

## International Affairs

Academic year 2009 - 2010

## International Institutions and Regulation

**E280 – Spring – International Institutions and Regulation–  
6 ECTS**

**Tuesdays 14:15-16:00 (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 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). Compulsory for MIA students ; closed to other students.

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## Syllabus

### Course Website

[http://graduateinstitute.ch/mia/mia/curriculum/compulsory\\_courses/international-institutions-regulation.html](http://graduateinstitute.ch/mia/mia/curriculum/compulsory_courses/international-institutions-regulation.html)

### Requirements

Students will be evaluated on the following requirements:

1. *For 60% of the grade:* Three (3) **short essays** of approximately 1000 words (+/-10%). These short essays must provide a clear and coherent answer to a specific "Essay Question", which you can choose from the list in the outline below. The three essays must be written on course material in **THREE** different parts of the course; **failure to comply with this requirement will be sanctioned**. The essays must be handed to the assistants in hard copy at the beginning of the relevant class.

NOTE: please systematically use a referencing method; indicate word count at the end of the assignment; and choose reader-friendly font and spacing. Excessive length or brevity will be sanctioned.

2. *For 40% of the grade:* A 3-hour open book **final exam**, which will be held on **June 1** 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: Make sure you plan ahead and spread out the workload over the course of the semester. In addition to the sanction for writing two papers in the same part, the workload can become unmanageable if you do not front-load your semester.

NOTE: **The deadlines are firm.** Except for valid medical reasons (with a medical certificate), late papers will be penalized: -.25 for 1-4 hours; -0.5 for 4-8 hours; -0.75 for 8-12 hours, and -1 point per day for +12 hours

3. Active and high-quality participation is greatly encouraged and will be taken into account when finalising the grade. Questions to help you prepare for class discussion are listed in the outline below.

### **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. A reading packet (polycopié) is available for purchase at *Imprimerie Minute* (7, rue Voie-Creuse, Tel: 022.734.0000, [www.imprimerie-minute.ch/minute/](http://www.imprimerie-minute.ch/minute/)). Readings for the first session will be posted on the website.

### **Outline**

#### **I. INTRODUCTORY CLASS [February 23]**

##### **Readings:**

1. The Economist, "What a way to run the world", 5 July 2008, cover page and p. 15 with tables.
2. Beth Simmons and Lisa L. Martin, "International Organizations and Institutions" in Carlnaes, Risse, & Simmons eds, *Handbook of International Relations*, 2002, read pp. 192-194.
3. Klabbers, Jan, *An Introduction to International Institutional Law*, Cambridge, 2009, pp. 6-12.
4. Opinion by Brownlie & Goodwin-Gill on status of Inter-Parliamentary Union (IPU), pp. 1-5 (just read the summary or "Statement").

##### **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. How and in what ways has the interest in researching IOs changed over time?

##### **Essay Questions:**

1. Compare Klabbers' definition of international organizations to the definitions/classifications in Simmons and Martin. What distinguishes an international law scholar from an international relations scholar in this respect?
2. Do you agree that the IPU is an IO? Why does this question matter for lawyers, and why for international relations?

### **PART I INTERDISCIPLINARY BACKGROUND**

#### **II. INTERNATIONAL COOPERATION AND THE STUDY OF INTERNATIONAL INSTITUTIONS (ME) [March 2]**

##### **Readings:**

1. Beth Simmons and Lisa L. Martin, "International Organizations and Institutions" in Carlnaes, Risse, & Simmons eds, *Handbook of International Relations*, 2002, read pp. 194-206.
2. 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.

3. Drezner, Daniel, *All Politics is Global*, Princeton, Princeton University Press, 2007, read pp. 32-33, 51-58 and 71-87.

Discussion Questions:

1. Are there situations in which international institutions could “spontaneously” emerge?
2. How can game theory help understand or predict policy outcomes in international politics?
3. How has the liberal approach to international institutions changed over time?
4. Is the market analogy of supply and demand a good entry point into the discussion on the emergence of institutions?
5. What are the difficulties in thinking about institutional effects?

**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. Drezner makes a convincing case that what matters are the preferences of Great Powers. But can you think of counterfactuals? When has policy coordination been possible despite divergent preferences between great powers? What made the difference?

**III. SOURCES AND THEORIES OF INTERNATIONAL LAW AND VARIETY IN INTERNATIONAL LEGAL INSTRUMENTS (JP) [March 9]**

**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.
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?
2. 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.
3. Aust claims that only States are subjects of international law. Make a case for an expanded list of subjects.
4. Are some issue-areas or problems better-suited for harder or softer types of legalization? If so, which ones?

**IV. OPTIMAL INSTITUTIONAL DESIGN: RATIONALITY, LAW & ECONOMICS (ME) [March 16]**

**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*, 2008, read pp. 1-15 and 198-206.
3. Koromenos, B., C. Lipson, et al., "The Rational Design of International Institutions", in *International Organization*, 55(4), 2001, 761-799, read pp. 762-780.
4. Hawkins Darren, David Lake, Daniel Nielson, and Michael Tierney. *Delegation and Agency in International Organizations*, New York: Cambridge University Press, 2006, read introduction pp. 3-38.

#### Discussion Questions:

1. Why do states delegate to international organizations and what explains differences in control tools to oversee their work
2. Is there such a thing as optimal design, can we think of optimal opt-outs?
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.

## V. INTERNATIONAL INSTITUTIONS AS SOCIAL ACTORS (ME) [March 23]

#### Readings:

1. Alastair Iain Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45:4 (December 2001), 487-516.
2. Jeffrey T. Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," *International Organization*, Vol. 59, No. 4, Autumn 2005, pp. 801-826.

#### Discussion Questions:

1. How do international organizations contribute to norm change? Under what conditions do norms emerge or diffuse?
2. What was easier in the past for IOs to undergo socialization processes, when there was less transparency and less public interest?
3. Can we entangle mechanisms such as "persuasion" from "social influence"?
4. How relevant is Checkel's framework for international organizations beyond the European Union?

#### Essay Questions:

1. How can a social-constructivist approach to international institutions better account for policy outcomes than rationalist approaches? Discuss critically and provide examples.
2. What are the conditions under which Checkel's framework is useful? What can be criticized from a rationalist perspective?
3. Pick an IO and analyze whether there is a particular social environment and how this affects the politics of the organization?

## **PART II                      ACTORS & PROCESSES**

### **VI.      NEW ACTORS AND NEW FORMS OF GOVERNANCE (JP) [March 30]**

#### **Readings:**

1. Kenneth Abbott & Duncan Snidal, Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit, 42 *Vanderbilt Journal of Transnational Law* (2009), 501-578, read p. 501-519 and 577-8.
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. Elsig, Manfred & Amalric, Franck, "Business and Public-Private Partnerships for Sustainability: Beyond Corporate Social Responsibility?" *Global Society*, Volume 22, Number 3, July 2008, pp. 387-404, read pp. 387-96.
5. Mattli, Walter & Tim Büthe, "Setting International Standards: Technological Rationality or Primacy of Power?" *World Politics*, 56(1), 2003, pp. 1-42, just read the introduction and conclusion (pp. 1-6 and 40-42).
6. 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.

#### **Discussion Questions:**

1. What are the characteristics of the "Transnational New Governance"? Why is it different from the Old? Does it suffer the same constraints and limits?
2. How is the role of the State modified in the New Governance model?
3. What are the advantages of using "soft law" for purposes of international regulation?
4. Is there, or should there be, any difference in the role given in international law-making to the Holy See, Taiwan, indigenous peoples, Greenpeace and the International Chamber of Commerce, all of which are non-State actors?
5. Is the increasing influence of private actors in world governance a good thing?
6. How do you assess the new hype for providing international public goods through Public-Private Partnerships? Why do NGOs participate?
7. Are there domains in which the influence of private actors is likely to remain minimal?
8. Do you think that private actors are mostly instrumentalized by States and have therefore little influence?

#### **Essay Questions:**

1. In what sectors is private governance ideal, desirable or preferable (and for whom?)
2. What are the benefits and pitfalls of private regulation? Can we expect this kind of regulation to grow in the near future, and why?
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. 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 (JP) [April 13]**

#### **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. Karen Alter, "Agents or Trustees? International Courts in their Political Context", *European Journal of International Relations*; 14 (1), 2008, pp. 33-63, read pp 33-48 and 54-55.

Discussion Questions:

1. Does greater integration among States necessarily call for stronger courts?
2. Can international courts really become fully independent from governments?
3. The international judge: are they agents or trustees of the principals? What explains their behaviour?
4. How do international courts differ from national courts, what are similarities?

**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. 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.
3. Which international courts matter and why?

**VIII. INTERNATIONAL CIVIL SERVANTS (ME) [April 20]**

**Readings:**

1. Barnett, Michael & Finnemore, Martha, *Rules for the World: International Organizations in World Politics*, Cornell University Press, 2004, read pp. 16-44.
2. Elsig, Manfred, "Principal-Agency Theory and the World Trade Organization: Complex Agency and 'Missing Delegation'" *European Journal of International Relations*, forthcoming.

Discussion Questions:

1. Why are states reluctant to delegate power to international civil servants?
2. How can we measure the influence of civil servants?
3. What type of pathologies within bureaucracies emerge and why?
4. Why should we be concerned about bureaucratic autonomy in IOs? How can international civil servants be held accountable?
5. Isn't the problem due to member states' diverging interests and reluctance to delegate? What are principal costs that can develop?

**Essay Questions:**

1. Pick an organization (not described by Barnett and Finnemore) and critically discuss the use of various types of authority by civil servants.
2. Pick an IO and discuss problems on the "principal's side" that impact the performance of an IO.
3. Contrast rational and social-constructivist explanations to account for the behavior and influence of international civil servants. Discuss critically with examples.

**IX. INFORMAL INTERNATIONAL PUBLIC POLICY MAKING (JP) [April 27]**

**In collaboration with Ayelet Berman.**

**Readings:**

1. Slaughter, Anne-Marie, "Governing the Global Economy through Government Networks", in Byers M., *Role of Law in International Politics*, Oxford University press (2000), pp. 177-205.
2. Hague Institute for the Internationalisation of Law, "Call for Research Proposals: HiiL Research Theme on Transnational Constitutionality: Democracy and Accountability in the Context of Informal

International Public-Policy Making", available at [http://www.hiil.org/assets/144/22-6434-Hiil\\_Constitutional\\_Law\\_Project\\_-\\_Tender\\_Document.pdf](http://www.hiil.org/assets/144/22-6434-Hiil_Constitutional_Law_Project_-_Tender_Document.pdf), pages 3-10.

3. Raustiala, Kal, "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law", 43 *Virginia Journal of International Law* (2002-2003), read pages 2-6 and 10-26.
4. Slaughter, Anne-Marie and Zaring, David, "Networking Goes International: An Update", 2 *Annual Review of Law and Social Science* (2006), read pp. 215-217 and 220-224.
5. Anderson, K. "Squaring the Circle? Reconciling Sovereignty and Global Governance Through Global Government Networks (Review of Anne-Marie Slaughter, a New World Order)." January 2005, *Harvard Law Review* 118: read pages 1276-1278, 1298-1301 and 1311-1312.

#### Discussion Questions:

1. Why is the kind of cooperation described in the literature above considered "informal"?
2. What are the accountability problems that transgovernmental regulatory networks are typically criticized for?
3. Provide examples of several known transgovernmental networks.

#### Essay questions:

1. Would you consider accountability problems to be more severe in informal modes of cooperation (such as by transgovernmental networks) than in formal modes of cooperation (such as traditional intergovernmental organizations)?
2. What would you consider the advantages and disadvantages of informal modes of cooperation (such as by transgovernmental networks) in comparison to formal modes of cooperation (such as by traditional IOs).
3. Suggest an analysis as to the status of transgovernmental networks in international law.

### **PART III SUBJECT-MATTER CASE STUDIES**

#### **X. PROTECTION OF THE ENVIRONMENT (ME) [May 4]**

##### 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.
3. Use the rational design literature to propose reforms for UNEP.

## **XI. INTERNATIONAL LABOR STANDARDS (JP) [May 11]**

### **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 (ME) [May 18]**

### **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. Klabbers, Jan, *An International Introduction to Institutional Law*, 2009, read pp. 271-293.
4. *Accountability at the World Bank*, The Inspection Panel 10 Years On, read pp. 2-17 and 89-99.
5. Draft Articles by International Law Commission on Responsibility of International Organizations, June 2009.

### **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 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?
5. When reading the ILC draft articles, what strikes you as problematic or missing?

**Essay Questions:**

1. How can international governance be made “democratic”? Is this at all possible?
2. Should all IOs have some form of “Inspection Panel”? If so, which form would likely be most appropriate?

**XIII. FRAGMENTATION, OVERLAP AND CONFLICT (JP) [May 25]**

**Readings:**

1. Pauwelyn, Joost, *Conflict of Norms in Public International Law*, Cambridge, 2003, pp. 12-24, 436-439.
2. 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.
3. 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. Can we speak of hierarchies of policy fields?
5. What explains the fragmentation of international law? Is it really a novel phenomenon?
6. 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 [June 1st, 10 AM to 1 PM]**