties
6. The role of other actors
7. Interpretation vs. modification

C. Treaty interpretation in different fora

8. International Court of Justice
9. European Court of Human Rights
10. WTO Appellate Body / Court of Justice of the European Union

D. A common approach? – The role of the International Law Commission

Treaty Interpretation in WTO Law

A. Specific issues / principles of treaty interpretation in WTO Law

1. The special tension between "interpretation" and "application" of a treaty provision
2. The WTO is a Single Undertaking: internal conflicts and harmonious interpretation
3. The focus on security and predictability
4. The continuation of principles for the management of disputes under the GATT (Art. 3.1 of the DSU)
5. The insistence on GATT decisions, procedures and customary practices (Art. XVI: 4 of the DSU)
6. The obsession with dictionaries
7. Exceptions are not to be interpreted narrowly and the principle of effectiveness
8. The issue of "silence" and WTO as *lex specialis*

B. Principles of interpretation codified in the Vienna Convention

9. Art. 31(1) VCLT: Good faith, reasonableness and *abus de droit*, ordinary meaning, context, object and purpose of the treaty
10. Agreements and instruments under Art. 31(2)(a) and (b) VCLT
11. Subsequent agreements, subsequent practice, and relevant rules of international law under Art. 31(3)(a), (b) and (c) VCLT
12. Art. 32 VCLT: Supplementary means of interpretation
13. Art. 33 VCLT: Treaties in multiple authentic languages

This course is organised in the context of the *Doktoratsprogramme universitäre Hochschulen 2017-2020*.

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C. Other interpretation principles, not codified in the VCLT, used in the WTO

14. *In dubio mitius*
15. *Lex specialis derogate legi generali*, *Lex posterior derogate legi priori*, *Successive treaties*
16. Non-retroactivity
17. Others

Grading

Class participation (20%); class exercises (80%).

Organisation

The course is intended for PhD students. A limited number of people with relevant professional or academic interest may be also admitted.

Lecture hours: 25 ECTS: 4

Timetable and Registration

The course takes place from Monday to Friday from 9.30 to 12.00 and from 13.30 to 16.00 in the Silva Casa at the World Trade Institute, University of Bern, Hallerstrasse 6, 3012 Bern. This is an intensive course. Please try to complete some of the readings from the suggested bibliography before the course begins.

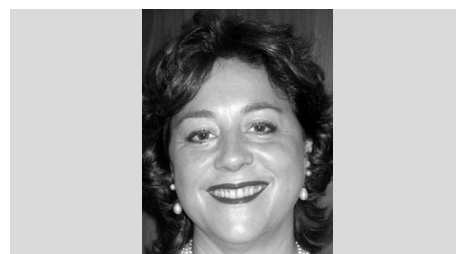
Tuition fee: 500 CHF. Financial support may be available.

For more information, please visit the doctoral programme section of our website:

<https://www.wti.org/education/doctoral-programme/>

Send your application to:
phd.applications@wti.org

Lecturer



Gabrielle Marceau, PhD, is Senior Counsellor in the Legal Affairs Division of the WTO Secretariat (since 1994). Her main function is to advise panelists in WTO disputes, the Director-General's Office, the Secretariat and WTO Members on WTO-related matters. Gabrielle Marceau is also Associate Professor at the Law Faculty of the University of Geneva and she lectures in other institutions. Professor Marceau is President of the Society of International Economic Law (SIEL), and is also involved with other associations and groups promoting international law.
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