



Academic Year 2020-2021

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, Jean-Bernard Auby

### Course Description

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

The 1<sup>st</sup> 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 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.

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 International Law**

#### 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

<p>(Prof. Mucci)</p>	<p>SOURCES OF INTERNATIONAL LAW</p> <ul style="list-style-type: none"> <li>a) Custom</li> <li>b) Treaties</li> <li>c) Binding acts of international intergovernmental organizations</li> <li>d) General principles of law</li> <li>e) Hierarchy of sources and <i>jus cogens</i></li> <li>f) <i>soft law</i></li> </ul>
<p><b>Topic 2</b>  <b>United Nations and Collective Security System</b>  (Prof. Borgia)</p>	<p>THE CONCEPT AND DEVELOPMENT OF COLLECTIVE SECURITY</p> <p>Collective security: a historical journey  The morphology of collective security  Triggers, actors and institutions</p> <p>THE UNITED NATIONS</p> <p>UN Charter  UN Structure</p> <p>THE UN CHARTER'S SYSTEM OF COLLECTIVE SECURITY</p> <p>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</p> <p>THE COLLECTIVE SECURITY AND THE PROTECTION OF HUMAN RIGHTS</p> <p>Humanitarian intervention  Responsibility to Protect doctrine  Fight against Terrorism</p>
<p><b>Topic 3</b>  <b>State Responsibility and Disputes Resolution in International Law</b>  (Prof. Simone)</p>	<p>STATE RESPONSIBILITY IN INTERNATIONAL LAW</p> <p>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</p> <p>DISPUTES RESOLUTION IN INTERNATIONAL LAW</p> <p>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 <i>ad hoc</i> International Criminal Tribunals.  The pacific resolution of international disputes and the non-judicial settlement procedures.</p>
<p><b>Teaching Method</b></p>	

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)

<b>First Part</b> <b>Prof. Martina Conticelli</b>	<ol style="list-style-type: none"> <li>1. Introduction: the Globalization of Law</li> <li>2. Public Law in a Globalized Perspective</li> <li>3. Global Regulation</li> <li>4. The emergence of Global Administrative Law</li> <li>5. Enforcing the Rule of Law</li> <li>6. The Faces of Global Law. Arbitral Lawmaking and State Power: An Empirical Analysis of Investment Arbitration</li> <li>7. When Legal Orders Collide: Due Process of Law</li> <li>8. Global Procedural requirements</li> <li>9. Global Enforcement</li> <li>10. Values in the global space</li> </ol>
<b>Second Part</b> <b>Prof. J.B. Auby</b>	<ol style="list-style-type: none"> <li>1. General Interest and Public Goods under Legal Globalization</li> <li>2. Cooperation between States and Other Public Entities in a globalizing world</li> <li>3. Non-State Actors in Legal Globalization</li> <li>4. Effects of globalization on the relationship between domestic law</li> <li>5. Transparency and Privacy: The Circulation of Information in Globalization</li> <li>6. Financial and Banking Regulation as a testimony of Legal Globalization</li> </ol>

### 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 choose among the following two textbooks:**

S. Cassese, A world government, Global Law Press, Sevilla 2018 pp. 47-85/ 109-175/ 191-213

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 (Martina Conticelli)**

November 19, 2020 The Globalization of Law  
November 26, 2020 Areas of legal globalization  
December 3, 2020 Governance without Government: power and legitimacy in the global sphere  
December 9, 2020, Does a global Constitution exist?  
December 10, 2020 An Administrative Law without the State  
December 11, 2020 Is there a Global Administrative Law?  
December 14, 2020 Origins and features of GAL  
December 14, 2020 Regulators: between private and public  
December 15, 2020 Global standards for national proceedings  
December 17, 2020 Global proceedings  
December 18, 2020 Due Process of Law  
January 8, 2021 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

### **2. 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)  
Background reading in the Textbook: S. Cassese p. 140-151

2.2. Monday, December 2

Casini, *Global administrative Law*

Background reading in the Textbook: S. Cassese p. 109-140

### **3. 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*

#### 4. The rule 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.

Background reading in the Textbook, S. Cassese, p. 155-175

Conticelli, *Global administrative procedures: distinguishing features*

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

ECJ, *Kadi and Al Barakaat International Foundation v Council and Commission* (2008) C-402/05  
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*.

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.

### Part II (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 Iccann 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 Beaumont, 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

### **6. Financial and Banking Regulation as a testimony of Legal Globalization**

#### Materials

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

#### Readings

- Andreas Busch, Banking Regulation and Globalization, Oxford University Press, 2009

- Peter Behrens, The Institutional Architecture of Global Financial Markets, Maastricht Journal of European and Comparative Law, 1999, n°3, p.271

- Janet Koven Levit, A Bottom-Up Approach to International Law-Making: the Tale of Three Trade Finance Investments, Yale Journal of International Law, 2005, p.125

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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 and participation in class (20%) and on a final oral exam (80%).

As for topic 1, students' evaluation will be based on the attendance and participation in class (20%), on a mid-course assignment (25%) and on a final oral exam at the mid-term period (55%). For the mid-course assignment, students will have to submit, by 20 October via e-mail to Prof. Mucci, a paper of up

to 5000 characters including spaces on a case or an issue related to subjectivity in international law (the subject of the paper can be chosen in a list that will be presented by the professor in class or, if individually proposed outside the list, must be previously agreed with Prof. Mucci during the course or through e-mail). The bibliography that has been consulted to write the paper must be indicated at the bottom of the paper. The final oral exam will cover the entire program relating to subjects and sources of international law.

As for topic 2, the mid-term exam will be composed by 27 multiple-choice questions and one open-ended question, covering part 1 and 2 of topic 2.

As for topic 3, a mid-term exam is not scheduled. The final oral exam will cover the entire program relating to State Responsibility in International Law and Disputes Resolution in International Law.

**Attendance to the final exam is compulsory in order to pass the exam.** Students who do not attend the first final oral exam **of both modules** can do them without foregoing the mid-term results (and the response papers results of module 2) in the second exam of the Winter session.

Students absent in the mid-term will have to submit a paper for topic 1 by January 20, sustain a written exam for topic 2 and sustain a final oral exam on all 3 topics.

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 exam is compulsory in order to pass the exam. Students who do not attend the first final oral exam **of both modules** can retake them, without foregoing the response papers results (and the midterm results of module 1), in the second exam 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):

- S. Cassese, *A World Government?*, Global Law Press, 2018
- J.B. Auby, *Globalization, Law and the State*, Bloomsbury, 2017

## **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 call (“appello”) of the same session or for another exam session, the whole exam must be completed on the same call. 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 other call (“appello”) and the exam will consist of a written and oral part. Students who reject the final grade or fail lose their Mid-term (module 1) and response paper (module 2) results 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](mailto:fiammetta.borgia@uniroma2.it)

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

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

**NOTE:** Erasmus or non-Global Governance students who would like to attend one or more courses and take one or more exams need to contact the Secretariat of Global Governance by e-mail [global.governance@uniroma2.it](mailto: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.

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.