

Course: International Law and Economics

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International law scholarship has predominantly been doctrinal in nature. Nevertheless, international law and rational choice assumptions have been closely connected for a long time. For the most part, realist thinkers in international relations are the ones who have used rational choice assumptions to explain states' behavior (though [liberal] institutionalist thinkers have done so as well), but they have rarely entered into legal intricacies. Instead, "big theories" have been at the forefront of the discussion. Economics is the study of rational choice. The rational choice approach to international law allows for theoretical conjectures that can be tested empirically regarding two questions: What are the effects of international law (international law as explanans; this question includes its effectiveness)? Why do states legalize their relations (international law as explanandum)? International law is a rather young subject of economic analysis of law, but it has gained prominence since 2000. Following the traditional international law assumptions in the aftermath of the Westphalian peace, the nation-state has mostly been analyzed as a unitary actor, or what has been described as a "black box" state, but in the discussion on international governance this has also changed recently. Analyzing international law through the rational choice perspective has become a joint enterprise by economists, international lawyers, and rational-choice political scientists, focusing on more precise questions of international law scholarship intended to inform doctrinal scholarship as well. Rational choice analysis may be used to diagnose substantive problems and frame better legal solutions, explain the structure or function of particular international legal rules or institutions, and reconceptualize or reframe particular institutions or international law generally, such as customary international law. It is well acknowledged that legal scholars alone cannot accomplish these tasks, and that social science approaches are needed to address them. By now, many international relations scholars, as well as law and economic scholars, start from a rationalist assumption but do not exclude other explanatory factors used by other theories and the newest developments include a behavioral approach to international law.

The class looks at those questions, exploring more general international law questions such as treaty design and compliance but also analyzing selected issue areas of international law (except International Economic Law, that is, international trade law and international investment law that will be taught in the third term). Students in this course will find that a background in international law would be necessary but prior courses on public international law or arbitration are not a formal prerequisite. (Those who have not taken an international law course are strongly encouraged to, over the first weeks of term, become familiar with the basic sources of international law (treaty and custom) and interpretation thereof in a basic text, such as the West nutshell on Public International Law.)

The Course takes place in Room 1083a on:

Monday, 02 March 14-17pm

Tuesday, 03 March 9-12 am, 1-3pm

Wednesday, 04 March 10-12 am, 1-3pm

Thursday, 05 March 9-12 am, 1-3pm

Friday, 06 March 9-12 am

Office Hours:

My office hours are by individual appointment (please send mail).

Requirements

This is a 4 ECTS credit course, The exam will be a closed book exam of 3 hours. The readings are available on the course web.

We mainly use articles or chapters from books provided online but the following list will give an overview over the most important books on the topic. Further references will be given on the slides but are not mandatory readings, but the slides are mandatory reading. Students must read the materials listed below before coming to class.

There is a small number of books providing a general overview over the newly emerging field of “International Law & Economics”. They include

Guzman, A. T. (2008). How international law works: a rational choice theory. Oxford University Press.

Kontorovich, E. and F. Parisi (eds., 2016). Economic Analysis of International Law. Cheltenham et al.: Elgar.

Posner, E. A., & Sykes, A. O. (2013). Economic foundations of international law. Harvard University Press (PS)

Scott, R. E., & Stephan, P. B. (2006). The Limits of Leviathan: Contract Theory and the Enforcement of International Law. Cambridge University Press.

Trachtman, J. P. (2009). The economic structure of international law. Harvard University Press.

Barbara Koremenos, (2016), The Continent of International Law, Cambridge University Press

A very critical analysis of international law in general is

Goldsmith, J. L., & Posner, E. A. (2005). The limits of international law. Oxford University Press.

Content of classes and Readings

<i>Classes:</i>	<i>Themes:</i>	<i>Readings:</i>
Class 1	Introduction to the Approach of L&E to IL (history, assumptions and other disciplines)	DUNHOFF, J. L. & POLLACK, M., Introduction. In: DUNHOFF, J. L. & POLLACK, M. (eds.) Interdisciplinary Perspectives on International Law and International Relations (Cambridge: Cambridge University Press), 3
Class 2	Basic Structure of International Law and why it is so interesting for Economic Analysis	PS, Chapter 1-3
Class 3	Sources and Soft Law	GUZMAN, A. T., & MEYER, T. L. (2010). International soft law. Journal of Legal Analysis, 2(1), 171-225.
Class 4	Why and how do States sign Treaties?	KOREMENOS, B., LIPSON, C. & SNIDAL, D. 2001. The Rational Design of International Institutions. International Organization, 55, 761-799. ABBOTT, K. W. & SNIDAL, D. 2000. Hard and Soft Law in International Governance. International Organization, 54, 421-456.
Class 5	Compliance with International Law	CHAYES, A. & HANDLER CHAYES, A. 1993. On Compliance. International Organization, 47, 175-205. STEIN, J. V. 2013. The Engines of Compliance. In: DUNHOFF, J. L. & POLLACK, M. (eds.) Interdisciplinary Perspectives on International Law and International Relations (Cambridge: Cambridge University Press), 477
Class 6	Courts and Dispute Settlement	Karen J. Alter. The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review In: DUNHOFF, J. L. & POLLACK, M. (eds.) Interdisciplinary Perspectives on International Law and International Relations (Cambridge: Cambridge University Press), 345

Class 7	International Organizations, Regulatory Networks and Global Governance	KENNETH ABBOTT, DUNCAN SNIDAL, Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit, Vanderbilt Journal of Transnational Law 42, 501-578
Class 8	International Human Rights Law	HATHAWAY, O. A. (2002). Do human rights treaties make a difference?. The Yale Law Journal, 111(8), 1935-2042 HATHAWAY, O. A. (2007). Why do countries commit to human rights treaties? Journal of Conflict Resolution, 51(4), 588-621.
Class 9	International Environmental Law	PS, Chapter 16 Anne van Aaken, Behavioral Aspects of the International Law of Global Public Goods and Common Pool Resources, American Journal of International Law 112(1) 2018, pp. 67-79
Class 10	Behavioral International Law and Economics	Anne van Aaken, Behavioral International Law and Economics. In: 55 Harvard International Law Journal (2014), pp. 421-481