



Academic Year

Syllabus

Global Law

CFU 12

1st Module: Proff. Fiammetta Borgia, Federica Mucci, Pierluigi Simone

2nd Module: Proff. Martina Conticelli, Giacinto della Cananea, Jean-Bernard Auby

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”. “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.

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.

The 2nd 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)

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| Topic 1 The Law of the International Community: Subjects and Sources of International Law (Prof. Mucci) | 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? - Individuals SOURCES OF INTERNATIONAL LAW a) Custom b) Treaties c) General principles of law |
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d) Hierarchy of sources and *jus cogens*
e) *soft law*

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

THE CONCEPT AND DEVELOPMENT OF COLLECTIVE SECURITY

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

THE UNITED NATIONS

UN Charter
UN Structure

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

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. Giacinto della Cananea | <ol style="list-style-type: none">1. Introduction: Public Law in a Globalized Perspective2. The Faces of Global Law. Arbitral Lawmaking and State Power: An Empirical Analysis of Investment Arbitration3. Enforcing the Rule of Law4. US Administrative Law and Global Law5. Is Global Law an Instrument of Legal Imperialism?6. When Legal Orders Collide: Due Process of Law |
| Second Part Prof. Martina Conticelli | <ol style="list-style-type: none">1. The emergence of global administrative Law2. Global procedural requirements3. The enforcement of decisions4. Legality, rule of law and values in the global space |
| Third Part Prof. J.B. Auby | <ol style="list-style-type: none">1. Making Global Administrative Entities and Processes Democratic2. General Interest and Public Goods under Legal Globalization3. Cooperation between States and other Public Entities in a Globalizing world4. Transparency and Privacy: Circulation of Information in Globalization |

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)

General bibliography

- 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* 1 [2005]
- [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

1. Introduction: Public Law in a Globalized Perspective (27 Nov 2017)

The main features of public law, within and beyond the State

Materials:

- Security Council of United Nations, *Resolution 1822 (2008)* [concerning the measures to prevent terrorism]

Reading

- M. Shapiro, *The Globalization of Law*, 1 Indiana Journal of Global Legal Studies 37 (2000)
- S. Cassese, *The Global Polity* (Ch 1).

2. The Faces of Global Law. Arbitral Lawmaking and State Power: An Empirical Analysis of Investment Arbitration (with prof. Alec Stone Sweet) (30 Nov 2017)

Materials and reading documents to be specified

3. Enforcing the Rule of Law (4 Dec. 2017)

The two concepts of the Rule of Law and its relevance beyond the State, particularly in Europe

Materials:

- UK High Court of Justice (2015) on data retention and investigatory powers
- 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)

Additional optional reading: B. Kingsbury, *The Concept of "Law" in Global Administrative Law*, 20 European J. Int. Law 23 (2009)

4. US Administrative Law and Global Law (11 Dec. 2017)

The Fifth Amendment to the US Constitution and the Administrative Procedure Act: A Global Due Process of Law?

Materials:

- US Administrative Procedure Act, 5 U.S.C. §§ 551, 553, 701-706

- US Supreme Court, *Citizens to Preserve Overton Park v. Volpe* (1977)

Reading:

R.B. Stewart, *U.S. Administrative Law: A Model for Global Administrative Law?* 68 *Law and Contemporary Problems* 63 (2005)

5. Is Global Law an Instrument of Legal Imperialism (I)? The World Trade and the Shrimp-Turtles Saga (14 Dec. 2017)

Law, Economics and Politics in the decisions of WTO dispute resolution bodies

Materials:

- United States - Import Prohibition of Certain Shrimp and Shrimp Products – Panel Report (2007)
- United States - Import Prohibition of Certain Shrimp and Shrimp Products Appellate Body Report pursuant to Article 21.5 of the DSU (16 July 2008)

Reading:

- 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)

6. Is Global Law an Instrument of Legal Imperialism (II)? Indigenous Groups and Property (18 Dec. 2017)

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 (Admissibility report, 2009)

Reading:

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

7. When Legal Orders Collide: Due Process of Law (I) (8 Jan. 2018)

- UN sanctions against transnational terrorism and their implementation within the EU

- 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*.

Reading:

- 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.

8. When Legal Orders Collide: Due Process of Law (II) (11 Jan. 2018)

- UN sanctions against transnational terrorism and their implementation within the EU: the ruling of the Court of Justice in *Kadi I* and that of the General Court in *Kadi II*

- Materials (excerpts from):

- ECJ, *Kadi and Al Barakaat International Foundation v Council and Commission* (2008) C-402/05
- General Court (Seventh Chamber), Case T-85/09, *Yassin Abdullah Kadi v European Commission* (2010)

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)

Part III (Jean-Bernard Auby)

1. Making Global Administrative Entities and Processes Democratic

Materials

- *Aarhus Convention*, 25 June 1998

Readings

- Steven Wheatley, Democratic Governance beyond the State: the Legitimacy of Non-State Actors as Standard Setters, in Anne Peters, Lucy Koechlin, Till Förster and Greta Fenner Zinkernagel (eds), *Non-State Actors as Standard-Setters*, Cambridge University Press, 2009, pp.215-240
- Karl-Peter Sommermann, Introduction, in Cristina Fraenkel-Haeblerle, Sabine Kropp, Francisco Palermo and Karl-Peter Sommermann (eds), *Citizen Participation in Multi-Level Democracies*, Brill Nijhoff, 2015, p.1 ff.
- Francesca Bignami, Theories of civil society and Global Administrative Law: the case of the World Bank and international development, in Sabino Cassese (ed.), *Research Handbook on Global Administrative Law*, Edward Elgar, 2016, pp. 325-346

2. 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.esporafica.es/sites/default/files/Inge%20Kaul.pdf>
- Jean-Bernard Auby, *Globalisation, Law and the State*, Hart Publishing, 2016, pp.129-136

3.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

4.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

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 (35%) and on a final oral exam (40%). The mid-term exams will be a total of three (one for each topic), and will cover at least 50% of the 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. The final exam will concern the other issues addressed in topic 1, in topic 2 and in topic 3 that have not been covered by the mid-term exams.

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.

Attendance to the class is strongly requested. In case of non-attending students, 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 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 oral 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.

Non-attending students will have to take a written and oral exam and will have the following additional readings:

- EU and Global Administrative Law: Foundations and Challenges (The Hamlyn Lectures) Paperback by Paul Craig (Author), Cambridge university press: part 5, and part 6;
- Due Process of Law Beyond the State. Requirements of Administrative Procedure. Giacinto della Cananea, Oxford University press part III

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

Prof. Federica Mucci: federica.mucci@uniroma2.it, Tuesday, 10.00-13.00

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

NOTE: Since the course is provided for a limited number of students, **Erasmus or non-Global Governance students** who would like to attend the course need to contact the Secretariat of Global Governance by e-mail global.governance@uniroma2.it for registration and inform the Professor of the course. They are required to sign a code of conduct like all Global Governance students, accepting all values and rules. Please read it carefully before enrolling and notice that attendance is required from the very first lesson.
