



INTERNATIONAL TRADE AND PRIVATE INTERNATIONAL LAW

12 CFU - 1° e 2° semestre

Docente titolare dell'insegnamento

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MODALITÀ DI SVOLGIMENTO DELL'INSEGNAMENTO

▪ INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

Lezioni frontali basate su una progressiva interazione con gli studenti, grazie anche all'analisi di casi reali e lavori di gruppo.

▪ CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS

Lezioni frontali basate su una progressiva interazione con gli studenti, grazie anche all'analisi di casi reali e simulati e lavori di gruppo.

PREREQUISITI RICHIESTI

▪ INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

Conoscenza delle nozioni fondamentali di diritto internazionale, in particolare del diritto dei trattati.

▪ CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS

Conoscenza delle nozioni fondamentali di diritto internazionale e di diritto privato.

FREQUENZA LEZIONI

▪ INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

Non obbligatoria ma fortemente consigliata, poiché consente di acquisire meglio e più rapidamente la conoscenza dei contenuti della materia e di acquisire altresì la corretta metodologia per applicare tali contenuti ai casi concreti.

▪ CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS

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CONTENUTI DEL CORSO

▪ INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

Evoluzione storica del sistema delle relazioni commerciali internazionali (GATT-OMC).

L'Organizzazione Mondiale del Commercio (OMC): finalità e struttura organizzativa, nuove questioni e prospettive future. Le fonti del sistema normativo OMC e il rapporto con il diritto interno degli Stati membri. I principi giuridici fondamentali: non discriminazione (trattamento della nazione più favorita; trattamento nazionale), reciprocità e relative eccezioni generali. Gli accordi di cooperazione regionale. Trattati essenziali in materia di: commercio di prodotti, barriere non tariffarie al commercio, anti-dumping e sovvenzioni, Accordo Generale sul commercio dei Servizi (GATS), Accordo sugli aspetti dei diritti di proprietà intellettuale correlati al commercio (TRIPs). Soluzione delle controversie.

Le fonti del diritto internazionale in materia di investimenti stranieri e il rapporto con gli ordinamenti giuridici statali. I principi e le regole consuetudinarie sulla protezione dello straniero e dei suoi interessi economici. La protezione diplomatica. I trattati bilaterali sulla promozione e protezione reciproca degli investimenti stranieri (B.I.T.). La soluzione delle controversie in materia: il sistema I.C.S.I.D; diritto applicabile e autonomia delle parti (i contratti di investimento e le c.d. clausole di stabilizzazione). La garanzia assicurativa degli investimenti all'estero: la Multilateral Investment Guarantee Agency (M.I.G.A.) e i principali sistemi nazionali.

▪ CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS

I problemi fondamentali in materia di conflitti di giurisdizione e di legge. Le fonti del diritto internazionale privato e processuale. La disciplina dei conflitti di giurisdizione: la delimitazione della giurisdizione italiana, il riconoscimento e l'esecuzione di sentenze straniere (L. 31 maggio 1995 n. 218; il Regolamento UE n. 1215/2012); l'arbitrato commerciale internazionale (la Convenzione di New York del 10 giugno 1958 sul riconoscimento e l'esecuzione di sentenze arbitrali straniere). Conflitti di legge - questioni generali: struttura e funzione della norma di conflitto; qualificazione; questioni preliminari; rinvio; conoscenza, interpretazione e applicazione del diritto straniero; ordinamenti plurilegislativi; ordine pubblico e norme di applicazione necessaria; il principio di reciprocità.

Il diritto applicabile alla capacità giuridica ed alla capacità di agire, alle società e persone giuridiche, ai diritti reali e ai diritti di proprietà intellettuale. Le norme uniformi dell'UE sul diritto applicabile alle obbligazioni contrattuali ed extracontrattuali (Regolamento CE n. 593/2008 e Regolamento CE n. 864/2007) e la rilevanza attuale in materia delle norme di conflitto di diritto comune previste dalla Legge 31 maggio 1995 n. 218.

TESTI DI RIFERIMENTO

▪ INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

1. VAN DEN BOSSCHE P., PREVOST D., *Essentials of WTO Law*, Cambridge, 2017;
2. LOWENFELD A. F., *International Economic Law*, Oxford, 2002, pp. 387-493;
3. FARUQUE A., *Validity and Efficacy of Stabilisation Clauses. Legal Protection vs. Functional Value*, in *Journal of International Arbitration*, 2006, 4, pp. 317-336.

▪ **CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS**

4. MENGOZZI P., *Private International Law - Italy*, in *International Encyclopaedia of Laws*, The Hague, 2005, pp. 33-115, 168-173;
5. BRIGGS A., *The Conflict of Laws*, 3rd ed., Oxford, 2013, pp. 55-110, 138-163, 212-291;
6. STELÉ D., CERINA P., *The New Italian Conflict-of-Laws: The Law N° 218 of May 31, 1995*, in *International Business Law Journal*, 1996, 1, pp. 11-27;
7. BANTEKAS I., *An Introduction to International Arbitration*, Cambridge, 2015, pp. 218-251.

PROGRAMMAZIONE DEL CORSO

INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

Argomenti	Riferimenti testi
1 Historical evolution of international trade relations (GATT-WTO). The World Trade Organization (WTO): purposes and organizational structure, new issues and future perspectives.	1, pp. 1-5, 232-258.
2 The sources of the WTO legal system and their relationship with the domestic legal systems of Member States.	1, pp. 5-12.
3 The Most-Favoured-Nation Treatment Principle.	1, pp. 13-29.
4 The National Treatment Principle. The Reciprocity Principle.	1, pp. 29-48.
5 The Regional trade agreements. The general exceptions to the principles of the WTO legal system.	1, pp. 83-139.
6 Basic features of Trade in goods, Non-tariff barriers to trade, Anti-dumping and subsidies.	1, pp. 49-71, 141-177.
7 The General Agreement on Trade in Services (G.A.T.S.) and the Trade-Related Aspects of Intellectual Property Rights (TRIPs).	1, pp. 71-81, 214-231.
8 Settlement of disputes within the WTO system: competent bodies and procedural issues.	1, pp. 259-295.
9 Settlement of disputes within the WTO system: implementation and enforcement.	1, pp. 259-295.

10	The sources of international law on foreign investments and their relationship with the domestic legal systems.	2, pp. 387-454.
11	Principles and rules of customary international law on the protection of aliens and their economic interests.	2, pp. 387-415, 461-473.
12	The diplomatic protection.	2, pp. 431-438.
13	Bilateral treaties on reciprocal promotion and protection of foreign investments (BITs).	2, pp. 473-488.
14	Comparative analysis of some BITs and BIT Models.	2, pp. 473-488.
15	The insurance guarantee of foreign investments: the Multilateral Investment Guarantee Agency (M.I.G.A.) and main domestic systems.	2, pp. 488-493.
16	The settlement of investment disputes: The applicable law and parties' autonomy. Investment contracts and the so-called "stabilization clauses".	2, pp. 416-438, 488-493; 3.
17	The International Centre for Settlement of Investment Disputes (I.C.S.I.D.): structure and competences.	2, pp. 455-461.
18	The International Centre for Settlement of Investment Disputes (I.C.S.I.D.): disputes settlement procedure, applicable law, recognition and enforcement of ICSID awards.	2, pp. 455-461.

CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS

	Argomenti	Riferimenti testi
1	The basic issues underlying conflict of jurisdictions and conflict of laws. Sources of Procedural and Private International Law.	4, pp. 33-51; 6.
2	The Italian jurisdiction under EU Regulation no. 1215/2012: scope of application; general and special grounds for jurisdiction.	5, pp. 55-91, 109-111.
3	The Italian jurisdiction under EU Regulation no. 1215/2012: grounds for exclusive jurisdiction; prorogation of jurisdiction; lis pendes and related actions; interim measures.	5, pp. 91-111.
4	The Italian jurisdiction under Law no. 218 of 31 May 1995.	6.
5	Recognition and enforcement of foreign judgments in Italy.	1, pp. 138-163; 6.
6	The New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.	7.
7	Structure and purpose of choice-of-law rules. The issue of "characterization".	4, pp. 51-57, 85-102.
8	The so-called "renvoi". The preliminary issues. Knowledge, interpretation and application of the applicable foreign law.	4, pp. 58-67, 102-105.

9	Non-unified foreign legal systems. Public policy and overriding mandatory rules. The principle of reciprocity.	4, pp. 64-84.
10	The law applicable to legal capacity and capacity to act, companies and legal entities.	4, pp. 105-116.
11	Analysis of a simulated case and interactive discussion.	4, pp. 105-116.
12	The law applicable to property and intellectual property rights.	6.
13	The EU uniform rules on the law applicable to contractual obligations (Regulation no. 593/2008): scope of application and general conflict-of-laws rules.	5, pp. 213-243.
14	The EU uniform rules on the law applicable to contractual obligations (Regulation no. 593/2008 and Regulation no. 864/2007): special conflict-of-laws rules and the solution of general issues.	5, pp. 243-262.
15	Analysis of a simulated case and interactive discussion.	5, pp. 213-262.
16	The EU uniform rules on the law applicable to non-contractual obligations (Regulation no. 593/2008 and Regulation no. 864/2007): scope of application and general conflict-of-laws rules.	5, pp. 263-284.
17	The EU uniform rules on the law applicable to non-contractual obligations (Regulation no. 593/2008 and Regulation no. 864/2007): special conflict-of-laws rules and the solution of general issues. The residual applicability of the Italian Law no. 218 of 31 May 1995.	5, pp. 285-295.
18	Analysis of a simulated case and interactive discussion.	5, pp. 263-295.

VERIFICA DELL'APPRENDIMENTO

MODALITÀ DI VERIFICA DELL'APPRENDIMENTO

▪ INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

Final exam: Oral. The course is divided into two intermediate exams (the first, in writing and lasting two hours, on the WTO system, with two “open questions”; the second, both written and oral, concerning the protection of international investments, with an individual paper on a specific case previously agreed upon and the oral discussion of the paper through an individual ppt presentation, the latter lasting about twenty minutes).

▪ CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS

Final exam: oral. The course envisages an intermediate exam, in writing, lasting three hours and consisting in the analysis and solution of a simulated case.

ESEMPI DI DOMANDE E/O ESERCIZI FREQUENTI

▪ INTERNATIONAL LAW ON TRADE AND FOREIGN INVESTMENTS

The functions of the World Trade Organization (WTO).

The organs of the WTO.

The decision making process within the WTO.

The sources of the WTO legal system and their relationship with domestic legal systems of Member States.

The Most-Favoured-Nation Treatment and National Treatment.

The reciprocity principle.

The regional trade agreements.

The general exceptions to the principles of the WTO legal system.

The basic rules on Trade in goods, Non-tariff barriers to trade, Anti-dumping and subsidies.

The basic rules of the General Agreement on Trade in Services (G.A.T.S.).

The basic rules of the Trade-Related Aspects of Intellectual Property Rights (TRIPs).

The settlement of disputes system in the WTO.

Sources of international law in the field of foreign investments and their relationship with the domestic legal systems.

Principles and rules of customary international law on the protection of aliens and their economic interests.

The diplomatic protection.

Bilateral treaties on reciprocal promotion and protection of foreign investments (BITs).

The settlement of investment disputes: the International Centre for Settlement of Investment Disputes (I.C.S.I.D.).

The applicable law to investment disputes and autonomy of the parties (the stabilization clauses in investment contracts).

The insurance guarantee of foreign investments: The Multilateral Investment Guarantee Agency (M.I.G.A.) and the most important domestic systems.

▪ **CONFLICT OF JURISDICTIONS AND CONFLICT OF LAWS**

The grounds for Italian jurisdiction in civil and commercial matters.

Recognition and enforcement of foreign judgments in Italy.

Recognition and enforcement of foreign arbitral awards under the New York Convention of 10 June 1958.

Structure and purpose of choice-of-law rules.

The issue of "characterization".

The preliminary issues.

The so-called “renvoi”.

Knowledge, interpretation and application of foreign law.

Reference to a non-unified foreign legal system.

Public policy and mandatory rules.

The principle of reciprocity.

The law applicable to legal capacity and capacity to act.

The law applicable to companies and legal entities.

The law applicable to property and intellectual property rights.

The law applicable to contractual obligations.

The law applicable to non-contractual obligations and the current scope of application of the Italian Law no. 218 of 31 May 1995 in this sector.
