

Double Degree in International Studies and Political Consulting and International Relations (LM 52)

Department of Political Science
INTERNATIONAL AND EUROPEAN MIGRATION LAW
Professor: Marcello Di Filippo



Part I

1.1 General Information

- Full course title: International and European Migration Law
- Type of course: Compulsory
- Level of course: second cycle degree programme
- Year of study: 1st- 2nd
- Number of ECTS credits allocated: 6 (42 hours)
- Name of lecturer(s) and office hours: Marcello Di Filippo, office hours TBD (weekly)

1.2 Course aims

Migration flows towards Europe and inside Europe are a stable phenomenon, but continuously evolving, and raising new questions and challenges to Member States' and EU policymakers.

The course unit is conceived in order to stimulate – in the light of applicable international rules and principles – a comprehensive knowledge and assessment of the regime on free movement of EU nationals and their families and the regime valid for admission, residence and intra-EU movement of non-EU nationals.

1.3 Learning outcomes

By the end of the course, students will be able to understand the complex interactions between international and European rules and the migration policies developed by States and international organizations, to assess the main features of the EU migration law and the degree of autonomy left to EU Member States for shaping their own policies and strategies.

Furthermore, students will be able to distinguish the propaganda from decisions or proposals based on the rule of law.

Finally, the student will be able to evaluate the role and the potential of a legal approach to migratory issues and to escape from superficial simplifications around a supposed inutility or even harmfulness of international and European rules and institutions.

1.4 Course requirements

The legal notions acquired in courses of "Institutions of Public Law" (or of Constitutional Law), of Public International Law, of EU Law and of International Protection of Human Rights are highly useful.

The attention for the current events is another useful element, given that it may be the subject of lectures or of questions at the written or oral test.

1.5 Grading plan

The main modality for assessing the preparation of students is the final oral test.

The degree of active participation during lectures and seminars will count up to a maximum of 20% in the final evaluation.

Intermediate written tests or group works may be organised for the students attending the course, according to modalities previously communicated. In such a case, the performance shown on those occasions will count up to a maximum of 20% in the final evaluation.

- The oral test consists of an interview between the candidate and the lecturer, or between the candidate and the lecturer's collaborators
- The oral test will be passed/failed if the candidate shows ability to express him/herself in a clear manner using the correct terminology, and if the candidate responds sufficiently to questions regarding the most fundamental part of the course. The test will not have a positive outcome if the candidate repeatedly demonstrates an incapacity to relate and link parts of the programme with notions and ideas that they must combine in order to correctly respond to a question. Finally, he/she must be able to comment foreign affairs in the light of the applicable international rules.

Part II

2.1 Course content (42 hours)

List of topics

PART ONE (8 hours)

1. Patterns of international migration. Sovereign States and their relationship with individuals.
2. International Migration Law. The classical view of the host State's discretionary power (and of the very few limits on it) on admission, treatment and expulsion of foreigners.

3. The slow emergence of new legal paradigms arising out of human rights law. The growing role of international entities and of regionalism.
4. The different statuses of individuals

PART TWO (6 hours)

5. The “EU laboratory”: the first steps.
6. A first step forward: the “external” laboratories of the Schengen Agreements and of the Dublin Convention.
7. The evolution from the Maastricht Treaty to the Lisbon Treaty.

PART THREE (28 hours)

8. The free circulation regime for EU nationals and their families.
9. The borders regime.
10. The EU visa policy.
11. The EU action on regular migration.
12. The EU action on irregular migration.
13. The EU and asylum, with a special focus on the Dublin system, the safe third country concept, the protected entry procedures.
14. The EU in the international arena. The EU and the UN Global Compacts.
15. Final reflections on the coherence of EU Law and policy with international standards, with European democratic standards and with some EU principles.

2.2 Course content and readings by topics

Topic 1 - Patterns of international migration. Sovereign States and their relationship with individuals.

Lecture 1 – 2 hours

Content of the lecture and questions to answer

Evolution of migration flows and main push factors. Features of mobile persons and migrants. Definitions. Interaction between restrictive migration policies and migratory routes and modalities. The position of individuals under international law: a brief reminder.

Questions:

1. Directions and dimension of migratory flows
2. Stable phenomenon or extraordinary events?
3. Main push factors

4. Reasons for the expression “mixed migration”
5. How restrictive or exclusionary migration policy influence irregular movements
6. The role of individual in classical international law

Compulsory readings

B. Opeskin et al. (eds.), *Foundations of International Migration Law*, Cambridge University Press, 2012, paperback, Chapters 1-2.

Further Readings

A Orakhelashvili, *The Position of the Individual in International Law*, California Western International Law Journal, 2001, Vol. 31, No. 2 (at <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1255&context=cwilj>)

Internet sources

<https://www.iom.int/migration>

Topic 2 - International Migration Law. The classical view of the host State’s discretionary power (and of the very few limits on it) on admission, treatment and expulsion of foreigners.

Lecture 2 – 2 hours

Content of the lecture and questions to answer

The slow emersion of dedicated rules for migration and aliens. Classical customary and treaty law. Control of borders and aliens’ presence on the territory. The reduced emphasis on individuals’ choices and on a supposed generalised freedom of movement.

Questions:

1. The main treaties on migrants and aliens and their general features
2. The customary rules developed until the II World War
3. Passports and borders control
4. States discretion on entry, stay and removal of aliens

Compulsory readings

B. Opeskin et al. (eds.), *Foundations of International Migration Law*, Cambridge University Press, 2012, paperback, Chapters 3, 5.

Topic 3 - The slow emersion of new legal paradigms arising out of human rights law. The growing role of international entities and of regionalism.

Lecture 3 – 1 hour

Content of the lecture and questions to answer

Human rights law as an empowering factor for aliens and migrants. Dedicated legal provisions and rules of general scope producing peculiar protective effects on aliens and migrants. The propulsive role of specialized bodies on human rights protection.

Dedicated international bodies (IOM, UNHCR and others) and regional integration organisations dealing with human mobility.

Questions:

1. The contents and interpretation of human rights treaties with regard to human mobility and aliens
2. The gradual emersion of a stable refugee law
3. The features and activities of UNHCR, IOM and other specialised bodies of the UN system and of the Council of Europe
4. The Reasons for the expression “mixed migration”

Compulsory readings

B. Opeskin et al. (eds.), *Foundations of International Migration Law*, Cambridge University Press, 2012, paperback, Chapters 6, 13, 14.

Topic 4 - The different statuses of individuals.

Lecture 4 – 3 hours

Content of the lecture and questions to answer

Nationality law: basic principles. Statelessness. Asylum and refugee law. Vulnerable categories and the debate around the drafting of special migratory statuses. Trafficking and smuggling: the diversity of legal regimes, the risk of confusion at enforcement level.

Questions:

1. Conditions for acquiring nationality: international rules or just domestic law?
2. The legal regime applicable to stateless persons
3. Definition of refugee and interpretative challenges
4. Environmentally and climate induced migration: is there an international legal regime?
5. Unaccompanied migrant minors: the main guarantees under international law
6. Human trafficking and smuggling of migrants: the main differences in law and in practice.

Compulsory readings

B. Opeskin et al. (eds.), *Foundations of International Migration Law*, Cambridge University Press, 2012, paperback, Chapters 4, 7, 8, 9, 15 (only § 15.3).

Internet sources

<https://www.unhcr.org/asylum-and-migration.html>

<https://www.iom.int/counter-trafficking>

<https://www.unhcr.org/stateless-people.html>

<https://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menuside>

Topic 5 - The “EU laboratory”: first steps.

Lecture 5 – 1 hour

Content of the lecture and questions to answer

The first experiments (UK-Ireland Common Travel Area; Nordic Passport Union; Benelux) and the European Communities. The emphasis on the creation of a regime of preferential free circulation for MS’ nationals and the “indifference” towards immigration policies from third countries.

Questions:

1. The main novelties of the regime of circulation for EU nationals
2. The extension to family members: choice or obligation for the European Communities?
3. The beneficiaries of freedom of movement under the EEC Treaty: all EU nationals or only some of them?
4. The Treaty provisions on freedom of movement: merely aspirational or rules with direct effect?

Compulsory readings

P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 1.

Topic 6 - A first step forward: the “external” laboratories of the Schengen Agreements and of the Dublin Convention.

Lecture 6 – 2 hours

Content of the lecture and questions to answer

A first step forward: the failed attempt to use EC competences in order to create a common border area and the “external” laboratories of the Schengen Agreements and of the Dublin Convention.

Questions:

1. Object and contents of the Schengen Agreements
2. Rationale of the Dublin Convention and the main connecting factors spelled therein.

Compulsory readings

P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 1.

Topic 7 - The evolution from the Maastricht Treaty to the Lisbon Treaty.

Lecture 7 – 3 hours

Content of the lecture and questions to answer

The cautious “openness” of the EU to the need to elaborate a common action in immigration and asylum: the third pillar introduced by the Maastricht Treaty. A new step: the Amsterdam Treaty, the slow communitarization of the asylum and migration policy, and the absorption of the Schengen acquis. The Lisbon Treaty and the subsequent phase of consolidation of the EU policy and legislation on migration and asylum.

Questions:

1. The third pillar and its limits
2. The novelties of the Amsterdam Treaty.
3. The Lisbon Treaty and the changes introduced at constitutional level.
4. The Citizenship of the Union: purpose, contents and impact for Member States

Compulsory readings

P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 1.

Topic 8 - The free circulation regime for EU nationals and their families.

Lecture 8 – 4 hours

Content of the lecture and questions to answer

The free circulation regime for EU nationals and their families and the tensions arising around it . The side effects on domestic legislation on nationality. The use of the public order exception; the differential treatment as for social benefits; the emphasis on abuse of right, especially for family relations; the formula of “newly EU nationals” and recourse to transitional periods. The impact of Brexit.

Questions:

1. The current beneficiaries of the freedom of movement
2. Legislative provisions on the strengthening of the residence rights with the passing of time
3. Measures on social security and professional qualifications and diplomas
4. “Newly EU nationals”: special aspects of their status
5. After Brexit: the position of EU nationals in the UK

Compulsory readings

P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 2.

Elsbeth Guild, *Brexit: Deal or no-Deal: The Consequences for freedom of movement of EU and British Citizens*, 10 Dec 2018, at <https://eumigrationlawblog.eu/brexit-deal-or-no-deal-the-consequences-for-freedom-of-movement-of-eu-and-british-citizens/>

Further Readings

Bernard Ryan, 'Negotiating the Right to Remain after Brexit', in *Immigration, Asylum and Nationality Law*, Vol 31, No 3, 2017, pp. 197-226.

Internet sources

<https://www.freemovement.org.uk/tag/brexit/>

Topic 9 - The borders regime.

Lecture 9 – 3 hours

Content of the lecture and questions to answer

The suppression of checks at internal borders and the debate about the reform on the possibility to reinstate them; the controls at the external border and the vague guarantees of redress for non-EU nationals; the expanding role of electronic surveillance, the role of Frontex and its transparency-record; the evaluation of forms of cooperation such as joint missions, RABITs, and Eurosur.

Questions:

1. Requirements for obtaining a Schengen Visa
2. Refusal and nature of the obligation to state the reasons
3. Legal redress against the denial of visa
4. "Black list" and the reasons behind the inclusion/exclusion of a single third country

Compulsory readings

1. P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 9 (only §§ 9.1 and 9.2);
2. Giuseppe Campesi, *European Border and Coast Guard (Frontex): Security, Democracy, and Rights at the EU Border*, Critical Criminology Online, Feb 2018 (DOI: 10.1093/acrefore/9780190264079.013.354)

Further Readings

Office of the United Nations High Commissioner for Human Rights (OHCHR), *In Search of Dignity: Report on the human rights of migrants at Europe's borders*, 2017 (https://www.ohchr.org/Documents/Issues/Migration/InSearchofDignity-OHCHR_Report_HR_Migrants_at_Europes_Borders.pdf)

EU Agency for Fundamental Rights (FRA), *Fundamental Rights Report 2019*, Chapter on 'Asylum, visas, migration, borders and integration' (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-frr-chapter-6-asylum_en.pdf)

Internet sources

https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas_en

<https://frontex.europa.eu/>

Topic 10 - The EU visa policy.

Lecture 10 - 2 hours

Content of the lecture and questions to answer

The EU visa policy and its effects on legal certainty for TCN and on migratory movements, both voluntary and forced.

Questions:

1. Requirements for obtaining a Schengen Visa
2. Refusal and nature of the obligation to state the reasons
3. Legal redress against the denial of visa
4. “Black list” and the reasons behind the inclusion/exclusion of a single third country

Compulsory readings

P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 9 (only § 9.3).
Maarten den Heijer, *Visas and Non-discrimination*, *European Journal of Migration and Law*, 20 (2018) 470–489.

Further Readings

1. Annalisa Meloni, *EU visa policy: What kind of solidarity?*, *Maastricht Journal of European and Comparative Law*, 2017, Vol. 24(5) 646–666;
2. EU Agency for Fundamental Rights (FRA), *Fundamental Rights Report 2019*, Chapter on ‘Asylum, visas, migration, borders and integration’ (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-frr-chapter-6-asylum_en.pdf).

Internet sources

European Commission, Official page on borders and visas, https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas_en

European Parliament, Hearing on the Reform of the Visa Code and on Humanitarian Visas, 10-07-2018, <http://www.europarl.europa.eu/committees/en/libe/events-hearings.html?id=20180703CHE04581>

Topic 11 – The EU action on regular migration.

Lecture 11 – 4 hours

Content of the lecture and questions to answer

The EU action on regular migration and the room left for a residual State's own policy (family reunification; economic migration; study, research, training, voluntary service and au pairing; the issue of quotas and of regularization policies; long-term residents; equal or just fair treatment?).

Questions:

1. Is the model elaborated for EU nationals being followed for the regulation of entry and stay of non-EU nationals?
2. Is economic migration fully regulated by the EU?
3. Is family reunification a fundamental right recognized under EU law?
4. To which extent non-EU nationals are entitled to equal treatment with respect to economic, social and political rights?

Compulsory readings

P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapters 4-5.

Further Readings

Herwig Verschueren, *Employment and Social Security Rights of Third-Country Labour Migrants under eu Law: An Incomplete Patchwork of Legal Protection*, *European Journal of Migration and Law*, 2016, pp. 373–408.

Internet sources

European Migration Network, Section on Studies, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/reports/studies_en

Topic 12 - The EU action on irregular migration.

Lecture 12 – 4 hours

Content of the lecture and questions to answer

Grounds for termination of stay; irregular stay; irregular arrival; rejection at borders and removal; use of detention as an instrument of migratory control. Trafficking and smuggling: the position of the EU. The use of criminal law against criminal organization, exploiters or the same migrants.

The complicated puzzle of the management of irregular migration by sea.

Questions:

- 1) In which cases an EU national may be ordered to leave the territory of the host Member State?
- 2) In which cases a non-EU national may be ordered to leave the territory of the host Member State?
- 3) Are detention for irregular migrants and dedicated detention structures regulated in EU law? Or is it a matter left to Member States?
- 4) Has the EU comprehensively regulated the issue of migration by sea, especially as regards the aspects related to search&rescue, disembarkation and assumption of responsibility for persons disembarked?

Compulsory readings

1. P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 9 (from § 9.4 to § 9.8 included), Chapter 10 (from §10.6 to § 10.9);
2. Marcello Di Filippo, 'Irregular Migration across the Mediterranean Sea: Problematic Issues Concerning the International Rules on Safeguard of Life at Sea', in *Paix et Sécurité Internationales*, vol. I, 2013, No. 1, ISSN 1114-7326, pp. 53-76 (see [here](#));
3. Efthymios Papastavridis, 'Recent "Non-Entrée" Policies in the Central Mediterranean and Their Legality: A New Form of "Refoulement"?' in *Diritti umani e diritto internazionale*, 3/2018, pp. 493-510.

Further Readings

1. Marcello Di Filippo, 'The human right to liberty in the context of migration governance: some critical remarks on the recent practice in the light of the applicable legal framework', in International Institute of Humanitarian Law (ed.), *Deprivation of Liberty and Armed Conflicts: Exploring Realities and Remedies*, Franco Angeli, Milano, 2019, pp. 239-253.
2. Eugenio Cusumano (2017), 'The sea as humanitarian space. Nongovernmental Search and Rescue dilemmas on the Central Mediterranean migratory route', *Mediterranean Politics* (<https://doi.org/10.1080/13629395.2017.1302223>)

Topic 13 – The EU and asylum, with a special focus on the Dublin system, the safe third country concept, the protected entry procedures.

Lecture 13 – 4 hours

Content of the lecture and questions to answer

The content of the EU rules interpreting and supplementing the Geneva Convention, read in conjunction with Dublin mechanisms and actual practice; the growing use of deflective devices such as the various "safe countries" concepts; the side effects on actual access to asylum produced by visa policy, by enhanced controls in the pre-arrival formula, by filtering carried out by transit countries or by international carriers; the EU and international cooperation for resettlement, relocation, regional programmes, protected entry procedures.

Questions:

1. Positive aspects of the CEAS
2. Negative aspects of the CEAS
3. Reasons for the failure of the Dublin system and ideas for its overhaul
4. Features of EU contribution to the design of legal pathways for asylum seekers and refugees

Compulsory readings

1. P. Boeles et al. (eds.), *EU Migration Law*, 2nd edition, Intersentia, 2014, Chapter 9 (from § 9.4 to § 9.8 included), Chapter 10 (from §10.6 to § 10.9).

2. Marcello Di Filippo, 'The allocation of competence in asylum procedures under EU law: The need to take the Dublin bull by the horns', in *Revista de Derecho Comunitario Europeo*, 2018, No. 59, pp. 41-95 (doi: <https://doi.org/10.18042/cepc/rdce.59.02>);

3. Eleni Koutsouraki, 'Refusal of international protection under the EU-Turkey deal', in *Ordine internazionale e diritti umani*, (2018), pp. 55-75.

Further Readings

European Commission, *Study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the EU, including resettlement. Final Report*, October 2018, Bruxelles (<https://publications.europa.eu/en/publication-detail/-/publication/1dbb0873-d349-11e8-9424-01aa75ed71a1>).

Internet sources

https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

[European Council on Refugees and Exiles \(ECRE\)](#)

Topic 14 - The EU in the international arena. The EU and the UN Global Compacts.

Lecture 14 – 4 hours

Content of the lecture and questions to answer

Agreements and arrangements on cooperation in the fight against irregular migration, smuggling and human trafficking; readmission linked to visa facilitation and liberalization; partnerships for migration and mobility and their real importance in the EU's agenda; the EU-Turkey deal; the UN Compacts and the role played by the EU and its MSs.

Questions:

1. Is the EU pursuing a coherent external policy on migration and asylum, or is it mainly pursuing selected goals?
2. Is the EU making recourse to informal arrangements for reasons of practicality or for reducing democratic control and legal liability?
3. How much legal mobility is favoured by the current EU external migration policy?
4. Has the EU been united during the consultations on the drafting of the two UN Compacts?

Compulsory readings

1. Eugenio Carli, 'EU Readmission Agreements as Tools for Fighting Irregular Migration: An Appraisal Twenty Years on from the Tampere European Council', in *Freedom, Security & Justice: European Legal Studies*, 2019, N. 1, pp. 11-29;
2. Sara Poli – Claudia Cinelli (2017), 'Mobility and legal migration in the context of the European Neighbourhood Policy: What role for the European Union?', in *Revista de Derecho Comunitario Europeo*, 58, pp. 979-1005 (<https://doi.org/10.18042/cepc/rdce.58.05>)

Others TBD

Topic 15 – Final reflections on the coherence of EU Law and policy with international standards, with European democratic standards and with some EU principles.

Lecture 15 – 2 hours

Content of the lecture and questions to answer

Innovative and conservative aspects of EU Law and policy on migration and refugee law, with respect to international practice.

Coherence with legal standards arising out of the UN and Council of Europe systems.

Coherence (or not) of secondary law and policy instruments with the EU founding treaties.

Perspectives on future directions.

Questions:

1. Is the EU an actor behaving in a balanced way, compared to the short-term responses of the generality of its Member States?
2. Is the EU contributing to the development of international standards more focussed on the individuals?
3. Is the EU acting itself or encouraging its Member States towards a restriction of safeguards for migrants and asylum seekers?
4. Is the EU comprehensively implementing its same constitutional rules and principles?

Compulsory readings

1. B. Opeskin et al. (eds.), *Foundations of International Migration Law*, Cambridge University Press, 2012, paperback, Chapter 15;
2. Thomas Spijkerboer, 'The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control', in *European Journal of Migration and Law* 20 (2018) 452–469;
3. Simone Marinai, 'Extraterritorial Processing of Asylum Claims: Is It a Viable Option?', in *Diritti umani e diritto internazionale*, 3/2018, pp. 481-492.