

International Law

Academic year 2019-2020

Change and Stability in the International Legal Order

DI127 - Autumn - 6 ECTS

Wednesday 12h15 - 14h00, room S5

Course Description

International law is constantly evolving, but we have a very limited understanding of how it evolves. Lawyers tend to point to the formal doctrine of sources without taking into account the informal, social life of legal norms. International relations scholars usually focus on treaty-making and ignore the other, less easily understood forms in which the international legal order develops. In this seminar, we seek to gain a better idea of the processes and conditions of international legal change. We will look at the urgency with which the problem of change was approached by thinkers at different points in time, but we will aim in particular at a clearer analysis of the empirical phenomenon of change. We will use different issue areas of international law to discern commonalities and differences between them, and we will pay attention to particular actors and factors behind international legal change, among them powerful states, norm entrepreneurs, courts, and expert bodies. The course requires a written research paper on a topic to be determined by the student in cooperation with the instructor. Students will present a draft of the paper at a workshop session towards the end of the course.

Important: *The first session will take place on Monday, 23 September, 18h15 to 20h00 in room S5.*

> PROFESSOR

[Nico Krisch](#)

[Office hours](#)

> ASSISTANT

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[Office hours](#)

Syllabus

Course Requirements

The course will be taught in an interactive way, and its success depends on all students being well prepared for, and ready to participate in, each session. All students will have to prepare a research paper (maximum 6,000 words, excluding footnotes and bibliography) on a topic agreed with the

instructor on the basis of their own proposals. Papers can address more theoretical questions, but can also focus on case studies of particular instances of change in international law.

Students will present, and receive feedback on, their draft papers during a full-day workshop on 7 December on which attendance is mandatory. All students are encouraged to suggest possible paper topics early on in the class, and no later than 15 October 2016. The draft paper is due on 2 December and the final research paper has to be submitted by 30 December.

Evaluation

The course grade consists of a 20% component for class participation, another 20% component for the presentation of the draft research paper and a 60% component for the final research paper.

Readings

The course does not use a particular textbook; the required readings for the course will be made available on Moodle. Please do also explore the literature beyond the required readings; it is only through engaging with scholarship and practical materials on your own initiative that you will develop your own take on change and stability in the international legal order.

Readings will be made available ahead of time for each session.

The course is linked to a research project, *PATHS: The Paths of Change in International Law*. More information on the project and related events is available [here](#).

Structure (provisional, subject to change)

1. Introduction (exceptionally: Monday, 23 September, 18:15-20:00)

This session will introduce the course, its main themes and questions as well as course requirements, including the research paper.

2. Points of Change in the International Legal Order (25 September)

This session undertakes a first inquiry into the macro-dimension of international legal change. Which were major change points in the history of international law? How do they relate to change in world politics? When do changes in interests, ideas and power translate into law, and when do they not? And into what kind of law do they translate? This inquiry will take us into broader questions of the historiography of international law, but also into the frames that can help structure the analysis of change processes, in particular the literature on historical institutionalism.

3. The Problem of Change in Inter-War International Law (2 October)

The problem of change was particularly virulent in the 1920s and 1930s when the peaceful adaptation of legal obligations to new political circumstances had become a pressing need and the consensual structure of international law-making was often seen as an obstacle to such adaptation. We will explore how actors and scholars at the time thought about, and sought to deal with, the challenge, and paved the way for later engagements. This should also help us to frame the analytical and normative questions around change more clearly. Do the challenges of the past persist in international law today?

4. Norm Change and Law Change in the Contemporary International Order (9 October)

Over the past twenty years, the question of how international norms change has been of increasing interest not only to lawyers but also to international relations scholars. In this session, we will explore some of the pertinent IR literature and its promise for understanding international *legal* change. We will especially focus on two major contributions to the study of international legal change from an IR perspective – those of Wayne Sandholtz and of Paul Diehl and Charlotte Ku – and ask what they help us see and what they obscure. And do they fit equally for all areas of international law?

5. Power, Precedent, Change (16 October)

Many theories centre on the role of powerful states for bringing about change, both as regards treaty-making and less formal modes of change, through precedent and the making of customary law. But how important are they really in this process? Can international legal change happen without the great powers, or even against them? In this session, we will analyse different instances of change and try to understand which actors have been key to the success or failure of change attempts.

Deadline: paper proposals (17 October)

6. Courts as Law-Makers (exceptionally: Monday, 21 October, 18:15-20:00 [TBC])

Not all change – and perhaps not even most change – is the product of direct state action; many instances of change are far more closely related to other actors. In this session, we look at the role of courts and quasi-courts. How influential are they for changing international law? Und what are the conditions under which they can be so influential? We will analyse change processes in different contexts – issue areas as well as geographical contexts – and try to gain a better grasp of the dynamics in each of them.

7. The Many Paths of Change (30 October)

Change in international law comes about in many other ways than directly through states and courts, and often through actors without a clear mandate for doing so. In this session, we will draw together and complement insights from previous sessions as regards the many paths on which change travels. Which authorities are relevant where? What role do international organizations, experts and private actors play in the development of international law? Why are they sometimes relevant and sometimes not?

8. Contested Paths (6 November)

What counts as relevant for change in international law is not easily subject to agreement among actors. Some focus on state action, others privilege statements and resolutions, yet others place emphasis on institutional and judicial action. Where do the dividing lines lie? What counts in which discourse? We will seek to reconstruct some of the contestation, try to link it to a broader interest in comparative international law, and use it to think about how international law is, after all, socially constructed through practice.

9. States at the Centre: Stasis and Change in the ILC (13 November)

Since World War II, the International Law Commission has been a major site for conceptualizing and codifying the ways of change of international law. This became reflected in, inter alia, the Vienna Convention on the Law of Treaties and the more recent conclusions on customary international law and the subsequent practice in treaty-making. On the basis of our insights in the previous sessions, we will analyse the choices made by the ILC in the process and the potential and limitations of its approach(es).

10. Change in and from International Law (20 November)

Change often takes place not through the modification of one or the other international legal rule, but rather through shifts from one mode of governance to another. Examples include shifts from bilateral to multilateral treaties (and back), from legal rules to informal rules, from public to private rule-making, or from multilateral to unilateral forms of regulation. When thinking about change in international law, we need to take also this change of and around international law into view. In this final session, we try to get a glimpse of the dynamics of these kinds of shifts.

Deadline: draft papers (2 December)

11.-14. Workshop (Saturday 7 December, 10:00-18:00)

This full-day session will feature panels with presentations of draft papers and feedback from other participants, with a view to developing the paper towards its final version. Attendance throughout the day is mandatory.

Deadline: final papers (30 December)