

University of Rome Tor Vergata
Undergraduate Degree (B.A.) in Global Governance

Course Syllabus

Global Law

12 CFU

Prof. Fiammetta Borgia, Giacinto Della Cananea, Federica Mucci, Pierluigi Simone

Course description

The Course is divided into four Modules:

- I. Global Law (Prof. Della Cananea)
- II. The International protection of Cultural Heritage and the Environment (Prof. Mucci)
- III. Self-Determination and Minorities: Contemporary Issues in International and European Law (Prof. Simone)
- IV. International Economic Law (Prof. Borgia)

I Module (6 CFU)

Prof. Giacinto della Cananea

Office: DEDI, room 57.

Office Hours: Thursdays, 8-10 am, or by appt.

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.

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. 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.

All of the required and recommended texts have been posted on the class web page. 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%).

October 13: Introduction: What is Global Law?

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.

I. Norms and Values

October 16: The General Principles of Law Shared by National Legal Orders

Statute of the International Court of Justice, Article 38;
Treaty Establishing the European Economic Community, Article 185;
Giorgio Gaja, *General Principles of Law*, *Max Planck Encyclopedia of Public International Law* (2007).

October 16: General Principles of Law and “Values”

C. Harlow, *Global Administrative Law: the Quest for Principles and Values*, 17 *The European Journal of International Law* (2006);
G. della Cananea, *Procedural Due Process of Law Beyond the State*, in Armin von Bogdandy, Rüdiger Wolfrum, Jochen von Bernstorff, Philipp Dann, Matthias Goldmann (eds.) *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* Springer Publ., Heidelberg 2009;
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (done at Aarhus, Denmark, on 25 June 1998).

October 23: The Rule of Law and Democracy Beyond the State

E. Stein, *International Law and Democracy: No Love at First Sight*, 95 *American Journal of International Law* (2001);
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);
Security Council of United Nations, *Resolution 1373 (2001)* [concerning the measures to prevent terrorism].

II. Interests, Rights, and Remedies

October 27: Human Dignity and Habeas Corpus are “Absolute” Rights?

European Court of Human Rights, Judgment of 28 February 2008, Case *Saadi v. Italy*, (*Application no. 37201/06*);
US Supreme Court, *Boumediene et al v. Bush* (2007) [Excerpt: pp. 9-76 of the document];
Further reading: Gentili, *European Court of Human Rights: An absolute ban on deportation of foreign citizens to countries where torture or ill-treatment is a genuine risk*, 2 *Int J Const. L.* 318 (2010).

October 30: Ownership, Foreign Investments, and Due Process of Law

ICSID Convention (excerpts);
Treaty establishing the North-American Free Trade Area (excerpts);
ICSID CASE No. ARB(AF)/97/1, *Metalclad v. Mexico*, Award (2000).

November 6: Indigenous Groups and Property:

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.

November 13: The Regulation of GMOs

European Court of Justice, Case C-236/01, *Monsanto v. Italy*;
Tribunale amministrativo regionale del Lazio, sez. I, decision of November 29 2004, n. 14477;
Further reading: J. Scott, *European regulation of GMOs and the WTO*, 9 Col. J. Eur. L 213 (2002-3).

III. When Legal Orders Collide

November 20: Due Process in Global Law: Kadi (I)

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*;

November 27: Due Process in Global Law: Kadi (II)

European Court of Justice, Joined cases C-402/05 and 415/05, *Kadi and Al Barakaat International Foundation v. Council*;

Excerpts from:

- 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.

December 4: The EU and the WTO: Co-operation or Collision?

European Court of Justice, Cases C-149/96, *Portugal v. Council* [1999] and C-377/02, *Léon Van Paris NV v. Belgisch Restitiebureau* [2005];

F.G. Snyder, *The Gatekeepers: the European Courts and WTO Law*, in *Common Market L. Rev.* 40 [2003];

Further reading: A. von Bogdandy and T. Makatsch, *Collision, Co-Existence or Cooperation? Prospects for the Relationship Between WTO law and European Union law*, in de Burca & Scott (eds.), *The European Union and WTO. Legal and constitutional issues*, 2003

December 11 and 18: Cosmopolitan Constitutionalism

A. Stone Sweet, *A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe*, *Journal of Global Constitutionalism* (2012);

Further reading: N. Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (2010).

II Module (2CFU)

Prof. Federica Mucci

Basic principles underlying the protection of cultural heritage and the environment in the international legal order

- **Heritage, environment and human rights**
 - Cultural heritage as a common heritage of humankind and the environment as a common concern of humankind
 - The so-called “third generation” human rights
 - Environmentally and culturally sustainable development: a challenge, an opportunity
- **Heritage and peace**
 - The first international rules about cultural heritage in the law of armed conflicts banning pillage and voluntary attack
 - The restitution of illegally removed cultural properties as a condition for restoring peace and security in the UN Security Council decisions

The UNESCO conventional system for the protection of cultural heritage: solution of jurisdictional problems and creation of systems of shared responsibility

- Obligations of safeguard and of respect: the 1954 The Hague Convention for the protection of cultural property in the event of armed conflict and its two Protocols
- Cultural nationalism v. cultural universalism? The 1970 Paris Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property
- A specific protection for sites “of outstanding universal value”: the 1972 Paris Convention concerning the protection of the world cultural and natural heritage
- Granting protection to “the widest – submerged – museum of the world”: the 2001 Paris Convention on the protection of the underwater cultural heritage
- Beyond the “classic” heritage concept: the 2003 Paris Convention for the safeguarding of the intangible cultural heritage
- Cultural diversity as essential as biodiversity, to be protected in a globalised world: the 2005 Paris Convention on the protection and promotion of the diversity of cultural expression
 - **Protection based on specific general international law rules, a process in the making**
 - The already established prohibition of the pillage of cultural properties during armed conflicts
 - The 2003 UNESCO Declaration and international practice concerning the intentional destruction of cultural heritage
 - The 2001 UNESCO Declaration affirming that cultural diversity is a common heritage of humanity

The international protection of the environment: guiding principles and conventional framework

- From transboundary harm to global asset approach (1972 Stockholm Declaration on Human Environment, 1992 Rio Declaration on Environment and Development)
- The conventional framework: from the 1909 Boundary Waters Treaty to the 1997 Kyoto Protocol to the UN Framework Convention on Climate Change
- The polluter-pays principle, the prevention principle, the precautionary principle and the duty to do environmental impact assessment
- The 1998 Aarhus Convention and the development of procedural rights in the environmental context

Complementarity of the international and domestic level of protection

- The necessary voluntary engagement of the State on whose territory the cultural property or the natural site/endangered species is localized
- “Soft means of coercive implementation” to grant best effectiveness of protection

Selected materials will be distributed to the students during the course.
Some suggested readings are available in electronic form.

General Reference Textbooks:

Craig Forrest, **International law and the protection of cultural heritage**, Routledge, November 2010, ISBN: 978-0-415-46781-0, 458 pp.

Ved P. Nanda, George (Rock) Pring, **International Environmental Law and Policy for the 21st Century**, Brill/Nijhoff, 2nd Revised Edition, ISBN13: 9789004242869; E-ISBN: 9789004250239, Publication Date: October 2012, Copyright Year: 2013, Format: Hardback, 668 pp.

III Module (2 CFU)

Prof. Pierluigi Simone

The Self-Determination Principle

The Self-Determination Principle: definition, nature, origin and legal sources

The Self-Determination Principle and its contents

The evolution of the Self-Determination Principle in the legal sources subsequent to the Charter of the United Nations

Self-Determination Principle and international practice

Minorities

General considerations on Minorities in international law: the definition of “minority”

The system of protection of Minorities in treaty law and in the soft law instruments

Mechanisms and procedures for the protection of Minorities

Self-Determination Principle and Minorities rights

Contemporary Issues

Self-Determination Principle, Minorities and the current impulses for independence in Europe: the cases of

a) Catalonia

b) Crimea

c) Scotland

Kosovo's independence and the application of the Self-Determination Principle: a still open question

Useful Texts

K. ROEPSTORFF, *The Politics of Self-Determination: Beyond the Decolonisation Process*, Abingdon-New York, 2013;

S.F. VAN DER DRIEST, *Remedial Succession: A Right to External Self-Determination as a Remedy to Serious Injustices?*, Cambridge-Antwerp-Portland, 2013;

J. SUMMERS, *Peoples and International Law: How Nationalism and Self-Determination shape a Contemporary Law of Nations*, Leiden, 2007;

S. WHEATLEY, *Democracy, Minorities and International Law*, Cambridge, 2005;

T.D. MUSGRAVE, *Self-Determination and National Minorities*, Oxford, 2000;

H. QUANE, *The United Nations and the Evolving Right to Self-Determination*, in *International and Comparative Law Quarterly*, 1998, 537-572.

IV Module (2CFU)

Prof. Fiammetta Borgia

Course outlines:

Section A: Principles and evolution of international economic law

1. · Evolution of international economic law
2. · Fundamental principles of international economic law
3. · Institutional structure of international economic law
4. · Sources of international economic law

Section B: International monetary and development law and policy

1. · The law and practice of the World Bank
2. · The law and practice of the International Monetary Fund
3. · Financing for development
4. · The millennium development goals

Section C: Regulation of foreign investments

1. · International efforts to regulate foreign investment
2. · Regulation of multinational enterprises (MNEs)
3. · The notion of corporate social responsibility
4. · Multinational enterprises and human rights

Section D: Public international law of trade

1. · Substantive rules of the GATT/World Trade Organization system
2. · Institutional overview of the World Trade Organization
3. · Case study of the liberalisation of trade in agriculture
4. · Current trade agenda and the Doha Development Round

Textbooks:

- M. Herdegen, Principles of International Economic Law, 2012.
- Slides provided during the lectures.