Teaching International Public Law

STATE CONSENT AS CONSENT TO A PROCESS OF NORMATIVE DEVELOPMENT AND ENSUING PROBLEMS
Topics

• Globalization and normative development
• Two types of normative patterns
  – Inter-state normative pattern
  – Common-interest normative pattern
• State-consent as consent to a process of normative development
• Ensuing problems
## Globalization and normative development

<table>
<thead>
<tr>
<th>Globalization</th>
<th>Normative Development</th>
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<tbody>
<tr>
<td>- Social relations extend across the globe</td>
<td>- Inter-state legal system not equipped to address these developments</td>
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<td>- Interests of the international community arise</td>
<td>- Systemic change ongoing in the international legal system</td>
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<td>- Actors other than states involved</td>
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Two types of normative patterns

• Inter-state and common-interest normative pattern
• When the two patterns meet difficulties and uncertainties arise
• Both patterns are the outcome of a political process aimed at translating social relationships into legal relationships
The inter-state normative pattern

- Defines relationships between states
- Regulates the interests that states share
- State-consent as consent to a rule or set of rules
The common-interest normative pattern

• Defines relationships between a variety of actors, including states
• Regulates the interests that these actors have in common
• States-consent as consent to a process of normative development
State-consent as consent to a process of normative development

• ICJ decision in *Gabčikovo-Nagymaros*
• UN Convention on the Law of the Sea
• ICJ opinion in *Reparation for Injuries*
• Human rights bodies setting aside reservations that they deem contrary to the object and purpose of the treaty in question
  – UN bodies
  – European Court of Human Rights
Ensuing problems

• Demands for
  – Inclusive decision-making processes
  – Transparent decision-making processes
  – Accountable mechanisms

• Issues of legitimacy arise, both
  – horizontal (between states, South-North) and
  – vertical (between states, international institutions and individuals and groups in society)
Conclusions

• Constructing state-consent as consent to a process aimed at normative development helps to clarify the nature of ongoing normative development at the international level under the influence of globalization, and

• Illustrates that international law has taken on traits of public law
Conclusions

• However, questions about the legitimacy of international decision-making processes arise

• Which in turn give rise to demands for systemic change in the international legal system

• And further processes and problems and thus change and uncertainty
Conclusions

Uncertainty presents a challenge

- Teachers: stable system easier to teach than a systemically changing system
- Lawyers: predisposed in favor of stability and legal certainty
Teaching International Public Law
State-consent as consent to a process of normative development and ensuing problems

‘I do not know’ and pursuing the unknown is a source of inspiration also in and because teaching international law matters (inspired by Wislawa Szymborska)