

Sciences Po
Master of Public Affairs 2009-2010

Syllabus, Elective Course, 2nd semester (5 credits)

Law and Globalization: How Globalization Transforms International and Domestic Legal Relations

Jean-Bernard Auby and Wilfried Bolewski

Instructors:

Jean-Bernard Auby, Professor at Sciences Po, Director of the “Mutations de l’Action Publique et du Droit Public” (Changes in Governance and Public Law) and **Wilfried Bolewski**, Professor of international law and diplomacy at the Freie Universität Berlin and former German Ambassador will be responsible for the course, which will also entail interventions by: **Professor Giacinto della Cananea** (University of Naples, Italy), **Professor Tom Zwart** (University of Utrecht, Netherlands) and **Professor Anne Peters** (University of Basel, Switzerland).

Course Description:

The course will consist of 9 sessions of 3 hours each.

Its overall subject will be “*Law and Globalization. How Globalization Transforms International and Domestic Legal Relations.*” Its aim will be to reflect on institutional consequences of globalization, both at the international level (transformation in international regulations, in creation and content of norms, in the functioning of international institutions, etc.) and at the domestic level (internationalization of domestic law, evolution in the grasp of states on law, etc.).

Both private domestic networks and networks of national governmental institutions are becoming decision-makers that cannot be controlled within the concepts of state-based constitutionalism. Transboundary networks of private entities associated with the administrative entities and transgovernmental networks operate beyond the nation-state. Transgovernmental networks take away traditional governmental functions and replace or complement the decisions of the state organs. The course considers the impact soft legalization has through international networks in view of a transnational constitutionalism beyond the nation-state.

In this context, the course will also deal with the changing role and the privatization of the art of diplomacy in globalized relations explaining the essence and dynamics of creative diplomacy: diplomacy is not only a traditional institution to promote and defend national interest but a modern policy to advance common values and norms in globalized relations.

Compared to what it was last year, the course will be more focused on practical challenges – like judicial strategy and financial regulation.

It will be taught by several instructors, with different professional and national backgrounds, under the coordination of Jean-Bernard Auby and Wilfried Bolewski.

Course Objectives:

By the end of this course, students should have acquired a range of intellectual tools which will help them understand those profound transformations in the international management of public affairs which are induced by the globalization phenomenon, especially on the institutional and legal sides of these transformations.

Course Requirements:

At each session, two oral presentations will be given by two small groups of students (2 or 3 people). Oral presentations will be fleshed out into written papers (about 10 pages).

Topics for the oral presentations (and written papers):

*Conceptual topics

Private framework for public authority (self-regulation as business corporatism)

Good Governance in global administrative bodies

Normative pluralism and legal theories of transnational regimes

*Case Studies (Institutions and regimes of global administrative governance)

World Bank / International Monetary Fund

OECD

WTO and the Shrimp Turtle Case

WHO / UNICEF and Nestle (Code of Conduct)

UNHCR (and Guiding Principles on Internal Displacement)

International Civil Aviation Organization (ICAO)

International Labour Organization

Basel Committee on Banking Supervision (Basel II)

International Organization of Securities Commissions (IOSCO)

Codex Alimentarius Commission (CAC)

ICANN – Legitimacy/subsidiarity and the need for an international arbitral body

International Organization on Standardization (ISO)

All students will be expected to have read, before the end of the course, a series of basic references (about 20 articles or book chapters).

There will be no final exam: assessment will be based on oral presentations and participation.

Assessment and Grade Distribution:

Evaluation of the students will be based on oral presentations (1/3), written papers drawn from oral presentations (1/3) and participation (1/3).

Course Outline:

-25th February: Traditional Architecture of Law at the international level and at the domestic one

-4th March: Impact of Globalization on International and National Legal Relations - Systemic Functioning of Legal Globalization: permeabilization of legal systems, competition, harmonization

-11st March: Judicial strategy in Globalization (Prof. Tom Zwart)

-18th March and 25th March: Emergence of transnational private regulators and control of transnational self-regulation

-1st April: Transparency as a principle of national and global constitutional and administrative law (Prof. Anne Peters)

-15th April: Financial Regulation and Corporate Diplomacy

-22d April: The relationship between the UN, EU and national law in the Kadi case (Prof. Giacinto della Cananea)

-29th April: final session

General Bibliography:

Jean-Bernard Auby, *La globalisation, le droit et l'Etat*, Montchrestien, 2003

Jürgen Basedow and Toshiyuki Kono, *Legal Aspects of Globalization*, Kluwer law International , 2000

Jean-Francois Bayart,, *Le gouvernement du monde, une critique politique de la globalisation*, Fayard, Paris,2004

Ulrich Beck, *Pouvoir et contre-pouvoir à l'heure de la mondialisation*, Flammarion, 2003

Wilfried Bolewski, *Diplomacy and International Law in Globalized Relations*, Springer, Berlin 2007

Sabino Cassese, *Lo spazio giuridico globale*, Editori Laterza, 2003

Frédéric Charillon,, *La politique étrangère à l'épreuve du transnational*, L'Harmattan, Paris, 1999

Claire Cutler et al., *Private authority and international affairs*, State University of New York Press, New York, 1999

Catherine Dauvergne (ed.), *Jurisprudence for an Interconnected Globe*, Ashgate, 2003

Mireille Delmas-Marty, *Trois défis pour un droit mondial*, Le Seuil, 1997 – *Le pluralisme ordonné*, Le Seuil, 2006

Eaton, David J. *The end of sovereignty?*, LIT Verlag, Hamburg, 2006

Hall, Rodney Bruce and Biersteker, Thomas J., *The emergence of private authority in global governance*, Cambridge University Press, Cambridge, 2002

Peters, Anne / Köchlin, Lucy / Forster, Till / Fenner, Gretta (eds.), *Non-state actors as standard setter*, Cambridge University Press 2009

Sassen, Saskia, *Losing control? Sovereignty in an age of globalization*, Columbia University Press, New York 1996

Boaventura de Sousa Santos and César A. Rodriguez-Garavito, *Law and Globalization from Below*, Cambridge University Press, 2005

Gunther Teubner, *Global Law without a State*, Dartmouth, 1997

Tsagourias, Nicholas (ed.), *Transnational constitutionalism. International and European models*, Cambridge University Press 2007

William Twining, *Globalization and Legal Theory*, Butterworths, 2000

Jarrold Wiener, *Globalization and the Harmonization of Law*, Pinter, 1999

The Problematic of Internationalisation of Public Law, *European Review of Public Law*, Spring 2006

The Emergence of Global Administrative Law, *Law and Contemporary Problems*, vol.68, Summer-Autumn, 2005, n°3-4