

Global Governance : Regulation, Adjudication and Dispute Settlement Beyond the State

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Course Description and Objectives:

The purpose of this course is to explain how global rules develop alongside global markets. The course will address the following questions:

- What is global governance?
- Is there a private law or a constitutional law framework of global regulation?
- Are global standards addressed to national governments or to citizens?
- Is the global administrative process subject to global principles of law?
- How do national interest groups interact with global regulators?
- Are global regulators' decisions subject to judicial review?
- What is the role of transnational relations in the global legal order?
- Does legal globalization benefit developed countries more than less developed countries?
- Does the increasing body of global regulation and adjudication produce a universal administrative law or an Americanization of domestic laws?

Both the legal and the political ramifications of the above issues will be considered.

By the end of the course, students will have acquired knowledge of the machinery of global governance: what global institutions are, how they work, what relations they have with domestic governments, how they affect individual citizens.

Course Requirements and Grading:

The course will be based on the discussion of assigned material. The instructor will introduce the topic by raising questions, will guide the discussion, and provide basic information with the help of PowerPoint slides. Participants are expected to read the materials ahead of each class and to actively participate in the discussion.

Coursework involves the following:

1. Before the beginning of the course: reading two articles from the reading list (see below);
2. Before each class: reading cases and materials (see course outline below);
3. During the course:
 - a. attendance and active participation in class (40% of the final grade);
 - b. writing two short papers, respectively, by the middle and the end of the course (60% of the final grade).

There will not be a final exam.

Books and other materials required:

All the materials listed below are available on the Internet.

A reading pack will be available.

Articles not available through the web will be distributed in class.

There is no book to be purchased.

Course Summary:

The purpose of the course is to analyze some notable developments in the global legal order, namely: the proliferation of organizations operating at a level other than the State, the expansion of global standards, and the increasing number of judicial and quasi-judicial bodies.

The course will discuss a selection of cases on the following main topics:

- the role of the rule of law in domestic and global law;
- negotiation and dispute resolution in the global arena;
- the private law framework of global institutions;
- the blurry divide between public and private law in the global governance;
- decision-making processes and enforcement procedures.

Reading List:

- Benedict Kingsbury, Nico Krisch, Richard B. Stewart, *The Emergence of Global Administrative Law*, in "Law and Contemporary Problems", vol. 68, Summer/Autumn 2005, numbers 3 & 4, pp. 15-61.

- Sabino Cassese, *Administrative Law without the State? The Challenge of Global Regulation*, in New York University "Journal of International Law and Politics", vol. 37, Summer 2005, number 4, pp. 663-694.

Those who want to read more can see S. Cassese et al., *Global Administrative Law: Cases, Materials, Issues* (2nd ed., 2008), available at <http://www.iilj.org/GAL/GALCasebook.asp>.

Course Outline:

I. Global Principles for National Procedures

1. The Disclosure of Information: Anti-Dumping Duties and the WTO System

Materials:

- World Trade Organization, European Communities – Anti-Dumping duties on malleable cast iron tube or pipe fittings from Brazil, AB-2003-2, Report of Appellate Body, WT/DS219/AB/R, July 22, 2003.

2. A Duty to Provide Reasons: Definitive safeguards measures on imports of certain steel products

Materials:

- World Trade Organization Appellate Body Decisions, United States – Definitive safeguard measures on import of certain steel products , AB-2003-3, Report of the Appellate Body, WTOAB 3, November 10, 2003.

3. Reasonableness and Proportionality: the NAFTA Binational Panel and the extension of administrative justice to international relations.

Materials:

- Article 1904, Binational Panel Review pursuant to the North American Free Trade Agreement, in the matter of: certain iodinated contrast media used for radiographic imaging, originating in or exported from the United States of America (including the Commonwealth of Puerto Rico), Decision of the Panel on review of the determination on remand of the Commissioner of Customs and Revenue (Secretariat File No.: CDA-USA-2000-1904-01), January 8, 2003;
- Article 1904, Binational Panel Review pursuant to the North American Free Trade Agreement, in the matter of: certain iodinated contrast media used for radiographic imaging, originating in or exported from the United States of America (including the Commonwealth of Puerto Rico), Panel decision and order on review of the determination on remand of the Commissioner of Customs and Revenue (Secretariat File No.: CDA-USA-2000-1904-01), May 26, 2003.

II. Due Process in the Global Legal Order

4. The International Tribunal for the Law of the Sea (ITLOS): The *Juno Trader* Case

Materials:

- International Tribunal for the Law of the Sea, The “Juno Trader” Case, Saint Vincent and the Grenadines v. Guinea-Bissau, Application for prompt release, Judgment, Year 2004, December 18, 2004.

III. Judicial Globalization

5. Settling Global Disputes: The Southern Bluefin Tuna Case

Materials:

- Southern Bluefin Tuna Case – Australia and New Zealand v. Japan, Award on Jurisdiction and Admissibility, August 4, 2000, rendered by the Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea.

6. Alternative Dispute Resolution: The ICANN’s Uniform Dispute Resolution Policy (UDRP)

Materials:

- WIPO Arbitration and Mediation Centre, Administrative Panel Decision, Casio Keisanki Kabushki Kaisha, dba Casio Computer Co., Ltd v. Fulviu Mihai Fodoreanu, Case No. DR02003-002, July 22, 2003.

7. The International Centre for Settlement of Investment Disputes: the *Tokios Tokelès* Case

Materials:

- International Centre for Settlement of Investment Disputes, Washington, D.C., Tokios Tokelès (Claimant) v. Ukraine (Respondent), Case No. ARB/02/18, Decision on Jurisdiction, April 29, 2004.

IV. The Enforcement of Global Decisions

8. EU countermeasures against the US Byrd Amendment

Materials:

- World Trade Organization, United States – Continued Dumping and Subsidy Offset Act of 2000, AB-2002-7, Report of Appellate Body, WT/DS217/AB/R, WT/DS234/AB/R, January

- 16, 2003;
- World Trade Organization, United States – Continued Dumping and Subsidy Offset Act of 2000, Recourse to Arbitration by the United States under Article 22.6 of DSU, Decision by the Arbitrator, WT/DS217/ARB/EEC, 04-3519, August 31, 2004

V. Conflicting Jurisdictions

9. Relations between global law and European law

Materials:

- Judgment of the Court (Grand Chamber), 1 March 2005, Case C-377/02, Léon Van Parys NV v. Belgisch Interventie – en Restitutiebureau (BIRB).

Reading Pack

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2. Sabino Cassese, *Administrative Law without the State? The Challenge of Global Regulation*, in New York University “Journal of International Law and Politics”, vol. 37, Summer 2005, number 4, pp. 663-694.
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