Week 9: Regulation from above
2/28: Sources, origins, and impacts of international law

What is international law & why does it exist?

Create behavioral certainties where municipal law does not apply
Enforce contracts where municipal sanctioning is not effective

Rules governing relations & exchanges among states
Rules governing behaviors in international “space”

Public law: treaties, customs, norms
Private law: contracts
Civil law: associational agreements
Int'l law succeeds diplomacy as int'l economy grows

18th century: Diplomacy arises out of religious law

\[ \text{Westphalia; Concert of Europe} \]

19th century: Int'l trade and exchange generates new concerns

\[ \text{Int'l Red Cross; Int'l Postal Union} \]

20th century: Growing density of trade, investment, mobility demands closer management

\[ \text{International regimes, public, private, civil} \]
Three types of international law

- **Public**
  - Treaties, conventions, protocols, bilateral memoranda, unilateral
  - Applies only to states: Kyoto, WTO, NATO, MOU, Super 301

- **Private**
  - Self-enforcing contractual agreements
  - Applies only to private corporations & associations: Merchant law, private contract law, arbitration

- **Civil**
  - Self-enforcing & municipal-origin laws, standards, norms, conventions
  - Applies to individual actors: EU law, NAFTA, Int'l Org. for Stand. (ISO), corp. soc. Responsibility, ICC
Int’l Regulation is generally articulated through regimes

Stephen Krasner, *International Regimes* (p.2):
“International regimes are defined as principles, norms, rules, and
decision-making procedures around which actor expectations converge
in a given issue area.
Principles are belief of fact, causation, and rectitude.
Norms are standards of behavior defined in terms of rights and
obligations.
Rules are specific prescriptions or proscriptions for action.
Decision-making procedures are prevailing practices for making and
implementing collective choice.”

Volker Rittenberger, *Regime Theory and Int’l Relations* (p.xii):
“Rules of the game agreed upon by actors in the international arena
(usually nation-states) and delimiting, for these actors, the range of
legitimate or admissible behavior in a specific context of activity.”
## Examples of International Regimes

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<th>Character</th>
<th>Name or issue area</th>
<th>Function</th>
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| Little or no administrative organization | Antarctic Treaty System (ATS)  
Human rights regime                              | Manage Antarctica  
Surveil for HR violations                                            |
| Small secretariats               | International Whaling Commission (IWC)  
Montreal Protocol, et seq.                          | Quotas on/protection of whales  
Protect stratospheric ozone layer                                         |
| Large administrations and affiliates | World Health Organization (WHO)  
Food and Agriculture Organization (FAO)                           | Monitor global health & welfare  
Global monitoring and education                                           |
| Complex regimes                  | Financial: World Bank, IMF, G-8, US Treasury  
Int'l Trade: WTO, WIPO, NAFTA, EU Nuclear weapons regime: IAEA, UNSC, NWS | Oversee global capital infrastructure  
Manage/monitor global trading system  
Prevent nuclear proliferation                                                |
| Mixed and private regimes        | Conv. on Int'l Trade in Endangered Species (CITES)  
Forest Stewardship Council (FSC)  
Prog.for the Endorsement of Forest Cert. (PEFC)  
Global anti-big dam movement                                | Maintain lists of banned species  
Regulate sustainable forestry  
Assoc. of nat'l forestry groups  
Social mvmt. against big dams                                             |
Regimes are noteworthy due to international anarchy

As self-interested, asocial entities, why should states cooperate on issues of concern?

Collective action theory suggests that free-riding and defection should be common in the absence of a hegemon or small group

After World War II, the United States took on the role of hegemon, but it has sometimes defected from the regimes it organized

The Kyoto Protocol is a regime from which the U.S. has defected, but which has become international law

But many other int'l regimes continue to function normally
Different theories explain int'l regimes differently

Realism
- Reflect distribution of power & desires of powerful

Liberalism
- Reflect common but distinct interests, learning, bargaining

Marxism
- Reflect int'l class power & structural domination through capital

Critical theories
- Reflect power & domination constructed via sexism, racism, class
Growing numbers of “private” regimes are appearing

Lengthy negotiations, failures, gaps in international law are resulting in “civil” regimes

“Global civil society” is constructing socially-based institutions to pressure states & corporations

Some of these are autonomous (FSC), others piggyback on public law (carbon trading)

Capital is constructing contract-based & self-policing institutions for PR & to head off public regulation

Some of these are autonomous (PEFC), others piggyback on public law (Global Compact)