



Academic Year 2022-2023

Syllabus
Global Law
CFU 12

1st Module: Proff. Fiammetta Borgia, Federica Mucci, Pierluigi Simone
2nd Module: Jean-Bernard Auby and Proff. Martina Conticelli

Course Description

The Course is divided into two Modules (International Law and Contemporary Challenges and Global Administrative Law).

The 1st Module aims at providing 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.

It focuses on the nature of "public" international law as a legal order that was born historically - and still operates - to regulate relations between sovereign states in the international community. The role of international organizations and individuals in the international order is also introduced and analyzed, as well as the other "actors" that in recent times have become increasingly important in international practice, such as international non-governmental organizations.

The 2nd module focuses on the rise of global administration, on the emergence of administrative law mechanisms beyond the State and on transnational regulation.

It focuses on the logics, dynamics and challenges of what can be called "global administrative law". "Global administrative 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.

International Law and Contemporary Challenges (1st Module)

Topic 1
The Law of the
International
Community:
Subjects and
Sources of

SUBJECTS OF INTERNATIONAL LAW

- a) The main features of the International Community and its historical evolution
- b) The subjects of international law
 - States
 - International intergovernmental organizations
 - Other subjects?

International Law
(Prof. Mucci)

- Individuals

SOURCES OF INTERNATIONAL LAW

- a) Custom
- b) Treaties
- c) Binding acts of international intergovernmental organizations
- d) General principles of law
- e) Hierarchy of sources and *jus cogens*
- f) *soft law*

Topic 2
United Nations and Collective Security System
(Prof. Borgia)

Part 1 THE CONCEPT AND DEVELOPMENT OF COLLECTIVE SECURITY

Collective security: a historical journey
The morphology of collective security
Triggers, actors and institutions

Part 2 THE UNITED NATIONS

UN Charter
UN Structure

Part 3 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

Part 4 THE COLLECTIVE SECURITY AND THE PROTECTION OF HUMAN RIGHTS

Humanitarian intervention
Responsibility to Protect doctrine
Fight against Terrorism

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

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 Inter-American 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

Lectures will focus on the different topics. The active participation of students will be stimulated through the analysis of cases and materials. Group work will be requested in order to stimulate the mutual interaction and the focus on 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

Global Administrative Law (2nd Module)

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|---|--|
| First Part Prof. J.B. Auby | <ol style="list-style-type: none">1. Introduction: Globalization and Law2. General Interest and Public Goods under Legal Globalization3. Non-State Actors in Legal Globalization4. Effects of Globalization on the relationship between Domestic Laws5. Transparency and Privacy: The Circulation of Information in Globalization6. Cities in Legal Globalization |
| Second Part Prof. Martina Conticelli | <ol style="list-style-type: none">1. The Globalization of Law2. Areas of legal globalization3. Governance without Government: power and legitimacy in the global sphere4. Does a global Constitution exist?5. An Administrative Law without the State6. Is there a Global Administrative Law?7. Origins and features of GAL8. Regulators: between private and public9. Global standards for national proceedings10. Global proceedings11. Due Process of 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:

Students attending classes may study on the following textbook:

J.B. Auby, Globalization, Law and the State, Bloomsbury, 2017

Selected materials and/or slides will be provided to the students during the course (a detailed list will be uploaded on the course website at the beginning of each module)

Part I (Jean-Bernard Auby)

1.General Interest and Public Goods under Legal Globalization

Materials

- Le Club des Juristes, Global Pact for the Environment. Project, 2017

Readings

- Inge Kaul, Global Public Goods. A Concept for Framing the Post-2015 Agenda?, Discussion Paper, Deutsches Institut für Entwicklungspolitik, 2013, <http://www.muji.esporafrika.es/sites/default/files/Inge%20Kaul.pdf>
- Jean-Bernard Auby, Globalisation, Law and the State, Hart Publishing, 2016, pp.129-136

2.Cooperation between States and Other Public Entities in a globalizing world

Materials

- Directive 2006/123/EC, 12 December 2006 on services in the internal market, articles 28 to 36

Readings

- Rüdiger Wolfrum, Solidarity amongst States: An Emerging Structural Principle of International Law, in Common Values in International Law. Essays in honour of Christian Tomuschat, N.P. Engel Verlag, 2006, pp. 1087-1101
- Jan Wouters, Government by Negotiation, in Sabino Cassese (ed.), Research Handbook on Global Administrative Law, Edward Elgar, 2016, pp.196-211
- Philip Dann, The Global Administrative Law of development cooperation, in Sabino Cassese (ed.), Research Handbook on Global Administrative Law, Edward Elgar, 2016, pp.414-435

3. Non-State Actors in Legal Globalization

Materials

- Lia Koletsou et al., The Role of Iann Internet Governance: Friend or Foe?, European Review of Public Law, Winter 2006

Readings

- David Bederman, Diversity and Permeability in Transnational Governance, Emory Law Journal, 2007-2008, p.201
- A.Peters, L.Förster and T. Zinkernagel (eds), Non-State Actors as Standard Setters, Cambridge University Press, 2009

4. Effects of globalization on the relationship between domestic laws

Materials

- ECJ, C-212/97 Cenros Ltd – C-196/04 Vadbury Schweppes

Readings

- Jürgen Basedow The Effects of Globalization on Private International Law, in Jürgen Basedow and Toshiyuki Kono (eds), Legal Aspects of Globalization, kluwer Law International, 2000, p.1
- Paul Baumnt, Carole Lyons and Neil Walker (eds), Convergence and Divergence in European Public Law, Hart Publishing, 2002

5. Transparency and Privacy: The Circulation of Information in Globalization

Materials

- ECJ, 6 October 2015, Case C-362/14, Schrems

Readings

- Anne Peters, Towards Transparency as a Global Norm, in Andrea Bianchi and Anne Peters (eds), *Transparency in International Law*, Cambridge University Press, 2013, pp.534-606
- Jens-Peter Schneider, Basic Structures of Information Management in the European Administrative Union, *European Public Law*, 2014, Issue 1, pp. 89-106

Part II (Martina Conticelli)

September 29, 2022 The Globalization of Law

November 28, 2022 Areas of legal globalization

December 2, 2022 Governance without Government: power and legitimacy in the global sphere

December 5, 2022, Does a global Constitution exist?

December 6, 2022, An Administrative Law without the State

December 7, 2022, Is there a Global Administrative Law?

December 13, 2022, Origins and features of GAL

December 15, 2022, Regulators: between private and public

December 16, 2022, Global standards for national proceedings

December 19, 2022, Global proceedings

December 20, 2022, Class Presentations

January 9, 2022, Due Process of Law

January 10 and 11, 2022, Class debate

General bibliography

- [Gordon Anthony](#), [Jean-Bernard Auby](#), [John Morison](#), [Tom Zwart](#) (eds.), *Values in Global Administrative Law*, Oxford, Hart, 2011
- S. Cassese, *The Global Polity. Global Dimensions of Democracy and the Rule of Law*, Sevilla, Global Law Press, 2012
- P. Craig, UK, *EU and Global Administrative Law*, Cambridge, Cambridge University Press, 2015
- G. della Cananea, *Due Process of Law Beyond the State: Requirements of Administrative Procedure*, Oxford, OUP, 2016

Introduction: the Globalization of Law

M. Shapiro, *The Globalization of Law*, 1 *Indiana Journal of Global Legal Studies* 37 (2000)

Background reading in the Textbook: S. Cassese p. 47-67

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)

Background reading in the Textbook: S. Cassese p. 67-87

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)

Public Law in a Globalized Perspective

B. Kingsbury, *The Concept of "Law" in Global Administrative Law*, 20 *European J. Int'l Law* 23 (2009)

M. De Bellis, *Public law and private regulators in the global legal space*

The rule of Law, due process of Law and the forms of Global Regulation

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

Conticelli, *Global administrative procedures: distinguishing features*

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.

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 average grade of the 3 topics. As for topic 1, students' evaluation will be based on the attendance and participation in class (25%) and on a final oral exam at the mid-term period (75%).

As for topic 2, the final oral exam in the mid-term period will cover the entire programme relating the United Nations and Collective Security System. It will be composed by 27 multiple-choice questions and one open-ended question, covering part 1 - 2 - 3 and 4.

As for topic 3, the final oral exam in the mid-term period will cover the entire program relating to State Responsibility in International Law and Disputes Resolution in International Law.

Attendance (and positive evaluation) to the mid-term period exam is compulsory in order to pass the exam in the first round of the Winter session. Students who do not attend the mid-term period exam **of Module 1** can do both modules in the second round (appello).

For round 2 exam of the Winter session, reserved for students absent in the mid-term period exam or students who have failed the mid-term exam or who have rejected the whole (Module 1 and 2) final grade of round 1, students will have to submit a paper for topic 1 by January 20 (unless they want to keep the grade for the mid-course assignment, if done), sustain a written exam for topic 2 and sustain a final oral exam on all 3 topics in round 2.

Attendance to the class is strongly requested. In case of non-attending students (less than 80% presence), we advise to contact Prof. Borgia, Prof. Mucci and Prof. Simone (see Office hours) for a better understanding of the assessment methods.

2nd Module: Global Administrative Law

Students attending classes will be evaluated on the basis of (A) one short (2-3 page) "response paper" on the weekly readings (40%), (B) attendance and participation (20%), and (C) a final oral exam (40%).

Attendance to the final oral exam is compulsory in order to pass the exam. Students who do not attend the first round final oral exam **of Module 2 must** retake it in the second round, without foregoing the response papers results (and possibly the midterm results of module 1-topic 1), in the second round of the Winter session.

Non-attending students will have to take a written and oral exam and will have to study on the following materials (one at your choice):

- J.B. Auby, *Globalization, Law and the State*, Bloomsbury, 2017
- S. Cassese, *A world government*, Global Law Press, Sevilla 2018 pp. 47-85/ 109-175/ 191-213

1st and 2nd Module: final grade

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.

The results of one module cannot be kept either for another round (“appello”) of the same session or for another exam session: the whole exam must be completed on the same round. The exam will be passed if the average of the grades of the two modules is higher than 18.

Students who reject the grade of one of the two modules have to repeat the **whole exam** on another round (“appello”) and the exam will consist of a written and oral part. Students who reject the final grade or fail in the Winter session, lose their Midterm (module 1) and response paper (module 2) results for the following sessions and academic years and are considered afterwards as non-attending students.

Students who are absent also in the second final exam of the Winter session lose their mid-term and response paper results.

Office hours

Prof. Fiammetta Borgia: before and after classes/or upon request by email fiammetta.borgia@uniroma2.it

Prof. Federica Mucci: before and after classes/or upon request by email federica.mucci@uniroma2.it

Prof. Pierluigi Simone: pierluigi.simone@uniroma2.it, Wednesday 15.00-18.00

Prof. Martina Conticelli: before and after classes/or upon request by email martina.conticelli@uniroma2.it

Prof. J.B. Auby: before and after classes/or upon request by email jeanbernard.auby@sciencespo.fr

NOTE: If you are an Erasmus or a non Global Governance student who would like to attend one or more courses in the Global Governance programme, please be aware that, **before enrolling in the course**, you should have read the code of conduct and the procedural rules characterizing our programme. We assume that, if you enroll in the course, **you have read and accepted all Global Governance values and rules**. Notice that attendance is required from the very first lesson and you need to attend at least 80% of the course to be considered an attending student.