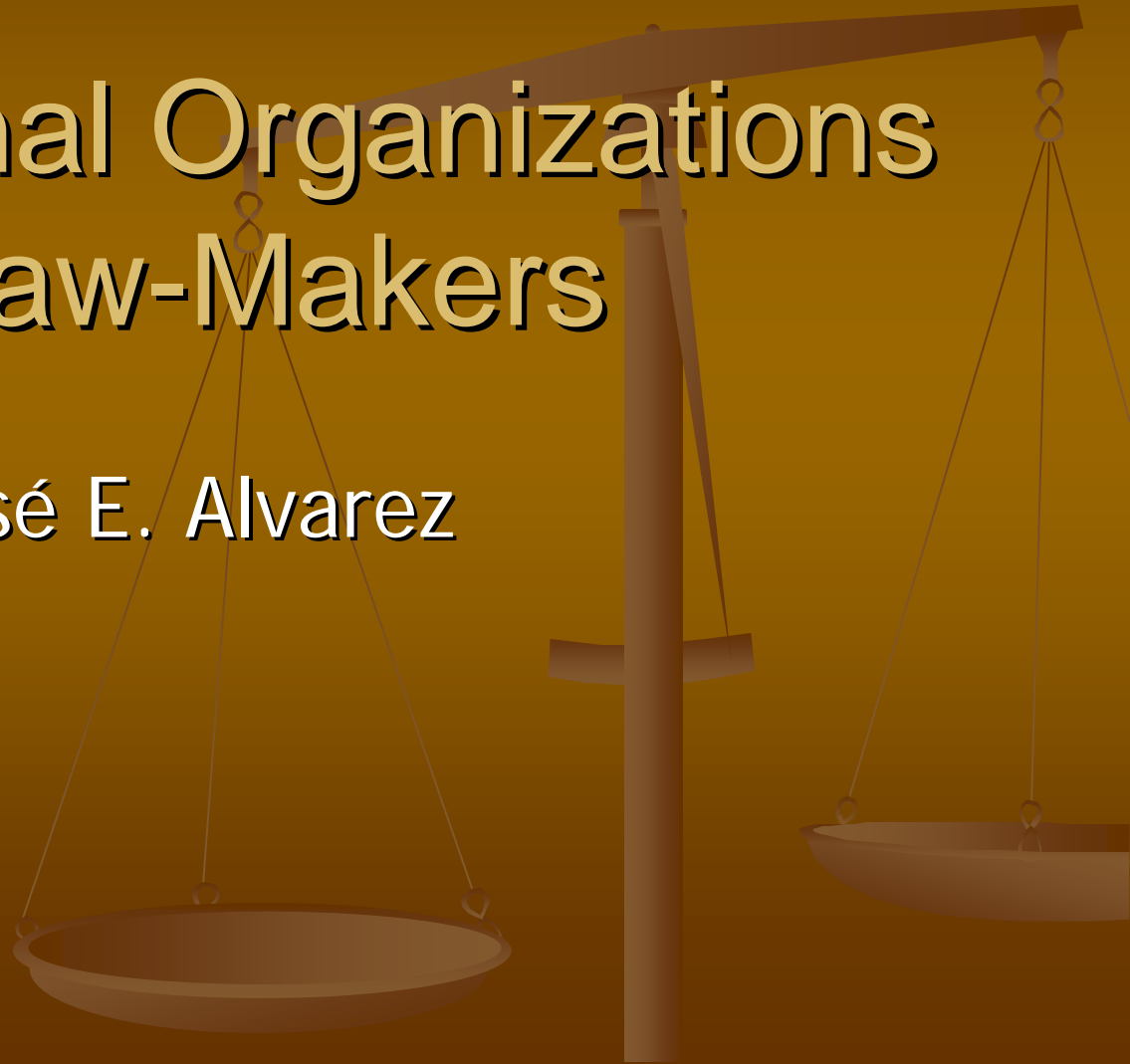


International Organizations as Law-Makers

José E. Alvarez



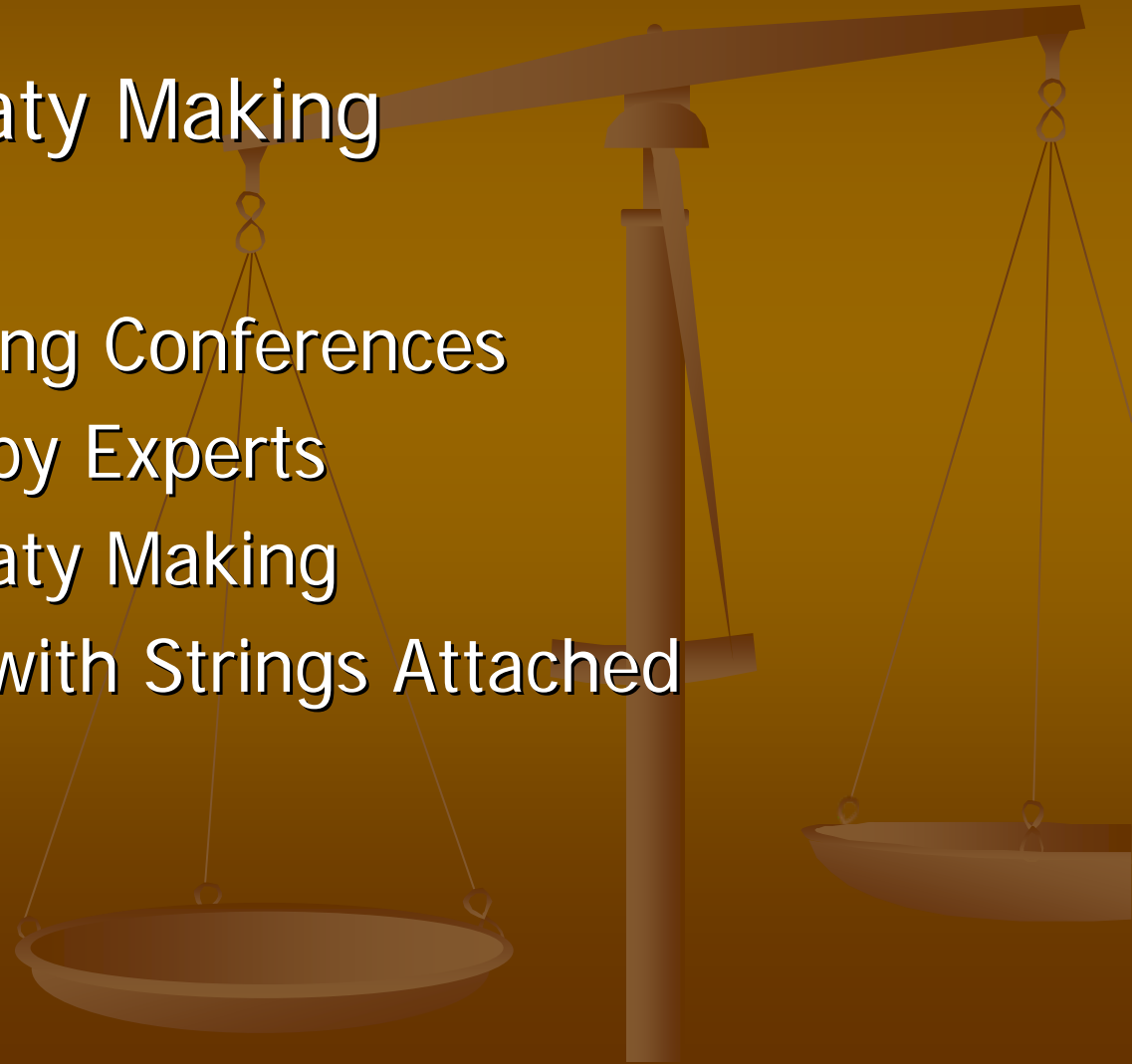
- Description
- Theory
- Prescription



- 
- 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



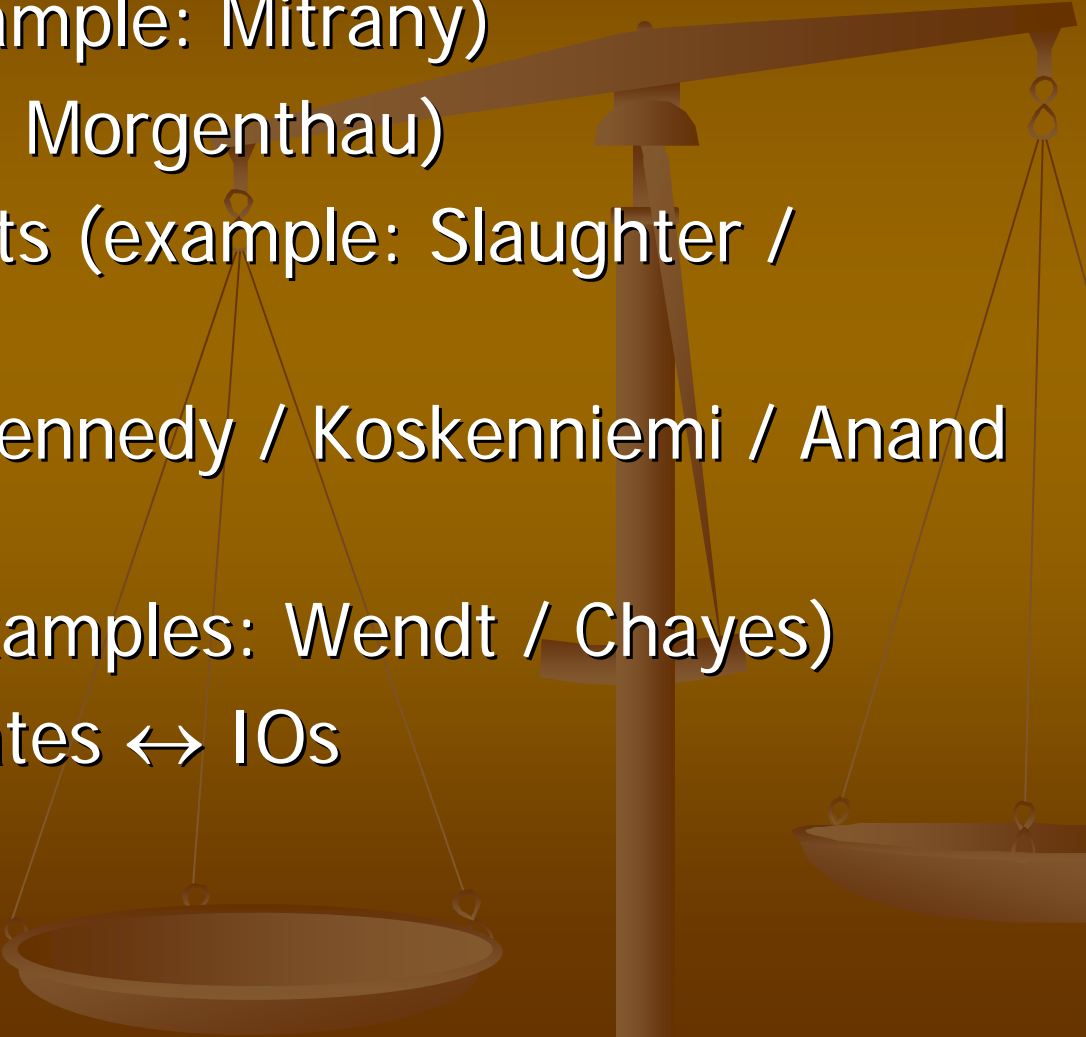
Other Kinds of IO Law

- 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

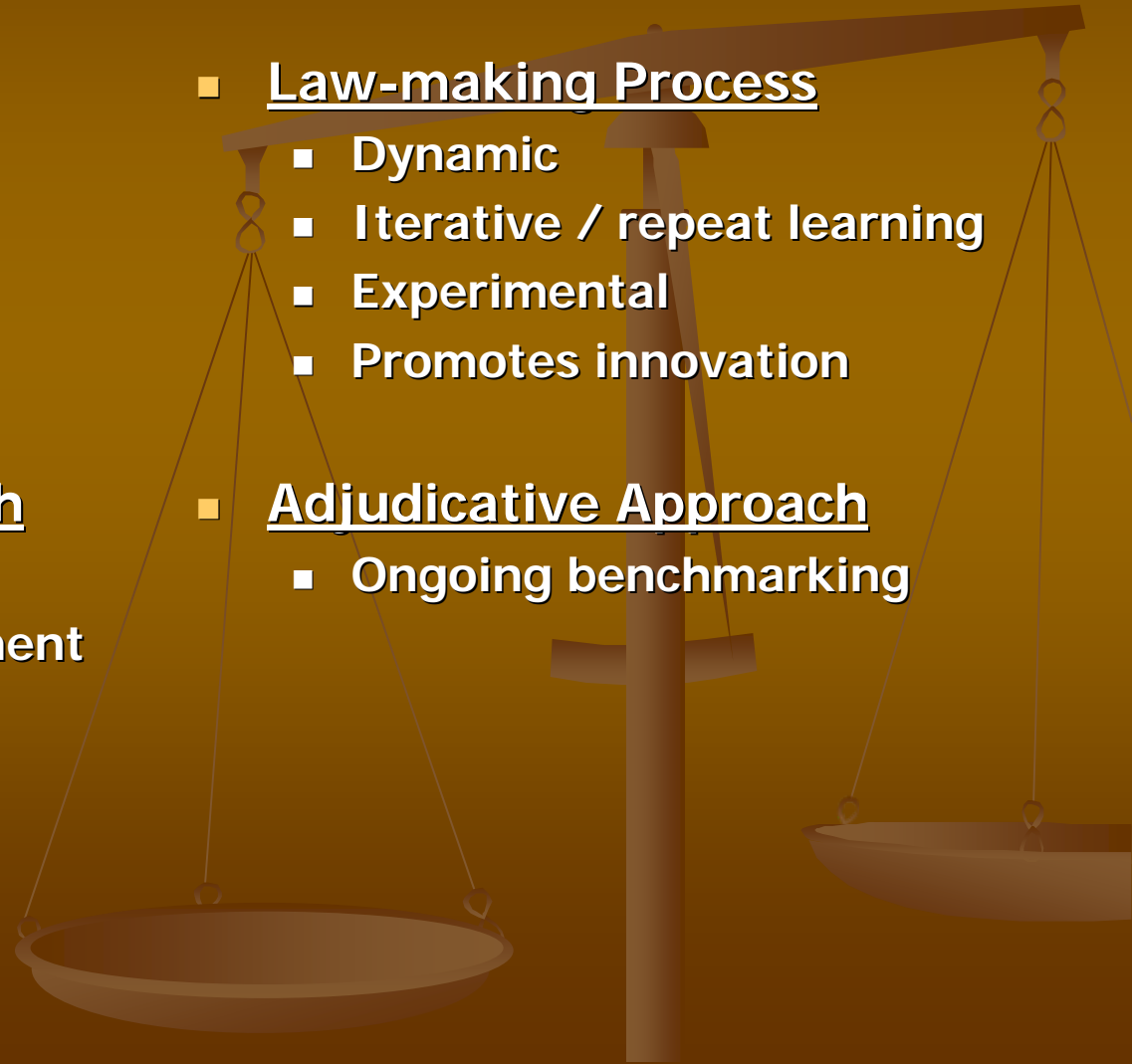


Traditional Regulation

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

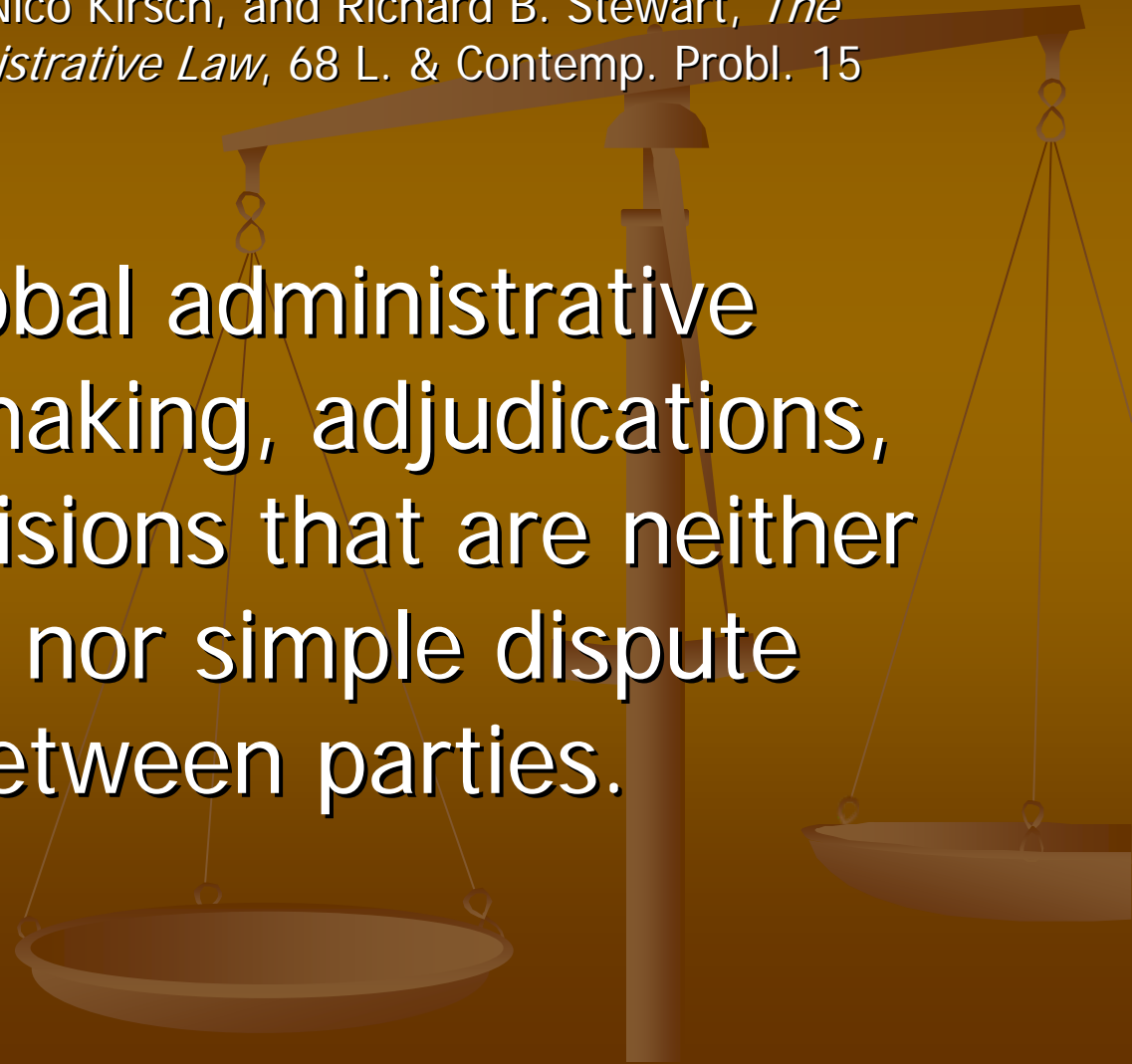
IO Governance

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

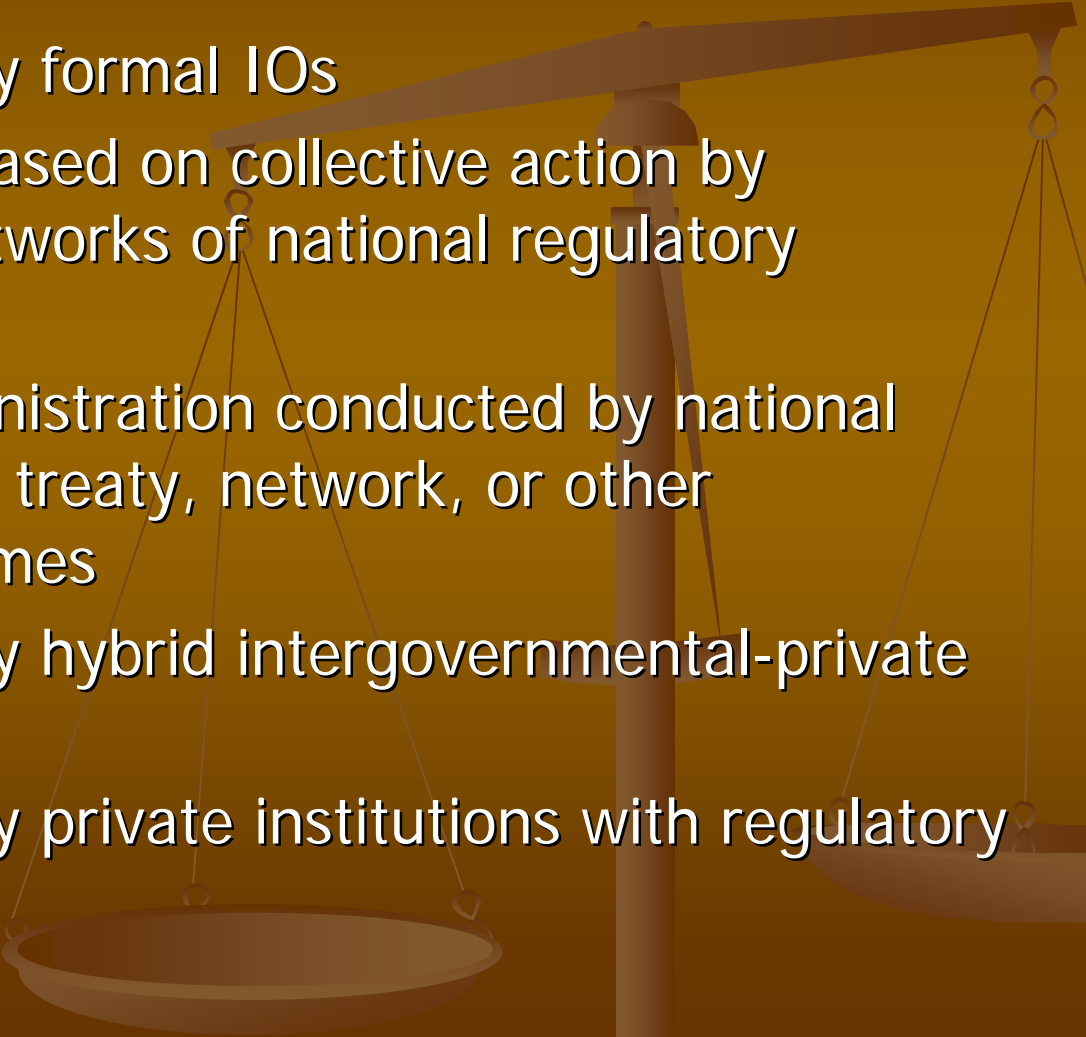


Global Administrative Law

- (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
- 

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
- 

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

It argues that existing descriptions of international law and international organizations do not do justice to the complex changes resulting from the increased importance of these institutions after World War II and then after the end of the Cold War. In particular, this book examines the impact of the institutions on international law through the day-to-day application and interpretation of institutional law, the making of multilateral treaties, and the decisions of a proliferating number of institutionalized dispute settlers. International Organizations as Law-Makers. Article in SSRN Electronic Journal Â· March 2009 with 160 Reads. DOI: 10.2139/ssrn.1767888.Â This working paper analyzes the law-making processes of international organizations and the impact thereof, particularly in the light of the functionalism-constitutionalism dichotomy and the agency theory. Both doctrines are introduced briefly before expanding upon the attribution of law-making powers to international organizations, their decision-making methods and the decisions of their judicial organs. The working paper then focuses on the impact of international organizations on the adoption of treaties and the development of customary international law. Finally, the issues of democratic d