

INTERNATIONAL INSTITUTIONS AND REGULATION

Fall Term 2007

Profs. C. Dupont and J. Pauwelyn

Tuesdays, 10h15 – 12h00

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Course description

In today's globalized world, the increasing interdependence among states has raised questions about the management of issues that go well beyond the border of individual states' jurisdictions. The proliferation of international institutions over the past six decades is in part a response to a growing need to manage such issues in the best appropriate way. This multidisciplinary course explores the challenges raised by the management of interdependence and puts into comparative perspective the various regulatory ways used by actors in different domains (security, trade, human rights, and environment).

Requirements

Student evaluation of this course will be based on three factors: (i) reaction papers (45%), (ii) a final exam (45%) and (iii) class participation (10%). Each student must submit five reaction papers of between 2 and 3 pages (1.5 space, Times New Roman 12) including at least one reaction paper for each of the four Parts of the course. A reaction paper should discuss one or more of the questions set out in the syllabus below. Reaction papers should be handed to the instructors before the relevant class (either through email or in hard copy at the beginning of

the class). There will be a final take-home exam at the end of the course, listing four essay-type questions of which each student must answer two.

Topics and readings

I. INTRODUCTORY CLASS – 25 September

Readings (suggested):

1. JAN KLABBERS, AN INTRODUCTION TO INTERNATIONAL INSTITUTIONAL LAW (CAMBRIDGE, 2002), p. 16-23
2. Keohane, Robert O. (1988). "International Institutions: Two Approaches." International Studies Quarterly 32: 379-396 (read pp.382-386, section on definitions)
3. ALVAREZ, JOSE 2002: The New Treaty Makers, in: *Boston College International & Comparative Law Review* 25 (2), 213-234.

PART I. INTERDISCIPLINARY BACKGROUND

II. SOURCES OF INTERNATIONAL LAW AND VARIETY IN INTERNATIONAL LEGAL INSTRUMENTS (Pauwelyn) – 2 October

Readings:

1. JAN KLABBERS, AN INTRODUCTION TO INTERNATIONAL INSTITUTIONAL LAW (CAMBRIDGE, 2002), p. 16-23 and 28-34
2. ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW (CAMBRIDGE, 2005), The Sources of International Law, p. 1-15
3. ALAN BOYLE AND CHRISTINE CHINKIN, THE MAKING OF INTERNATIONAL LAW (OXFORD, 2007), p. 1-10 and 35-39
4. REPORT OF THE HIGH-LEVEL PANEL ON THREATS, CHALLENGES AND CHANGE (UNITED NATIONS, 2004), Synopsis, p. 1-5.

Questions:

1. What is “wrong” with domestic legal systems, and explains the need for international law and institutions? When should an issue be dealt with under domestic law, when should it be addressed under international law?
2. Compare the sources of domestic law to the sources of international law. What are the main differences?
3. Give a critique of each of the sources of international law.
4. Make a list of the different actors, instruments, processes and institutions involved in the international law-making in response to global terrorism.
5. How would you reform international law-making? Use the example of terrorism and keep in mind the 2004 UN High-level Panel report.

III. THE EMERGENCE OF INTERNATIONAL INSTITUTIONS: SUPPLY AND DEMAND PERSPECTIVES (Dupont)

-- 9 October

Readings:

1. Aggarwal, Vinod K. and Cédric Dupont (2004). Collaboration and Coordination in the Global Political Economy. In John Ravenhill, ed. *Global Political Economy*. Oxford, Oxford University press, pp. 28-49 (focus on pp. 29-32).
2. Keohane, Robert O. (1982). "The Demand for International Regimes." International Organization **36**(2): 325-355 (all pages)
3. Olson, Mancur (1965). The Logic of Collective Action. Cambridge: Harvard University Press, chap. 1 (all pages)
4. Snidal, Duncan (1985). "The Limits of Hegemonic Stability Theory." International Organization **39**(4): 579-614 (all pages).

Questions:

1. Are international institutions public goods or are they providers of public goods?
2. Is the market analogy of supply and demand a good entry into the discussion of the emergence of institutions?
3. Do you think that leadership is better than hegemony for the supply of institutions?
4. Are there situations in which international institutions could "spontaneously" emerge?
5. Based on the readings for this session, can we expect important changes in the emergence of new institutions in the near future?

IV. FORMS OF INTERNATIONAL INSTITUTIONS [DUPONT] -- 16 October

Readings:

- Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal (2000). "The Concept of Legalization", *International Organization* 54(3), pp. 401-419 (focus on pp. 29-32).
- Hawkins, Darren., David A. Lake, et al., Eds. (2006), Delegation and Agency in International Organizations, Cambridge, Cambridge University Press (chap. 1).
- Keohane, Robert O. (1982), "The Demand for International Regimes." International Organization **36**(2): 325-355 (all pages).
- Koromenos Barbara, Charles Lipson and Duncan Snidal (2001), "The Rational Design of International Institutions", *International Organization* 55(4); pp. 761-799 (focus on pp. 769 onward)
- Williamson, Oliver E. (2002), "The Theory of Firm as Governance Structure: From Choice to Contract." Journal of Economic Perspectives **16**(3): 171-195 (focus on pp. 171-182)

Questions:

1. Can principles about the organization of firms be applied to states on the international scene?
2. Discuss the power and the limits of transaction costs to explain institutional variation.
3. Do delegation and centralization go together?

4. Is there a positive (and significant) correlation between the number of actors and the extent of delegation to international institutions?
5. Do you think that the concept of legalization is a useful contribution to our understanding of international institutions?

PART II: PROCESSES AND ACTORS

V. MULTILATERAL LAW-MAKING: DIPLOMATIC PROCESSES (Dupont) -- 24 October

Readings:

1. Alan Boyle and Christine Chinkin, The Making of International Law, (Oxford, 2007), p. 98-124, 141-162 and 229-233.
2. Jose Alvarez, International Organizations as Law-Makers, 2006, p. 370-394.
3. Ruggie, John G. (1992). "Multilateralism: The Anatomy of an Institution." International Organization **46**(3): 561-598 (read pp. 574-584).
4. Sieglinde Gstöhl (2004). "The G7/G8 and the UN System: Varying Forms of Global Governance".

Questions:

1. Is small group diplomacy a useful complement to multilateral law-making?
2. Would multilateralism have taken such an importance short of the US role in promoting it after WWII?
3. What are the different ways or processes for multilateral law-making? Identify the different stages in each of these processes. Are current processes of multilateral law-making legitimate? To answer that question, what benchmarks could you use?
4. In what ways can the UN Security Council be termed as a law-making body? Do you agree with Boyle & Chinkin that the Security Council "is a seriously deficient vehicle for the exercise of legislative competence" (p. 115)?
5. If a new issue arises which needs international cooperation, does it matter in what international institution the issue is dealt with? If so, for what specific reasons?
6. What lessons do you draw from the law-making experiences of UNCLOS III and the ICC?
7. Considering multilateral law-making in IOs, do you consider that IOs have actually facilitated achievement of the Coase Theorem, i.e., have they established patterns of legal liability, provided symmetrical information and reduced transaction costs?
8. What is the role of voting rules, and voting, in multilateral treaty-making and treaty amendments/elaborations? Do you prefer voting over consensus?
9. Have multilateral treaties created in IOs proven to be effective ways of dealing with specific problems? Have IOs made treaties better? Formulate Simma's critique as elaborated by Alvarez and provide your personal analysis.

VI. PARTICIPANTS AND SUBJECTS IN INTERNATIONAL INSTITUTIONS AND REGULATION: THE EXAMPLE OF NGOs AND MNCs (Pauwelyn) -- 30 October

Readings:

1. Alan Boyle and Christine Chinkin, The Making of International Law (Oxford, 2007), p. 41-77, 81-87.
2. Andrew Clapham, Human Rights Obligations of Non-State Actors, (Oxford, 2006), excerpts.
3. Joost Pauwelyn, "Blood Diamonds many facets", The News Observer, 2007.
4. Haas, Peter M. (1992). "Introduction: Epistemic Communities and International Policy Coordination." *International Organization* 46: 1-35 (read pp. 1-20).
5. Report of the Panel of Eminent Persons on United Nations-Civil Society Relations (Cardoso Panel), 2002-2004.

Questions:

1. Should NGOs specialize in technical issues and leave the political ones to states?
2. Are NGOs the international transposition of domestic pressure groups?
3. Can epistemic communities thrive outside of the domain of the environment?
4. What are the reasons to involve NGOs in international law-making/enforcement and pursuant to what different processes can this be done?
5. Is there, or should there be, any difference in the role given in international law-making to the Holy Sea, Taiwan, indigenous peoples, Greenpeace and the International Chamber of Commerce, all of which are non-State actors?
6. What lessons do you draw from NGO involvement in the Torture Convention, the Landmines Convention, the ICC and the Kimberley Process against Conflict Diamonds?
7. Non-state actors can be participants in the law-making process; they can also become subjects of international law themselves. Should there be a symmetry between these two (when you participate, you also become subject to the rules), or do you see reasons for a-symmetry in this respect?
8. How does Clapham support the proposition that non-state actors are, and should be, bound by human rights? What are the counter-arguments? Which do you find most convincing? Use the Global Compact and/or the UN "Norms on the Responsibilities of Trans-national Corporations" as examples.

VII. THE ROLE OF INTERNATIONAL COURTS AND TRIBUNALS (Pauwelyn) --
6 November

Readings:

1. Alvarez, J. (2003), "The new dispute settlers: (Half) truths and consequences", *Texas International Law Journal*, 38, pp. 405-444
2. Alan Boyle and Christine Chinkin, The Making of International Law (Oxford, 2007), p. 263-312
3. Project on International Courts and Tribunals (PICT), Chart of International Courts and Tribunals.
4. Pauwelyn Joost, (2005), "The Transformation of World Trade", *Michigan Law Review* 1004(1): 1-65
5. Cesare Romano, From the Consensual to the Compulsory Paradigm in International Adjudication: Elements for a Theory of Consent, March 2006 (p. 792-816, 834-838, 844-871).

6. Stone Sweet, Alec (1999), "Judicialization and the Construction of Governance", *Comparative Political Studies* 32(2): 147-184.

Questions:

1. Does greater integration among states necessarily call for stronger courts?
2. Can international courts really become fully independent for governments?
3. Can the creation of international courts be counterproductive?
4. What has changed in the landscape of international courts and tribunals in the last 50 years? What factors prompted this change, and is the change one for the better?
5. Is legalization or further judicialisation of international institutions by definition a good thing? What could be counter-balancing factors?
6. What is the conventional story of legalization in the GATT/WTO system? How does Pauwelyn's account differ? Can one apply the exit v. voice model to other international institutions?
7. Do you agree with Romano that there has been a paradigm shift from consent to compulsory jurisdiction? In any event, what are the problems engendered by the shift he describes, and how can they be resolved?

VIII. PUBLIC V. PRIVATE GOVERNANCE (Dupont) -- 13 November

Readings:

1. Andonova, Liliana (2006), Globalization, Agency and Institutional Innovation: The Rise of Public-Private Partnerships in Global Governance, pp. 12 and following
2. Bruner, Christopher M. and Rawi Abdelal (2005). "To Judge Leviathan: Sovereign Credit Ratings, National Law, and the World Economy." *Journal of Public Policy* 25 (2): 191-217.
3. Mattli, Walter and Tim Büthe (2003), "Setting International Standards: Technological Rationality or Primacy of Power?" *World Politics* 56(1): 1-42.
4. Joost Pauwelyn, Non-Traditional Patterns of Global Regulation: Is the WTO 'Missing the Boat'?

Questions:

1. Is the increasing influence of private actors in world governance a good thing?
2. Are there domains in which the influence of private actors is likely to remain minimal?
3. Do you think that private actors are mostly instrumentalized by states and have therefore little influence?
4. When and why do states create soft law instead of hard law?
5. What is the role of soft law in WTO dispute settlement? What is the role of "international standards" in WTO agreements on health and technical barriers to trade (SPS/TBT)?
6. Should international law monitor or otherwise check and control private governance structures? Take the example of private labels or standards that affect trade. Should

the WTO regulate those to avoid that they become unjustified protectionism? If not, how else can private governance be controlled?

PART III SUBJECT-MATTER CASE STUDIES

IX. GLOBAL AND REGIONAL INTEGRATION (Dupont) -- 20 November

Readings:

1. Baldwin, R. E. (2006), "Multilateralising Regionalism: Spaghetti Bowls as Building Blocs on the Path to Global Free Trade." *The World Economy* **29**(11): 1451-1518 (pp. 1474-1492 on the narratives of the dynamics of integration).
2. Yarbrough, Beth V. and Robert M. Yarbrough (1986), "Reciprocity, Bilateralism, and Economic Hostages: Self-Enforcing Agreements in International Trade." *International Studies Quarterly* 30(March): 7-21.
3. Ruggie, John G. (1982), "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order", *International Organization* 36(2): 379-415.
4. Schwartz Warren F., Sykes Alan O., "The Economic Structure of Renegotiation and Dispute Resolution in the World Trade Organization", *The Journal of Legal Studies*, volume 31 (2001), pp. 181-183 and 188-192.

Questions:

1. Does the world economy need institutions rather than regulation?
2. Can the world economy rely on regional clusters of governance?
3. Is the cascade of agreements likely to stop?
4. Formulate Sykes and Schwartz "efficient breach" theory. Is the theory an economic theory or a political theory? Is their view a descriptive view or a normative/prescriptive view? Are you convinced that WTO negotiators wanted to promote "efficient breach"? Consider both the legal texts and the policy arguments for and against.

X. PROTECTION OF THE ENVIRONMENT (Dupont) -- 27 November

Readings:

1. Center for UN Reform, *Global Environmental Governance: Perspectives on the Current Debate*, Lydia Swart and Estelle Perry, eds. All the chapters are available for download at <http://www.centerforunreform.org/node/251> :
 - Ivanova Maria, "Moving Forward by Looking Back: Learning from UNEP's history." (chap.2)
 - Biermann Frank, "Reforming Global Environmental Governance: From UNEP Toward a World Environmental Governance."
2. Geoffrey Palmer (1992), "New Ways To Make International Environmental Law", *American Journal of International Law* 86, 259-283.
3. Pauwelyn Joost, "A carbon levy on imports to fight climate change?" 11 September 2007.

4. UNFCCC, A summary of the Kyoto Protocol, available at http://unfccc.int/kyoto_protocol/background/items/2879.php.

Questions:

1. When are environmental issues local and when global problems? Why?
2. Should environmental concerns be dealt with one at a time or in an integrated manner?
3. Why have countries established so many environmental treaties and regimes? What should be the building rocks of the global governance architecture?
4. What are the options for reform?
5. How much could market-based solutions work?
6. When are environmental issues local and when global problems? Why?
7. Should environmental concerns be dealt with one at a time or in an integrated manner?
8. Why have countries established so many environmental treaties and regimes? What should be the building rocks of the global governance architecture? Why is there a WTO but not WEO?
9. What are the options for reform? Should there be a World Environmental Organization?
10. Tabula rasa or rearranging the current institutional fragmentation?

XI. INTERNATIONAL LABOR STANDARDS (PAUWELYN) --4 December

Readings:

1. Laurence Helfer, "Understanding Change in International Organizations: Globalization and Innovation in the ILO", 59 *Vanderbilt Law Review* (2006), 649-726 (focus on pp. 9-657, 669-726).
2. Philip Alston, 'Core Labour Standards' and the Transformation of the International Labour Rights Regime", *European Journal of International Law*, Jun 2004, 15: 457 – 521 (read 457-487, 518-521)
3. Brian A Langille, "Core Labour Rights – The True Story (Reply to Alston)", *European Journal of International Law*, June 2005; 16: 409 – 437.
4. ILO Report (2007), Strengthening the ILO's Capacity to Assist its Members' Efforts to Reach its Objectives in the Context of Globalization (read only Chapters 1 and 4).

Questions:

1. What influences change and evolution in IOs? How can you summarize the ILO's evolution?
2. In what ways is the ILO a unique institution? Why was it originally created? Do the reasons for its original creation persist or have they changed in the age of globalization?
3. What are the arguments for and against the ILO's enactment of "core labor standards"? Where do you stand in this debate?
4. How does the ILO in its 2007 "Strengthening the ILO's capacity" rationalize its continuing existence in an age of globalization? Are you convinced?

5. How should the ILO be reformed to fulfil the role it is setting for itself? Do you agree with the proposals in the 2007 report?

PART IV CROSS-CUTTING SYSTEMIC QUESTIONS

XII. DELEGATION TO, POWERS OF, AND ACCOUNTABILITY OF INTERNATIONAL INSTITUTIONS (Pauwelyn) -- 11 December

Readings:

1. Jose Alvarez, *The Move from Institutions*, 2006 Address, Friedman Conference.
2. Klabbers (2002), *An International Introduction to Institutional Law*, excerpts pp. 300-319.
3. *Accountability at the World Bank*, The Inspection Panel 10 Years On, p. 2-17 and 89-99.
4. Barnett, Michael and Martha Finnemore (2006), *Rules for the World. International Organization in Global Politics*. Ithaca, Cornell University Press (chap. 6).
5. Grant, Ruth W. and Robert O. Keohane (2005), "Accountability and Abuses of Power in World Politics." *American Political Science Review* **99**(1): 29-43.
6. Pollack, Mark A. (1997). "Delegation, Agency, and Agenda Setting in the EC.", *International Organization* **51**(1): 99-134 (focus on pp. 108-121 on member state control).

Questions:

1. What are the main problems connected to delegation to international organizations?
2. Based on factual evidence from the readings, have "international" agents been seriously shirking?
3. Is lack of accountability a real problem for international organizations?
4. Do you agree with Alvarez that while in the 20th century we saw a move "to" IO, more recently there is a move "away from" IO? What are the reasons for each of these movements? Based on what we covered in this course, what movement do you support?
5. Can international institutions be held responsible under international law? What are the different avenues available, and how far should one go with subjecting international institutions to standard rules of international law?
6. In what ways does the Inspection Panel hold the World Bank accountable? Given the rules on who can request an investigation, against whom such investigation is conducted, and what eventually follows after a negative finding, is the process a genuine accountability system or merely a fig-leaf to appease World Bank critics?

XIII. FRAGMENTATION, OVERLAP AND CONFLICT (Pauwelyn) -- 28 December

Readings:

1. Joost Pauwelyn, *Conflict of Norms in Public International Law* (Cambridge, 2003) p. 12-24, 436-439.
2. Joost Pauwelyn, "How to Win a WTO Dispute Based on Non-WTO Law", 37 *Journal of World Trade* (2003), 997-1005 and 1019-1030.

3. Joost Pauwelyn, "The UNESCO Convention on Cultural Diversity, and the WTO: Diversity in International Law-Making?" *ASIL Insight*, 15 November 2005.
4. Sofie Meunier & K. Alter, "Nested and Overlapping Regimes in the Transatlantic Banana Trade Dispute", *Journal of European Public Policy*, 13:3, April 2006, 362-382.
5. Ashaki Binta, "Denied collective bargaining, North Carolina employees turn more militant", *Labor Notes*, 2007.
6. "UN Labor Panel finds US violation, calls for repeal of NC bargaining ban" and "Unions charge North Carolina violating NAFTA Labor rules", 2007, United Electrical, Radio and Machine Workers of America News.
7. Aggarwal, Vinod K., "Reconciling Multiple Institutions: Bargaining, Linkages, and Nesting" in Aggarwal, Vinod K., Institutional Designs for a Complex World: Bargaining, Linkages, and Nesting, Cornell University Press: 1-31.
8. Cohen Benjamin J., "When Giants clash: the OECD Financial support Fund and the IMF", in Aggarwal, Vinod K., Institutional Designs for a Complex World: Bargaining, Linkages, and Nesting, Cornell University Press: 161-194 (read pp. 161-186).

Questions:

1. Is an overlap of international institutions necessarily a bad thing?
2. Is institutional fragmentation the price of multipolarity?
3. Can institutional overlap be realistically stopped/prevented?
4. What explains the fragmentation of international law? Is it really a novel phenomenon?
5. Is an overlap of international institutions necessarily a bad thing?
6. Is institutional fragmentation the price of multipolarity?
7. How can WTO panels deal with overlaps between WTO law and other international law? Should WTO panels open the door to outside treaties and institutions, or rather stick to the four corners of the WTO? What are the policy implications of these two approaches?