

Course: Economic Analysis of International Law

Prof. Dr. Anne van Aaken

Contact: anne.van.aaken@uni-hamburg.de

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 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 – we are turning to multilevel governance framework in international law. Analyzing international law through the rational choice perspective has become a joint enterprise by economists, international lawyers, and rational-choice international relations scholars, 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. The newest development is a behavioral economics approach to international law which we will also cover, also given that the United Nations uses behavioral sciences now to achieve all its goals, including the Sustainable Development Goals.

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 the interpretation thereof in a basic text, such as the West nutshell on Public International Law or any other shorter one.

The course will take place in VMP5, Room 1083a on:

Monday, 6 February	10-13h and 14-16h
Tuesday, 7 February	10-13h and 14-16h
Wednesday, 8 February	10-13h
Thursday, 9 February	10-13h and 14-16h
Friday, 10 February	10-12h

Office Hours:

By individual appointment. Please send an e-mail to anne.van.aaken@uni-hamburg.de. Please ask all course-related questions to all via mail so that everyone can benefit.

Requirements

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

We mainly use articles or chapters from books provided online but the following list will give an overview of 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 of the newly emerging field of “International Law & Economics”. They include:

Trachtman, J. P. (2009). *The economic structure of international law*. Harvard University Press (I deem the best).

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.

Barbara Koremenos, (2016), *The Continent of International Law. Explaining Agreement Design*, 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

Classes:	Themes:	Readings:
Class 1	<i>Introduction to the Approach of L&E to International Law</i>	DUNHOFF, J. L. & POLLACK, M. (2013), Introduction. In: DUNHOFF, J. L. & POLLACK, M. (eds.) <i>Interdisciplinary Perspectives on International Law and International Relations</i> (Cambridge: Cambridge University Press), 3-32
Class 2	<i>Behavioral International Law and Economics</i>	VAN AAKEN, A. (2014), Behavioral International Law and Economics. In: <i>55 Harvard International Law Journal</i> (2014), pp. 421-481
Class 3	<i>Basic Structures of International Law</i>	PS, Chapters 1-3
Class 4	<i>Sources of International Law and their Interpretation</i>	GUZMAN, A. T., & MEYER, T. L. (2010). International soft law. <i>Journal of Legal Analysis</i> , 2(1), 171-225.
Class 5	<i>Why and how do States sign Treaties?</i>	KOREMENOS, B., LIPSON, C. & SNIDAL, D. 2001. The Rational Design of International Institutions. <i>International Organization</i> , 55, 761-799. ABBOTT, K. W. & SNIDAL, D. 2000. Hard and Soft Law in International Governance. <i>International Organization</i> , 54, 421-456.
Class 6	<i>Compliance with International Law</i>	CHAYES, A. & HANDLER CHAYES, A. 1993. On Compliance. <i>International Organization</i> , 47, 175-205. STEIN, J. V. (2013). The Engines of Compliance. In: DUNHOFF, J. L. & POLLACK, M. (eds.) <i>Interdisciplinary Perspectives on International Law and International Relations</i> (Cambridge: Cambridge University Press), 477-501 VAN AAKEN&SIMSEK (2021). Rewarding in International Law, <i>American Journal of International Law</i> , 115(2), 195-241

Class 7	<i>Courts and Dispute Settlement</i>	ALTER, K. (2013). 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), 345-370
Class 8	<i>International Law behind the Headlines: International Organizations, Regulatory Networks, and Global Governance</i>	ABBOTT, K.W. & SNIDAL, D. (2021). Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit, Vanderbilt Law Review 42, 501-578
Class 9	<i>International Human Rights Law</i>	HATHAWAY, O. A. (2007). Why do countries commit to human rights treaties? Journal of Conflict Resolution, 51(4), 588-621.
Class 10	<i>International Environmental Law</i>	PS, Chapter 16 VAN AAKEN, A. (2018). Behavioral Aspects of the International Law of Global Public Goods and Common Pool Resources, American Journal of International Law 112(1), 67-79