

Master in International Affairs (MIA)

Academic year 2008 - 2009

International Institutions and Regulation

E280 – Fall – International Institutions & Regulation – 6 ECTS
Tuesdays 10:15-12:00 (AJF)

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 borders of their individual jurisdictions. The proliferation of international institutions over the past six decades is in part a response to a growing need to manage these issues in the most appropriate way. This multidisciplinary course explores the challenges raised by the management of interdependence and puts into comparative perspective the various regulatory tools used by actors in different domains, such as security, trade, human rights and the environment.

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Syllabus

Course Website

<http://graduateinstitute.ch/mia/programme/courses/compulsory/international-institutions-regulation.html>

Requirements

Students will be evaluated on the following requirements:

1. *For 30% of your grade:* Two (2) **short essays** of approximately 1000 words (+/-10%). These short essays, which must be written for two different parts of the course, will answer a specific question to be chosen from the ones listed in the outline below. The essays should be handed to the instructors *before* the relevant class, either by email to the assistants or in hard copy at the beginning of the class.
2. *For 30% of your grade:* Two (2) **critical reviews** of approximately 1000 words (+/-10%) on the readings of a particular session. The reviews should be on readings for sessions from two different parts of the course. In addition to a critical discussion of the merits of the readings of a given session, the reviews should also put them in perspective with readings from one or several previous sessions. The reviews should be handed to the instructors *before* the relevant class, either by email to the assistants or in hard copy at the beginning of the class.

3. *For 40% of your grade:* A 3-hour open book final exam, which will be held on December 16 from 10 AM to 1 PM. Students will have to answer two (2) of four (4) essay-type questions related to the course and the readings.

NOTE: Active and high-quality participation is greatly encouraged and will be taken into account when finalising the grade, with a potential bonus of +0.5. Questions to help prepare for class discussion are listed in the outline below.

NOTE: The deadlines are firm. Except for valid medical reasons (with a medical certificate), late papers will be penalized -1 point per day.

Readings

In order to be able to participate in class discussions and to prepare the required assignments, students must do a set of required readings. These readings will be posted on the website of the course on a separate password-protected page. A reading packet (polycopié) is also available for purchase at *Imprimerie Minute* (7, rue Voie-Creuse, Tel: 022.734.0000, www.imprimerie-minute.ch/minute/). Information on the password and how to order the polycopié will be given during the first day of class.

NOTE: Please make sure you consult the website regularly, as information regarding the course will be posted there.

Outline

I. INTRODUCTORY CLASS [September 16]

Readings:

1. The Economist, "What a way to run the world", 5 July 2008, cover page and p. 15 with tables.
2. Klabbers, Jan, *An Introduction to International Institutional Law*, Cambridge, 2002, pp. 7-13 and pp. 16-28.
3. Keohane, Robert O., "International Institutions: Two Approaches", *International Studies Quarterly*, vol. 32, 1988, read pp. 382-386 (definitions of institutions)
4. Koromenos, Barbara, Charles Lipson and Duncan Snidal, "The Rational Design of International Institutions", *International Organization* 55(4), 2001, pp. 761-799, read pp. 768-775 (section on dependent variables)

Discussion Questions:

1. List the specific reasons why, according to *The Economist*, today's global institutions are in trouble.
2. What possible solutions does *The Economist* address, and what caveats does it add to each? What risks happening, according to *The Economist*, if we continue with 'business as usual'?
3. Describe the history and evolution of international institutions according to Klabbers.

Essay Questions:

1. Based on Klabbers, what are the different ways of classifying international institutions? Compare Klabbers' classification to the definitions and classifications of international institutions in Keohane and Koromenos et al.

PART I INTERDISCIPLINARY BACKGROUND

II. PUBLIC GOODS AND INTERNATIONAL COOPERATION: A STRATEGIC PERSPECTIVE (CD) [September 23]

Readings:

1. Aggarwal, Vinod K. and Cédric Dupont, "Collaboration and Coordination in the Global Political Economy", in John Ravenhill (ed.), *Global Political Economy*, Oxford, Oxford University Press, 2008, pp. 67-94.

2. Kaul, Inge, and Ronald U. Mendoza, "Advancing the Concept of Public Goods", in Inge Kaul, Pedro Conceição, Katell Le Goulven and Ronald U. Mendoza (eds.), *Providing Global Public Goods: Managing Globalization*, New York, Oxford University Press, 2008, <http://www.undp.org/globalpublicgoods/globalization/pdfs/KaulMendoza.pdf>
3. Drezner, Daniel, *All Politics is Global*, Princeton, Princeton University Press, 2007, read pp. 32-33, 51-58 and 71-87.

Discussion Questions:

1. How sharp and convincing is the distinction between what Kaul and Mendoza call "intermediate" and "final" public goods? Try to apply it to some of your favourite IOs, particularly those located in Geneva.
2. Is the market analogy of supply and demand a good entry point into the discussion on 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?

Essay Questions:

1. What are the benefits and limits of a political economy approach to apprehend the emergence of institutions? Think of other approaches/theories that could help understand the conditions for the emergence of an institution.
2. Can you systematically link the strategic approach chosen by Aggarwal and Dupont with the analytical framework in Mendoza and Kaul?

III. SOURCES AND THEORIES OF INTERNATIONAL LAW AND VARIETY IN INTERNATIONAL LEGAL INSTRUMENTS (JP) [September 30]

Readings:

1. Aust, Anthony, "The Sources of International Law", in *Handbook of International Law*, Cambridge University Press, Cambridge, 2005, pp. 1-15.
2. Boyle, Alan and Christine Chinkin, *The Making of International Law*, Oxford University Press, Oxford, 2007, pp. 1-19.
3. Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal, "The Concept of Legalization", in *International Organization*, 54(3), 2000, pp. 401-419 (full article).
4. Abbott, K. W. and D. Snidal, "Hard and Soft Law in International Governance", in *International Organization*, 54(3), 2000, pp. 421-456, read pp. 421-423.

Discussion Questions:

1. Compare the sources of domestic law to the sources of international law. What are the main differences?
2. Present a critique of each of the sources of international law.
3. Make a list of the different actors, instruments, processes and institutions involved in the international law-making process in response to global terrorism.
4. What are the different theories of international law and how do they shed light on the study of international institutions?

Essay Questions:

1. Is law without a coercive sovereign possible? Is harder law or more legalization necessarily a good thing? Compare what you have read so far by international lawyers with what has been written by political scientists.
2. Could the institutionalization of the hierarchy of the sources of international law increase its legitimacy? What institution could do this?

IV. OPTIMAL INSTITUTIONAL DESIGN: RATIONALITY, LAW & ECONOMICS (CD) [October 7]

Readings:

1. Dunoff, Jeffrey and Joel Trachtman, "Economic Analysis of International Law", *Yale Journal of International Law*, 1999, pp. 1-59, read pp. 6-22, 36-44 and 46-49.
2. Pauwelyn, Joost, *Optimal Protection of International Law*, forthcoming 2008, read pp. 1-15 and 198-206.
3. Koromenos, B., C. Lipson, et al., "Rational Design: Looking Back to Move Forward", in *International Organization*, 55(4), 2001, pp. 1051-1082, read pp.1054-1064 (empirical results)

Discussion 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. What is the specificity of the rational design approach in Koromenos et al in contrast to a "law and economics" approach?
4. Think of a case of institutional design at the international level that hardly looks rational.

Essay Questions:

1. What does it mean to take a "law and economics" approach to international law and international institutions? What are the potential pay-offs of such an approach? What are its limits?
2. What is Pauwelyn's critique of the current system of designing and protecting international law entitlements? What is his proposed alternative? Compare his approach to that in readings 3 and 4 of the previous session.
3. Take an international institution of your choice, and analyse the rational design that led to the emergence of this institution, placing it in its historical evolution and connecting it to the future described by *The Economist* in session 1.

PART II PROCESSES & ACTORS

V. MULTILATERAL LAW-MAKING: DIPLOMATIC PROCESSES (CD) [October 14]

Readings:

1. Boyle, Alan and Christine Chinkin, *The Making of International Law*, Oxford, University Press, Oxford, 2007, read pp. 98-99, 108-109 and 141-154.
2. Alvarez, Jose, *International Organizations as Law-Makers*, Oxford University Press, Oxford, 2006, read pp. 370-394.
3. Pauwelyn, Joost, "A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature?", *EJIL*, 14(5), 2003, pp. 907-951, read pp. 907-9, 928-941 and 949-951.
4. March, James and Herbert Simon, *Organizations*, Cambridge, Blackwell, 1993 (1958), read pp. 203-221 (sections 7.3, 7.4 and 7.5)
5. Barnett, Michael and Martha Finnemore, *Rules for the World: International Organizations in Global Politics*, 2002, Ithaca, Cornell University Press, Chap. 2.

Discussion Questions:

1. 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)?
2. 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?
3. What lessons do you draw from the law-making experiences of UNCLOS III and the ICC?
4. 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?
5. Do the observations and assumptions made by March and Simon fit the world of IOs?

6. How severe are the IO pathologies described by Barnett and Finnemore? How does this connect with how IO adapt to new situations (March and Simon)?

Essay Questions:

1. Describe and assess the consequences of the different types of “multilateral law-making” processes (as discussed i.e., in Boyle & Chinkin and Alvarez) and “multilateral law-making” outcomes (e.g., in terms of different types of multilateral treaty obligations as discussed in Pauwelyn).
2. 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 with insights from the literature on bureaucracies (March and Simon, Barnett and Finnemore).
3. Could law-making be the only domain where multilateralism is really successful?

VI. PARTICIPANTS AND SUBJECTS IN INTERNATIONAL INSTITUTIONS AND REGULATION: THE EXAMPLE OF NGOs AND MNCs (JP) [October 21]

Readings:

1. Boyle, Alan and Christine Chinkin, *The Making of International Law*, Oxford, University Press, Oxford, 2007, read pp. 41-77 and 52-77.
2. Clapham, Andrew, *Human Rights Obligations of Non-State Actors*, Oxford University Press, Oxford, 2006, read pp. 25-29, 32-45, 52-55 and 218-237.
3. Pauwelyn, Joost, “Blood Diamonds’ Many Facets”, *The News Observer*, 2007.
4. Haas, Peter M., “Introduction: Epistemic Communities and International Policy Coordination”, *International Organization*, vol. 46, 1992, pp. 1-35, read pp. 1-20.

Discussion 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 the domain of the environment?
4. 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?
5. 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.

Essay Questions:

1. What are the reasons to involve NGOs in international law-making/enforcement and in what different ways can this be done? Compare, in particular, Boyle & Chinkin to Haas.
2. What lessons do you draw from NGO involvement in the Torture Convention, the Landmines Convention, the ICC and the Kimberley Process against Conflict Diamonds?
3. Non-State actors can be participants in the law-making process; they can also become subjects of international law themselves. Should there be 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?
4. Consider the diversity of non-State actors. On the basis of this diversity, make an argument for or against Clapham’s conception. Try to build a categorization of these actors.

VII. PUBLIC V. PRIVATE GOVERNANCE (CD) [October 28]

Readings:

1. Mattli, Walter and Tim Büthe, “Setting International Standards: Technological Rationality or Primacy of Power?”, *World Politics*, 56(1), 2003, pp. 1-42.

2. Bruner, Christopher M. and Rawi Abdelal, "To Judge Leviathan: Sovereign Credit Ratings, National Law, and the World Economy", *Journal of Public Policy*, 25(2), 2005, pp. 191-217; skip the section "Increasing scrutiny" on pp. 201-205.
3. Lipschutz, Ronnie and Cathleen Vogel, "Regulation for the Rest of Us? Global Civil Society and the Privatization of Transnational Regulation", in R. Hall and T. Biersteker (eds.), *The Emergence of Private Authority in Global Governance*, Cambridge, Cambridge University Press, 2002, pp. 115-140, read pp. 125-135.

Discussion 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?

Essay Questions:

1. Find a case study of your choice to prove that private governance can be more efficient than public governance. How can private and public governance partnerships be conceived internationally? Is private governance the future?
2. Would the involvement of NGOs in global finance help correct the market failures that we have repeatedly seen (the last one being the "US subprime crisis")? How could such an involvement work?

VIII. THE ROLE OF INTERNATIONAL COURTS AND TRIBUNALS (JP) [November 4]

Readings:

1. Boyle, Alan and Christine Chinkin, *The Making of International Law*, Oxford, University Press, Oxford, 2007, pp. 263-312.
2. Terris, Romano and Leigh Swigart, *The International Judge*, Oxford, 2007, read pp. xi-xiv, xix-xxii and 221-233 and glimpse at Appendix A (pp. 236-245).
3. Stone Sweet, Alec, "Judicialization and the Construction of Governance", *Comparative Political Studies*, vol. 32, 1999, pp. 147-184, read pp. 147-164 and 178-181.

Discussion Questions:

1. Does greater integration among States necessarily call for stronger courts?
2. Can international courts really become fully independent from governments?

Essay Questions:

1. What has changed in the landscape of international courts and tribunals in the last 50 years? What factors prompted this change, and is it for the better?
2. Is further judicialisation of international institutions and dispute settlement (i.e., the move from dyadic to triadic dispute resolution or from consensual to compulsory jurisdiction of international tribunals) by definition a good thing? What could be counter-balancing or even counter-productive factors?
3. Take an international institution of your choice. Analyse it in terms of further judicialisation and make conclusions about the costs, benefits and legitimacy of a further judicialisation on the international scene.

PART III SUBJECT-MATTER CASE STUDIES

IX. GLOBAL AND REGIONAL INTEGRATION (CD) [November 11]

Readings:

1. WTO, *World Trade Report 2007*, http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report07_e.pdf read pp. 89-98, pp. 111-120, pp. 126-127(box 6), pp. 179-200, 261-268 and 321-342.
2. Pauwelyn, Joost, "The Transformation of World Trade", *Michigan Law Review*, 1004(1), 2005, pp. 1-65, read pp. 1-9, 24-34, 36-37 and 56-65.
3. Baldwin, R. E., "Multilateralising Regionalism: Spaghetti Bowls as Building Blocs on the Path to Global Free Trade", *The World Economy*, 29(11), 2006, pp. 1451-1518, read pp. 1474-1485 on the narratives of the dynamics of integration.

Discussion 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. What is the conventional story of legalization in the GATT/WTO system? How does Pauwelyn's account differ? Can one apply the exit vs. voice model to other international institutions?

Essay Question:

1. Compare the narratives of the evolution from GATT to WTO as it is described in the World Trade Report, Pauwelyn and Baldwin. What are the differences and similarities? Which narrative is more convincing, and why?

X. PROTECTION OF THE ENVIRONMENT (CD) [November 18]

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>. Read the following two chapters:
 - Ivanova, Maria, "Moving Forward by Looking Back: Learning from UNEP's history"
 - Biermann, Frank, "Reforming Global Environmental Governance: From UNEP Toward a World Environmental Governance"
2. Palmer, Geoffrey, "New Ways to Make International Environmental Law", *American Journal of International Law*, vol. 86, 1992, pp. 259-283.
5. Frey, Bruno, "Morality and Rationality in Environmental Policy", *Journal of Consumer Policy*, vol. 22, 1999, pp. 395-414, read pp. 396-398 and 404-414.

Discussion Questions:

1. When are environmental issues local problems and when are they global ones? 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 blocks of the global governance architecture? Why is there a WTO but not a WEO?
4. What are the options for reform? Should there be a World Environmental Organization? Tabula rasa or rearranging the current institutional fragmentation?
5. Could market-based solutions work?

Essay Questions:

1. Compare the narrative of the creation, evolution, core problems and appropriate reforms of international environmental governance as it is presented by Ivanova, Biermann and Palmer.
2. Compare the analysis by Frey to the readings on "legalization" and "hard v. soft law" in session III above and "optimal institutional design" in session IV above.

XI. INTERNATIONAL LABOR STANDARDS (JP) [November 25]

Readings:

1. Helfer, Laurence, "Understanding Change in International Organizations: Globalization and Innovation in the ILO", *Vanderbilt Law Review*, vol. 59, 2006, pp. 649-726, read pp. 649-657, 671-688, 690-702 and 705-726.
2. Alston, Philip, "Core Labour Standards and the Transformation of the International Labour Rights Regime", *European Journal of International Law*, June 2004, vol. 15, pp. 457-521, read pp. 457 and 518-521.
3. Langille, Brian A, "Core Labour Rights – The True Story (Reply to Alston)", *European Journal of International Law*, June 2005, vol. 16, pp. 409-437, read pp. 409 and 417-420.
4. Standing, Guy, "The ILO: An Agency for Globalization?", *Development and Change*, vol. 39, 2008, pp. 355-384, read pp. 355-369, 373-374 and 378-382.

Discussion Questions:

1. What are the arguments for and against the ILO's enactment of "core labor standards"? Where do you stand in this debate between Alston and Langill? Do earlier readings on "legalization", "soft v. hard law" and "optimal design" of IOs assist in resolving this debate?
2. What is the role, if any, of the ILO in today's globalised economy? How should the ILO be reformed to appropriately fulfil this role?

Essay Questions:

1. Based on, in particular Standing and Alston v. Langille, what cross-border problem is the ILO responding to? Are the ILO's member States involved in a prisoners' dilemma game (trying to prevent a race to the bottom) or are we talking rather of an assurance game (see reading 1 of session II). What institutional consequences are linked to classifying the ILO as an assurance game as opposed to a prisoners' dilemma?
2. Compare the narratives of the creation, development, current problems and best way forward for the ILO as described in the four different readings above.

PART IV CROSS-CUTTING SYSTEMIC QUESTIONS

XII. DELEGATION TO, POWERS OF, AND ACCOUNTABILITY OF INTERNATIONAL INSTITUTIONS (JP) [December 2]

Readings:

1. Grant, Ruth W. and Robert O. Keohane, "Accountability and Abuses of Power in World Politics", *American Political Science Review*, 99(1), 2005, read pp. 1-15.
2. ***, Conceptions of Democratic Legitimate Governance in the Multilateral Realm: The Case of the WTO, read pp. 1-16 and 21-29.
3. Cheneval, Francis, "Multilateral Democracy: The Original Position", *Journal of Social Philosophy*, 2008, read pp. 42-58.
4. Klabbers, Jan, *An International Introduction to Institutional Law*, 2002, read pp. 300-319.
5. *Accountability at the World Bank*, The Inspection Panel 10 Years On, read pp. 2-17 and 89-99.

Discussion Questions:

1. What are the main problems connected to delegation in international organizations?
2. Is lack of accountability a real problem for international organizations?
3. Can international institutions be held legally 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?
4. In what ways does the Inspection Panel hold the Work 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?

Essay Questions:

1. How can international governance be made “democratic”? Is this at all possible? Compare Grant & Keohane to Cheneval, and other authors mentioned in reading 2.
2. If you were to follow Cheneval’s two-step process behind a “veil of ignorance”, what would a multilateral trade system look like? In what way, if at all, would you expect it to differ from the current WTO?
3. Should all IOs have some form of “Inspection Panel”? If so, which form would likely be most appropriate?

XIII. FRAGMENTATION, OVERLAP AND CONFLICT (JP) [December 9]

Readings:

1. Pauwelyn, Joost, *Conflict of Norms in Public International Law*, Cambridge, 2003, pp. 12-24, 436-439.
2. 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, pp. 1-27 (skip the discussion of case studies).
3. Pauwelyn, Joost, “How to Win a WTO Dispute Based on Non-WTO Law”, *Journal of World Trade*, vol. 37, 2003, read pp. 997-1005 and 1019-1030.
4. Specific examples
 - Pauwelyn, Joost, “The UNESCO Convention on Cultural Diversity, and the WTO: Diversity in International Law-Making?”, *ASIL Insight*, 15 November 2005.
 - Ashaki, Binta, “Denied collective bargaining, North Carolina employees turn more militant”, *Labor Notes*, 2007.
 - “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.
 - Sofie Meunier & K. Alter, “Nested and Overlapping Regimes in the Transatlantic Banana Trade Dispute”, *Journal of European Public Policy*, 13:3, April 2006, pp. 362-382.

Discussion Questions:

1. Is 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. 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?

Essay Questions:

1. What overarching conclusions on the question of fragmentation and overlap do you draw based on the specific examples discussed in the readings?
2. Is overlap a temporary problem that tends to fade away with time? Why or why not?

XIV. FINAL EXAM [December 16, 10 AM to 1 PM]