**UNIVERSITY OF SÃO PAULO**

**FACULTY OF LAW**

**DEPARTMENT OF INTERNATIONAL AND COMPARATIVE LAW**

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**Fundamental Issues of Jurisdiction in Private and Public International Cases**

**(DIN 5925)**

**Professors:** Alberto do Amaral Jr. (USP)

Diego Fernandez Arroyo (Sciences Po –Fr)

**Teaching Assistant:** Cynthia Kramer – [cyk@lob-svmfa.com.br](mailto:cyk@lob-svmfa.com.br)

The course will be held in English. The first 8 (eight) classes will be conducted by Prof. Alberto do Amaral on Thursdays from 8.30am-12.30pm. Professor Alberto do Alberto will focus on International Public Law. The other classes will be held on the week from October 19th to October 25th, when Prof. Diego Arroyo will be in São Paulo. Professor Diego Arroyo will focus on International Private Law.

This course differs from most of the other offerings in the Law School of University of São Paulo not only because it is held in English and counts with a foreign professor, but also because it adopts the Socratic Method. The students are strongly encouraged to participate during all classes, since their performance will be assessed continuously during the semester, both from a quantitative and a qualitative perspective.

In the first part of the first 8 classes (from 9-10.30am), a theoretical discussion regarding the reading assignments will be conducted by the Professor. In the second part of these classes (10.30-12am), students are expected to discuss relevant case law from different international courts with the teaching assistant. Both parts of the classes will adopt the Socratic Method.

The final grade will be comprised of: 1) Grade 1 – written assignment: paper to be eventually published in a journal (2.500 words) – 60% of the final grade; 2) Grade 2 - participation in class – 40% of the final grade.

1. **Written Assignment – Paper to be eventually published in a journal**

**I.I. Instruction for the written assignment:**

1. The paper shall be written individually;
2. Length: 2.500 words (maximum);
3. The written assignment is due by the beginning of January, and shall be sent by e-mail to [aamaralj@uol.com.br](mailto:aamaralj@uol.com.br) and cyk@lob-svmfa.com.br.
4. The paper must be persuasive and the product of the work of the author(s) only. Any copy from the internet or any other kind of plagiarism will imply in a grade 0.

**I.II. Criteria for the assessment of the written assignment (paper)**

1. **Formal criteria:** whether the student(s) has / have respected the maximum length of the procedural document (2.500 words) and whether the formal / content requirements have been fulfilled. The format is that of an application for initiating proceedings or a sentence. The format of the text (type of letters, size,..) may be chosen by the student;
2. **Linguistic criteria:** whether the student(s) has / have presented a written assignment in accordance with the grammatical rules of the English language, and whether the paper was cohesive, concise and objective;
3. **Material criteria:** the depth of the theme, the persuasiveness of the procedural document;
4. **Reasoning criteria:** the level of reasoning and arguments presented by the student(s) (factual basis, technical basis, political basis, theoretical basis - jurisprudence and theory of International Relations, and case law, when applicable);
5. **Classroom criteria:** whether the arguments raised in the discussions during the classes were used by the student(s)
6. **Participation in class**
7. The participation in class will be assessed from a qualitative point of view.
8. It will be calculated in accordance to three aspects with identical weigh: a) whether the comments by the students were grounded on the reading assignments of the course (both theory and case law); b) whether the comments by the student were construed in such a way as to provide a personal contribution to the discussed theme; c) whether the comments by the student have instigated debate on the theme, or contributed to the interaction with other colleagues, or to the conclusion or organization of the ideas presented.
9. All these criteria will be assessed by the teaching assistant at the end of every class and registered for a final grading at the end of the semester.
10. **Schedule and list of reading assignments for the classes**

**Class 1 – August 4th**

Introduction to the course

Presentation of the Teaching Assistant

**Class 2 – August 11th**

**New Regionalism and Preferential Trade Agreements**

Mandatory Reading:

PRAZERES, Tatiana. A OMC e os Blocos Regionais. São Paulo Aduaneiras, 2008.

* Chapter 2, Section 2.1: Regionalismo: Contextualização e Questões Conceituais (p. 103-123)
* Chapter 2, Section 2.3: A Evolução Rumo ao Novo Regionalismo (p. 145-152).

Case Reading:

ECJ/Tribunal do Mar. Mox Plant, European Communities v. Ireland, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-459/03> and at <https://www.itlos.org/cases/list-of-cases/case-no-10/>

Complementary Reading:

BALDWING, Richard. 21st Filling the Gap between 21st Century trade and 20th century trade rules. Geneva: WTO, 2011 (38 pages).

FAWCETT, Louise. The History and Concept of Regionalism. Conference paper n. 4/2012. In: AAKEN, Anne AKEN, Anne; PROST, Mario (eds). European Society of International Law Conference Paper Series (5th Biennial Conference, Valencia (Spain), 13-15 Sept 2012), 2(1), 17 p.

**Class 3 – August 18th**

**MERCOSUR**

Mandatory Reading:

AMARAL JÚNIOR, Alberto do. Curso de Direito Internacional Público. O Direito da Integração: Mercosul e União Europeia (Chapter 15, points 15.1 to 15.6), p. 429-454.

Case Readings:

Mercosur “ad hoc” arbitral tribunal. Prohibition on the import of remolded tyres from Uruguay, available at: <http://www.stf.jus.br/arquivo/cms/processoAudienciaPublicaAdpf101/anexo/LaudodoTribunalArbitralAdHocdoMERCOSUL.pdf>

WTO, Brazil — Measures Affecting Imports of Retreaded Tyres, available at:

<https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm>

Complementary Reading:

LEFKOWITZ, David. The Sources of International Law: Some Philosophical Reflections (Chapter 8), in BESSON, Samantha; TASIOULAS, John. The Philosophy of International Law, Oxford, 2010, pp.163-186.

**August 25th – no classes**

**Class 4 – September 1st**

**Mega Regional Trade Agreements**

Mandatory Reading:

AMARAL JÚNIOR. Alberto. Is Trade Governance Changing? Revista de Direito Internacional, Brasília, v. 12, n.2, 2015, p. 370-382.

Case Reading:

WTO. European Communities. Measures prohibiting the importation and marketing of seal products, available at: <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm>

Complementary Readings:

AGGARWAL; EVENETT. A fragmenting Global Economy: a Weekened WTO, Mega FTAs, and Murky Protectionism. Swiss Political Science Review, 19 (4): p. 550-557.

HUFBAUER; CIMINO-ISAACS. How will TPP and TTIP Change the WTO System. Journal of International Economic Law, 2015, v. 18, p. 679-696.

**Class 5 – September 8th**

**International Law - principles**

Mandatory readings*:*

Peter Singer. One World: The Ethics of Globalization, chapter 4, The Law.

Case reading:

ICJ. Judgment of 16 December 2015 - Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), available at: <http://www.icj-cij.org/docket/files/150/18848.pdf>

Complementary reading:

HART, Herbert L. A. The concept of law.

**Class 6 – September 22nd**

**International Economic Law**

Mandatory reading*:*

Chapter 2 - POSCHER, Ralf, “Teoria de um Fantasma – A Malsucedida busca da Teoria dos Princípios pelo seu Objeto”, in CAMPOS, Ricardo (org.), Crítica da Ponderação, Método constitucional entre a dogmática jurídica e a teoria social - Ensaios traduzidos, Saraiva, 2016, pp. 63-96

Case reading:

ICSID, [1. BSG Resources (Guinea) Limited and BSG Resources (Guinea) SÀRL v. Republic of Guinea (ICSID Case No. ARB/15/46)](https://icsid.worldbank.org/apps/ICSIDWEB/cases/pages/casedetail.aspx?CaseNo=ARB/15/46), available at: <https://icsid.worldbank.org/apps/ICSIDWEB/cases/pages/concludedcases.aspx?status=c>

Complementary reading*:*

HOWSE, Robert; TEITEL, Ruti. Global Justice, Poverty, and the International Economic Order, in in BESSON, Samantha; TASIOULAS, John. The Philosophy of International Law, Oxford, 2010, pp.437-452.

**Class 7 – October 6th**

**International Criminal Law**

Mandatory reading:

Luban, David. Fairness to Rightness: jurisdiction, legality and the legitimacy of international criminal law

Case reading:

Tribunal Penal Internacional. Mbarushimana Case, available at <https://www.icc-cpi.int/Pages/closed.aspx>

Complementary reading:

Chapter 29, Authority and Responsibility In International Criminal Law. ANTONY DUFF - The philosophy of International Law - *Edited by* Samantha Besson and John Tasioulas. Oxford. Pages 589-604.

**Class 8 – October 13th**

Mandatory reading:

DWORKIN, Ronald. Law and Literature.

Case reading:

European Court of Human Rights. Lopez Ostra v. Spain, available at: <https://www.escr-net.org/docs/i/673084>

Complementary reading:

DWORKIN, Ronald. A matter of principles.

**October 19th to October 25th – classes with Professor Diego Arroyo**

**January – deadline for the Written Assignment**

The program and readings will be available at Moodle.

A full version of BESSON, Samantha, TASIOULAS, John. The Philosophy of International Law is also available online at: <https://iuristebi.files.wordpress.com/2011/07/the-philosophy-of-international-law.pdf>