Week 2 – The Multilateral System

Global architecture – rules

- Regulation distinct from law
- The idea of international law
- Distinction international law and domestic law
- Forms of rules, e.g. Convention, Merchant rules, Guidance, Principles
- Differences between hard rules and soft rules
- Rule makers, takers, sharers
- Making and socialising the market

Global framework – institutions

- Parliament
- Executive
- Courts
- Law/rules linked to the will of the people

- The primacy of the national state
- Institutions e.g. WTO
- Convention, will of the national state, will of the people
- The cooperation of business people e.g. ICC
- Cooperation of states rather than express agreement via treaty e.g. G20
- Cooperation of national regulatory bodies of states with an international dimension e.g. IOSCO

The Westphalian System

- The Treaty of Westphalia 1648
- Recognised the sovereign state of the nation (as distinct other loose entities)
- Principles of self-determination and sovereignty i.e. states deal with each other as equals; one state should not interfere in the internal affairs of another state.
- In addition to setting up a system of sovereign states after the devastation of the wars,
- Peace of Westphalia concerned with restoration of commerce between parts

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- And to prevent for the future any Differences arising in the Politick State, all and every one of the Electors, Princes and States of the Roman Empire, are so established and confirmed in their antient Rights, Prerogatives, Liberty's, Privileges, free exercise of Territorial Right, as well Ecclesiastic, as Politick Lordships, Regales, by virtue of this present Transaction: that they never can or ought to be molested therein by any whomsoever upon any manner of pretence.

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- They shall enjoy without contradiction, the Right of Suffrage in all Deliberations touching the Affairs of the Empire; but above all, when the Business in hand shall be the making or interpreting of Laws, the declaring of Wars, imposing of Taxes, levying or quartering of Soldiers, erecting new Fortifications in the Territories of the States, or reinforcing the old Garrisons; as also when a Peace of Alliance is to be concluded, and treated about, or the like, none of these, or the like things shall be acted for the future, without the Suffrage and Consent of the Free Assembly of all the States of the Empire: Above all, it shall be free perpetually to each of the States of the Empire, to make Alliances with Strangers for their Preservation and Safety; provided, nevertheless, such Alliances be not against the Emperor, and the Empire, nor against the Public Peace, and this Treaty, and without prejudice to the Oath by which everyone is bound to the Emperor and the Empire.

. LXIX

- And since it much concerns the Public, that upon the Conclusion of the Peace, Commerce be re-established, for that end it has been agreed, that the Tolls, Customs, as also the Abuses of the Bull of Brabant, and the Reprisals and Arrests, which proceeded from thence, together with foreign Certifications, Exactions, Detentions; Item, The immoderate Expenses and Charges of Posts, and other Obstacles to Commerce and Navigation introduced to its Prejudice, contrary to the Public Benefit here and there, in the Empire on occasion of the War, and of late by a private Authority against its Rights and Privileges, without the Emperor's and Princes of the Empire's consent, shall be fully removed; and the antient Security, Jurisdiction and Custom, such as have been long before these Wars in use, shall be re-established and inviolably maintained in the Provinces, Ports and Rivers.

Trade and the State

- Adam Smith, The Wealth of Nations and the theory of absolute advantage of nations – nations/states are endowed with resources e.g. natural resources, labor
- If you restrict imports you reduce the wealth of a nation because that country is unable to specialize.
- Ricardo the theory of comparative advantage countries should produce those things in which they are relatively more efficient.
- If countries produce those things in which they are relatively efficient and exchange them, then both countries benefit. If countries trade, then they can acquire more goods and this benefits consumers.

Adam Smith & The Wealth of Nations

- Absolute advantage
- In certain products
- Nations should specialize
- There should be free trade between nations
- There should not be barriers to imports

Ricardo – comparative advantage

- If each country produces goods in which have a comparative advantage, even if one had an absolute advantage i.e. use trade to supplement resources for production, both countries benefit
- Gain more of x by exporting more of y

The concept of Free Trade

- The theory of comparative advantage underpins the notion of free trade
- The non-discrimination or equality principles i.e. “most favored nation” and “national treatment” also underpin free trade and the reduction of protectionism
- MFN and NT are cornerstones of the WTO system

MFN and NT

- If one contracting party grants privileges e.g. (lower import duties) to another it should give them to ‘like products’ from others
- There should be no discrimination regarding taxes ect. Between domestically produced and imported products

Arguments against free trade

- National winners and losers
- Industries
- Jobs
- Economic nationalism
- Inequality between countries
- Environment

WW1: origins; post → international institutions

- One argument:
- Nations excluded from global trading opportunities
- Expressed in the race for colonies

- Institutions after WW1
- League of Nations
- BIS

Bank for International Settlements (BIS)

- Established 1930
- To coordinate payments of reparations
- To administer loan made in order for reparations to be paid
- To promote cooperation of the central banks of nations
- Governors of central banks met at Basel in Switzerland – name of series of Accords
- Directed to monetary and financial stability

Evolution of BIS

- The Basel Committee on Banking Supervision (BCBS)
- Set up in 1973 after breakdown of Bretton Woods system
- Mandate – to enhance financial stability
- How?
- Strengthen regulation, supervision and practices of banks

Basel

- Basel Capital Accord 1988
- Outdated by late 1990s
- Basel 11 – Capital Framework – to develop capital adequacy guidelines (risk, supervision, disclosure)
- Basel 111 – a response to the north Atlantic financial crisis – ensure banks have sufficient capital; ensure bank assets are sufficiently liquid

BIS Basel

- Australia at forefront of Basel 111 discussions
- Designed to deal with systemic risk i.e. the banking system
- Designed to 'regulate' individual institutions so they don't collapse

Post WWII

- Bretton Woods, New Hampshire July 1844, 45 countries
- To overcome the protectionism of the 1930s

- To foster international cooperation regarding international trade, investment and foreign exchange
- New institutions – International Monetary Fund (IMF); International Bank for Reconstruction and Development I.e. World Bank
- Proposals for an International Trade Organization

Bretton Woods and fixed exchange rates

- Previously countries tied their currencies to the gold standard
- Fixed exchange rates to minimize currency fluctuations
- 1971 the US delinked the exchange rate between US$ and gold
- Australia floated the $ in December 1983

IMF

- Established by treaty in 1945 to promote monetary cooperation, exchange stability and international liquidity
- Context – temporary balance of payment problems
- Deals with sovereign debt e.g. loans and rescheduling repayments
- IMF 'bailouts' e.g. Greece, Portugal and Ireland

The IMF as a global regulator

- IMF Articles of Agreement
- When countries join they agree to provide economic data to the IMF;
- Subject themselves to scrutiny;
- Put in place policies – directed towards growth and stability;
- Not to manipulate exchange rates

IMF and World Bank – standards and codes

- Help establish standards and codes for the global economy e.g.
- Central bank independence; financial sector regulation; policy transparency; accountability
- IMF reports on how well countries observe these standards and codes

The World Bank

- A Bretton Woods institution
- Grew out of International Bank for Reconstruction and Development

- Comprised of a number of different bodies IBRD; International Development Association (IDA) the International Finance Corporation (IFC) the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID)
- Today focused on reducing poverty
- Low interest loans
- Project finance – agriculture, education, health, public admin, infrastructure
- Technical assistance

World Bank Institutions

- IBRD – lends to middle income countries
- IDA – lends to developing countries via interest free loans
- IFC – concentrates on the private sector
- MIGA – provides political risk insurance to investors and lenders who are involved in foreign direct investment projects in various countries

World Bank Institutions

- ICSID – arbitration of investment disputes established under:
- The Convention on the Settlement of Investment Disputes between States and Nationals of Other States
- This Convention was formulated by the executive Directors of the IBRD and in March in 1965 submitted to the governments who were members of the World Bank.
- It came into force in October 14, 1966
- 161 members
- As of April, 10 2006 has been ratified by 143 different countries

Towards an ITO

- UN Conference on Trade and Employment was in Havana, this resulted in the Havana Charter
- i.e. the Charter for the International Trade Organization
- Also, an Interim Commission, Secretariat and Executive Committee
- ITO based on the Havana Charter of 1948 did not go ahead
- US Congress concerns about threats to domestic sovereignty
- No point without the US

Parallel process regarding tariffs

- An agreement to reduce barriers to international trade by reducing tariff barriers
- Idea - an interim agreement until the ITO was set up
- General Agreement on Tariffs and Trade (GATT) was drafted in 1947 by the US
- Based on US trade policy

- Purpose of the GATT was to promote free trade through overcoming barriers to international trade in goods

GATT

- 23 founding members of the GATT signed the agreement on 30 October 1947
- Included Australia
- Others were Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, the Czechoslovak Republic, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom, the United States of America

GATT – at first provisional

- The GATT was accompanied by a Protocol of Provisional Application.
- Signatories signed this at the same time as agreeing to the GATT.
- Signatories agreed that from 1 Jan 1948 the GATT agreement would apply on a provisional basis

The grandfather clause

- The protocol said that Part 11 of the GATT applied:
- "to the fullest extent not inconsistent with existing legislation."
- This "grandfather "clause meant that signatories could maintain existing legislation
- i.e. countries could maintain existing legislation that might be protectionist and inconsistent with the measures in the GATT

GATT

- Membership expanded in the 1960s
- By 1970, 77 members
- 52 from the developing world
- GATT a site for drawing in the developing world; also of conflict re views of developed and developing world
- Before the Uruguay Round the GATT = the initial 1947 agreement; protocols; accession agreements when new countries joined; codes negotiated in earlier rounds e.g. Kennedy (c 50% tariff reductions); Tokyo (e.g. anti-dumping code)

Forming the WTO

- Uruguay Round of trade negotiations led to
- the Marrakesh Agreement in April 1994

- i.e. the Agreement establishing the World Trade Organization (took from 1986)
- Agreement came into force on 1 Jan 1995
- Under the Marrakesch Agreement, each Member is bound by the agreement and the agreements annexed to it.
- It is a <u>'single undertaking'</u> - not possible to make reservations from the agreement.
- A state that signs up to the Marrakesh agreement signs up to all the agreements

WTO Agreements

- GATT
- GATS (Annex 1B)
- TRIMS
- TRIPS (Annex 1C)

GATT some key concepts

- Tariff barriers
- The non-discrimination principles:
- Most Favoured Nation
- National Treatment
- Countries entered into binding agreement that set bound tariffs re product i.e. a rate above which a tariff could not be levied.
- This treatment applied to all Member states because of the MFN principle i.e. equal treatment at the border for like goods from all member states i.e. tariff concessions to one State to be given to all
- NT requires goods/services (GATS) within the country from foreign countries to be treated in the same way as domestic goods/services

WTO organs

- *Ministerial Conference* - meets at least every two years
- under it there are further committees such as the Committee on Trade and Development
- *General Council with* reps from each member - meets between Ministerial Conference meetings . (It has responsibilities re the Dispute Resolution Body and others such as the Trade Policy Review Body)
- *Secretariat* - provides admin etc re WTO and all bodies within it. There is a Director-General who is appointed by the Ministerial Council. This is located in Geneva. A term of the Director General is 4 years

What does the WTO do?

- The WTO agreement sets up the organization and its administration

- The WTO provides a forum for negotiation
- The WTO provides for dispute resolution
- WTO is based on a Convention, and there are a series of further Conventions or treaties linked to the WTO. (greater detail in later classes**.)**

Organization for Economic Cooperation and Development – OECD

- Started 1948 as the OEEC i.e. the Organisation for European Economic Cooperation.
- Based in Paris - involved in running the Marshall Plan financed by the US for the redevelopment of Europe after WW11.
- idea - if the European countries which had been at war realised that the economy of each country was interconnected with those of other European countries they could redevelop together and would be far less likely to go to war

OECD

- 1960 14 Dec - a new OECD Convention; Convention came into force on 30 September 1961
- the European countries were joined by Canada and the US. Japan in 1964. Australia in 1971.
- China has not joined the OECD but has a close working relationship with it.
- India which may be the world's third largest economy has not joined the OECD.
- The OECD is another body concerned with economic growth and financial stability.
- It analyses economic trends in member countries and makes future projections.

OECD and rules

- Role in formulation of rules through members meeting in working groups and formulating these rules e.g.
- OECD Convention on Combatting Bribery of Foreign Public Officials;
- Convention on Mutual Administrative Assistance in Tax Matters
- OECD Model Tax Convention on Income and on Capital;
- OECD Guidelines for Multinational Enterprises;
- OECD Guidelines of Corporate Governance of State Owned Enterprises;
- OECD Principles of Corporate Governance (there is a new review slated for these).
- The OECD also puts out Guidelines, Good Practices, Core Principles in other areas eg OECD e-commerce recommendation, 2016

Financial Stability Board

- Established in 2009 after the north Atlantic financial crisis. (GFC)
- Grew out of the Financial Stability Forum which had been established in February 1999.

- Members of the Group of 7 and the Central Bank governors had given a mandate to the Financial Stability Forum to bring bankers and regulators together and to work towards establishing standards.
- After the collapse of Lehman Bros, the G20 countries said the FSF should have a wider membership and it was reconstituted as the FSB.
- The role of the FSB is to establish effective regulatory policies and financial supervision.
- The secretariat for the FSB is located in Basel with the Bank for International Settlements.

FSB – Principles and Standards

- Principles for Cross Border Cooperation on Crisis Management;
- Principles for Sound Compensation Practices;
- Principles for Sound Compensation Practices – Implementation Standards;
- Principles for Reducing Reliance on CRA Ratings (credit reference agency);
- Principles for Sound Residential Mortgage Underwriting Practices.
- It also publishes guidance documents e.g. Consumer Finance Protection with particular focus on credit.

World standard setting bodies

- From the FSB website, standard setting bodies towards financial stability:
- Basel Committee on Banking Supervision (BCBS)
- Committee on the Global Financial System (CGFS)
- Committee on Payment and Settlement Systems (CPSS)
- Financial Action Task Force on Money Laundering (FATF)
- Financial Stability Board (FSB)
- International Association of Deposit Insurers (IADI)
- International Association of Insurance Supervisors (IAIS)
- International Accounting Standards Board (IASB)
- International Auditing and Assurance Standards Board (IAASB)
- International Monetary Fund (IMF)
- International Organisation of Securities Commissions (IOSCO)
- Organisation for Economic Cooperation and Development (OECD)
- The World Bank (WB)
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