I. Course Overview

This course provides practical instruction in advocacy based on a study of advanced topics in investment arbitration. The scope of instruction will include both procedural and substantive topics. The principle underlying the course is that students will learn by doing.

II. Format of Course

This is a two unit course that meets for two hours, once a week. The format of the course will be a combination of lectures and mock arbitrations based on a fact pattern that evolves over the course of the semester. The fact pattern will be based on a fictional dispute arising under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID).

Each class session will feature a lecture that is informed by the assigned reading for that session. Lectures will provided by both Professor Carlson as well as guest lecturers.

Where a class session is scheduled to have a mock arbitration, the mock will take place in the second half of the session. As with the lecture, the mock arbitration will be based on the reading for that week.

III. Grading

Grading in the course will be based on oral arguments, (45%), written arguments (45%), and participation (10%).

IV. Elements of Course

A. Written and oral arguments

Each student is expected to participate in no less than three moots—at least once for Claimant, once for Respondent, and once as a member of a three person arbitral tribunal. In each moot, Claimant and Respondent will each be represented by two counsel.

The oral and written arguments are based on the fact pattern, which will evolve over the course of the semester. Mock participants will be given the fact pattern three weeks in advance.

Oral arguments will last approximately 35 minutes, including time allotted for the tribunal’s opening remarks and transition between speakers.
**Phase 1:**

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<td>Claimant 1:</td>
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**Phase 2:**

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<td>Claimant 2:</td>
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<td>Respondent 2:</td>
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<td>Claimant 2:</td>
<td>2 minutes (rebuttal)</td>
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<tr>
<td>Respondent 2:</td>
<td>1 minute (sur-rebuttal)</td>
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The above speaking order, in which the claimant presents first, is intended only as a recommendation for issues on the merits of the dispute, for which the claimant is typically charged with the burden of proof. Correspondingly, for objections to admissibility and jurisdiction, the respondent is typically charged with the burden of proof. Where the parties are unable to agree on the speaking order of the dispute, the tribunal must do so.

Professor Carlson, Nav, Harsh are likely to join the tribunal in asking questions of counsel during the mock arbitrations.

1. Responsibilities of Counsel

As counsel, two students will prepare oral arguments on behalf of their client. Each moot will involve multiple issues, and counsel is expected to allot amongst themselves the issues to be addressed. Counsel should distribute these issues so that each advocate shares a roughly equal burden and there is no overlap.

The mock arbitrations comprise both an email exchange of written arguments, in the form of outlines, and oral argument.

   (i) Written arguments

Written arguments in the form of outlines are intended to provide opposing counsel and the Tribunal an understanding of the positions to be advanced in oral arguments. Accordingly, by 11:59pm the Thursday preceding a given moot, each participant must circulate an outline that captures their arguments in summary form (*ie*, there will be four outlines total—two for Claimant and two for Respondent).

Counsel must copy the Tribunal on this exchange, as well as Professor Carlson, Nav, and Harsh. In addition, counsel must post the outlines on courseware. Late submissions will not be accepted without first receiving permission from the professor.
Each outline must be between 2,000-2,500 words in length. It must conform to the following additional requirements:

- There must be a header that includes (1) both of the names of the students who prepared it, (2) the date on which the submission was made, (3) and the issue represented in the outline.

- Style:
  - No cover page or table of contents is necessary.
  - The font must be 12pt Times New Roman.
  - Paragraph spacing and line indentation is up to the student, but must be consistent throughout.
  - Students may use either American English or British English, but must be consistent throughout.
  - Page numbers must be included.
  - Headers should be included.

- Sources:
  - Sources may include a combination of applicable law, jurisprudence, scholarship, and other sources as helpful.
  - Sources must be included in footnotes. They are not to be included in the body of the text nor in endnotes.
  - Sources may include parentheticals.
  - Sources are included in the word count.

Outlines will be evaluated based on their comprehension of the material, presentation of cogent, structured arguments, and responsiveness to anticipated arguments made by opposing counsel.

Students will receive written feedback for their outlines. Together with the Tribunal’s questions, the outlines will comprise 45% of the oral advocacy grade.

(ii) Oral arguments

Students will be evaluated based on their comprehension of the material, ability to answer effectively the Tribunal’s questions, and ability to present in a persuasive manner. Students will receive oral feedback following the round, followed by short written feedback.

The oral arguments of the first speaker in Phases 1 and 2 may not meaningfully deviate from the substance of their outlines. However, minor deviations in argument and additional support for existing arguments are both permissible. Where an objection arises, the tribunal shall decide whether a given submission is admissible. The second speaker in Phases 1 and 2 may deviate from their outlines, as helpful to respond to the first speaker’s oral submissions.

2. Responsibilities of the Tribunal

The Tribunal will be expected to have reviewed the outline submissions made by both parties prior to the start of the proceeding. During oral arguments, the Tribunal will have three primary responsibilities:
• To ask questions of counsel intended to help resolve the issues of which the Tribunal is seized.
• To ensure that the proceeding is advancing in an orderly manner, including the keeping of time.
• To resolve procedural issues as they arise.

The Tribunal’s questions to counsel may be introduced during or after a given oral submission. For questions asked after a submission, however, the Tribunal should be mindful of time constraints.

The written work product for each member of the Tribunal is undertaken after the moot. Based on the contents of the parties’ written and oral submissions, each member of the Tribunal must independently prepare an outline of an award on that issue. The positions taken in that outline should be based on what that member of the Tribunal found most persuasive—e.g., they may agree exclusively with one side on all issues, or they may come up with a decision somewhere in between the two sides.

The Tribunal member may rely on new authorities not addressed in the written or oral submissions, but may not introduce new arguments.

Each outline must be between 2,000-2,500 words in length. It must conform to the same formatting and style requirements as the outlines for counsel. The outline is due within three weeks of the moot (so, e.g., the arbitrator outline for a moot on Feb. 1 would be due by 11:59pm on Feb. 21). Late submissions will not be accepted without first receiving permission from the professor.

Unlike the counsel outlines, the arbitrator outlines need only be posted on Courseware.

B. Participation

Participation in the course will be graded not on quantity, but quality. The opportunity to participate will arise principally during the lecture part of the class.

In order to participate effectively, students must do the reading.

V. Administrative Items

A. Teaching assistants

Navpreet (Nav) Moonga and Harsh Sancheti are assisting with this course. Assignments and logistical questions directed to Professor Carlson should also include as copyees Harsh and Nav.

Nav Moonga is available at: 
Harsh Sancheti is available at:
B. Office hours

Office hours are on a per request basis. Professor Carlson is generally available before class begins on Mondays.
Course Schedule

Week 1: January 25, 2016
Class to be rescheduled because of snow day

Week 2: February 1, 2016
Introduction, overview of investment arbitration, and researching international arbitration

Oral advocacy training

Reading:
- UNCTAD Course on Dispute Settlement, 2.1, *Overview*, UNCTAD website.
- UNCTAD Course on Dispute Settlement, 2.2, *Selecting the Appropriate Forum*, UNCTAD website.

Week 3: February 8, 2016
Tribunal Jurisdiction (Part I)

Oral advocacy training

Reading:

Week 4: February 18, 2016
Tribunal Jurisdiction (Part II)

Oral advocacy training

Reading:

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1 Available through the Georgetown Law Library website.
2 Available through Investment Claims, which is available through the Georgetown Law Library website.
3 All ICSID cases referred to in this syllabus are available on ITALaw.com.

**Week 5: February 22, 2016**

**Attribution and State Responsibility**

**Moot no. 1:** Whether Danubia is liable under the BIT for Danubian Oil S.A.’s seizure of Dorne Oil’s offshore project.

**Reading:**
- *EDF (Services) Limited v Romania*, Award, ICSID Case No. ARB/05/13 (2009), ¶¶ 185-214.

**Week 6: February 29, 2016**

**State of necessity**

**Moot no. 2:** Whether Danubia’s invocation of the necessity defense precludes wrongfulness as matter of the BIT or customary international law.

**Reading:**
- *Continental Casualty v Argentina*, Award, Case No. ICSID ARB/03/9 (2008), ¶¶ 160-181, 189-198, 227, 231-233
- *Suez v Argentina*, Award, ICSID Case No. ARB/03/19 (2010), ¶¶ 249-271

**Week 7: March 14, 2016**
Corruption and bad faith

**Moot no. 3:** Whether Danubia beards the burden of proof in its claim that Dorne Oil secured its investment via corruption and what the applicable standard of proof is. Further, should the Tribunal conclude that Dorne Oil secured its investment via corruption, but did so at the behest of high-ranking Danubian officials, what effect that finding would have on the Tribunal’s decision.

**Reading:**
- *World Duty Free v Kenya*, Award, ICSID Case No. ARB/00/7 (2006), ¶¶ 105-188.
- Additional reading to be included.

**Week 8:** March 21, 2016

Expropriation

**Moot no. 4:** Whether Danubia’s “Environmental Renewal Tax” was a non-compensable governmental regulation.

**Reading:**
- *Metalclad v Mexico*, Award, ICSID Case No. ARB(AF)/97/1 (2000), ¶¶ 102-112.

**Week 9:** March 28, 2016

Fair and equitable treatment

**Moot no. 5:** Whether any of Danubia’s contested taxes constituted a violation of the BIT’s fair and equitable treatment standard.

**Reading:**
- *Glamis Gold v United States*, NAFTA Award (2009), ¶¶ 598-627.
Week 10: April 4, 2016
National Treatment and Most-Favored Nations Clauses

Moot no. 6: Whether Danubia may rely on the BIT’s MFN clause in order to import more favorable provisions into the BIT’s dispute resolution clause.

Reading:
- *Maffezini v Spain*, Decision of the Tribunal on Objections to Jurisdiction, ICSID Case No. ARB/97/7 (2000).

Week 11: April 11, 2016
Damages and costs

Reading:
- Additional reading to be included.

Week 12: April 18, 2016
Annulment, revision, and interpretation

Moot no. 7: Whether the Tribunal’s decision to import a more favorable dispute resolution clause via MFN should be annulled in accordance with ICSID Article 52.

Reading:
- ICSID Convention, Article 52.
- Mallory B. Silberman, *ICSID Annulment Reform: Are We Looking at the Right Problem?*, Transactional Dispute Management (January 2014)

Week 13: April 25, 2016
Recognition and enforcement

Reading:

• Redfern and Hunter (6th edition), Chapters 10 and 11.

• Additional reading to be included.

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4 Available through Kluwer Arbitration, which is available through the Georgetown Law Library website.