

COURSE INFORMATION

Faculty: Gonçalo Matias (coordinator), Ana André Júdice Glória, André Salgado de Matos, Aua Baldé, Tracy Maguze, Ana Sofia Barros

Academic Year: 2018/2019 | 2nd Semester | Elective Course

Teaching Hours: 30 | 6 ECTS

Teaching Method: Case method

LEARNING OBJECTIVES

The course will illustrate the globalization of some areas of law through the analysis of leading cases decided by national, international and supranational courts.

The course will begin with an overview of the legal globalization phenomenon and then move on to an analysis of its influence in different areas. The chosen areas can be distinguished into two types: areas in which the movement towards globalization is more or less obvious – like Corporate Law and Humanitarian Law – and areas that are traditionally perceived as being the realm of sovereignty – like Administrative Law. The goal of the course will be to unveil the common thread running through these areas. Students should be aware, however, that this is not an exhaustive list of areas of law in which globalization is felt; they are simply the ones that we have chosen to discuss, given the time constraints we are under.

This course will be as demanding as it will (hopefully) be rewarding. Being a short seminar, it is critical to the success of the classes that students come fully prepared. What we can promise in exchange is an intellectually exciting seminar.

PROGRAM CONTENTS

From time to time, students may be given more specific instructions than the ones provided here (for example, that certain portions of the readings need only be skimmed).

The assignments below are subject to modification.

Introduction

(Gonçalo Matias– 1 x 1h15)

1. The origins of Global Law
2. Defining Global Law: old wine in new bottles?

Class #1

Readings:

- Course Syllabus
- Preface, in Rafael Domingo, *The New Global Law* (2010)

I - Human Rights in a Global Era (Ana Sofia Barros)

Classes Description

1. International Human Rights Law as Global Law

- 1.1. The emergence of International Human Rights Law
- 1.2. An overview of the international human rights system
- 1.3. Globalisation and human rights responsibility: current challenges

2. Human Rights and Security

- 2.1. International responsibility in the context of military operations
 - 2.1.1. Who is responsible for human rights violations: International Organisations or their Member States?
- 2.2. The fight against terrorism

3. Human Rights and Development Cooperation

- 3.1. The link between human rights and development
- 3.2. The World Bank and human rights
 - 3.2.1. World Bank operations and its policy framework
 - 3.2.2. Who is responsible for human rights violations: the World Bank or its Member States?

4. Human Rights and Business

- 4.1. The international responsibility of Multinational Corporations
- 4.2. The international responsibility of the Home-State of Multinational Corporations

4.3. Class activity

II – Reading Materials

General

- K. De Feyter, Globalisation and Human Rights, in F. Gómez Isa and K. De Feyter (eds.), *International Human Rights Law in a Global Context*, Deusto University Press, Bilbao, 2009, pp. 51-84 and 91-96

Specific

Class #1

- T. Buergenthal, 'The Evolving International Human Rights System', in *The American Journal of International Law*, Vol. 100(4), 2006, pp. 783-807

Optional:

- A. A. Cançado Trindade: 'The Human Person and International Justice', in *Columbia Journal of Transnational Law*, Vol. 47, 2008, pp. 18-30

Class #2

- ILC Articles on the Responsibility of International Organizations, ILC Report, Sixty-Third Session, UN Doc. A/66/10, 2011, Articles 1-11

- C. Ryngaert, 'Apportioning Responsibility Between the UN and Member States in UN Peace-Support Operations: An Inquiry into the Application of the 'Effective Control' Standard After *Behrami*', in *Israel Law Review*, Vol. 45(1), 2012, pp. 151-178

- Joined Cases *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, Application No. 71412/01 and Application No. 78166/01, Admissibility Decision, (2007) 45 EHRR SE10, especially paras. 1–17 and 121–153

- Joined Cases C-402/05 P and C-415/05, *Kadi and Al Barakaat* [2008] ECR I-06351, especially paras. 1–45 and 248–372

- *Mothers of Srebrenica v. The Netherlands*, ECLI:NL:HR:2019:1284, Supreme Court of The Netherlands, 19 July 2019

Class #3

- C. Lennox, 'The Human Rights Based Approach and Development Agendas: Bridging the Gap', in *Towards a Theory of Change: Human Rights and Development in the New Millennium*, Cost Action, June 2012, pp. 1–4

- UN Human Rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, UN Doc. A/70/274, 4 August 2015

- ETO Consortium Handbook, *For human rights beyond borders: How to hold States accountable for extraterritorial violations*, September 2017, pp. 27–34 and 46–53

Class #4

- UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/8/5, 7 April 2008
- ETO Consortium Handbook, *For human rights beyond borders: How to hold States accountable for extraterritorial violations*, September 2017, pp. 35–45
- Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises, Revised Draft, 16 July 2019

II – International Humanitarian Law

(Aua Baldé – 4 x 1h15)

1. Introduction to IHL

Definition, core principles and sources of international humanitarian law.

2. Categorization of Armed Conflicts

The second module will analyse the types of armed conflict and the threshold of applicability of IHL. It will distinguish between the legal regimes governing International and Non-International Armed Conflicts, as well as, the changing nature of today's armed conflict.

3. Civilian and Combatants Legal Status.

It will discuss the relevance of distinguishing between civilians and combatants as well as the legal regimes governing both categories.

4. IHL and International Human Rights Law

This module will discuss the differences and similarities between International Humanitarian Law and International Human Rights Law. It will in particular discuss the applicability of international human rights law in armed conflict and the *lex specialis* principle.

Class #6

Readings:

- (i) *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, International Court of Justice (ICJ);
- (ii) *Legality of the Threat of Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ reports 1996

Class #7

Readings:

- (i) Prosecutor v. Tadic, Case no IT-94-i-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, ICTY;
- (ii) Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, International Criminal Court (ICC).

Class #8

Readings:

- (i) Hamdan v Rumsfeld, US Supreme Court, 2006;
- (ii) The Public Committee against Torture in Israel et al., v. The Government of Israel et al., Supreme Court of Israel sitting as the High Court of Justice, Judgement, 11 December 2006, HCJ 769/02 (Targeted Killings).

Class #9

Readings:

- (i) Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, ICJ Reports 2004;
- (ii) Hassan v. the United Kingdom, European Court of Human Rights, Grand Chamber, Application no. 29750/09, Judgment, Strasbourg, 16 September 2014.

III – Global Administrative Law

(André Salgado de Matos – 4 x 1h15)

1. The *Southern Bluefin Tuna* case and the birth of Global Administrative Law
2. Global Administrative Law and participatory rights: The *Indian Mumbai Urban Transport* case
3. Global Administrative Law and the duty to give reasons: The EU-US World Trade Organization Steel Dispute
4. Does a Global Administrative Law really exist?

Class #10

Readings:

- Bruno Carotti & Martina Conticelli, *Settling Global Disputes: the Southern Bluefin Tuna Case*, in Sabino Cassese et al. (eds.), *Global Administrative Law: Cases, Materials, Issues*, 2nd ed., 2008 (pp. 145-149)
- Sabino Cassese, *Administrative Law without the State? The Challenge of Global Regulation*, 37 N.Y.U. Journal of International Law and Politics 663 (2005)

Class #11

Readings:

- Mariarita Circi, *The World Bank Inspection Panel: The Indian Mumbai Urban Transport Project Case*, in Sabino Cassese et al. (eds.), *Global Administrative Law: Cases, Materials, Issues*, 2nd ed., 2008 (pp. 129-133)

Class #12

Readings:

- Maurizia De Bellis, *A Duty to Provide Reasons: Definitive Safeguards Measures on Imports of Certain Steel Products*, in Sabino Cassese et al. (eds.), *Global Administrative Law: Cases, Materials, Issues*, 2nd ed., 2008 (pp. 81-86)

Class #13

Readings:

- [Reread: Sabino Cassese, *Administrative Law without the State? The Challenge of Global Regulation*, 37 N.Y.U. Journal of International Law and Politics 663 (2005)]
- Carol Harlow, *Global Administrative Law: The Quest for Principles and Values*, 17 European Journal of International Law 187 (2006)
- Euan MacDonald, *The "Emergence" of Global Administrative Law?*, 4th Global Administrative Law Seminar Papers (2008)

IV – Global Financial Law

(Tracy Maguze - 4 x 1h15)

1. What is Global Financial Law
2. The Architecture of Global Law:

- 2.1 Institutions and their standard setting mechanisms
- 2.2 The legitimacy and accountability of supranational regulators
- 3. What is the future of Global Financial Law?

Class #14

Readings:

- Paul Sebastianutti, "What is this thing called international financial law?," *Law and Financial Markets Review* 64, January 2009
- *Banco Santander Totta SA v Companhia Carris De Ferro De Lisboa SA & Ors* [2016] EWCA Civ 1267
- *Charmway Hong Kong Investment Ltd v Fortunesea (Cayman) Ltd* [2015] HKEC 1496

Class #15

Readings:

- Michael S. Barr, "Who's in Charge of Global Finance?" *Geo. J. Int'l L.* 45, no. 4 (2014): 971-1027
- Mario Giovanoli, "The reform of the international financial architecture after the global crisis" *International Law and Politics* Vol. 42:81 (2009)

Class #16

Readings:

- *Peter Paul and Others v Bundesrepublik Deutschland* ([2004] ECR I-09425)
- Dani Rodrik, "The Globalization Paradox: Democracy and the Future of the World Economy" (2013) 11(3) *International Journal of Constitutional Law* 809.

Class #17

Readings:

- Rosa M. Lastra "Do We Need a World Financial Organization?" *Journal of International Economic Law*, Volume 17, Issue 4, 1 December 2014, Pages 787–805
- Andrew Ross Sorkin, "Still needed: A sheriff for global finance" *New York Times* (25 January 2010), at <
<http://www.nytimes.com/2010/01/26/business/26sorkin.html>>

Class #18

Class #19

Class #20

Readings:

- Luca Enriques, “The Mandatory Bid Rule in the Takeover Directive: Harmonization without Foundation”
- Blanaid Clarke, “The Takeover Directive: Is a Little Regulation Better than No Regulation?” *European Law Journal* Vol 15 No. 2, March 2009, pp 174-197 - <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0386.2008.00457.x/epdf>
- Freezing Out Minority Shareholders, 74 *Harv. L. Rev.* 1630 1960-1961
- Marina Martynova and Luc Renneboog, “A Corporate Governance Index: Convergence and Diversity of National Corporate Governance Regulations” (February 23, 2010), *CentER Discussion Paper Series No. 2010-17*; *TILEC Discussion Paper No. 2010-012*. - http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1557627
- Jonathan Mukwiri and Mathias Siems, “The Financial Crisis: A Reason To Improve Shareholder Protection In The EU?” *Journal Of Law And Society* Volume 41, Number 1, March 2014 - <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-6478.2014.00656.x/epdf>
- Bianco, Giuseppe. “The Bitter End Of Sovereign Debt Restructurings: The *Abaclat V. Argentina* Arbitration and the Eurozone Crisis”, *Legal Issues Of Economic Integration* 40, No. 4 (2013): 315–338.
- Matteo M. Winkler, “From Whipped Cream to Multibillion Euro Financial Collapse: The European Regulation On Transnational Insolvency In Action”, 26 *Berkeley J. Int'l L.* 352 2008 - <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1355&context=bjil>
- David Howarth and Lucia Quaglia, “The Steep Road to European Banking Union: Constructing the Single Resolution Mechanism”, *Journal of Common Market Studies*,s1, 52 - <https://orbilu.uni.lu/bitstream/10993/17393/1/Howarth%20and%20Quaglia%20The%20Steep%20Road%20to%20European%20Banking%20Union,%20JCMS,%20s1,%2052.pdf>

Conclusion

(Gonçalo Matias – 1 x 1h15)

1. Defining Global Law (revisited): New wine in old wineskins?

Class #24

Readings:

- The Parable of New Wine in Old Wineskins, Luke 5:33-39 (New King James Version)
- Miguel Poiares Maduro's contribution to the Global Dialogue on the Future of Legal Education, <http://www.youtube.com/watch?v=atW2iMBN914>

TEACHING METHOD AND ASSESSMENT

Faculty specialized in each of the selected areas of law will teach the different modules. Their role in the course will be to engage in Socratic dialogue with the students and to promote discussion, although they will also do some lecturing.

Students are expected to read the assigned material and to participate in class discussion.

The final grade will be based on:

- Class participation (20%)
- Take-home exam with essay-type questions (80%)

BIBLIOGRAPHY

The students will be provided, via the Moodle platform, with the required readings.

It is also recommended, as a general introduction, the following book: Rafael Domingo, *The New Global Law* (2010).