STUDIES IN INTERNATIONAL LAW:
TRANSNATIONAL CORPORATIONS, HUMAN RIGHTS AND INTERNATIONAL ECONOMIC LAW

CML 4108A/DCL 6121F

Fall 2009

SYLLABUS

Prof. Penelope Simons
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Tel: 562-5800 ext 3071
E-mail: psimons@uottawa.ca
Office Hours: Monday 13:15-14:15, Friday 11:45-12:45

Timetable: Friday 8:30-11:30 FTX 136

COURSE DESCRIPTION

This course examines the intersections between the activities of transnational corporations, international economic law and international human rights law. Students will consider the conceptual, normative and regulatory challenges transnational corporate actors pose to the international legal system; the facilitation of globalized corporate activity through international economic law, in particular the international regulation of trade and investment; concerns about the human rights impact of transnational corporate activity; and the variety of regulatory mechanisms available to promote or ensure corporate accountability for violations of human rights. You will be given the opportunity to explore relevant law, theoretical issues and contemporary debates concerning human rights through the lectures, class discussions and activities, your own reading, and in your assessments.

TEACHING AND LEARNING EXPERIENCE

The course will be taught through introductory interactive lectures, guest lectures, small group and class discussions, as well as student presentations. You will be expected to do the reading before each class. The reading will be designated as ‘required’ and ‘further reading’. The required reading is the minimum necessary for participation in each class. Graduate students are expected to go beyond the required reading.

LEARNING OUTCOMES:

A student successfully completing this course will be able to:

a. describe the regulatory challenges raised by TNCs in relation to the protection of human rights
b. describe current human rights issues raised by corporate activity and related international economic law
c. critically discuss the theories underlying international human rights law and economic globalization and their relationship
d. demonstrate an understanding of the interaction between international human rights and international economic law
e. critically assess existing mechanisms to regulate the human rights related activity of TNCs
g. engage in scholarly research, analysis, presentation and writing in relation to a human rights issue raised by TNC activity and international economic law.

**Reading Materials**

**Course Pack:** Volume 1 of the course pack of reading materials is available for purchase from Office Mart Inc. - 226 Laurier Ave East (613-233-0635). Volume 2 will be available shortly.

The following books are on reserve in the BD Law Library or available in the HRREC:


The following books may also be useful:

COURSE EVALUATION

1/ Class Participation 15%
Class attendance is compulsory and students are expected to complete the required reading and participate actively in small group and class discussions, including following guest lectures and student presentations. As part of their participation mark, graduate students will be required to present a designated reading in one of the classes.

2/ Presentation 25%:
Students are required to make a 45 minute presentation and to participate in discussions following the presentations. Students must submit an 800-word fully referenced typed summary (which may be in point form) of their presentation plus a full bibliography of sources by 12:00 noon on Wednesday preceding a Friday presentation. The allocation of topics will be decided by Friday, September 25th through online sign-up.

3/ Paper proposal 5%
- The topic can be developed from your presentation
- The topic must link TNC conduct, aspect of international economic law and human rights issue
- The submission date is Monday November 23rd, 12 noon to FTX 105
- Criteria for proposal will be distributed

4/ Paper 55%
CML (LL.B.) students - maximum 25 pages
DCL/LL.M. students - maximum 35 pages

- The submission date is Friday December 22nd, 2009 by 12 noon. Papers should be delivered to FTX 105. Late papers will be penalised 10% for each day they are late and papers submitted 5 days late will not be marked. Any requests for an extension must go through the office of the Director of Academic Affairs, Mme Foré.
- All papers must be double spaced, Times New Roman 12 point font, footnotes in 10 point. Long quotations may be single-spaced and must be in minimum 11 point font.
- Your coursework must be properly referenced. Quotations and ideas should be clearly identified and attributed to the author. You are expected to use an accepted form of legal citation. Plagiarism and other forms of cheating are considered very serious offences. Please see the University regulations for more information.
Assessment criteria which will be used when marking your presentation, presentation summaries and your papers are set out on the course website.

Presentation Topics:

Critically examine and assess:

• The relationship between the human right to water, international investment law, and TNC activity in Bolivia (Oct 30)
• The Canada-Colombia Free Trade Agreement and its potential for regulating the human rights impact of TNC activity in Colombia in areas of conflict (Oct 30)
• The WTO Dispute Settlement Body as a means of linking trade and human rights – the Right to Adequate Food (Nov 6)
• The effectiveness of NAFTA and the North American Agreement on Labor Cooperation (NAALC) in regulating TNC compliance with internationally recognised labour rights (Nov 13)
• Voluntary self-regulation and the TNC protection of labour rights (Nov 13)
• The relationship between indigenous rights, the protection of traditional knowledge, TNC activity and the WTO Agreement on TRIPs (Nov 27)
• The relationship between the right to health, TNC activity and the WTO Agreement on TRIPS (Dec 4)

For students in need of learning supports

Students who require accommodations or academic support because of a physical or learning disability, or any condition that affects their ability to learn, are invited to register with ACCESS SERVICE:

Office: UCU 339
Telephone: 613-562-5976
TTY: 613-562-5214
E-mail: adapt@uottawa.ca
Web: www.sass.uottawa.ca/access/

Students can meet with an Access Service specialist to identify their individual needs and to discuss appropriate strategies. All information provided to Access Services and all accommodations received remain strictly confidential.

Deadlines to request accommodations for final exams: Fall Semester: before 15 November

For additional information about Access Services you may contact Jessica Simon in Student Services at jsimon@uottawa.ca or at 613.562.5800 x 8891.
## Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Theme/Topic</th>
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<tr>
<td>Sept 11</td>
<td>Introduction: Transnational Corporations and International Law</td>
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<td>Film: The Corporation</td>
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<td>Sept 18</td>
<td>Corporate Structures</td>
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<td>Review of Public International Law Sources</td>
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<td>Sept 25</td>
<td>Overview of Universal and Regional Human Rights Law Regimes</td>
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<td>Oct 2</td>
<td>Economic Globalization, TNCs and Human Rights</td>
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<td>Oct 9</td>
<td><strong>Guest Lecturer: Prof Don McCrae</strong> – Introduction to the WTO and the Dispute Settlement Body</td>
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<td>Introduction to the WTO Agreement on Agriculture</td>
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<td>Oct 16</td>
<td>Bilateral Investment Treaties and the Protection of Human Rights</td>
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<td><strong>Guest Lecturer: Prof Graham Mayeda</strong> – BITs, Investment Arbitration and Human Rights</td>
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<td>Oct 23</td>
<td>Bilateral Investment Treaties and the Protection of Human Rights (con’t)</td>
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<td><strong>Film: Flow (For the Love of Water)</strong></td>
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<td>Oct 30</td>
<td>The Right to Water, International Investment Law and TNC Activity in Bolivia</td>
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<td>TNCs and the Protection of Human Rights under the Canada-Colombia Free Trade Agreement</td>
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<td>Nov 6</td>
<td><strong>Guest Lecturer: Jeremy de Beers</strong> – Introduction to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
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<td>The WTO DSB – Linking Trade and Human Rights – the Right to Adequate Food</td>
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<td>Nov 13</td>
<td>TNCs and the Protection of Labour Rights under NAFTA/NAALC</td>
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<td>Voluntary Self-Regulation, TNCs and the Protection of Labour Rights</td>
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<td>Nov 20</td>
<td>No Class</td>
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<td>Nov 27</td>
<td>Indigenous Rights, TNCs Traditional Knowledge and TRIPs</td>
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<td><strong>Guest Lecturer: Prof Don Hubert</strong> - Conflict Diamonds, Human Rights and</td>
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SEPT 11 – INTRODUCTION: TNCs, HUMAN RIGHTS AND THE INTERNATIONAL LEGAL SYSTEM

Required Reading:
P Muchlinski, Multinational Enterprises and the Law (2nd edn Oxford, OUP 2007), Chapter 1, 3-8, Chapter 13, 507-536

Further Reading:

SEPT 18 – THE CORPORATION -AND- REVIEW OF PUBLIC INTERNATIONAL BASICS

Required reading:

Further Reading:
K Green, ‘New Principles for Corporate Law’ (2005) 1 Hastings Bus L J 87
JH Currie, C Forcese and V Oosterveld, International Law: Doctrine, Practice and Theory (Irwin Law, Toronto 2007)
SEPT 25 - OVERVIEW OF UNIVERSAL AND REGIONAL HUMAN RIGHTS REGIMES

Required reading:

The Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(111) (UDHR)

The International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)


Further reading:


OCT 2 – ECONOMIC GLOBALIZATION, TNCs AND HUMAN RIGHTS

Required Reading:


Further reading:


**OCT 9 – INTRODUCTION TO THE WTO DISPUTE SETTLEMENT BODY**

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**INTRODUCTION TO THE WTO AGREEMENT ON AGRICULTURE**

*Required reading:*


*Further reading:*


OCT 16 – INTRODUCTION TO BILATERAL INVESTMENT TREATIES AND HUMAN RIGHTS

Required Reading:


**Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic, ICSID Case No. ARB/97/3 (France/Argentina BIT) -Award, 20 August 2007**


Further Reading:


H Mann, ‘International Investment Agreements, Business and Human Rights: Key Issues and Opportunities, prepared for Prof. John Ruggie, UN Special Representative to the Secretary General for Business and Human Rights (International Institute for Sustainable Development, February 2008) [http://www.iisd.org](http://www.iisd.org)


**OCT 16 – BILATERAL INVESTMENT TREATIES AND THE PROTECTION OF HUMAN RIGHTS (CON’T) TRANSNATIONAL CORPORATIONS AND WATER**

*Required reading:*


C Mann, 'The Rise of Big Water' [2007] Vanity Fair 86

**OCT 23 – THE RIGHT TO WATER, PRIVATIZATION, TNCs AND INTERNATIONAL INVESTMENT LAW –AND–

THE CANADA-COLOMBIA FREE TRADE AGREEMENT, TNCs AND THE PROTECTION OF HUMAN RIGHTS IN COLOMBIA**

*Required reading:*

ICESCR, Articles 2, 11 & 12

UN Committee on Economic, Social and Cultural Rights, ‘Comment No. 15’ UN Doc E/C.12/2000/4


*Further reading:*

Water

F Costamagna and F Sindico 'The linkage between international economic law and access to water and water scarcity' (2007) International Environmental Law Research Centre (IELRC) http://www.ielrc.org/activities/workshop_0704/content/d0710.pdf
R Daniels, 'Implementation of the right of access to sufficient water through privatization in South Africa' [2006] 15 Penn St Env't L Rev 61


UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 14’ UN Doc E/C.12/1999/5


Canada-Colombia FTA


Canada-Colombia Free Trade Agreement Implementation Act, Bill C-23 (First Reading, March 26, 2009).


NOV 6 – INTRODUCTION TO THE WTO AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY

- AND -

THE WTO DSB – LINKING TRADE AND HUMAN RIGHTS – THE RIGHT TO ADEQUATE FOOD

Required Reading:


KH Cross, King Cotton, Developing Countries and the “Peace Clause”: The WTO Cotton Subsidies Decision (2006) 9 J of Int Economic L 149

ICESCR Art 11

UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 12’ UN Doc E/C.12/1999/5

Further reading:

TRIPS and Human Rights


WTO DSB and the Right to Food


S Murphy, ‘Globalization and Corporate Concentration in the Food and Agriculture Sector’ (2008) 53 Development 527


Nov 13 – TNCs and the Protection of Labour Rights and Human Rights under Regional and Bilateral Free Trade Agreements

- AND -

Fall 2009
VOLUNTARY SELF-REGULATION AND THE TNC PROTECTION OF LABOUR RIGHTS

Required reading:


Further reading:

BITs and Labour Rights


Voluntary Self-Regulation


ILO Declaration on Fundamental Principles and Rights at Work, 1998
http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy


OECD Guidelines for Multinational Enterprises (Revision 2000) OECD Guidelines for Multinational Enterprises

United Nations, Global Compact http://www.unglobalcompact.org/

NOV 27 – CONFLICT DIAMONDS, HUMAN RIGHTS AND THE KIMBERLY PROCESS
– AND –

TRADITIONAL KNOWLEDGE, TNCs AND INTELLECTUAL PROPERTY RIGHTS
**Required reading:**


Kimberley Process Certification Scheme


RM Bratspies, ‘The New Discovery Doctrine: Some thoughts on Property Rights and Traditional Knowledge’ (2006/7) 31 Am Indian L Rev 315

**Further Reading:**

** Kimberley Process **


**TRIPs and Traditional Knowledge**


**DEC 4 – THE RIGHT TO HEALTH, TNCs AND INTELLECTUAL PROPERTY RIGHTS**

*Required reading:*

- ICESCR Article 12
- UN Committee on Economic, Social and Cultural Rights, General Comment No.14

*Further reading:*