



UNIVERSITY OF TORONTO
FACULTY OF LAW

LAW & ECONOMICS WORKSHOP

presents

Alan Sykes
New York University Law School

Economic “Necessity” in International Law

Tuesday, March 17, 2015
4:10 – 5:45
Solarium (room FA2), Falconer Hall
84 Queen’s Park

Recent investment litigation against Argentina focuses attention on the necessity defense in customary international law and related provisions in investment treaties. This paper considers, from an economic standpoint, the question of when exigent economic circumstances might create conditions of “necessity” that justify deviation from international obligations. Although economic circumstances may arise in which the performance of certain international obligations might impose costs that exceed the benefits, it can be difficult to observe and verify those circumstances reliably. It can also be difficult to assess whether conditions of economic necessity result from excessive moral hazard, and whether deviation from international obligations is the best policy instrument in response to conditions of necessity. A possible solution to these problems is an appropriate compensation requirement.

A leading expert on the application of economics to legal problems, Alan O. Sykes has focused his research on international economic relations. His writing and teaching have encompassed international trade, torts, contracts, insurance, antitrust, and economic analysis of law. He has been a member of the executive committee and the board of the American Law and Economics Association, and he currently serves as reporter for the American Law Institute Project on Principles of Trade Law: The World Trade Organization. Professor Sykes is associate editor of the *Journal of International Economic Law* and a member of the board of editors of the *World Trade Review*. He formerly served as editor of the *Journal of Legal Studies* and the *Journal of Law and Economics*. Before joining the Stanford Law School faculty in 2006, Professor Sykes was the Frank and Bernice J. Greenberg Professor of Law at the University of Chicago Law School, where he also served as faculty director of curriculum. He is a former National Science Foundation graduate fellow in the Department of Economics at Yale University. He is a senior fellow (by courtesy) with the Stanford Institute for Economic Policy Research and the Stanford Center for International Development.