

UNIVERSITÀ DEGLI STUDI DI PARMA

**Dipartimento di Giurisprudenza, Studi politici e internazionali
Dipartimento di Scienze economiche e aziendali
Centro Studi in Affari Europei e Internazionali (CSEIA)**

RISK REGULATION IN INTERNATIONAL LAW **Health, Environment, and Food**

March 2019

Professor David A. Wirth

COURSE INFORMATION AND SYLLABUS

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Class sessions: March 11-20, 2019
University Building, via Università 12
Monday (Aula IV), Tuesday (Aula II), Wednesday (Aula III)
16.30-18.30

I. COURSE DESCRIPTION

Environmental integrity, public health, and food safety are critical to the well-being of every individual on Earth – and, indeed, to the planet itself. As we approach the third decade of the twenty-first century, it is increasingly apparent that all three of these crucial determinants have international dimensions. Truly global environmental challenges, such as stratospheric ozone depletion and climate disruption, affect the entire world. Increasing international trade in foodstuffs mean that concerns about food safety are no longer confined to national jurisdictions, but instead require attention to the integrity of food processing up the supply chain at the level of individual facilities in exporting countries to assure the health of consumers around the globe.

At the same time, all of these public policy considerations are hotly contested. Protection of public health carries with it economic costs, as does protection of the environment. The necessity – or absence thereof – for immediate cessation of human alterations to the climate is at the center of governmental debates around the world every day. Rigorous protections for food safety can limit market access for agricultural exporters. And the highly decentralized structure of international decision-making only adds complexity, and frequently confusion, to the debate. One area of convergence is the importance of science to all of these questions. Not that there is agreement about the significance of policy-related scientific questions, but there is at least a consensus that science is relevant.

This brief course examines the role of science-based analysis of risk in evaluating policy-relevant science to international discourse on public health, the international environment, and food safety. As we will see, science can act as a shield for public policy decisions, buoying up an incipient consensus. It can also operate as a sword, allowing one state to attack another's policy as lacking sufficient support in science. This course will examine both aspects of science-based decision-making on the multilateral level, using examples from the areas of public health, the environment, and food safety. The course will emphasize a structural perspective that links these potentially disparate questions into a coherent whole. Central to the course is a simulation in which students will draft a multilateral standard under conditions that replicate actual multilateral decision-making processes.

Much of the course addresses basic analytical skills associated with the study of the law governing the relations between states, and to that extent provides an introduction to international law. The course also

provides an entry point to some substantive areas of international law, such as the international environment and trade law, as well as exposure to international institutions such as the UN Food and Agriculture Organization and the World Trade Organization. It is also designed to familiarize students with working with primary legal materials, such as treaties and domestic statutes.

II. EVALUATION AND GRADING

This course will be evaluated by a take-home examination, consisting of two essay questions directly related to the course materials. In borderline cases, class participation will be taken into account in grading.

It is expected that students will routinely attend, be prepared for, and participate in all class sessions. Their contribution to the simulated negotiation will not be graded as such, but may affect the evaluation of their class participation.

III. SIMULATED MULTILATERAL NEGOTIATION

The course will include a simulated multilateral negotiation of a Codex Alimentarius standard on labelling for “natural” products of agricultural origin. Students will be assigned roles as governmental representatives or non-state observers. The purposes of the negotiation include the assimilation of the course material through active learning techniques and exposure to the real-world dynamics of international diplomacy.

The negotiation will be conducted over three sessions, distributed over the span of the course. As will be elaborated in class, ***each round of negotiations will require a brief written work product in advance*** (an opening statement or a negotiating proposal, as the case may be). Specific requirements will be elaborated at the first class session.

Detailed instructions will be distributed in writing and explained in advance of the first session of the negotiation. The negotiation itself will not be graded, but all course participants are expected actively to contribute to the exercise. A brief background excerpt concerning the role of risk in the work of Codex Alimentarius will be made available in advance of the first session.

IV. READING ASSIGNMENTS AND CLASS SESSIONS

The tentative reading assignments their approximate treatment during the class sessions are as follows, correlated to each of the six sessions. All readings will be made available electronically, or through web links. We will move through the assignments and the syllabus in sequential order, covering all of the material in class by the end of the course. Material that may not be completed in class one day will be held over until the next. The last topic is optional, depending on the availability of time.

This syllabus is subject to further modification as reflected in individual class assignments. Any modifications to the reading assignments as set out below will be clearly announced in class.

Topic I: Introduction: Risk, precaution, and the international legal system

Readings:

- The Trail Smelter Arbitration.
- Quantitative Risk Assessment. Pay close attention to the dose-response curve in figure 13.2. What are the public policy implications of the choice of the various low-dose extrapolations? (Not to worry if you haven't encountered this before, we will discuss this in class!)

- Excerpt from Jacqueline M. Peel, *Science and Risk Regulation in International Law* (Cambridge 2010), pp. 115-122, 129-140, 150-154.

Topic II: Regulating global risks: Stratospheric ozone depletion and global warming

Readings:

- Stratospheric ozone depletion excerpt.
- Global warming excerpt.

Topic III: Food Safety: The U.S. Food Safety Modernization Act

Readings:

- 10 Deadliest Food Contaminations in U.S. History, <http://www.everydayhealth.com/healthy-living-pictures/deadliest-foodborne-illness-outbreaks-in-us-history.aspx#/slide-1>. What do these incidents have in common? How are they different? What challenges do they present to investigators, such as the Centers for Disease Control, in identifying the source of the outbreak and curtailing it?
- Food Safety Modernization Act summary.
- Enrichment: Students can get a free subscription to the online newsletter/trade paper “Food Safety News” by going to <http://www.foodsafetynews.com/>. Enter your email address, and click “Subscribe” on the right-hand side of the page.

Topic IV: GATT/WTO basic disciplines: The tuna/dolphin and turtle/shrimp disputes

Readings:

- Tuna I GATT report: <http://www.worldtradelaw.net/reports/gattpanels/tunadolphinI.pdf> Read paragraphs 2.1-2.12; 5.8-5.15; 5.22-5.38.
- Turtle/shrimp Appellate Body report: https://www.wto.org/english/tratop_e/dispu_e/58abr.pdf. Read paras. 113-172 (pp. 41-70). Why did the U.S. measure fail to satisfy the chapeau of article XX? Students should be able to make a list of at least 5 or 6 reasons.

Topic V: WTO SPS Agreement: Hormones and GMOs

Readings:

- The World Trade Organization Dispute Concerning Genetically-Modified Organisms. This piece discusses both the beef hormones and GMO disputes. Skip pages 1172-1177, the section entitled “The Quarantine Disputes and SPS Article 5.7.”

If time permits we will also take up:

Topic VI: Foreign Investment: NAFTA Chapter 11, Ethyl and Metalclad

- Foreign Investment and the Environment
- Metalclad Corp. v. United Mexican States (ICSID) (posted under Resources/Assignments section of website) (One page of this pdf is defective; the missing material is posted separately).

- Metalclad Corp. v. United Mexican States (Supreme Court of British Columbia) (posted under Resources/Assignments section of website) (How did the court modify the award of the arbitral tribunal, and why?)
- NAFTA Free Trade Commission Clarifications to Chapter 11, <http://www.worldtradelaw.net/nafta/chap11interp.pdf> (To what extent is this responsive to the problem(s), if any, with chapter 11?)

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