



Academic Year 2016-2017

Syllabus  
Global Law  
CFU 12

1<sup>st</sup> Module: Proff. Fiammetta Borgia, Federica Mucci, Pierluigi Simone  
2<sup>nd</sup> Module: Proff. Martina Conticelli, Giacinto della Cananea, Thomas Perroud

### Course Description

The Course is divided into two Modules (International Law and Contemporary Challenges and Global Administrative Law). It focuses on the logics, dynamics and challenges of what can be called “global law”. In particular, the 1<sup>st</sup> Module of the Course aims to provide students with the knowledge of the basic elements of modern international law, with particular reference to subjects and legal sources, the United Nations collective security system, the State responsibility and disputes resolution. The 2<sup>nd</sup> module focuses on the rise of global administration, on the emergence of administrative law mechanisms beyond the State and on transnational regulation.

### International Law and Contemporary Challenges (1st Module)

<b>Topic 1</b> <b>The Law of the International Community: Subjects and Sources of International Law</b> (Prof. Mucci)	<b>SUBJECTS OF INTERNATIONAL LAW</b> a) The main features of the International Community and its historical evolution b) The subjects of international law - States - International intergovernmental organizations - Other subjects? - Individuals  <b>SOURCES OF INTERNATIONAL LAW</b> a) Custom b) Treaties c) General principles of law d) Hierarchy of sources and <i>jus cogens</i> e) <i>soft law</i>
<b>Topic 2</b> <b>United Nations and Collective Security System</b> (Prof. Borgia)	<b>THE CONCEPT AND DEVELOPMENT OF COLLECTIVE SECURITY</b> Collective security: a historical journey The morphology of collective security Triggers, actors and institutions  <b>THE UNITED NATIONS</b> UN Charter UN Structure

**Topic 3**  
**State**  
**Responsibility**  
**and Disputes**  
**Resolution in**  
**International**  
**Law**  
(Prof. Simone)

THE UN CHARTER'S SYSTEM OF COLLECTIVE SECURITY

Powers of general assembly, general secretary and security council  
The contribution of regional, defence and security organisations to peace and security  
Economic and military sanctions

THE COLLECTIVE SECURITY AND THE PROTECTION OF HUMAN RIGHTS

Humanitarian intervention  
Responsibility to Protect doctrine  
Criticisms

STATE RESPONSIBILITY IN INTERNATIONAL LAW

The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts  
Internationally wrongful acts  
The rules of attribution  
Circumstances precluding wrongfulness  
Consequences of breach  
Invocation of State responsibility  
International liability for injurious consequences arising out of acts non prohibited by international law

DISPUTES RESOLUTION IN INTERNATIONAL LAW

The international judicial function: Arbitration; the International Court of Justice  
Regional and sectorial international courts: The General Court and the Court of Justice of the European Union; the International Tribunal of the Law of the Sea; the WTO Dispute Settlement Body; the European Court of Human Rights; the Interamerican Commission and Court of Human Rights; the African Commission and Court of Human Rights; the Committee for Human Rights of the United Nations Covenant on Civil and Political Rights; the International Criminal Court and the *ad hoc* International Criminal Tribunals.  
The pacific resolution of international disputes and the non-judicial settlement procedures.

**Teaching Method**

The topics of the 1st Module will be exposed through lectures. The active participation of students will be stimulated through the analysis of cases and materials submitted by the teachers. The formation of groups among students will be also expected, so as to stimulate the mutual interaction and the study of specific and relevant matters.

**Textbook and Materials**

A. CASSESE, International Law, 2nd edition, Oxford University Press, 2004  
Selected materials and/or slides will be provided to the students during the course

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**Global Administrative Law  
(2nd Module)**

This course focuses on the logics, dynamics, and challenges of what can be called “global law”. “Global law” refers to a situation in which: (1) relationships between the interests of individuals and public authorities are influenced or governed by multiple normative systems (from informal social norms to law, from specific rules to the general principles of law), with the consequence that such systems co-exist and compete with one another within the same territory or domain of activity; or (2) two or more systems of governance – such as the courts of different legal orders – claim authority over the same domain of activity.

Topics include: the criteria governing the expropriation of aliens; due process of law in regulatory and adjudicatory procedures; the tensions between custom, state law, and human rights in developing countries; and the ways in which the pluralist structure of international treaty law and organization are transforming law and courts at the national level.

<b>First Part</b> <b>Prof. Giacinto della Cananea</b>	1. Introduction: Public Law in a Globalized Perspective 2. Enforcing the Rule of Law 3. Indigenous Groups and Property 4. When Legal Orders Collide: Due Process of Law
<b>Second Part</b> <b>Prof. Martina Conticelli</b>	1. The emergence of global administrative Law 2. Global procedural requirements 3. The enforcement of decisions 4. Legality, rule of law and values in the global space
<b>Third Part</b> <b>Prof. Thomas Perroud</b>	1. Historical Introduction to Administrative Law and Regulation 2. Regulation and the State in the new Global Order 3. Global Regulation and Global Competition Law 4. Regulatory competition 5. Regulation and The Use of Private Standards 6. Regulation and Market Building in the Field of Environment 7. Regulation, Impact Assessment and Participation 8. Government Networks 9. New Perspectives: transnational administrative law

### Teaching Method

The class will survey approaches to understanding global law in a range of settings, focusing on “inter-normativity”: the various ways in which autonomous normative orders, including systems of law with fully-fledged courts, interact with one another. A variety of issues concerning legal principles and rules, as well as their underlying values, will thus be considered.

### Textbook and Materials

#### Part I (G. della Cananea)

##### 1. Introduction: Public Law in a Globalized Perspective

###### Materials:

- UK High Court of Justice (2015) on data retention and investigatory powers
- Security Council of United Nations, *Resolution 1373 (2001)* [concerning the measures to prevent terrorism]

###### Readings:

- M. Shapiro, *The Globalization of Law*, 1 *Indiana Journal of Global Legal Studies* 37 (2000)
- B. Kingsbury, N. Krisch, R. B. Stewart & J. Weiner, *The Emergence of Global Administrative Law*, 68 *Law and Contemporary Legal Problems* 2005

or, alternatively,

- B. Chimni, *Co-optation and Resistance: Two Faces of Global Administrative Law*, 37 *NYU J Int'l L & Policy* 798 [2005]

## 2. Enforcing the Rule of Law

Materials:

- European Court of Human Rights, Judgment of 28 February 2008, Case *Saadi v. Italy*, (*Application no. 37201/06*)

Reading:

A. Stone Sweet, *A cosmopolitan legal order: Constitutional pluralism and rights adjudication in Europe*, 1 *Global Constitutionalism* 53 (2012)

## 3. Indigenous Groups and Property

Materials:

- *The Mayagna (Sumo) Community v. Nicaragua*, Inter-American Court of Human Rights (Judgment of 31 August 2001): excerpts.
- *Hul'qumi'num Treaty Group v. Canada*, Inter-American Court of Human Rights, Petition 592-07.

Readings:

- U. Mattei, *A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance*, 17 *Indiana Journal of Global Legal Studies* (2005)

## 4. When Legal Orders Collide: Due Process of Law

Materials (excerpts from):

- Court of First Instance of the EU, **Case T-315/01**, *Yassin Abdullah Kadi v Council of the EU and the Commission*;
- Advocate General Maduro, Opinion of 16 January 2008, Case C-402/05 P, *Yassin Abdullah Kadi v Council of the EU and the Commission of the EC*.

Readings:

- G. De Burca, *The EU, the European Court of Justice and the International Legal Order after Kadi*, *Harvard International Law Journal*, 51 *Harv. Int'l L.J.* 1/2010, pp. 1-49.
- G. della Cananea, *Administrative Due Process in Liberal Democracies: a Post-9/11 World*, *Italian Journal of Public Law*, n. 3, 1/2011, pp. 195-223.

Further reading (optional): G. della Cananea, *Due Process of Law Beyond the State: Requirements of Administrative Procedure*, Oxford, OUP, 2016

## Part II (Martina Conticelli)

### 1. The Emergence of Global Administrative Law

- Kingsbury et al., *The Emergence of Global Administrative Law*, 68 *Law and Contemporary Problems*, p.15-62 (Summer 2005)

### 2. Global procedural requirements

- M. Conticelli, *Global administrative Procedure: Distinguishing Features* (forthcoming)

### 3. The enforcement of decisions

- G. della Cananea, *Beyond the State: the Europeanization and globalization of procedural administrative law*, (2003) 9 *European Public Law*, p. 563 ff.

- S. Cassese, *Global Standards for National Administrative Procedure*, 68 *Law and Contemporary Problems*, p. 109-126 (Summer 2005)

#### **4. Legality, rule of law and values in the global space**

##### Readings:

- S. Cassese, *The Global Polity. Global Dimensions of Democracy and the Rule of Law* (Editorial Derecho Global / Global Law Press) 2014, 15-31
- D. Dyzenhaus, M. Hunt, M. Taggart, *The Principle of Legality in Administrative law: Internationalisation as Constitutionalisation*, in *Comm. Law Journal*, 2001, 5

### **Part III (Thomas Perroud) 9 sessions on Global Regulation**

#### **1. Historical Introduction to Administrative Law and Regulation**

##### **Readings:**

- Cassese, *'La costruzione del diritto amministrativo: Francia e Regno Unito'*, in S. Cassese (ed.), *Trattato di diritto amministrativo*, 2nd ed., vol. I (Milan: Giuffrè, 2003)
- Rabin, *Federal Regulation in Historical Perspective*, 38 *Stanford Law Review* 1189
- Stewart, *The Reformation of American Administrative Law*, 88 *HARV. L. REV.* 1667 (1975)
- Craig, *Constitutions, Property and Regulation*, *Public Law* 1991

#### **2. Regulation and the State in the new Global Order**

##### **Readings:**

- Majone, (1994) *'The rise of the regulatory state in Europe'*, *West European Politics*, 17: 3, 77 — 101
- Black, *Critical Reflections on Regulation*, *Australian journal of legal philosophy*, 27 . pp. 1-35
- Koop, C. and Lodge, M. (2015), *What is regulation? An interdisciplinary concept analysis. Regulation & Governance*.
- Julien Sylvestre Fleury and Jean-Michel Marcoux, *The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership* *J Int Economic Law* (2016) 19 (2): 445-465

#### **3. Global Regulation and Global Competition Law**

##### **Readings:**

- Koenig-Archibugi, *Global Regulation*, *Oxford Handbook of Regulation*
- Gerber, *Global Competition: Law, Markets, and Globalization*, chapters 5, 6
- Kent Bernard, *Is Full Transatlantic Competition Law Convergence Realistic, or Even Desirable?*

#### **4. Regulatory competition**

##### **Readings:**

- Simon Deakin, *Is regulatory competition the future for European integration?*
- Case C-212/97 *Centros Ltd. v. Erhvervs-og Selskabsstyrelsen* [1999] ECR I-1459
- Scharpf, *Democratic Legitimacy under Conditions of Regulatory Competition: Why Europe Differs from the United States*

#### **5. Regulation and The Use of Private Standards**

##### **Readings:**

- De Bellis, *EU and Global Private Regulatory Regimes: the Accounting and Auditing Sectors*, in E. Chiti e B.G. Mattarella (a cura di), *Global Administrative Law and EU Administrative Law. Relationships, Legal Issues and Comparison*, Springer, 2011, pp. 269-292;

- De Bellis, *Public law and private regulators in the global legal space*, in *International Journal of Constitutional Law*, 2011, Vol. 9, pp. 425-448;  
Scott, *Standard-Setting in Regulatory Regimes*, Oxford Handbook of Regulation

## 6. Regulation and Market Building in the Field of Environment

### Readings:

- Driesen, *Alternatives to Regulation?*, Market Mechanisms and the Environment, Oxford Handbook of Regulation
- Ackerman, Stewart, *Reforming Environmental Law : The Democratic Case for Market Incentives* (1988) Columbia Journal of Environmental Law, vol. 13

## 7. Regulation, Impact Assessment and Participation

### Readings:

- Radaelli, Francesco, *Regulatory Impact Assessment*, Oxford Handbook of Regulation
- Auby, Perroud, *Regulatory Impact Analysis*, Global Law Press
- Rose-Ackerman, Perroud, *Policymaking and Public Law in France: Public Participation, Agency Independence, and Impact Assessment*

## 8. Government Networks

### Readings:

- Slaughter, Anne-Marie (2001) *The Accountability of Government Networks*, Indiana Journal of Global Legal Studies
- Verdier, *Regulatory Networks and their limits*

## 9. New Perspectives: transnational questions in administrative law

### Readings:

- Alemanno, *The Regulatory Cooperation Chapter of the Transatlantic Trade and Investment Partnership: Institutional Structures and Democratic Consequences*, Forthcoming in Journal of International Economic Law, 2015
- This issue of Law and Contemporary Problems:  
<http://scholarship.law.duke.edu/lcp/vol78/iss4/>
- Vicki Been, Joel C. Beauvais, *The Global Fifth Amendment? NAFTA's Investment Protections and the Misguided Quest for an International 'Regulatory Takings' Doctrine*

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## Assessment of Global Law exam

### 1st Module: International Law and Contemporary Challenges

With reference to the 1st Module, students' evaluation will be based on the attendance in class (25%), on mid-term written exams (30%) and on a final oral exam (45%). The mid-term exams will be a total of three (one for each topic), and will consist in the preparation of papers regarding issues addressed in topic 1 (The Law of the International Community: Subjects and Sources of International Law), in topic 2 (United Nations and Collective Security System) and in topic 3 (State Responsibility and Disputes Resolution in International Law), respectively.

Attendance to the final exam is compulsory in order to pass the exam. Students who do not attend the first final exam can do it without foregoing the mid-term results in the second exam of the Winter session.

## **2nd Module: Global Administrative Law**

Students will be evaluated on the basis of (A) three short (2-3 page) “response papers” on the weekly readings (45%), (B) attendance and participation (25%), and (C) a final exam (30%).

Attendance to the final exam is compulsory in order to pass the exam. Students who do not attend the first final exam can retake it, without foregoing the response papers results, in the second exam of the Winter session.

## **1st and 2nd Module**

The final grade given to the students for the Course of Global Law will be equivalent to the point average obtained between the final grade attributed at the end of the 1st Module and the final grade attributed at the end of the 2nd Module, rounded up for averages with 5 decimals.

Students who fail or reject the grade of one of the two modules can repeat it within the Winter session. Such students are also allowed to retake the second exam in the Winter session or in the September session without reference to their previous grade components and the exam will consist of a written and oral part. Students who retake the exam in the September session have to forego any result of the Winter session and do a new complete exam, consisting of a written and oral part for both modules.

## **Office hours**

Prof. Fiammetta Borgia: [fiammetta.borgia@uniroma2.it](mailto:fiammetta.borgia@uniroma2.it), Monday, 11.00-13.00

Prof. Federica Mucci: [federica.mucci@uniroma2.it](mailto:federica.mucci@uniroma2.it), Tuesday, 10.00-13.00

Prof. Pierluigi Simone: [pierluigi.simone@uniroma2.it](mailto:pierluigi.simone@uniroma2.it), Wednesday 15.00-18.00

Proff. Martina Conticelli, Giacinto della Cananea: before and after classes/ or upon request by email: [della.cananea@economia.uniroma2.it](mailto:della.cananea@economia.uniroma2.it); [martina.conticelli@uniroma2.it](mailto:martina.conticelli@uniroma2.it)

**NOTE:** Since the course is provided for a limited number of students, **Erasmus and non-Global Governance students** who would like to attend this course and take this exam need to contact the Secretariat of Global Governance by e-mail [global.governance@uniroma2.it](mailto:global.governance@uniroma2.it) for registration and sign the Code of Conduct.

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