
INTERNATIONAL ECONOMIC LAW INTRO

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Unit Eighteen

WHAT IS IEL?

INT'L ECONOMIC LAW AS LAW GOVERNING INT'L ECONOMIC ACTIVITY

So what is (int'l) economic activity?

- Trade in goods (your Samsung TV from BestBuy)
- Trade in services (with whom do you bank, fly, insure?)
- Investment across borders (look closely at your Samsung TV, it may have been made in Mexico rather than Korea)
- Free movement of labor (in EU by treaty, in US by custom as undocumented Mexicans picking fruit in rural counties)

ASSUME UNDERSTAND TECHNICAL DETAILS OF PUBLIC INTERNATIONAL LAW IN TERMS OF SOURCES, MEANING TREATY, CUSTOMARY LAW, GENERAL PRINCIPLES, ETC.

PUBLIC VS PRIVATE

ARGUMENTS ABOUT PUBLIC LAW (INSTITUTIONS) VERSUS PRIVATE LAW (TRANSACTIONS)

- **Public law focus on institutions entails confronting issue of whether transnational institutions, since law normally intensely local (by treaty)**
- **Private law focus on transactions raises questions regarding whether you need public institutions at all or rely instead on “dealings among merchants” (law vs custom)**
 - Is 15th century lex mercantoria distinctly inferior to current Convention on Sale of Goods as quasi-UCC Art 2 for export trade? (standardization)**

ECON VS LAW

The Lawyers' View

Int'l framework standard setting (regulatory)

**Issues re binding rules (law) vs diplomacy
(policy)**

Periodic crisis-systemic risk fire brigade

The Economists' View

**Changing nature of markets, geographically &
type (regulatory)**

**Coordination of policy problem (fiscal &
monetary)**

**Changes since original Bretton Woods system
post World War II (replacing 1930s
responses)**

IEL IN PRACTICE?

WHAT & WHY ARE INTERNATIONAL ECONOMIC LAW CORE AREAS?

- *IFIs and monetary law*
- *International trade law (now maybe more int'l economic integration law)*

ULTIMATE PROB OF STRONG MIXING OF ECONOMIC CONCERNS/ISSUES

- *Role of int'l financial system*
- *Trade among nations (economic integration)*

IEL ESSENTIALLY MIRRORS THE SYSTEM ITSELF, TO EXTENT IT PROVIDES OPERATIONAL "RULES" DISTANT FROM COMMON LAW MODELS (HALF INSTITUTIONS, HALF SUBSTANCE)

PIL CONCEPTS

WHAT ARE PUBLIC INT'L LAW CONCEPTS BEHIND INT'L ECONOMIC LAW?

Idea of no obligation to even trade internationally because of sovereignty over borders

- **Goods or services**

Very idea of nationality and control of entry/exit of foreigners and own nationals

- **Labor**

Idea of no rights of establishment in terms of foreign investment

- **Make versus import/export**

Parallel in idea of monetary sovereignty, ultimately entailing control of national economies

- **Dollar bill says “legal tender for all debts public and private”**

BUT ULTIMATELY THESE “CUSTOMARY LAW” VIEWS CAN BE CHANGED BY TREATY, SO IEL IS LARGELY MODERN ECONOMIC TREATY LAW IMPLICITLY CHANGING LEGAL FRAMEWORK

INSTITUTIONAL HISTORY

BRETTON WOODS SYSTEM IN HISTORICAL PERSPECTIVE

Concept at end WWII that war had resulted from economic troubles of 1930s, so 1944 creation of IMF & World Bank

ITO (Havana Charter) mooted but failed in adoption until 1994 WTO with interim 1948 GATT

UN Charter (San Francisco meeting 1945) itself contemplates back to 1943 Atlantic Alliance “peace & prosperity,” but remember economic development less successful than collective security in terms of Charter goals

BRETTON WOODS ORIG

CONDITIONS IN 1940s FOR IMF & WORLD BANK

Fixed exchange rates between currencies, gold convertibility for hard currencies

IMF essentially a regulatory & lending institution to maintain currency rates

World Bank created to rebuild Europe, but displaced by Marshall Plan while quickly moving into development lending for newly independent countries like India (1947)

ITO FAILED, ONLY “TEMPORARY” GATT (1947)

CURRENTLY...

CURRENT SHAPE OF ENVIRONMENT/INSTITUTIONS?

Market conditions?

Corporate finance explosion of instruments, etc.?

Exchange rate structures?

Economic integration in differing degrees (e.g., EU, NAFTA, etc.)

Private versus state involvement in markets?

WHERE DID THE LAST PAIR OF SHOES THAT YOU BOUGHT REALLY COME FROM?

WHAT DOES IT MEAN WHEN YOU PICK UP THE PHONE TO ORDER ANYTHING, AND THE PEOPLE AT THE OTHER END ARE SITTING IN A CALL CENTER OFFSHORE WHILE YOU PAY FOR THE GOODS OR SERVICES ORDERED VIA PLASTIC?

SYSTEM PLAYERS/FINANCE

INT'L FINANCIAL INSTITUTIONS OR IFIs

International Monetary Fund (IMF, 1944)

<http://www.imf.org>

**World Bank or International Bank for
Reconstruction & Development (IBRD,
1944)**

<http://www.worldbank.org>

Bank for International Settlements (BIS, 1930)

<http://www.bis.org>

Regional development banks (ADB 1966, etc.)

<http://www.adb.org>

SYSTEM PLAYERS/TRADE

GATT 1947/WTO 1994 (MULTILATERAL TRADE)

<http://www.wto.org>

MODERN REGIONAL EXAMPLES (INTEGRATION)

European Union 1953

<http://www.eu.int/> (only economic?)

NAFTA 1994

<http://www.nafta-sec-alena.org/DefaultSite/index.html> (only econ?)

FTAs (BILATERAL TRADE)

US-Singapore Free Trade Agreement 2003

http://www.ustr.gov/Trade_Agreements/Bilateral/Singapore_FTA/Section_Index.html (what happened to WTO?)

COOPERATIVE MECHANISMS (NON-BINDING, UNILATERAL)

Asia Pacific Economic Cooperation

<http://www.apecsec.org.sg> (why not FTAs?)

SYSTEM PLAYERS/GROUPINGS

INT'L GROUPINGS LIKE COUNTRY CAUCUSES

G-7 1975 (US, Japan, Germany, France, UK, Italy & Canada, now plus Russia G-8) heads of state annual meetings

G-10 1962 (G-7 plus Netherlands, Belgium & Sweden, now plus Switzerland G-11) more technical, rich countries for borrowings

[G-20 1999 (G-22 replacement, with inst. rep. too like IMF/World Bank)]

G-22 1998 (post Asian Financial Crisis temp. working group examining financial stability in G-7 plus 15 major developing countries)

G-77 1964 (now 130+ countries, essentially the developing world aka Non-aligned Movement during Cold War)

APEC 1989 (21 countries, Pacific Rim, <http://www.apecsec.org.sg/>)

OECD 1962 (club of the rich, <http://www.oecd.org>)

WHAT IS THE BASIS OF CAUCUSES, WHY BOTHER?

IFIs VS GROUPINGS

DIFFERENCES IFIs VERSUS INT'L GROUPINGS

Technical difference that IFIs are normally creatures of treaty and autonomous int'l law subjects (remember IEL as treaty-based law)

Practical difference that Int'l Grouping are usually just collections of major states meeting periodically to discuss current problems (so both financial system & trade interests as econ)

Legal insight how soft law is formed/hard law may emerge given players' nature

ECONOMIC ACTIVITY

***WHAT DOES THE BELOW MAP RE
1995 GDP TELL YOU ABOUT
COUNTRIES AND ECONOMIC
ACTIVITY AS AN UNDERLYING
REALITY OF INT'L ECONOMIC LAW?***

<http://www.lfip.org/laws666spring05/index.htm>

ECON CHANGES

WHAT IS HIDDEN ECONOMIC PICTURE & HOW DOES IT DIFFER BETWEEN ECONOMIES?

- 1. Goods versus services**
- 2. Changing nature of economies at different levels of development**
- 3. Does IEL under trade branch track these changes? So what?**
- 4. Changing patterns of production (intra-industry trade, multinational production platforms, global supply chains)**

GIVEN BREADTH, ARGUABLY CAN LOOK ONLY AT IEL EXAMPLES

IEL SUBSTANCE I

FOUR PILLARS OF GATT/WTO ON TRADE SIDE

1. Most Favored Nations
2. National Treatment
3. Trade Liberalization (negotiated tariff reductions in trade rounds)
4. Non-Tariff Barriers & “Fair Trade”

PRINCIPLES ACROSS DIFFERENT AGREEMENTS, IDEA ALMOST OF CONSTITUTIONAL PRINCIPLES NOW INTO SERVICES TOO

CHECK OUT [WTO streaming video page](#) & WATCH BASIC PRINCIPLES OF THE WTO SYSTEM (68 MIN)

IEL SUBSTANCE II

CURRENT DOHA ROUND DISCUSSION AREAS

1. Trade Liberalization-Agriculture
2. Trade Liberalization-Services
3. TRIPS & Singapore Issues (economic organization issues like competition policy, investment, government procurement)
4. Anti-Dumping & Counterveiling Duties
5. Trade & Environment reconciliation

IEL SUBSTANCE III

***FROM THE FINANCIAL TO ECONOMIC
SIDES (RE IMF)***

**What is money? (remember sovereignty
ques.)**

**Legally, who can create & regulate it (why
care who replaces Greenspan?)**

**Institutional framework under nat'l vs
international law (Federal Reserve vs IMF)**

IEL SUBSTANCE IV

IMF TECHNICAL SIDE COMPARABLE TO GATT/WTO FOUR PILLARS

Idea that IMF Articles of Agreement contain both an institutional structure (IMF the organization) and substantive principles as how far monetary sovereignty may go, at stake being

- Power to define a monetary unit and its value (official versus black market exchange rates)**
- Power under legal tender laws to require that payments be accepted at nominal value**
- Public banking system supervision in territorial state issuing currency (interest rates, credit policy and money supply control)**
- Power also to determine convertibility or non-convertibility (trade issues, current versus capital account, maintaining control over currency by not letting too much overseas)**

CURRENT IMF VIEW OF ITS ROLES INCLUDE SURVEILLANCE, TECHNICAL ASSISTANCE & FINANCING

IEL SUBSTANCE V

WHAT HAPPENS AS COUNTRY WHEN YOU HAVE MONEY PROBLEMS?

Combined IFI structural adjustment emphasis since 1970s, changing World Bank & IMF roles too

Conditionality in newer loan programs (do X or we will not loan to you, IMF LOI modality)

Arguments re moral hazard, abolition of IFIs (conservative US side, but where else do you see pro private sector/markets?)

IEL SUBST EXAMPLE

***EXAMPLE “WASHINGTON CONSENSUS”
SINCE 1980s***

**(NB– Washington Consensus means
IFIs, not US government)**

- 1) Eliminating fiscal deficits for stability
purposes**

***BUT PROBLEM OF LIMITING IDEA OF
KEYNESIAN GROWTH ENHANCEMENT
IN STIMULATIVE SPENDING***

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

**2) Reviewing public expenditure priorities
(increasing revenues versus decreasing
expenses)**

**a) Military spending sovereign prerogative, off
table**

**b) Subsidies strongly disfavored as distorting
economy & expensive**

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

**2) Reviewing public expenditure priorities
(increasing revenues versus decreasing
expenses)**

**c) Education & health spending viewed as proper,
but issue of actual composition (investment
versus consumption and helping disadvantaged)**

d) Public infrastructure investment as productive

***Concept of switching expenditures from subsidies
to education & health or public infrastructure***

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

3) Tax Reform

Ultimately just reverse of cutting expenditures in raising revenues, but disfavored by politicians while favored by technocrats

This is the revenue side of public expenditure priorities

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

4) Interest Rates

a) market determined to avoid misallocation of funds in bureaucratic credit rationing (efficiency hidden good)

b) positive real interest rates to discourage capital flight and perhaps encourage savings

EAST ASIAN DISAGREEMENT ON PICKING INDUSTRIAL CHAMPIONS

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

5) Exchange Rates

a) Concept of “competitive” exchange rate versus technical question of how determined (export competitiveness)

b) Ambivalence on liberalization of foreign capital flows from developing country perspective (capital account)

THINK US DISAGREEMENTS W/ CHINA

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

6) Trade Policy

- a) **Import liberalization & outward oriented economic policy**
- b) **Disfavoring import substitution protection for developing domestic industry (costliness argument & who profits)**
- c) **Import licensing & corruption problems, so if protection tariffs**
- d) **free trade idea subject to (temporary) infant industry issues, plus phase out versus big bang approach bringing costs**

LOOKING BACKWARDS TO 1950s, RATHER THAN MODERN ECON INTEGRATION CONCEPTS

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

7) Foreign Direct Investment

- a) Idea adding bricks & mortar capital good for real economy (current account & national accounts int'l econ concept)**
- b) distinguish it from liberalizing financial flows (capital account & national accounts int'l econ concept)**

8) Privatization

- a) Efficiency (hidden view markets better allocator than governments through State Owned Enterprises (SOEs given heavy govt involvement in econ))**
- b) Market preference as change since 1950s, linked with competition ideals**

IEL EX WASH CONS

WASHINGTON CONSENSUS (cont'd)

9) Deregulation

Idea ultimately is again competition through deregulation for cheaper prices and greater efficiencies

10) Property rights

Concept of property rights ties into contracting & incentives, to make markets work

HOW INTRUSIVE IS THE WASHINGTON CONSENSUS AND HOW FAR IS THIS OFF ORIGINAL IFI ROLE OF LENDER?

PROBLEM OF NEW ASIAN ATTEMPTS POST 1997 TO CREATE IMF ALTERNATIVE (AGMTS ON FOREIGN EXCHANGE RESERVE LENDING & EAST ASIAN COMMUNITY)?

IEL INSTITUTIONS+

IEL AS LAW VS INT'L ECONOMIC POLICY

How much of Washington Consensus wielded in hands of IFIs is law vs policy?

At extreme, aside from sovereignty claims, does it start to hit at level of economic & social rights in practice (arguments re economic growth vs on whom costs and benefits visited)?

- **Claims some steps like mandating water SOE privatizations run afoul of supposed right to water (at subsidized price)**
- **Claims that even if liberal econ policies benefit a few, impoverish more and what are development implications**

IEL TENSIONS

UN SYSTEM CONFLICTING (GENERAL ASSEMBLY & AGENCIES VS SECURITY COUNCIL), WHO CONTROLS VS WHO PAYS FOR ECON INSTITUTIONS (VOTING), MIXED BLESSING OF LEGALIZING ECONOMIC AFFAIRS

TENSIONS VISIBLE AS IN CURRENT DOHA ROUND, POTENTIAL DIVERGENT COUNTRY INTERESTS DEVELOPING WORLD VS TRAD GATT/WTO PLAYERS

CROSSOVER INTO INT'L ECONOMIC LAW PARTICULARLY VIA TRADE & ENVIRONMENT CONCERNS

- E.g., is genetic recombinant tech and GMOs a commercial bonanza for Monsanto, a danger hazard for the environment worse than plague as the European Greens believe, guaranteed worldwide markets by GATT/WTO?

DOES IEL SEEM BROAD?

-Ultimately it is largely the legal side of globalization, assuming econ views (neoclassical, traditionally efficiency concerns over distributional justice going back to late 1940s so not new)