

Digitalisation and International Law (Fall 2023)

Course Description

Digitalisation brings new challenges for which international law is only partially prepared. In the course "Digitalisation and International Law" we will discuss the impact of digitalisation and new technologies on human rights and international law as well as the role of actors such as Google, Facebook, etc. The course also addresses issues of sovereignty, cyber-attacks as well as new forms of regulation in times of blockchain and artificial intelligence. The course is part of the Master Programme. It is designed as block course and takes place on four days during the semester.

Literature

In addition to the readings listed in the course programme below these books could be of interest:

CHESTERMAN SIMON, *We the Robots? Regulating Artificial Intelligence and the Limits of the Law*, Cambridge Mass. 2021

DENARDIS LAURA, *The Internet in Everything: Freedom and Security in a World with No Off Switch*, New Haven/London 2020

KETTEMANN MATTHIAS, *The Normative Order of the Internet: A Theory of Rule and Regulation Online*, Oxford 2020

TEGMARK MAX, *Life 3.0: Being Human in the Age of Artificial Intelligence*, London 2018

Moodle Platform

To access all information, course material and updates, please enrol in our Moodle course, which will be available shortly: <https://moodle-app2.let.ethz.ch/course/view.php?id=13356> (AAI Login).

Time and Place

This course will be held **in person**, no podcasts or livestreaming will be made available. It will take place on the following dates in room SOC-F-106:

Friday, **22 September 2023** (9:00-16:00)

Friday, **13 October 2023** (9:00-16:00)

Friday, **3 November 2023** (9:00-16:00)

Friday, **17 November 2023** (9:00-16:00)

Alternative date: Friday, 8 December 2023 (9:00-16:00)

Attendance, Preparation and Reading Material

Attendance in class is mandatory. Furthermore, preparation and active participation in the discussions are a prerequisite for successfully completing the course. Please read all the texts listed under mandatory readings in the syllabus. Additional readings are meant to assist you should any topics be of particular interest to you. Please note that the required course material (including the PowerPoint Presentations used in class) and reading assignments will regularly be updated and published on the Moodle platform. Moreover, be aware that certain links to download readings are only accessible when using the UZH network connection (use VPN for remote access to the UZH network; manual for VPN installation in German: <https://www.zi.uzh.ch/de/support/netzwerk/vpn.html>).

Group Presentations

Students will be required to give short group presentations on specific topics in class and then lead a discussion on that topic. The presentation and the participation in class will be part of the final grade. Further information regarding the presentations will be given in the first lecture of the course.

Exam

There will be an exam (oral or written) at the end of the term. Details will be announced via Moodle by 13 October 2023.

Course Administration and Support

MLaw Camila Addiechi, research assistant, is responsible for this course and available to answer your questions (Lst.kaufmann@rwi.uzh.ch; 044 634 48 64).

Date	Topic	Mandatory readings & cases	Additional materials
22.09.23	<p>General Introduction</p> <p>Overview of key topics for the course</p> <p>Digitalisation and its impacts</p> <ul style="list-style-type: none"> - Digitalisation and digital transformation - Key features of digitalisation - Impacts on law and society <p>Introduction to Artificial Intelligence and Blockchain</p>	<p>Readings:</p> <ul style="list-style-type: none"> - Text 1a: KETTEMANN, The Normative Order of the Internet: A Theory of Rule and Regulation Online, Oxford 2020, pp. 45-55 (online access using UZH network) - Text 1b: RIEDL, Some Core Legal Challenges of Digital Transformation, Bern 2020 (online access using UZH network) - Text 1c: DEEKS, High-Tech International Law, in: George Washington Law Review 88 (2020), pp. 574-653 - Text 1d: BUITEN, Towards Intelligent Regulation of Artificial Intelligence, in: European Journal of Risk Regulation 10/1 (2019), pp. 41-59 - Text 1e: EUROPEAN PARLIAMENT, Briefing EU Legislation in Progress – Artificial intelligence Act, Strasburg 2023 - Text 1f: BUCKLEY/DIDENKO/TRZECINSKI, Blockchain and its Applications: A Conceptual Legal Primer, in: Journal of International Economic Law 26 (2023), pp. 363-383 (<i>skim only</i>) 	<ul style="list-style-type: none"> - JOHNS, Data, Detection, and the Redistribution of the Sensible in International Law, in: American Journal of International Law 111 (2017), pp. 57-103 (online access using UZH network) - SALAM, Reflections on International Law in Changing Times, in: Harvard International Law Journal 60(2) (2019), pp. 201-218 (online access using UZH network) - AKANDE/COCO/DE SOUZA DIAS, Drawing the Cyber Baseline: The Applicability of Existing International Law to the Governance of Information and Communication Technologies, in: International Law Studies 99 (4/2022), pp. 4-36 (online access using UZH network) - CULVER, Sensing Possibility in International Law - Concepts and Categories for the 21st Century, in: AJIL Unbound 111 (2017-2018), pp. 200-204 (online access using AAI Login and UZH network) - STERNLIGHT, Justice in a Brave New World?, in: Connecticut Law Review 52(1) (2020), pp. 213-269 - OECD, OECD Blockchain Primer, Paris 2019



<p>13.10.23</p>	<p>The role of the state: sovereignty, cyber-attacks, cyber security, and international law</p> <ul style="list-style-type: none"> - Sovereignty and jurisdiction in a digital era - Use of force and intervention - State responsibility 	<p>Readings:</p> <ul style="list-style-type: none"> - Text 2a: BOEHME-NESSLER, Digitising Democracy, On Reinventing Democracy in the Digital Era – A Legal, Political and Psychological Perspective, Berlin 2019, pp. 16-30 (online access using UZH network) - Text 2b: RYNGAERT, Extraterritorial Enforcement Jurisdiction in Cyberspace: Normative Shifts, in: German Law Journal 24/3 (2023), pp. 537-550 (online access using UZH network) - Text 2c: UNITED NATIONS Open-ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security, Report on Developments in the Field of Information and Telecommunications in the Context of International Security, 75th Session, 18 March 2021, U.N. Doc. A/75/816 (skim only) - Text 2d: HELLER, In Defense of Pure Sovereignty in Cyberspace, in: International Law Studies (2021), pp. 1-54 - Text 2e: SCHMITT, Introduction, in: Schmitt (ed.), Tallin Manual 2.0 on the International Law Applicable to Cyber Operations, Cambridge 2017, pp. 1-8 (online access using UZH network) - Text 2f: SCHMITT, Sovereignty, in: Schmitt (ed.), Tallin Manual 2.0 on the International Law Applicable to Cyber Operations, Cambridge 2017, pp. 9-29 (online access using UZH network) - Text 2g: POLI/SOMMARIO, The Rationale and the Perils of Failing to Invoke State Responsibility for Cyber-Attacks: The Case of the EU and Cyber Sanctions, in: German Law Journal 24/3 (2023), pp. 522-536 (online access using UZH network) 	<ul style="list-style-type: none"> - TRAN, The Law of Attribution: Rules for Attribution the Source of a Cyber-Attack, in: Yale Journal of Law & Technology 20 (2018), pp. 376-441 (online access using AAI Login and UZH network) - SWART, Constructing “Electronic Liability” for International Crimes: Transcending the Individual in International Criminal Law, in: German Law Journal 24 (2023), pp. 589-602 (online access using UZH network)
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		<p>Cases:</p> <ul style="list-style-type: none">- Case 2a: FOLTZ, Stuxnet, Schmitt Analysis, and the Cyber “Use-of-Force” Debate, in: Joint Force Quarterly 67 (4/2012), pp. 40-48- Case 2b: SCHMITT/FAHEY, WannaCry and the International Law of Cyberspace, New York 2017, <https://www.justsecurity.org/50038/wannacry-international-law-cyberspace/> (accessed: 25 August 2023)	

<p>3.11.23</p>	<p>Human rights in a digitalised world</p> <ul style="list-style-type: none"> - States' human rights obligations in cyberspace - Protection of privacy - Impacts of AI on human rights - Role of private actors 	<p>Readings:</p> <ul style="list-style-type: none"> - Text 3a: SHANY, Digital Rights and the Outer Limits of International Human Rights Law, in: German Law Journal 24 (2023), pp. 461-472 (online access using UZH network) - Text 3b: ANDREW, Introduction, in: Andrew/Bernard (eds.), Human Rights Responsibilities in the Digital Age: States, Companies and Individuals, Oxford 2021, pp.1-18 (online access using UZH network) - Text 3c: KRISHNAMURTHY/SCHMIDT/LEHR, Cybersecurity and Human Rights: Understanding the Connection, in: Andrew/Bernard (eds.), Human Rights Responsibilities in the Digital Age: States, Companies and Individuals, Oxford 2021, pp. 19-36 (online access using UZH network) - Text 3d: HUMAN RIGHTS WATCH, Bacciarelli, Pandora's Box: Generative AI Companies, ChatGPT, and Human Rights – What's at Stake in Tech's Newest Race?, New York 2023 - Text 3e: KRISHNAMURTHY, With Great (Computing) Power Comes Great (Human Rights) Responsibility: Cloud Computing and Human Rights, in: Business and Human Rights Journal 7 (2022), pp. 226-248 (online access using UZH network) - Text 3f: GULATI, Meta's Oversight Board and Transnational Hybrid Adjudication – What Consequences for International Law?, in: German Law Journal 24 (2023), pp. 473-493 (online access using UZH network) <p>Cases:</p> <ul style="list-style-type: none"> - Case 3a: ECJ, Maximilian Schrems v. Data Protection Commissioner (Schrems I: Facebook, Safe Harbour) (C-362/14), 6 October 2015 - Case 3b: ECJ, Preliminary Ruling Data Protection Commissioner v. Facebook Ireland Ltd. and Maximilian Schrems (Schrems II: EU-US Privacy Shield) (C-311/18), 16 July 2020 - Case 3c: ECJ, Meta Platforms Inc. v. Bundeskartellamt (C-252/21), 4 July 2023 	<ul style="list-style-type: none"> - AUST, 'The System Only Dreams in Total Darkness': The Future of Human Rights Law in the Light of Algorithmic Authority, in: German Yearbook of International Law 60 (2017), pp. 71-90 - ECtHR, Hurbain v. Belgium (57292/16), 22 June 2021 - ECJ, Eva Glawischnig-Piesczek v. Facebook Ireland Limited (C-18/18), 3 October 2019 - ECJ, Facebook Ireland Ltd. and Others v. Gegevensbeschermingsautoriteit (C-645/19), 15 June 2021
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		<ul style="list-style-type: none"> - Case 3d: ECJ, Bundesverband der Verbraucherzentralen und Verbraucherverbände v. Planet49 GmbH (C-673/17), 1 October 2019 - Case 3e: ECtHR, Big Brother Watch and Others v. the United Kingdom (58170/13, 62322/14 and 24960/15), 25 May 2021 - Case 3f: ECJ, Google LLC v. CNIL (C-507/17), 24 September 2019 - Case 3g: United States District Court, Northern District of California, Andersen et al v. Stability AI Ltd. et al (3:23-CV-00201), 13 January 2023 <p>Legal sources:</p> <ul style="list-style-type: none"> - EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (2016/679), 27 April 2016 - EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Digital Services Act (Regulation 2022/2065), 19 October 2022 - EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Digital Markets Act (Regulation 2022/1925), 14 September 2022 	

<p>17.11.23</p>	<p>Artificial Intelligence & Co.: Do we need new forms of regulation?</p> <ul style="list-style-type: none"> - What are the impacts of new technologies on law? - Can new technologies support international law? - Do we need to types and forms of regulation? 	<p>Readings:</p> <ul style="list-style-type: none"> - Text 4a: VON UNGERN-STERNBERG, Artificial Agents and General Principles of Law, in: German Yearbook of International Law 60 (2017), pp. 240-267 - Text 4b: CONTINI, Artificial Intelligence and the Transformation of Humans, Law and Technology Interactions in Judicial Proceedings, in: Law, Technology and Humans 2(1) (2020), pp. 4-18 - Text 4c: PENG/LIN/STREINZ, Artificial Intelligence and International Economic Law: A Research and Policy Agenda, in: Peng/Lin/StreinZ (eds.), Artificial Intelligence and International Economic Law, Disruption, Regulation, and Reconfiguration, Cambridge 2021, pp. 1-26 - Text 4d: ARMOUR/EIDENMÜLLER, Self-Driving Corporations?, in: Harvard Business Law Review 10 (2020), pp. 87-116 - Text 4e: KAUFMANN, Responsible Business in a Digital World – What's International Law Got to Do With It?, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 81 (2021), pp. 781-815 - Text 4f: CHEONG, Avatars in the metaverse: potential legal issues and remedies, in: International Cybersecurity Law Review (2022), pp. 1-28 - Text 4g: DWIVEDI ET AL., Metaverse beyond the hype: Multidisciplinary perspectives on emerging challenges, opportunities, and agenda for research, practice and policy, in: International Journal of Information Management 66 (2022), pp. 1-2 (online access using UZH network) <p>Cases:</p> <ul style="list-style-type: none"> - Case 4a: United Kingdom, Court of Appeal (Civil Division), R (Bridges) v. Chief Constable of South Wales Police (C1/2019/2670), 11 August 2020 - Case 4b: United States Circuit Court of Cook County, Illinois, ACLU et al. v. Clearview AI, Inc. (2020CH04353), 28 May 2020 - Case 4c: Supreme Court of the State of Washington, Josette Taylor v. Intuitive Surgical, Inc. (92210-1), 9 February 2017 	<ul style="list-style-type: none"> - DIGNUM, Responsibility and Artificial Intelligence, in: Dubber/Pasquale/Das (eds.), <i>The Oxford Handbook of Ethics of AI</i>, Oxford 2020, pp. 215-231 (online access using UZH network) - RUBEL/CASTRO/PHAM, Algorithms and Autonomy: The Ethics of Automated Decision Systems, Part IV: <i>The Responsibilities of Agents</i>, Cambridge 2021, pp.1-20 - BU, The global governance on automated facial recognition (AFR): ethical and legal opportunities and privacy challenges, in: <i>International Cybersecurity Law Review</i> 2 (2021), pp. 113-145 (online access using UZH network) - UK INFORMATION COMMISSIONER'S OFFICE, Guide to the UK General Data Protection Regulation, Lawful basis for processing, Special category data, Wilmslow 2019 - OECD, Directorate for Financial and Enterprise Affairs, Platform Companies and Responsible Business Conduct, Paris 2019 - REYES/NELSON, Legal Issues Raised by Medical AI: An Introductory Exploration, Chicago 2019 - MARCHANT/TOURNAS, AI Health Care Liability: From Research Trials to Court Trials, in: <i>Journal of Health & Life Science</i> 12/2 (2019), pp. 23-41
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Date	Topic	Mandatory readings & cases	Additional materials
		<p>Legal sources:</p> <ul style="list-style-type: none"> - COUNCIL OF EUROPE, Committee on Artificial Intelligence (CAI), Consolidated Working Draft of the Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, (CAI(2023)18), 7 July 2023 - OECD, Council, Recommendation of the Council on Artificial Intelligence (OECD/Legal/0449), 22 May 2019 	