

International Organizations as Law-Makers



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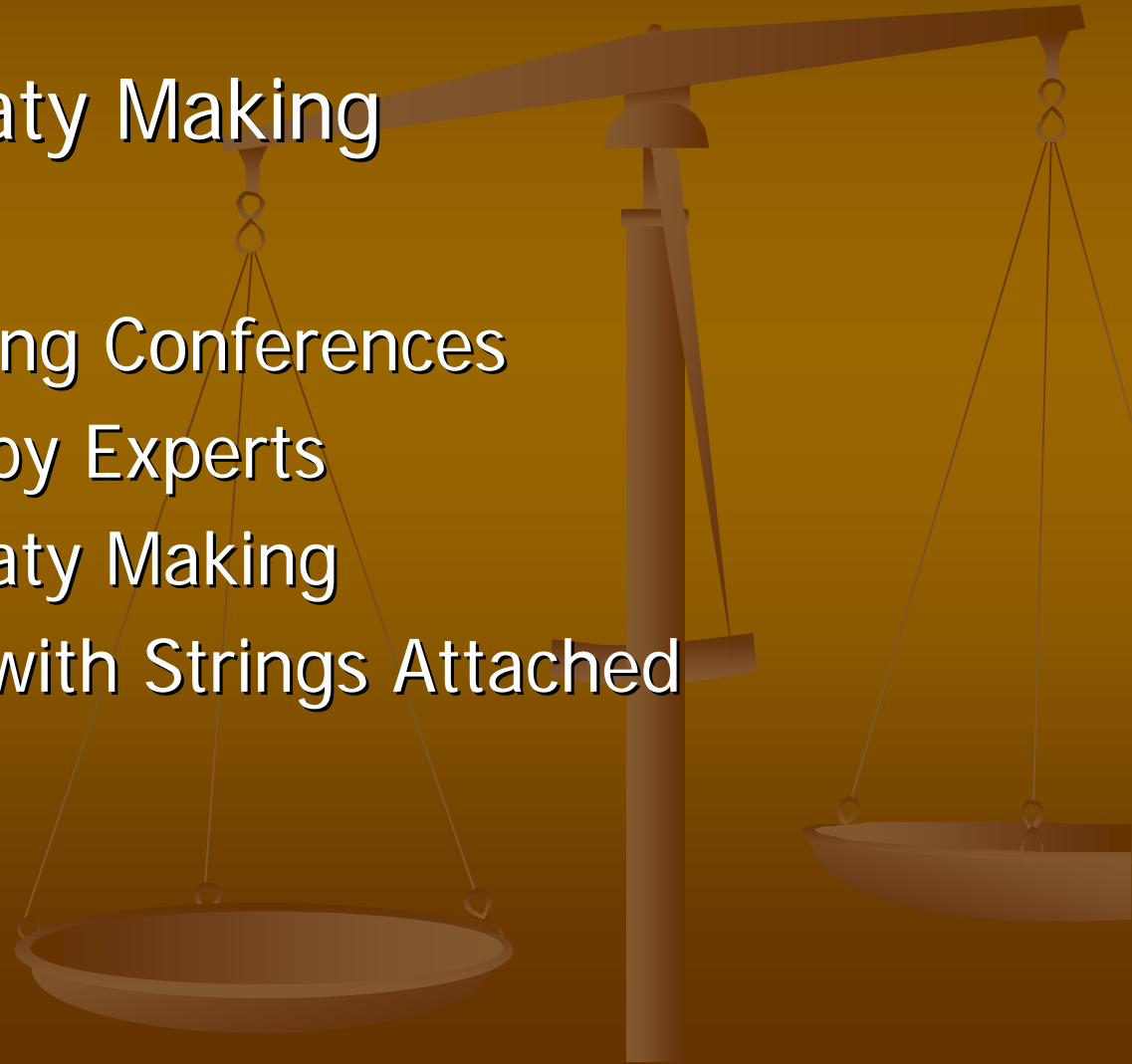
- Description
- Theory
- Prescription



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- Thesis:
 - Change in Sources of International Law
 - Change in Content of International Law
 - Change in Legally Relevant Actors
 - Producing:
 - Changing Conceptions of Compliance / Enforcement
 - New Forms of Challenges to Legitimacy of Both IOs and International Law
 - Vertical
 - Horizontal
 - Ideological

Examples of New IO-Sources of Law

- Changes in Treaty Making
 - UN Treaty Making Conferences
 - Treaty Making by Experts
 - Managerial Treaty Making
 - Treaty Making with Strings Attached



Other Kinds of IO Law

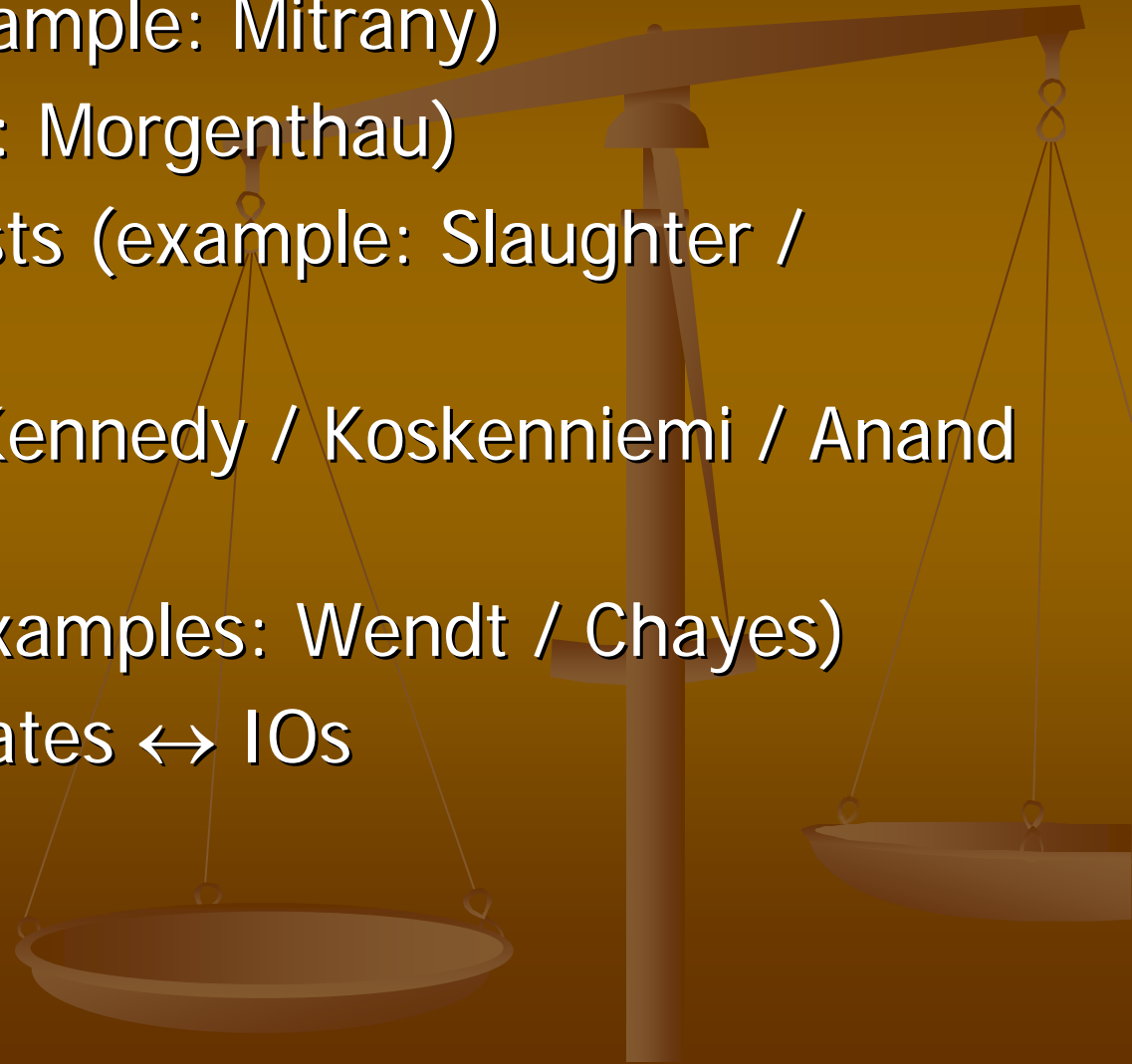
- Security Council Resolutions
- The Codex Alimentarius
- ICAO Standards & Recommended Practices
- IO Codes of 'Best Practices'
- ILO Recommendations
- IAEA Standards
- The FAO's Food Additives Regime
- UNEP's Prior Consent Regime for Pesticides
- WTO Soft Law
- WHO's Code on Marketing Breastmilk Substitutes
- World Bank Guidelines
- IMF Conditionality

- One result: Emerging Global Administrative Law



Intellectual History

- Functionalism (example: Mitrany)
- Realism (example: Morgenthau)
- Disaggregationalists (example: Slaughter / Moravcsik)
- Critics (examples: Kennedy / Koskenniemi / Anand / Mutua)
- Constructivism (examples: Wendt / Chayes)
 - Crucial idea: states \leftrightarrow IOs



Traditional Regulation

- Nature of Law
 - Centralized
 - Command & control
 - Rigid & fixed
 - Uniform rules
 - Generalized
- Organization
 - Top-down hierarchy
 - Formal
- Central Actors
 - State / public

IO Governance

- Nature of Law
 - Decentralized
 - Coordination / orchestration
 - Flexible & adaptable
 - Diversity
 - Contextualized variances
- Organization
 - Horizontal network
 - Informal
- Central Actors
 - Multiple levels of government
 - Multiple public and private participation
 - Decentralization and principle of subsidiarity

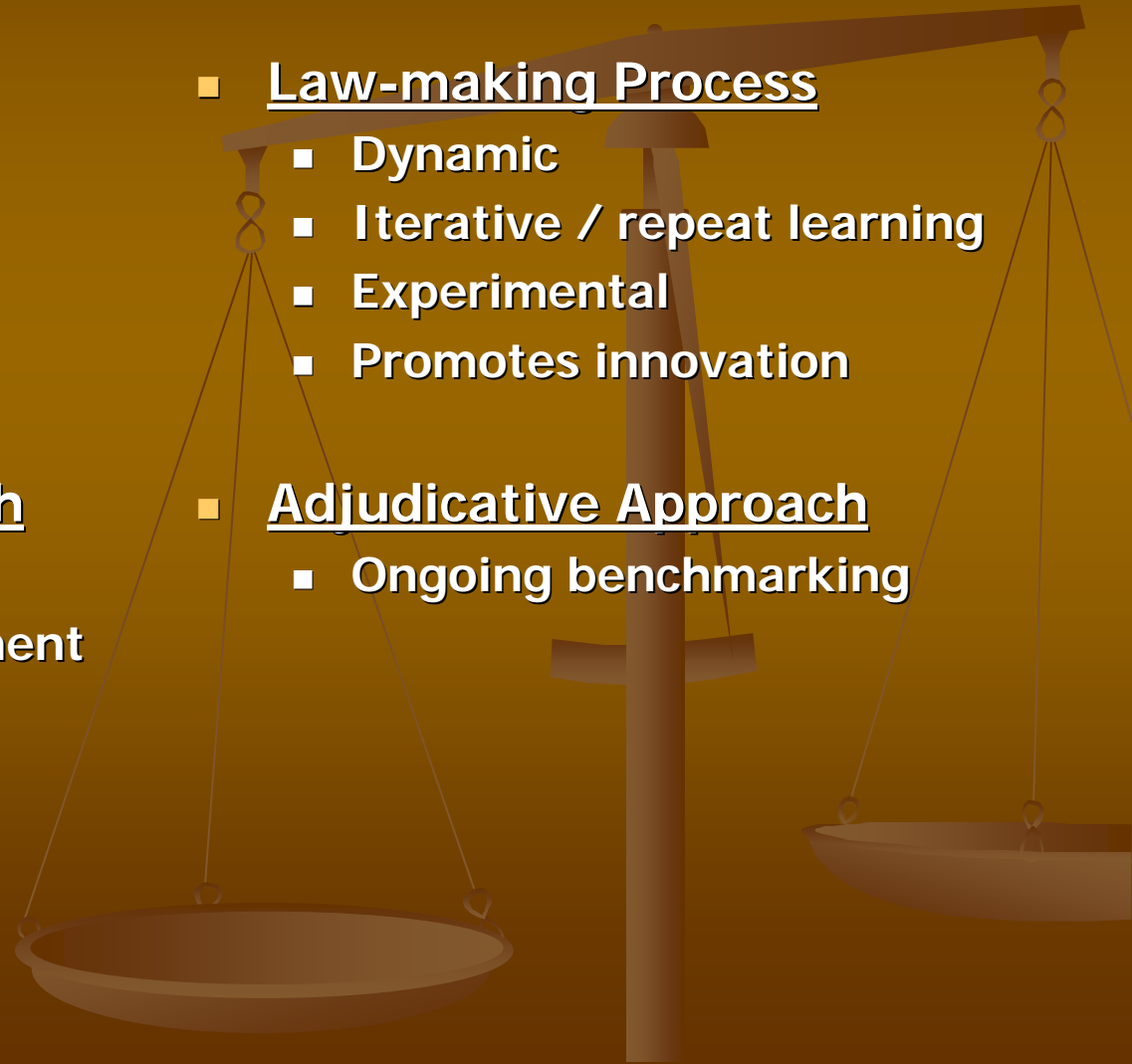


Traditional Regulation

- Law-making Process
 - Static
 - One-shot
 - Rigid & fixed
- Adjudicative Approach
 - Reactive
 - After-the-fact judgment

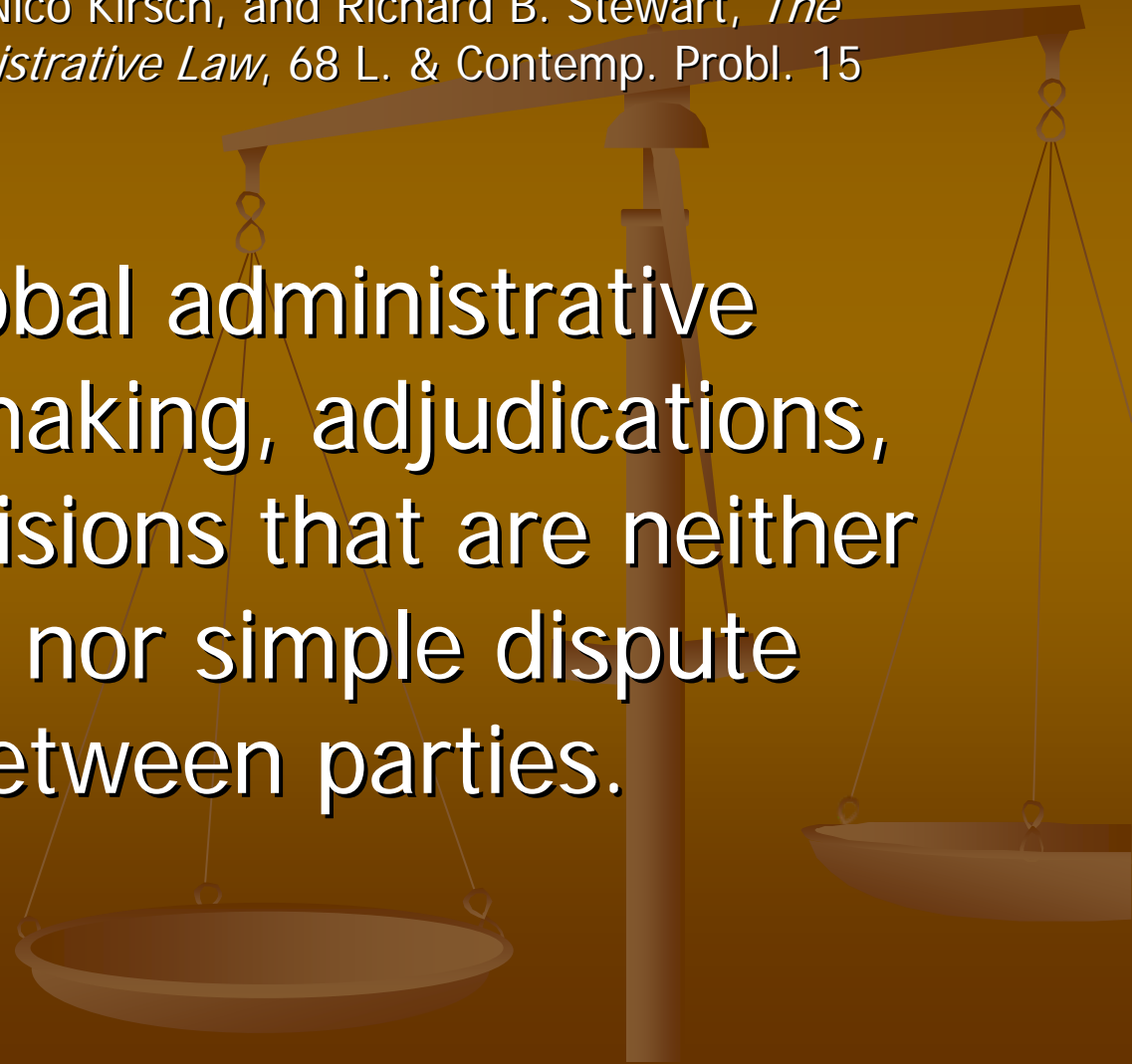
IO Governance

- Law-making Process
 - Dynamic
 - Iterative / repeat learning
 - Experimental
 - Promotes innovation
- Adjudicative Approach
 - Ongoing benchmarking

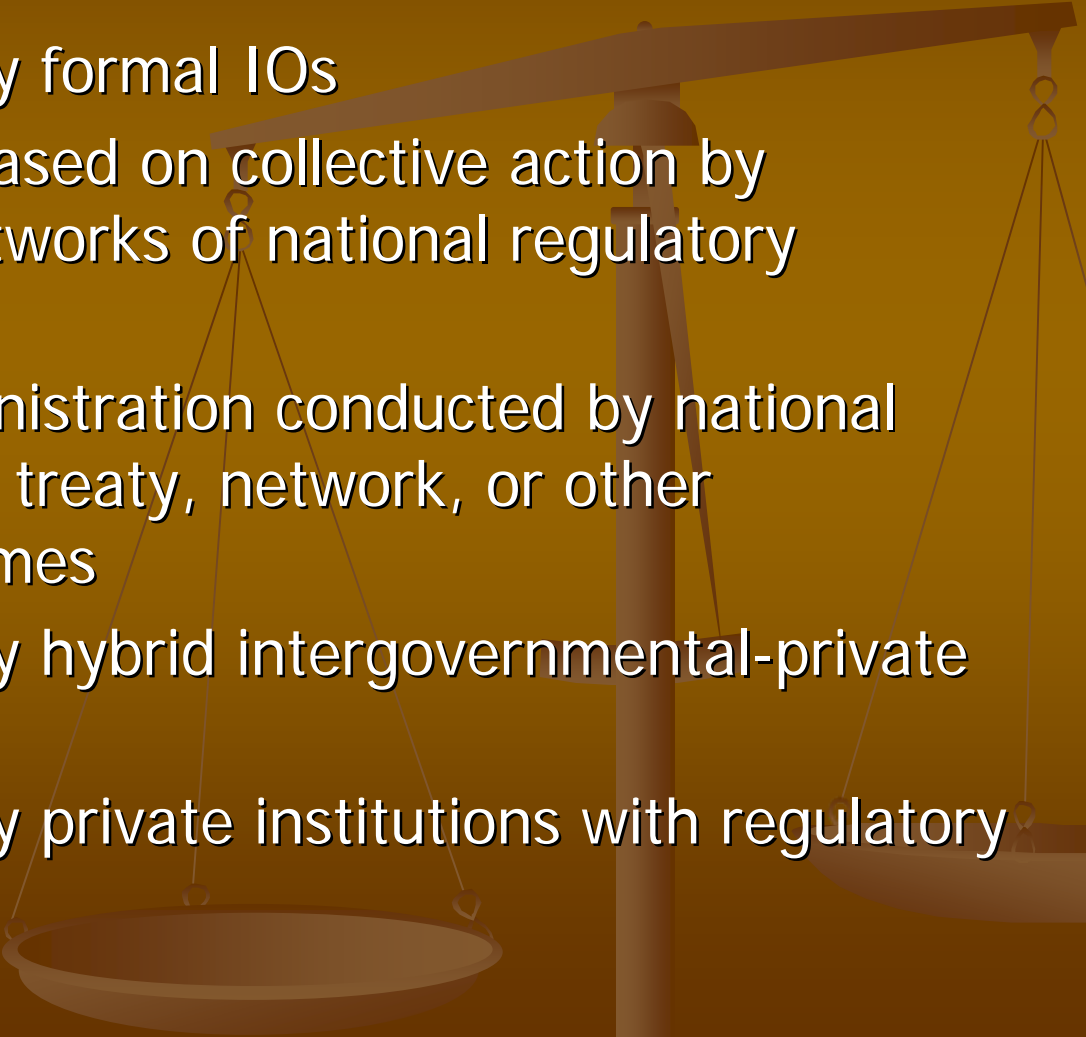


Global Administrative Law

- (From Benedict Kingsbury, Nico Kirsch, and Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 L. & Contemp. Probl. 15 (2005))
- **Definition:** Global administrative action is rulemaking, adjudications, and other decisions that are neither treaty-making nor simple dispute settlements between parties.



Global Administrative Law


- Categories:
 - Administration by formal IOs
 - Administration based on collective action by transnational networks of national regulatory officials
 - Distributed administration conducted by national regulators under treaty, network, or other cooperative regimes
 - Administration by hybrid intergovernmental-private arrangements
 - Administration by private institutions with regulatory functions
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Subjects of Global Administration

- States
- Individuals
- Corporations
- NGOs and Other Collectivities



Emerging Principles

- Procedural participation and transparency
 - Reasoned decisions
 - Review
 - Substantive standards:
 - Proportionality
 - Means-ends rationality
 - Avoidance of unnecessarily restrictive means
 - Legitimate expectations
 - Restricting immunities of IOs and their officials
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A Taxonomy of Ways to Apply the Principles

- Domestic institutions as checks on global administration
- Internal global mechanisms for participation and accountability
- Global disciplines on distributed administration