

## Programa de Pós-graduação *Stricto Sensu* em Direito da Regulação

### Plano de Ensino

▪ **Disciplina:** Regulação Internacional

▪ **Curso:** Mestrado

▪ **Tipo Disciplina:** Eletiva Comum

▪ **Carga Horária:** 45h (3 créditos)

▪ **Ementa:**

Governança Global e Regulação Internacional: As Bases da Nova Ordem Global; Regulação Internacional e *Global Public Goods*: Os Desafios da Nova Ordem Global; Novos Atores da Ordem Global Contemporânea: Rompendo o Paradigma Clássico do Direito Internacional; O Papel da OIT na Regulação Internacional: *Standard-Setting Organization*; O Papel da OMS na Regulação Internacional frente à Pandemia Covid-19; *Revisiting* Mecanismos Regulatórios Clássicos: A Insuficiência das Fontes Formais; A Incorporação dos Mecanismos Regulatórios Clássicos e o Papel do Brasil; As Fontes Informais da Regulação Internacional: *Hard Law* vs. *Soft Law-Making*; Global Litigation, Judicial Law-Making e *Soft Law*; Global Litigation e Atores Não Estatais; Global Litigation e *Global Public Goods*: Procedimento vs. Substância Perante ICTs; Arbitragem Internacional, *Soft Law*, *Global Public Goods* e Atores Não Estatais; Os Desafios da Governança Global: Legitimacy, Public Authority e Accountability; Os Desafios da Governança Global: Mecanismos de Compliance e Enforcement.

▪ **Objetivos:**

Pretende-se refletir sobre as novas tendências dos processos de formulação normativa internacional por organizações internacionais e entes não estatais (*non-state actors*), que se materializam em novas fontes (não elencadas no artigo 38 do Estatuto da Corte Internacional de Justiça, como por exemplo *Soft Law*). Serão abordados os desafios da participação dos entes não estatais na governança global, incluindo questões de legitimidade, *accountability* e autoridade pública, bem como os procedimentos prescritos e as consequências pretendidas para a ordem jurídica global contemporânea. A partir da análise do panorama regulatório internacional, busca-se analisar a presença e participação dos entes não estatais nas cortes internacionais, a emergência de bens públicos globais (*global public goods*) no processo de adjudicação internacional e seus desafios. Visa também avaliar mecanismos de boa governança e o papel das autoridades regulatórias transnacionais nas negociações e processo de tomada de decisões internacionais. Empenha-se, ainda, a partir dos estudos realizados, em propor considerações sobre o provimento valores da comunidade internacional, expressos em *global public goods*, como os direitos humanos, o direito a um meio ambiente saudável, à saúde e ao desenvolvimento. Ademais, dispõe-se a apresentar possíveis alternativas políticas e jurídicas para os desafios a serem apresentados, bem como os mecanismos de *compliance* e *enforcement*. Para essa finalidade, busca-se estabelecer uma agenda para o desenvolvimento de pesquisas no campo de Regulação Internacional e Governança Global, que ainda é um tópico de pesquisa pouco estudado na América Latina. Por fim, objetiva ampliar o conhecimento sobre a prática da produção normativa nos diferentes contextos regulatórios, além de estimular o interesse no desenvolvimento de pesquisas sobre produção normativa dos órgãos reguladores em âmbito internacional.

▪ **Temas e Bibliografia:**

**GOVERNANÇA GLOBAL E REGULAÇÃO INTERNACIONAL: AS BASES DA NOVA ORDEM GLOBAL**

**Objetivos específicos:**

- (i) Compreender a formação do direito internacional e da comunidade internacional;
- (ii) Analisar as tendências do direito internacional contemporâneo;
- (iii) Identificar os novos sujeitos e atores do direito internacional (*non-state actors*) e sua relevância para a governança global;
- (iv) Identificar os novos mecanismos de tomada de decisão (*multidisciplinary law-making processes*) na esfera global e seu impacto na regulação internacional.

#### **Bibliografia obrigatória:**

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KRISCH, Nico; KINGSBURY, Benedict. Introduction: Global Governance and Global Administrative Law in the International Legal Order. In: **The European Journal of International Law**, vol 17, no. 1, EJIL, 2006, p. 1-13.

PETERS, Anne. Constitutionalisation. In: d' ASPREMONT, Jean; SINGH, Sahib (eds.). **Concepts for International Law - Contributions to Disciplinary Thought** (*forthcoming*) (Edward Elgar 2017). Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2017-08. 18 p.

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#### **Bibliografia complementar:**

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HOLTERMANN, Jakob V.H.; MADSEN, Mikael Rask. Toleration, Synthesis or Replacement? The 'Empirical Turn' and its Consequences for the Science of International Law. **Leiden Journal of International Law**, vol. 29, pp. 1001–1019. 2016.

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KRIEGER, Heike; NOLTE, Georg. The International Rule of Law—Rise or Decline?—Approaching Current Foundational Challenges. In: KRIEGER, Heike; NOLTE, Georg; ZIMMERMANN, Andreas (Eds.). **The International Rule of Law: Rise or Decline?** Oxford University Press, 2019, p. 7-15.

YUSUF, Abdulqawi Ahmed. Engaging With International Law. **International & Comparative Law Quarterly**. v. 69, n. 3. p. 505-519. Cambridge University Press, 3 jul 2020. Disponível em <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/engaging-with-international-law/F4C615F6A33EB73935298C41CDDC76E6>.

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DINH, Nguyen Quoc; DAILLIER, Patrick; PELLET, Alain. **Direito Internacional Público**. 2ª ed. Lisboa: Fundação Calouste Gulbenkian, 2003, p. 37-42.

TOMUSCHAT, Christian. Obligations arising for states without or against their will. In: **Collected Courses of the Hague Academy of International Law - Recueil des cours**, Volume 241, Brill Nijhoff, 1993, p. 195-374.

WOJCIKIEWICZ ALMEIDA, Paula. **Direito das Organizações Internacionais: casos e problemas**. Rio de Janeiro: FGV, 2014.

MUTUA, Makau W. What Is TWAIL? Proceedings of the ASIL Annual Meeting n. 94, 2000. Disponível em: <https://digitalcommons.law.buffalo.edu/articles/560> p. 31-38.

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GALINDO, George R.B. Splitting Twail? **Windsor Yearbook of Access to Justice**, n. 33, 2016, p. 37-56.

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PEGORARI, Bruno; FRANCO, Fernanda Cristina de Oliveira; TASQUETTO, Lucas da Silva. Comentário ao Capítulo 1: "Abordagens Terceiro-Mundistas ao Direito Internacional (TWAIL): um Manifesto". In BADIN, Michelle Ratton Sanchez Badin. MOROSINI, Fábio Costa Morosini, GIANNATTASIO Arthur Roberto Capella (eds.) **Direito Internacional: Leituras Críticas**. São Paulo: Almedina, 2019.

## REGULAÇÃO INTERNACIONAL E *GLOBAL PUBLIC GOODS*: OS DESAFIOS DA NOVA ORDEM GLOBAL

### Objetivos específicos:

- (i) Entender o conceito de interesses da comunidade internacional e suas expressões no Direito Internacional;
- (ii) Relacionar o conceito de interesses da comunidade internacional e obrigações *erga omnes*;
- (iii) Entender o conceito de Bens Públicos Globais e seu paralelo com os interesses da comunidade internacional;
- (iv) Analisar a relevância dos Bens Públicos Globais em um contexto de governança internacional.

### Bibliografia obrigatória:

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SIMMA, Bruno. From Bilateralism to Community Interest in International Law. In: **Recueil des Cours de l'Académie de Droit International** 250, 1994. p. 229-248; 285-300.

WOJCIKIEWICZ ALMEIDA, Paula; HÜHNE PORTO, Gabriela. Is International Adjudication a Global Public Good? Procedure vs. GPG Before the ICJ. In: **Revista de Direito da Cidade**, vol. 11, no 1, p. 599-600.

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De WET, Erika. Jus Cogens and Obligations Erga Omnes. In: SHELTON, Dinah (ed.). **The Oxford Handbook on International Human Rights**, Oxford University Press, 2013. (Item 4) p. 8-10.

## Bibliografia para debate:

### Jurisprudência:

#### - International Court of Justice:

*East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, 90. **Summary of the Judgment of 30 June 1995**. 4 p.

*Barcelona Traction, Light and Power Company, Limited*, Judgment, ICJ Reports 1970, 3. **Summary of the Judgment of 5 February 1970**. 3 p.

*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion ICJ Reports 2004, 200. para. 159. **Summary of the Advisory Opinion of 9 July 2004**. 21 p.

*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)* (Judgment: Preliminary Objections) ICJ Reports 2016, 833. **Summary of the Judgment of 5 October 2016**. 37 p.

*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment) ICJ Reports 2012, 422. **Summary of the Judgment of 20 July 2012**. 34 p.

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CAFAGGI, Fabrizio; CARON, David D. Global Public Goods amidst a Plurality of Legal Orders: A Symposium. In: **The European Journal of International Law** 23 3, 2012, p. 643-649.

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*Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)* (Judgment: Merits) ICJ Reports 2014, 226. **Summary of the Judgment of 31 March 2014**. 35 p.

*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v. Myanmar)* (Order: Provisional Measures) 23 January 2020. **Summary of the Order of 23 January 2020**. 12 p.

*Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, ICJ Reports 2002, 3. **Joint separate opinion of Judges Higgins, Kooijmans, and Buergenthal**, p. 85, para 73.

## NOVOS ATORES DA ORDEM GLOBAL CONTEMPORÂNEA: ROMPENDO O PARADIGMA CLÁSSICO DO DIREITO INTERNACIONAL

### Objetivos específicos:

- (i) Definir o conceito e o papel de atores não estatais na ordem global contemporânea;
- (ii) Analisar diferentes perspectivas institucionais de atores não estatais;
- (iii) Analisar a participação dos atores não estatais nos processos de tomada de decisão internacionais e mecanismos regulatórios.
- (iv) Analisar os desafios da regulação internacional por atores não estatais.

### Bibliografia obrigatória:

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GOLIA, Angelo; PETERS, Anne. The Concept of International Organization. In: KLABBERS, Jan (ed.). **Cambridge Companion to International Organizations Law**, Cambridge: CUP, 2021 (forthcoming). Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2020-27. 21 p.

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### Bibliografia para debate:

#### 1. Jurisprudência:

##### - Permanent Court of Arbitration:

*Chevron Corporation and Texaco Petroleum Corporation v. Ecuador* (II):

PCA Case No. 2009-23. Order for Interim Measures 9 feb. 2011. Disponível em: <https://www.italaw.com/sites/default/files/case-documents/ita0167.pdf>, 4 p.

PCA Case No. 2007-02/AA277, Final Award. Disponível em: <https://www.italaw.com/sites/default/files/case-documents/ita0154.pdf>, p. 141-142.

##### - US Supreme Court:

*Kiobel v. Royal Dutch Petroleum, Shell Transport And Trading Company and Shell Petroleum Development Company of Nigeria*: 569 U.S. 108; 133 S.Ct. 1659 (2013) 35 p.

#### 2. Comentário da doutrina:

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ARROYO, Diego P. Fernández; PIÑEIRO, Laura Carballo. Parallel proceedings: Texaco/Chevron lawsuits (re Ecuador). In WATT, Horatia Muir; BÍZIKOVÁ, Lucia; de OLIVEIRA, Agatha Brandão; ARROYO, Diego P. Fernandez (eds.). **Global Private International Law: Adjudication without Frontiers**. Edward Elgar Publishing, 2019. p. 55-75.



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#### **-US Court of Appeals**

*Doe I v Nestle USA, Inc.*, Court of Appeals for the Ninth Circuit Case No. 10-56739 (9 apr. 2014; 4 sept. 2015); Central District of California, Judge Wilson, 2 mar. 2017; Supreme Court Case 19-416 (pending). 45 p.

FERRANDO, Tomaso; FULLI-LEMAIRE, Samuel. Global supply chains: Doe v Nestle. In WATT, Horatia Muir; BÍZIKOVÁ, Lucia; de OLIVEIRA, Agatha Brandão; ARROYO, Diego P. Fernandez (eds.). **Global Private International Law: Adjudication without Frontiers**. Edward Elgar Publishing, 2019. p. 236-254.

### **O PAPEL DA OIT NA REGULAÇÃO INTERNACIONAL: STANDARD-SETTING ORGANIZATION**

#### **Objetivos específicos:**

- (i) Compreender a estrutura da OIT;
- (ii) Avaliar o valor dos instrumentos normativos da OIT para o Direito Internacional;
- (iii) Analisar a importância das normas de *soft law* da OIT no contexto da governança global;
- (iv) Analisar os desafios da regulação internacional por atores não estatais.

#### **Bibliografia obrigatória:**

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#### **Bibliografia para debate:**

##### **1. Jurisprudência:**

##### **-US Supreme Court:**

*Hoffman Plastic Compounds Inc v. National Labor Relations Board*, 535 U.S. 1595 (2002). 15 p.

**-Inter-American Court of Human Rights:**

*Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion of 17 September 2003, OC-18/03, p. 39-3, 89-114.

**-Comitê de Liberdade Sindical da OIT:**

*FOA Case No 2227 (United States of America)* - Complaint date: 18-OCT-02, The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM), Report No 332, LXXXVI, 2003, series B, No 3. para. 556-577.

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### **O PAPEL DA OMS NA REGULAÇÃO INTERNACIONAL FRENTE À PANDEMIA COVID-19**

#### **Objetivos específicos:**

- (i) Compreender a estrutura da OMS;
- (ii) Avaliar o valor dos instrumentos normativos da OMS para o Direito Internacional;
- (iii) Analisar a importância dos regulamentos da OMS no contexto da governança global;
- (iv) Analisar os desafios da regulação internacional após a crise sofrida pelo multilateralismo durante a pandemia COVID-19.

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ALMEIDA, Paula Wojcikiewicz; PORTO, Gabriela Hühne. **Existem limites à atuação Estatal na luta global contra o Covid-19? As respostas do Direito Internacional e dos Direitos Humanos à pandemia. Working Paper**

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#### **REVISITING MECANISMOS REGULATÓRIOS CLÁSSICOS: A INSUFICIÊNCIA DAS FONTES FORMAIS**

##### **Objetivos específicos:**

- (i) Definir as fontes do Direito Internacional, diferenciando as fontes de DIP e DIPr, as internas e internacionais;
- (ii) Compreender o rol de fontes formais do Direito Internacional e suas lacunas;
- (iii) Analisar o papel das fontes materiais do Direito Internacional
- (iv) Relacionar as fontes formais com as fontes materiais do Direito Internacional;
- (v) Identificar lacunas no sistema normativo internacional e criticar o sistema clássico.

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## A INCORPORAÇÃO DOS MECANISMOS REGULATÓRIOS CLÁSSICOS E O PAPEL DO BRASIL

### Objetivos específicos:

- (i) Entender o processo de incorporação de tratados internacionais (*treaty-making power*);
- (ii) Analisar a prática brasileira em matéria de incorporação e aplicação de tratados internacionais;
- (iii) Identificar os desafios da prática brasileira de incorporação e aplicação de tratados e apresentar possíveis soluções.

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#### **AS FONTES INFORMAIS DA REGULAÇÃO INTERNACIONAL: HARD LAW VS. SOFT LAW-MAKING**

##### **Objetivos específicos:**

- (i) Analisar a relevância de novas fontes para o Direito Internacional;
- (ii) Definir *soft law* e entender sua tipologia;
- (iii) Analisar o processo de produção de normas de *soft law*;
- (iv) Avaliar o papel e o impacto das normas de *soft law* na regulação internacional.

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#### **GLOBAL LITIGATION, JUDICIAL LAW-MAKING E SOFT LAW**

##### **Objetivos específicos:**

- (i) Entender as diferentes funções dos tribunais internacionais;
- (ii) Analisar o papel dos tribunais internacionais na produção do direito internacional;
- (iii) Discutir o valor da jurisprudência como *soft law* na litigância internacional;
- (iv) Analisar a aplicação de *soft law* pelos tribunais internacionais.

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#### **GLOBAL LITIGATION E ATORES NÃO ESTATAIS**

##### **Objetivos específicos:**

- (i) Analisar mecanismos de participação de atores não estatais em cortes internacionais;
- (ii) Examinar o papel e impacto da participação de atores não estatais na litigância internacional, com ênfase na Corte Internacional de Justiça.
- (iii) Identificar os desafios da participação *amicus curiae* em processos internacionais

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## GLOBAL LITIGATION E GLOBAL PUBLIC GOODS: PROCEDIMENTO VS. SUBSTÂNCIA PERANTE ICTS

### Objetivos específicos:

- (i) Entender o papel dos tribunais internacionais na promoção e proteção dos Bens Públicos Globais ou community interests;
- (ii) Analisar os desafios decorrentes da proteção dos Bens Públicos Globais por tribunais internacionais;
- (iii) Discutir o impacto da dicotomia entre procedimento e substância no contexto da promoção de Bens Públicos Globais.

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## ARBITRAGEM INTERNACIONAL, SOFT LAW, GLOBAL PUBLIC GOODS E ATORES NÃO ESTATAIS

### Objetivos específicos:

- (i) Analisar o uso de instrumentos de *soft law* na arbitragem interestatal e de investimentos.
- (ii) Analisar a participação de atores não estatais em procedimentos de arbitragem interestatal e de investimentos.

### Bibliografia obrigatória:

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#### 1. Jurisprudência:

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#### **OS DESAFIOS DA GOVERNANÇA GLOBAL: *LEGITIMACY*, *PUBLIC AUTHORITY* E ACCOUNTABILITY**

##### **Objetivos específicos:**

- (i) Diferenciar os conceitos de legitimidade normativa e legitimidade democrática e sua aplicação às cortes internacionais;
- (ii) Conhecer os desafios da ausência de legitimidade democrática e de *accountability* dos tribunais internacionais no contexto da governança global;
- (iii) Compreender o conceito de autoridade pública global no contexto da governança global.

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#### **OS DESAFIOS DA GOVERNANÇA GLOBAL: MECANISMOS DE COMPLIANCE E ENFORCEMENT**

##### **Objetivos específicos:**

- (i) Analisar diferentes mecanismos de enforcement e compliance de decisões de tribunais internacionais (*hard law*);
- (ii) Comparar mecanismos de enforcement e compliance de *hard law* com mecanismos de *soft law*;
- (iii) Identificar lacunas e desafios nos mecanismos de compliance e enforcement de *soft law*.



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