

# International Economic Dispute Resolution

Are you really listening . . . or are you just waiting for your turn to talk?

Robert Montgomery

Peter Van den Bossche  
World Trade Institute & Faculty of Law  
University of Bern  
Second semester 2022-23

## Course description

Disputes regarding cross-border trade and investment have always existed, and so have institutions and procedures to resolve these disputes in a peaceful manner. However, with economic globalisation and the ever-increasing interaction between national economies, these disputes have proliferated both in number and complexity, and so have the institutions and procedures to resolve them. Rules-based, rather than power-based, systems for the resolution of international economic disputes are a core aspect of global economic governance and essential to sustainable economic growth and development worldwide. With the current rise of nationalism and unilateralism in many countries, rules-based international dispute resolution is in crisis.

This course aims at introducing students to the key features and principal challenges of international economic dispute resolution. The course starts with an introduction to methods and institutions/systems of international economic dispute resolution. The methods discussed include both diplomatic methods, such as negotiation, mediation, inquiry and conciliation, as well as legal methods, such as arbitration and adjudication. The emphasis of this course is on the latter methods of dispute resolution. The course focuses in particular on economic dispute resolution by the International Court of Justice (ICJ), the dispute settlement system of the World Trade Organization (WTO), the International Centre for the Settlement of Investment Disputes (ICSID), and dispute settlement under the EU-Canada Comprehensive Economic and Trade Agreement (CETA), but other global and regional courts and tribunals are also referred to. Rather than examining, one by one, these different institutions/systems for economic dispute resolution, this course focuses on

specific features of, and challenges encountered by, these institutions and systems in resolving international trade and investment disputes.

## Participation

The course is designed for advanced students in law, economics or political science with a strong command of English and interest in international law and international relations. Prior knowledge of international law and/or domestic judicial institutions and procedures is helpful but not indispensable.

## Schedule

This 5 ECTS course runs over 14 weeks. From Monday, 20 February to Monday, 22 May 2023, the course includes seven lectures by Prof. Van den Bossche, five guest lectures, and one revision/exam preparation class. The course also includes on 30 and 31 May 2023, a two-day study trip to the World Trade Organization in Geneva.

- Week 1: Methods and institutions for international economic dispute resolution
- Week 2: Jurisdiction of courts and tribunals over international economic disputes
- Week 3: Judges and arbitrators in international economic dispute resolution
- Week 4: Process and procedures of international economic dispute resolution (part 1)
- Week 5: Process and procedures of international economic dispute resolution (part 2)
- Week 6: Interpretation and precedent in international economic dispute settlement
- Week 7: Remedies for breach of obligations and enforcement of rulings in international economic disputes
- Week 8: Guest lecture on *Practicing International Trade Law in Geneva* by Mr. Iain Sandford, Partner, Sidley, Geneva (<https://www.sidley.com/en/people/s/sandford-iain>).
- Week 9: Guest lecture on *Mediation and Conciliation as Methods for Trade Dispute Resolution* by Mr. Rambod Behboodi, Founder, GenevaTradeLaw .com, Geneva (<https://genevatradelaw.com/wp-content/uploads/2021/10/Behboodi-FactSheet.pdf>)
- Week 10: Guest lecture on *Practicing International Trade Law in Brussels* by Mr. Paolo Vergano, Partner, FratiniVergano European Lawyers, Brussels (<http://www.fratinivergano.eu/en/paolo-r.-vergano/>)
- Week 11: Guest lecture on the *WTO Multi-Party Interim Appeal Arbitration Mechanism* by Prof. em. Dr. Thomas Cottier, Founder and Senior Fellow, World Trade Institute, and WTO MPIA Arbitrator (<https://www.wti.org/institute/people/4/cottier-thomas/>)
- Week 12: Guest lecture on *International Commercial and Investment Arbitration* by Mr. Rahul Donde, Counsel, Lévy Kaufmann-Kolher, Geneva (<https://lk.com/team/rahul-donde-lawyer/>)

Week 13: Revision and exam preparation class

Week 14: Study trip to the World Trade Organization, Geneva

### Exam

The final exam is an open-book oral exam of 20 minutes. Students will receive the exam questions 30 minutes in advance and may use this time to prepare for the oral exam. In the evaluation, emphasis will be placed on the ability to critically discuss the core features of, and challenges encountered by, the institutions/systems for the resolution of international economic disputes.

### Lecturer

Peter Van den Bossche is a former Member and Chair of the Appellate Body of the World Trade Organization (2009-2019), and is currently Director of Studies and Professor of International Economic Law at the World Trade Institute of the University of Bern, and President of the Society of International Economic Law (SIEL). Van den Bossche is also a visiting professor at the Bocconi University, Milan (2022), the Université de Genève (since 2018), LUISS Guido Carli University, Rome, Italy (since 2016), the Universidad San Francisco de Quito, Ecuador (since 2016), and the College of Europe, Bruges (since 2010), and Maastricht University (since 2010). He is member of the Advisory Board of the *World Trade Review*, *Journal of International Economic Law*, the *Journal of World Investment and Trade* and the *Revista Latinoamericana de Derecho Comercial Internacional*. Since 2013, he is also member of the Advisory Board of the WTO Chairs Programme (WCP). Van den Bossche is on the roster of arbitrators for disputes under the EU-UK Trade and Cooperation Agreement (TCA), the EU-Canada Comprehensive Economic and Trade Agreement (CETA), and the EU-Andean Community Trade Agreement, on the panel of arbitrators of the Shenzhen Court of International Arbitration (SCIA) and the South China International Arbitration Center (Hong Kong) (SCIAHK), and on the EU list of candidates suitable for appointment as arbitrators and TSD experts.

Van den Bossche holds an LL.M. from the University of Michigan, Ann Arbor (1986) and a PhD in law from the European University Institute, Florence (1990). Van den Bossche graduated *magna cum laude* from the Faculty of Law of the University of Antwerp (1982). Van den Bossche worked at the Court of Justice of the European Communities, Luxembourg, as *référéndaire* of Advocate-General W. Van Gerven (1990-92) after which he joined the Faculty of Law of Maastricht University. From 1997 to 2001, Van den Bossche was Counsellor to the Appellate Body of the World Trade Organization, Geneva. In 2001, he served as Acting Director of the Appellate Body Secretariat after which he returned to Maastricht University as Professor of International Economic Law. From 2005 to 2009, Van den Bossche was Head of the Department of International and European Law of Maastricht

University. In 2007, he founded the Institute for Globalisation and International Regulation (IGIR) at Maastricht University and served as its first Academic Director until 2009. He obtained substantial research grants from *inter alia* the European Commission, the Asian Development Bank, the Government of the Netherlands, and the Southern African Customs Union.

Van den Bossche is the author (with Werner Zdouc) of *The Law and Policy of the World Trade Organization*, 5<sup>th</sup> edition (Cambridge University Press, 2022), 1170 p., and (with Denise Prévost) of *Essentials of WTO Law*, 2<sup>nd</sup> edition (Cambridge University Press, 2021), 223 p. The Chinese edition of *The Law and Policy of the World Trade Organization* was published in 2020 by Law Press China.

### **Compulsory and recommended reading materials**

Students will receive a digital reader with chapters and sections from books and articles on the topics addressed in this course. The reader also contains basic international instruments and relevant jurisprudence. Note the difference made between 'Main Reading Materials' and 'Other Reading Materials'. This digital reader will be available on ILIAS.