INSTITUTE FOR INTERNATIONAL LAW AND JUSTICE
NEW YORK UNIVERSITY SCHOOL OF LAW

Technologies and Effects of Inter-Institutional Interaction

Furman Hall, Lester Pollack Colloquium Room
April 9, 2013 2:00 to 5:40 pm

Report of Roundtable Workshop

This was an informal workshop in roundtable format, to explore ideas and existing research on how particular structures and dynamics of interactions between institutions can make a difference in global governance, and to help frame future possible research and initiatives. For each topic listed in the program, a few speakers led off reporting research or proposing an idea in five minutes each, in order to generate as much discussion as possible. The roundtable was designed to take advantage of the presence in New York of participants in the NYU-Giessen conference on 'Innovation in Governance of Development Finance: Causes, Consequences and the Role of Law',[1] and continued (while broadening) that work into inter-institutional issues. Background on the IILJ inter-institutional relations research project, with information on IDRC-supported projects centered at Los Andes University in Bogota and a report of the April 2012 IILJ workshop on 'Analyzing and Shaping Inter-Institutional Relations in Global Governance', can be found on the IILJ website.[2]

1. Framing the project: technologies and consequences of inter-institutional interaction

1.1 *Benedict Kingsbury, Murry and Ida Becker Professor of Law, New York University School of Law*

Benedict Kingsbury opened the workshop by explaining the basic premise of the IILJ project, which was still at a preliminary stage. The idea underlying the project is that interactions between institutions have a lot of influence on what happens in global governance. The intention is to study interactions at three levels:

(*a*) interactions between international institutions;

(*b*) interactions between international and national institutions;

(*c*) interactions between national institutions, which is more complex.

He referred participants to the April 2012 workshop report,[3] which sheds light on the directions that the project is intended to take, while keeping the parameters of the project deliberately loose. Further, he highlighted that there had been a good response to the call for papers for the upcoming Viterbo Global Administrative Law Seminar (June 13-14, 2013, Viterbo, Italy), which would be organized by colleagues in Italy around the theme "Inter-institutional

---

1 *Conference: "Innovation in Governance of Development Finance: Causes, Consequences and the Role of Law"*, New York University School of Law / Univ. of Giessen (Apr. 8-9, 2013), http://www.iilj.org/newsandevents/InnovationinGovernanceofDevelopmentFinance.asp

2 Institute for International Law and Justice, New York University School of Law, *Inter-Institutional Relations Project*, http://www.iilj.org/research/Inter-InstitutionalRelationsProject.asp

3 *See* INSTITUTE FOR INTERNATIONAL LAW AND JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW, REPORT OF ANALYZING AND SHAPING INTER-INSTITUTIONAL RELATIONS IN GLOBAL GOVERNANCE WORKSHOP (2012), *available at* http://www.iilj.org/newsandevents/documents/Aprilreport.pdf and the sources cited therein.

relations in global law and governance".[4] Finally, he mentioned four ongoing International Development Research Centre (IDRC)-supported projects based at Los Andes University. These projects dealt with issues concerning the effects of different structures of inter-institutional relations on outcomes in four contexts, building on an earlier set of IDRC-supported projects.[5]

Benedict Kingsbury then outlined several themes which might be usefully explored in order to map and deepen our understanding of inter-institutional relations in global governance. *First*, we could say something more about the idea of *co-ordination*, which is a rather anodyne-sounding term recurring in the existing literature, but that should be problematized and explored further. For example, co-ordination may very well lead to cartels, or may stand in the way of learning. *Second*, institutions are often at the center of dynamics around forum-shopping and fragmentation. Where there is a multiplicity of institutions, we can see an important role for institutions to have *review* powers. The practice of review remains under-studied. *Third*, interactions can be important in terms of norm-generation. *Finally*, interactions can be important in terms of *learning*. At the moment, this field is dominated by work by Charles Sabel and others on experimentalist governance in the European Union,[6] which takes a generally positive view on experimentalist governance practices.

One angle on these themes is to look at *change and innovation*, much along the lines of the earlier conference presentation by Michael Woolcock.[7] To understand change, we need to consider the *dynamics of the market*. *Theories around knowledge and mimesis* will tell us something about the dynamics of change. *Theories of the firm* may also be useful.[8] As for *impediments to change*, useful work on this front has already been done by Michael Trebilcock and Mariana Mota Prado on enmeshment, path dependence, inertia and switching costs.[9]

In conclusion, the framing of the project was still at a preliminary stage, but the intention was to move the project forward by way of a framing paper and a series of case studies. Benedict

---

4 INSTITUTE FOR RESEARCH ON PUBLIC ADMINISTRATION, VITERBO IX (2013) CALL, *available at* http://www.irpa.eu/en/gal-section/11365/viterbo-ix-2013-call/.

5 This first set of projects involved multi-institution collaborative research projects on global administrative law-type rule of law issues in four fields of great importance to people in the developing world: utilities regulation and the impact international institutions have on the distribution of essential services; the balance between intellectual property protection and access to medicines; the struggle to combat corruption and money-laundering, both in domestic and transnational contexts; and the significant and formative interplay between domestic competition law and international regulation, across many jurisdictions. *See* Institute for International Law and Justice, *GAL Network*, http://www.iilj.org/GAL/GALNetwork.asp.

6 *See, e.g.,* Gráinne de Búrca, Robert O. Keohane & Charles F. Sabel, *New Modes of Pluralist Global Governance*, New York University School of Law, Public Law & Legal Theory Research Paper Series, Working Paper No. 13-08 (March 2013); Joshua Cohen & Charles F. Sabel, *A Global Democracy?*, 37 N.Y.U. J. INT'L L. & POL. 763 (2005).

7 Deval Desai, Rosie Wagner & Michael Woolcock, *The Missing Middle: Reconfiguring Rule of Law Reform As If Politics and Process Mattered* (Apr. 4, 2013), *available at* http://www.iilj.org/newsandevents/documents/woolcock.pdf.

8 *See* R.H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937), as well as more recent work noting other types of inter-firm relationships relevant to the regulatory environment beyond "contracting-in" and "contracting-out", including Ronald J. Gilson, Charles F. Sabel & Robert E. Scott, *Braiding: The Interaction of Formal and Informal Contracting in Theory, Practice and Doctrine*, 110 COLUM. L. REV. 1377 (2010).

9 MICHAEL TREBILCOCK & MARIANA MOTA PRADO, WHAT MAKES POOR COUNTRIES POOR? INSTITUTIONAL DETERMINANTS OF DEVELOPMENT (2011); Michael Trebilcock & Mariana Mota Prado, *Path Dependence, Development and the Dynamics of Institutional Reform*, 59 U. TORONTO L. J. 341 (2009).

Kingsbury anticipated that the structure and approach of the project would be broadly similar to that of the IILJ's earlier Global Administrative Law project,[10] but on a smaller scale.

1.2 *Jessica F. Green, Assistant Professor of Political Science, Case Western Reserve University / Visiting Scholar, IILJ*

Jessica Green's remarks drew from a draft paper she had co-authored with Kenneth Abbott and Robert Keohane entitled 'Organizational Ecology in World Politics: Institutional Density and Organizational Strategies'.[11] She explained that this paper had been motivated by the following empirical puzzle. There are ever more governing bodies and more rules, and that these interact—depending on who you ask—in positive or negative ways. While there had been a strong growth in what Jessica Green and her co-authors termed 'private transnational organizations' (PTOs), there had been a drop in formal intergovernmental organizations (IGOs). Their paper was motivated by the question: why this trend?

International relations (IR) scholars had thought about this problem in the context of a number of different literatures, but their paper turned instead to the *organizational ecology* literature. This literature attempts to explain the growth and abundance of different kinds of organizations. The paper answered its central question through the concept of '*strategic flexibility*': the ability of an organization to choose its strategies. This ability is, in turn, determined by the extent to which an organization is tightly controlled by its principals, and the organization's ability to change its mandate, thereby making choices about where in the institutional landscape the institution exercises its authority. The paper concluded that IGOs have less strategic flexibility, while PTOs are more nimble in this regard.

In closing, Jessica directed participants to the full paper, in which there was much more discussion of the empirics underlying this conclusion, as well as how PTOs adopt these strategies in the context of the climate change regime. She noted that based on this work, inter-institutional interaction is actually not observed as frequently as we would expect, precisely because PTOs adopt *ex ante* strategies to avoid conflict, such as finding unoccupied policy niches. As such, the adjustments of where in the governance landscape they will enter, and what types of issues they will choose to promulgate rules about, will be conditioned on what is already out there in the landscape, particularly by what issues are already dealt with by IGOs. In response to a question from the floor, Jessica clarified that the term 'private transnational organization' was used in the paper to denote a private standard-setting organization, such as the International Organization for Standardization (ISO) or the International Electrotechnical Commission (IEC) dealt with in the work of Tim Büthe.[12] She added that her own work dealt with private standard-setting in the climate change field.[13]

Returning to the intended approach of the IILJ project, Benedict Kingsbury mentioned that further case studies would be included in an ongoing book project being edited by himself

---

[10] Institute for International Law and Justice, New York University School of Law, *Website of the Global Administrative Law Project*, http://www.iilj.org/GAL/default.asp.

[11] Kenneth W. Abbott, Jessica F. Green & Robert O. Keohane, *Organizational Ecology in World Politics: Institutional Density and Organizational Strategy* (Mar. 9, 2013), *available at* http://www.iilj.org/research/documents/Organizational.Ecology.Abbott.Green.Keohane.pdf.

[12] *See*, *e.g.*, Tim Büthe, *Engineering Uncontestedness? The Origins and Institutional Development of the International Electrotechnical Commission (IEC)*, 12(3) BUS. & POL. (2010); Tim Büthe, *The Power of Norms; the Norms of Power: Who Governs International Electrical and Electronic Technology?*, *in* WHO GOVERNS THE GLOBE? 292 (Deborah D. Avant, Martha Finnemore & Susan K. Sell, eds., 2010).

[13] *See*, *e.g.*, Jessica F. Green, *Order out of Chaos: Public and Private Rules for Managing Carbon*, 13 GLOBAL ENVTL. POL. (forthcoming 2013); Jessica F. Green, *Private Standards in the Climate Regime: The Greenhouse Gas Protocol*, 12(3) BUS. & POL. (2010).

and Richard Stewart. The book project would cover, among other issue-areas: global sports governance, the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Extractive Industries Transparency Initiative, forestry certification and hydropower governance. This book project would help generate exact examples to move the inter-institutional relations project forward.

1.3 *Tim Büthe, Associate Professor of Political Science, Duke University*

Tim Büthe presented a sketch of *institutional complementarity theory*, developed with his co-author Walter Mattli of Oxford University.[14] The key question motivating this work was to understand something about the terms of international co-operation when governance and decision-making takes place across two levels of aggregation: a higher level of aggregation, which we may call 'international', and a lower level of aggregation, which we may call 'domestic'. These conditions were characteristic in much of global governance, but similar conditions obtain in federal states. The existing literature on this question was not well-suited to provide us with a sustained theoretical angle on how interactions between these two levels of institutions actually shaped outcomes. The 'two-level game' literature did address some of the relevant issues in a reasonably sustained fashion, but its conclusions depended on some strong assumptions which were usually not made explicit.

Tim explained that his own work tried to tease out those assumptions, and to subsume them within a larger framework. That larger framework drew on work done over a number of years, mostly with Walter Mattli, on institutional complementarity theory. Institutional complementarity theory was essentially developed to explain winners and losers in transnational standard-setting organizations such as the ISO. The assumption here was that there were some differences in prior domestic practices, so that international common rules will affect domestic stakeholders differently. In other words, there was distributional conflict over the specific rules that might be adopted at the international level. The core argument of institutional complementarity theory is that stakeholders' ability to influence rule-making at the international level is a function of the fit between the domestic institutions to which those stakeholders have access and the institutional structure of rule-making at the international level. The general claim about the study of institutions was that we should focus on not just domestic or international institutions. Rather, we should focus on the specific configuration of institutions *across* levels of aggregation, and therefore, on interaction between domestic and international institutions. The more specific theoretical claim that followed from this was that *any kind of statement about optimal institutional design at either the domestic or the international level is a function of information about the institutional setting at the other level.*

One area of focus of institutional complementarity theory was on the transnational regulation of global product markets. Here, the common element was a multi-stage decision-making process, where fundamental decisions were taken early on, and the details were then incrementally filled in. The decision-making mechanism comprised consensus norms, in order to take in the preferences of the stakeholders of as many countries as possible, combined with super-majority at the point that the technical rule was adopted as an international standard. If these were the institutional characteristics at the international level, then quite apart from requiring expertise, one would also need *information* about the international regulatory agenda in a timely fashion, in order to engage at the early stage when the fundamental decisions get made. In addition, one would need a *mechanism for aggregating preferences at the domestic level* to be able to speak with a single voice at the international level, and so take advantage of the consensus norms in the

[14] TIM BÜTHE & WALTER MATTLI, THE NEW GLOBAL RULERS: THE PRIVATIZATION OF REGULATION IN THE WORLD ECONOMY (2011).

decision-making process at the international level. Empirical work by Tim Büthe and Walter Mattli showed that countries where (*a*) the domestic institutional setting is well-geared towards information flows, (*b*) stakeholders are provided with that information early on, and (*c*) where preferences are aggregated at the domestic level are in a clear advantageous position *vis-à-vis* countries where this is not the case.

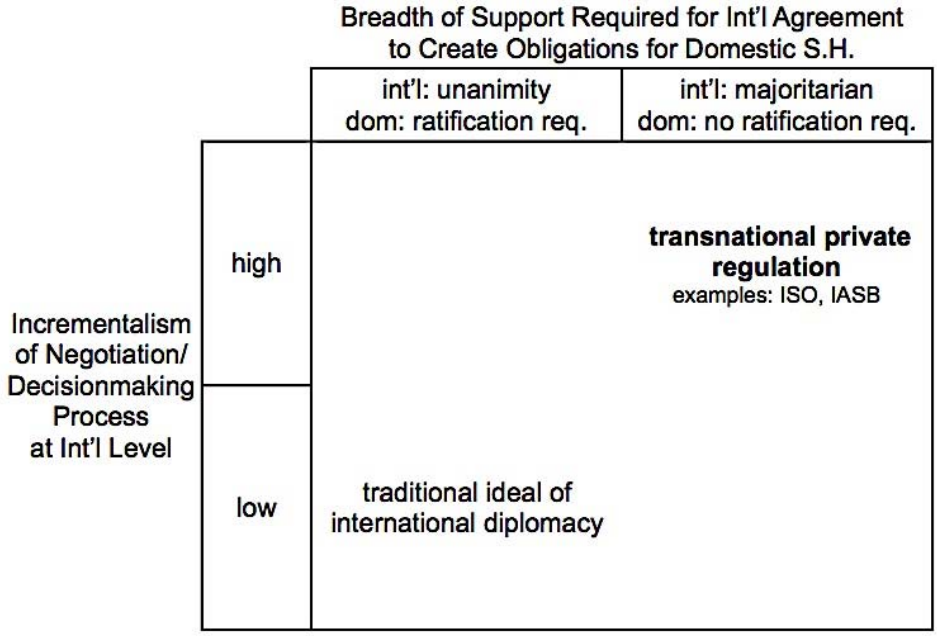

Figure 1. Characteristics of the international context.

On a broader level, and noting that his subsequent comments went beyond the published work done with Walter Mattli, Tim Büthe observed that the negotiating/decision-making process at the international level was highly incremental, and the breadth of support required for an international agreement that created *de facto* obligations for domestic stakeholders was relatively low. We could contrast this with the traditional ideal of international diplomacy, where there is no binding obligation until the deal is signed and ratified. In comparison, these international standard-setting processes could often shape market access even if some countries did not agree with those standards. A producer or stakeholder could be affected by these standards regardless of whether their national representative agreed with them. Tim Büthe suggested that we see many areas of global governance which fall into the top right-hand area of **Figure 1** (*above*).

A further example comes from the Uruguay Round negotiations that led to the WTO Agreement on Sanitary and Phytosanitary Measures. Even in those negotiations, which were intergovernmental negotiations, the domestic institutional arrangements had very substantial effect. The key question in that example was: why did the EU agree on the delegation of authority to the Codex Alimentarius Commission, which, in turn, ultimately led to a finding against the EU and in favor of the United States in the *Hormones* case?[15] It was because the EU had a very narrow negotiating team from the Commission, while the United States had a large

[15] Appellate Body Report, *European Communities—Measures Concerning Meat and Meat Products*, WT/DS26/AB/R & WT/DS48/AB/R (Jan. 16, 1998).

inter-agency team. The EU lead negotiator's expertise was in veterinary hygiene, and only EU member states (not the European Commission) sent representatives to Codex Alimentarius Commission meetings. In contrast, the United States' negotiating team was tied to a domestic-level 'inter-agency committee' with representatives from the Departments of Agriculture, Commerce and State, as well as federal agencies including the Food and Drug Administration, and the Environmental Protection Agency.

Questions and discussion

There was some discussion of the focus on rule-making organizations—as opposed to organizations with distributive, adjudicative or enforcement functions (per comments from Philipp Dann and Kevin Davis)—in the 'Organizational Ecology' paper presented by Jessica Green, which some viewed as too narrow. Jessica Green explained that this focus had been chosen because the paper's hypotheses were easier to operationalize in a rule-setting environment. She acknowledged that there were many different kinds of institutions in the global governance landscape, including treaty/non-treaty based IGOs, public-private partnerships and so on. The paper authors had chosen IGOs and PTOs as ideal types because they varies so highly in their strategic flexibility, so they provide a useful comparison. She added that many private rule-making bodies also incorporated some sort of adjudicative or enforcement mechanism. For example, many private environmental standards required third-party verification. This is, in essence, a type of enforcement. To that extent, the paper did encompass adjudication and enforcement functions. One participant observed that rule-making organizations might also be viewed as distributive organizations, but in a removed fashion. Jessica Green explained that the paper had originated as a response to the regime complexity literature in international relations. So the paper attempted to map out that complexity, and did so by analyzing PTOs and IGOs, which represent just one type of interaction.

Another line of discussion questioned whether there were really any exclusively private regulatory organizations at all. Richard Stewart provided the example of ISO standards, which were embedded in public organizations. He made the point that many organizations like ISO had a hybrid character, and that IGOs, in turn, were also assuming a hybrid character. He agreed that one might start with a pure dichotomy, but that one would then have to explain the phenomenon of growing hybridity. Jessica Green agreed with this observation on hybridity, and directed participants to the paper, which incorporated two tables depicting this idea. One table, in particular, showed two axes along which we can conceptualize the availability of organizational strategies. Following this thread, May Miller-Dawkins asked how adaptability of organizations over time might be constrained by ever more complex governance settings. In response, Jessica Green connected May's question to Benedict Kingsbury's earlier point about a static picture versus a dynamic analysis. She commented that organizational ecology was very interesting in this regard, because that literature tried to explain why organizational forms emerge, and what accounts for their entry, birth and death over time. So in organizational ecology literature, the response to May's question could be expressed in terms of ability to adapt, and in terms of competition.

2. Technologies of interaction (case studies)

2.1 *May Miller-Dawkins, LL.M. '13, New York University School of Law*

May Miller-Dawkins gave an overview of her work on two cases of private/hybrid governance in hydropower/dam development. The regulatory settings for these cases were complex, consisting of a patchwork of social and environmental standards and impact assessments, which were highly variable at the national level. At the international level, one had

to consider financing flows and the Equator Principles,[16] as well as the broader backdrop of international environmental law, some of which have variable levels of customary status, and instruments such as the UN Watercourses Convention,[17] which was slated to come into force fairly soon.

She then moved on to the two specific regimes forming the subject-matter of her case study. The story of these two regimes was a story of evolution and competition. The interesting point about this case study was that one set of principles no longer had an 'institutional home'. Instead, they had been incorporated into regional and domestic institutions or laws, such as the EU emissions trading system. These principles were those of the World Commission on Dams, which evolved in the late 1990s and early 2000s. These were spurred by conflict over the building of dams, and led to some real halts and limits to developments, as well as internal debates within the World Bank. The process involved a range of government, private sector and civil society actors. The process was initially organized as an epistemic process, with a low degree of politicization. The principles that were ultimately created set quite a high bar, in terms of local consent, locally-negotiated agreements on dams, the idea of community acceptance, as well as the rights of indigenous people to free and informed consent. In a sense, this process also greatly mobilized the industry, so it politicized the industry structure at a global level.

This was subsequently followed by the International Hydropower Association.[18] The interesting point about this organization was that it was initially created under the auspices of UNESCO. The International Hydropower Association established its own set of private standards, the Sustainability Assessment Protocol.[19] The Protocol is a set of 'best practices' that can be used at different stages of dam development. One of the interesting key features about the Protocol is that it is a management tool that converts aspects of human rights law. For example, 'free and informed consent' is re-defined as a 'best practice', so that it becomes an aspiration through management, rather than a requirement. The Protocol also reflects the industry setting, in that it has a much more objectivist epistemology than the World Commission on Dams. For example, it privileges expert assessments by individual assessors, and the Protocol's definitions imply that the experience of local people would not be an objective standard. As such, the Protocol has a more instrumentalist bent. The Protocol is one example of what Tim Büthe terms 'competitive regulation'.

2.2 *Lorenzo Casini, Associate Professor, University of Rome Sapienza*

Lorenzo Casini gave an overview of his work on global sports law and governance. He began by observing that the case of global sports was so exceptional that it sometimes had limited utility. There were several reasons for this. First, the system was very ancient. The International Olympic Committee, which is the governing body, was founded in 1896.[20] Second, the degree of institutionalization and juridification of this system was extremely high. For example, in the global context, there were four different kinds of bodies: (*a*) the International Olympic Committee (a fully private body, and also the governing body of the system); (*b*) hundreds of international sports federations; (*c*) the World Anti-Doping Agency (a public-private body, constituted as a private foundation but with its membership equally divided between public and private actors); and (*d*) the Court of Arbitration for Sport, which was initially created in the

16 Equator Principles, *Homepage*, http://www.equator-principles.com/.
17 Convention on the Law of Non-Navigational Uses of International Watercourses, May 21, 1997, G.A. Res. 51/229.
18 International Hydropower Association, *Homepage*, http://www.hydropower.org/.
19 Hydropower Sustainability Assessment Protocol, *Homepage*, http://www.hydrosustainability.org/.
20 International Olympic Committee, *Homepage*, http://www.olympic.org/ioc.

1980s but had now gained such importance that some termed it 'the World Supreme Court of Sport'.

The interesting element of the global sports system was in how it attempted to allocate rule-making and adjudication between the different institutions constituting the system. For example, only international sports federations (not the International Olympic Committee) could set the rules of the game. This 'separation of powers' was also evident in the text of the Olympic Charter.[21]

We can frame at least three different types of relations between these institutions. *First*, there are *pyramid structures*, where a specific institution is at the apex of the system. *Second*, there are *controlling mechanisms*, such as with the Court of Arbitration for Sport. The International Olympic Committee is subject to review by the Court of Arbitration for Sport. This was inconceivable (because the International Olympic Committee had adjudicative functions) until about twenty or thirty years ago. Finally, there are *relations of equality or partnership*. These may be characterized as a type of co-operation or co-existence, such as between the International Olympic Committee and the World Anti-Doping Agency. Administrative law can help to frame these relationships, because they are not unlike those found in the domestic context.

3. Global-local interactions

3.1 *Elspeth Faiman Hans, J.D. '14, New York University School of Law*

Elspeth Faiman Hans provided an overview of her work on the relations between the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund) and its Country Coordinating Mechanisms at the local level.[22] The Global Fund is the body that provides funding for tuberculosis, HIV/AIDS and malaria programs in developing countries. The Global Fund has a Board that sits in Geneva, but no field offices in-country. At the country level, they primarily rely on a body known as the Country Coordinating Mechanism. The Country Coordinating Mechanism consists of representatives from government, civil society organizations, people living with the diseases, aid agencies and private/for profit groups. The Country Coordinating Mechanism is intended to provide a local ownership role in the Global Fund structure, in that it develops the grant applications, selects the Principal Recipients (of Global Fund grants), and provides oversight of the grants. The grant does not go to the local government or the Country Coordinating Mechanism directly, but to a Principal Recipient (an implementing organization). The Principal Recipient can be a section of the national health ministry, or an international NGO. In addition to these entities, there is the Local Fund Agent, which is an accounting organization that provides an oversight role.

Elspeth explained that her work looked specifically at the governance functions provided by the Country Coordinating Mechanism at the local level. The interesting aspect of this case study was how this private body interacted with both the national government and the international organization. The Global Fund looked to the Country Coordinating Mechanism to provide national voice and local ownership, but it was the Global Fund itself that had created this body. In her view, the Country Coordinating Mechanism was important because of the extent of funding provided by the Global Fund, and the impact that that funding could have on the national health system. These grant decisions could produce significant effects on the rest of the national health system through what those decisions prioritized.

---

[21] International Olympic Committee, *Olympic Charter*, http://www.olympic.org/olympic-charter/documents-reports-studies-publications.

[22] Global Fund to Fight AIDS, Tuberculosis and Malaria, *Homepage*, http://www.theglobalfund.org/en/.

Elspeth pointed out that to date, there had been no systematic study of the governance role that these Country Coordinating Mechanisms were playing. The Global Fund does have certain guidelines that the Country Coordinating Mechanisms must follow, including transparency requirements in selecting representatives from civil society, transparency requirements in developing the grant application as well as the selection of recipients. However, the Global Fund had promulgated little guidance on transparency in performing the oversight function, and how Country Coordinating Mechanisms should interact with the national health system as a whole.

3.2 *Patricia Galvão Ferreira, Nabuco Scholar, Center for Latin American Studies, Stanford University*

Patricia Galvão Ferreira provided an overview of her work on the Extractive Industries Transparency Initiative (EITI), which had formed part of her doctoral dissertation on governance in resource-rich developing countries, completed at the University of Toronto.[23] The EITI was created in 2002, during the World Summit on Sustainable Development.[24] The goal of the EITI was to improve the domestic governance of natural resources in resource-rich but poor countries by bringing more transparency and more accountability to the collection of revenues. The EITI was structured as a transnational public-private partnership. It included resource-rich development countries (host countries), private actors such as transnational corporations and investor associations, and civil society organizations. These public and private actors participated in design and implementation at both the global and national level.

Patricia explained that EITI operated on the basis of a set of 'EITI Criteria' that all EITI countries must meet,[25] and highlighted two such Criteria in her presentation as being most relevant to the inter-institutional relations question. First (substantive requirement), companies and governments must fully disclose all payments made and revenues received. Second (procedural requirement; most relevant to the inter-institutional relations question), governments must establish a national multi-stakeholder group to oversee the implementation of EITI. The multi-stakeholder group must include civil society and corporate players at the national level. These actors were expected to be actively engaged in the design and implementation of EITI at the national level.

The assumption behind the formalization of actor participation in EITI was that participation by different stakeholders could improve the quality of governance. Patricia highlighted that the key idea relevant to the present discussion was that *EITI was a new type of global governance institution that used a particular strategy of leveraging a diverse expertise within a global public-private partnership structure to ensure a participatory global governance mechanism*. More traditional global instruments would use exhortatory language about participation. In contrast, EITI was a move away from exhortatory language. Here, the participation was part and parcel of the global initiative. *This was the innovation in EITI: the inclusion of the idea in the regulatory instrument itself.* At the same time, the multi-stakeholder group at the national level was expected to function as the feedback loop to the global governance initiative.

Questions and discussion

Benedict Kingsbury observed that what we saw in the EITI case and others like it was the reverse flow of the 'institutional complementarity' idea. While the work by Tim Büthe and

---

[23] Patricia Ferreira, *Breaking the Weak Governance Curse: Global Regulation and Governance Reform in Resource-rich Developing Countries* (Dec. 11, 2012), *available at* http://hdl.handle.net/1807/33995.

[24] Extractive Industries Transparency Initiative, *Homepage*, http://eiti.org/.

[25] Extractive Industries Transparency Initiative, *The EITI Criteria*, http://eiti.org/eiti/criteria.

Walter Mattli focused on the degree of success that national institutions have at the global level, what we saw in the EITI and Global Fund cases was how the global institution grew its roots in national society by creating institutions at the local level. So the suggestion here was that the pathway goes the other way (global/international to local/national).

There were diverging views about the utility of applying a strict public/private lens to the four case studies just presented. While recognizing that this might be a subject for further debate, Matthias Goldmann commented that there may be some benefit in paying particular attention to the distinction between private authority and public authority, in that the framework of an inter-institutional relationship should really vary with the public or private nature of the authority that was being exercised by the institution under consideration. Such an analytical distinction could shed light on whether there is a relationship of coordination or a relationship of hierarchy within a complex setting. Some of the examples just presented may benefit from a consideration of whether a particular actor is exercising authority that they perceive to be in the public interest. Lorenzo Casini disagreed, pointing to the idea of hybridity rather than a distinction between public and private.

David Gartner observed that what these cases had in common was that they seemed to represent a challenge to more state-centric modes of governance. Each case study had some element of multi-stakeholder governance. In terms of inter-institutional relationships, it could be useful to consider how these seemingly discrete cases related to each other. In other words, would the Global Fund experience have been possible without the prior instance of the World Commission on Dams, and to what extent did the EITI borrow from the Global Fund model? What were the inter-institutional dynamics that gave rise to these cases? Benedict Kingsbury highlighted that two LL.M. students were currently working on two further case studies. Swee Leng Harris (LL.M. '13) was working on a case study of governance of investments in palm oil involving the International Finance Corporation and the Equator Principles. Alex Latu (LL.M. '13) was working on a case study of forestry certification standards. Michael Woolcock added that it would be interesting to see whether all these organizations were overtly looking around for precedents to adopt. The sociological approach would be to ask: what were the relevant actors reading? What conferences were they attending? Who were they speaking to? It would be very interesting to know the answers to these questions. Benedict Kingsbury commented that the book project he had highlighted earlier in the afternoon would aim to show some of these linkages, by including a short section on inter-institutional relations in each case study.

With the caveat that his comments were based only on having heard the presentations, Tim Büthe commented that it was possible to see elements of institutional complementarity in almost all of the case studies that had been presented thus far. He noted that the sports case, as presented, did not share this characteristic, but commented that institutional complementarity could probably be seen at the national level through the creation of national sports federations. What we saw even in the area of product regulation was the development of institutions in OECD/industrialized countries during the late industrialization phase. This changed very little thereafter, even in the late twentieth century. Some of these domestic rule-making procedures then became dysfunctional because there was such intense domestic stakeholder interest in not changing these institutions. However, in developing countries, partly out of a need to legitimize their global rule-making functions, both ISO and IEC had tried to increase the involvement of developing countries. Even where there were nominal domestic rule-making organizations, they were so rudimentary and lacked capacity so that they were not able to participate effectively. As such, ISO and IEC tried to foster and strengthen these domestic organizations. Turning to the sports case study, Tim Büthe asked how the International Olympic Committee had lost some of

its functions, particularly the adjudicative function and its function with respect to anti-doping. Had there been some resistance to this? Similarly in the EITI case, did the delegation of functions to these multi-stakeholder groups meet with resistance from national governments?

Jessica Green commented that there appeared to be a lot of hierarchy in the cases presented. On the sports case study, she asked what had changed so that what was not possible twenty years ago was possible now. On the hydropower case study, David Malone asked what the end outcome might be. What was the overall impact of the great density of intervention and interaction, in terms of number of dam projects, as far as we knew up to now?

Lorenzo Casini responded that the changes in global sports governance were due to increased money in sports. In particular, he highlighted the role of the 1984 Los Angeles Olympics in this change. He agreed that sports institutions were extremely hierarchical internally and across institutions. This characteristic had been present from the outset of the establishment of these institutions. Responding to questions on her case study, May Miller-Dawkins observed that one major question across hydropower governance schemes was the extent to which there has been convergence in the substantive social and environmental standards applied to hydropower projects. Was the benchmark of comparison to the World Bank safeguards, or to international environmental law? There was also some indication that the definitions of 'stakeholders' and 'participation' were being adopted wholesale across different schemes. While there had previously been some drop-off in World Bank funding for dam-building, there was now some resurgence in large-scale dam-building, particularly as regards activity by China and other emerging economies. One report had projected a 35 per cent increase in dam-building over the next twenty years, on top of some 45,000 large dams already in existence. On the history of the Global Fund governance structure, Elspeth Faiman Hans observed that the Global Fund was very much a reaction to two different sets of criticisms of older international aid models. The first set of criticisms had to do with the very heavily donor-driven policies of (for example) the IMF and the World Bank. There was a sense that what was needed was a model that was more responsive to local needs, local goals and local interests. The second set of criticisms had to do with a real concern, particularly in donor governments, about weak, corrupt national governance, lack of local capacity, and a lack of voice for affected people. On the history of the EITI, Patricia Ferreira summarized the history as follows. Concerns about the so-called 'resource curse', environmental degradation and human rights violations led to public pressure to create some kind of regulation to deal with these problems. These were at the macro level. At the national level, there was a need to strengthen national governance mechanisms. Resource-rich countries had different motivations. Some countries wanted more foreign direct investment, so EITI participation was part of building a better business environment. Other countries were those with recent changes in government, such as East Timor or Liberia. Yet other countries were compelled to participate in EITI because this was part of World Bank conditionality. She also added that May Miller-Dawkins had earlier brought the case of Indonesia to her attention, where participation in EITI by Indonesia was part of a bilateral arrangement between Indonesia and Australia.

The discussion then returned to 'Technologies of interaction'. (Note: The topics were re-ordered to accommodate the scheduling conflicts of some participants.)

2. Technologies of interaction (case studies) (*continued*)

2.3 *Antonios Tzanakopoulos (LL.M. '05), University Lecturer in Public International Law, University of Oxford*

Antonios Tzanakopoulos provided an overview of his work on courts and interpretation.[26] Thinking about technologies and the effects of inter-institutional interaction, we might consider courts and interpretation as a technology of interaction. One particularly interesting aspect of this was that these relations did not only consist of outsourcing to private or hybrid actors in order to avoid scrutiny or review by domestic courts. International law could also be used as a shield from scrutiny at the international level by facilitating the transfer of powers to formal international institutions, thereby bypassing review by domestic courts.

Techniques deployed to achieve this could be traced back to the German Federal Constitutional Court decisions in *Solange I* and *Solange II*, during the 1970s-80s.[27] This line of jurisprudence pushed the EU institutions toward complying with fundamental human rights as found in the legal systems of its member states. Courts were now increasingly using *Solange*-like techniques to deal with the transfer of powers in a multi-level governance setting. For example, this could be seen in what the European Court of Justice and other courts have done in *Kadi*,[28] which we could view through the lens of *Solange*. There, the EU faced a situation where the UN Security Council had imposed particular measures on it. If those measures had been imposed at the domestic or EU level, they would have been subject to certain human rights requirements, such as the right to an effective remedy. In response, the European Court of Human Rights and the UK Supreme Court effectively held that they would require Member States and the UK (respectively) to 'disobey' particular obligations that have been imposed by the UN Security Council. As such, over the last five years, the UN Security Council had made various changes to the blacklisting procedure, including the focal point to challenge listing, the Office of the Ombudsman and others. There had been similar developments in the European Court of Human Rights in the same context in the *Nada* case, which held that Member States cannot implement UN sanctions if they are not in compliance with their European Convention obligations.[29] Finally, in the *Waite and Kennedy* category of cases, the European Court of Human Rights has held that Member States are free to transfer powers to an international organization, but they cannot allow that international organization to claim immunity from domestic courts unless that international organization has introduced an alternative remedy at the organizational level.

In sum, there was a particular method by which domestic and regional courts were using various interpretive techniques—for example, holding that they interpret UN Security Council resolutions on the assumption that the UN Security Council does not intend to violate international law, or holding that there was a margin of appreciation available to national authorities—in order to force the state into a situation where it had to confront the international organization. An interaction or dialogue between the national and international levels then ensued through this type of *Solange* technology.

---

[26] ANTONIOS TZANAKOPOULOS, DISOBEYING THE SECURITY COUNCIL: COUNTERMEASURES AGAINST WRONGFUL SANCTIONS (2011).

[27] Judgment of Oct. 22, 1986, 73 BVerfGE 339 [*Solange II*]; Judgment of May 29, 1974, 37 BVerfGE 271, 14 COMMON MKT. L.R. 540 (1974) [*Solange I*].

[28] Joined Cases C-402 & 415/05P, *Kadi & Al Barakaat Int'l Found. v. Council & Comm'n*, 2008 E.C.R. I-6351.

[29] *Nada v. Switzerland*, Eur Ct H R, Application No. 10593/08, Judgment of Sep. 12, 2012.

Discussion

Benedict Kingsbury observed that what this case study added to the discussion was that there were varying degrees of juridification across these different regimes. This highlighted an important puzzle: why was there a higher degree of juridification in some regimes, but not in others? For example, there was little to no juridification in the hydropower case, but some now in the EITI. Richard Stewart connected this thread of the discussion with the earlier discussion around Jessica Green's paper, with respect to standards set by one organization being adjudicated on or enforced by another organization. For example, the building of a dam may have human rights impacts, and courts might get into those impacts if they can find defendants that are not immune. Benedict Kingsbury agreed that we could identify there an element of transitivity, and added that we might also consider the formality of the decision taken, as well as that of the institution taking it.

2.4 *Michael Riegner, Research Fellow, University of Giessen*

Michael Riegner provided an overview of his work on harmonized data, which framed decisions and perceptions, and thus established a common rational language for administrations. This work linked to metrics issues that are the subject of previous work by scholars such as Margaret Satterthwaite and Rene Urueña. Information was an important tool for interaction because numbers travelled horizontally across different agencies, as well as vertically through different levels of governance. In his presentation, Michael focused on three specific institutions: the World Bank, the Millenium Development Goals, and the UN Statistical Commission.

The World Bank, as a 'Knowledge Bank', tried to coordinate knowledge production, in particular through the use of external knowledge networks and partnerships, including the Global Development Network and where the World Bank participated in management structures.[30] Further, the Bank's open data initiatives made data available and were used by numerous actors in the field as a basis for decision-making, thereby establishing a common informational basis that frames a statistical reality. The World Bank was not the only actor in this field. Another example was the Millenium Development Goals, which are particularly relevant as an unprecedented measure of cooperation based on the collection of data. A further example is the UN Statistical Commission.[31] A particularly successful aspect of that institution's coordinating work was the System of National Accounts, which harmonized national statistics and is now used not only by UN agencies, but also within states. This success was not replicated in other fields, especially the UN social data agenda, where initiatives by the UN Statistical Commission were blocked by other agencies in the 1970s and 1980s. As such other organizations took over here, including the World Bank as well as the International Labour Organization on labor statistics. This led to a measure of fragmentation in the data.

Returning to the Millenium Development Goals, there was an Inter-Agency and Expert Group (IAEG) on MDG Indicators, which was an informal body comprising international and national statistical experts, and was coordinated by the UN Statistical Commission with important contributions from the World Bank.[32] The IAEG was instrumental in defining the indicators that were now the MDGs. For example, in the water goal, the group decided to focus on access to infrastructure, and not affordability. This determines the fact that this goal was

---

30 World Bank, *Knowledge Bank*, http://go.worldbank.org/VS3EZ3A7Z0.

31 United Nations Statistical Commission, *Homepage*, http://unstats.un.org/unsd/statcom/commission.htm.

32 Millenium Development Goals Indicators, *Inter-agency and Expert Group on MDG Indicators*, http://mdgs.un.org/unsd/mdg/Host.aspx?Content=IAEG.htm.

achieved in 2012. This highlighted the importance of the IAEG in making choices about data. Further, the indicators were the basis for MDG monitoring.

2.5 *David Gartner, Associate Professor of Law, Sandra Day O'Connor College of Law, Arizona State University*

David Gartner explained that he would provide an overview of his work in global health governance as well as work he had done on the World Bank and the IMF, as well as an indication of areas he thought would be worth exploring further. In terms of the horizontal relationships, he identified two mechanisms which had been quite important in driving the move to transparency over the last decade. One was a *persuasive mechanism* that related to norm entrepreneurs, particularly within civil society, and the other was a *coercive mechanism*, where donors were placing explicit conditions on international organizations, including the World Bank and IMF, in ways akin to those latter organizations sometimes placed conditions on countries.

On the persuasive dimension, the older global health organizations, such as the World Health Organization (WHO), were among the least transparent of organizations. This was true of UN institutions more generally. However, there was now a newer generation of organizations that was more transparent. One reason why they were more transparent had to do with the multi-stakeholder mechanisms that were highlighted in previous presentations. This was significant for more long-standing institutions like the WHO because it created a competitive dynamic in respect of the donors. It also created certain expectations among civil society actors, who had become much more mobilized in the last decade, and had successfully used existing mechanisms within the World Bank as a point of leverage to get conditions that contributed to a dramatic expansion of transparency policy under President Zoellick. That same mechanism had not worked as well in the context of other institutions such as the IMF, which were less vulnerable to the coercive dynamics of donors.

On the vertical dimension, some institutions, including the IMF and the G20, had recently created hybrid governance institutions. In the case of the IMF, a fiscal transparency initiative was founded, which involved multistakeholder governance, to try and expand fiscal transparency at the national level.

Questions and discussion

Richard Stewart asked about the extent to which there was a functional relation between transparency in the form of multistakeholder governance, and the internal functional needs of the organization, as an organization that is multistakeholder in nature. David Gartner agreed that there was such a functional relation. On data and indicators, David Malone pointed out that data can often be flawed. The MDG figures for Ghana, for example, were amended recently. While the general trend lines might be correct, the data they relied on to generate those lines often might not be. He cited a further example from the time he was living in Cairo some years ago. At the time, there was a census of the city. There were separate statistics for population density, so it became clear that the overall figure that was cited for the Cairo population was an undercount. It turned out that the team involved in the previous census, which had undercounted for all sorts of reasons, did not want their earlier error revealed by a correction ten years later. As such, there was a need to be tremendously interested in data and indicators, but also a little skeptical of what they represented.

Mariana Mota Prado asked David Gartner how he saw his work relating to the earlier presentation by Jessica Green on organizational ecology and institutional density. David Gartner commented that in both contexts, the vulnerability of these organizations to external influence is quite important. Megan Donaldson observed that David Gartner's work showed that inter-

institutional interaction takes place at several different layers. Even when there were relatively clear norms, for example, one could trace the genesis of those norms in different interactions. Tim Büthe asked whether, from a principal-agent point of view, it was easier for member states to weigh in on the newer generation of organizations, whereas in an organization such as the WHO, where the work gets more technical, it would be harder for them to do so. Philipp Dann asked about the extent to which there might also be an internal motive on the part of the World Bank to create agents of change.

Returning to the question of indicators, Angelina Fisher commented that at least in the field of education, which was the subject-matter of her work, metrics had value in and of themselves. First, rankings created peer groups, so that it did not actually matter what the accuracy of that data was. Rankings gave national bodies a tool to mobilize. In India, for example, the PISA rankings were used in this way by the education NGO Pratham to legitimize their own work and the ways in which they measured performance in education.[33] Second, indicators often framed a contested problem in a neutral way, in terms of accountability. So rather than looking at what education is, or what the quality of education means, we look at it in terms of indicators. This then allows for partnerships, such as the Global Partnership for Education, which were very much modeled after the structures of GAVI and the Global Fund.[34] Finally, indicators and metrics allowed national NGOs that use them (as opposed to others that do not use them) to speak in a common language to institutions such as the World Bank. They then become a tool for managing competition at the horizontal level.

2.6 *David Trubek, Voss-Bascom Professor of Law Emeritus, University of Wisconsin-Madison*

David Trubek provided an overview of his work with M. Patrick Cottrell on international law as a framework for problem-solving.[35] The history of this work was that it had started with the EU. In this area of inter-institutional collaboration, the EU was a real laboratory. In the social policy field, a lot of what the EU was doing was soft law: there was no competence to legislate. As such, it was a pure coordination challenge, where the EU level coordinated with the Member States horizontally, and then had the Member States coordinate vertically. This was the so-called 'Open Method of Coordination'.

Even with hard law in the EU, there was also a major coordination problem. Directives had to be transposed, and they then went through another level in the national parliament. Almost everything was enforced by national bodies. There were then all sorts of areas of slippage. Therefore, it seemed to him that what we were seeing in the EU were problems without obvious solutions: issues of governance that seemed to call out for some public response, but where it was not at all clear what the right answer was. So the situation called for experimentation, and it became important to have maximum participation, not just because of some general constitutional concern – which there was – but because that was the way you solved problems and brought knowledge to the table to solve these problems. This included *tacit knowledge* held by the stakeholders themselves about how things work or don't work, or how to get things to work. This also involved *deliberation*, because there would always be many different options on the table. On *indicators*, there was also a need to measure how solutions were working, and to determine success or failure. Indicators became central to the operation of the processes that we were observing in the EU. The Open Method of Coordination had something like 60 indicators. The politics of indicator creation itself was an interesting byproduct of this process.

---

33 Pratham, *Homepage*, http://www.pratham.org/Default.aspx?id=1.

34 Global Partnership for Education, *Homepage*, http://www.globalpartnership.org/.

35 M. Patrick Cottrell & David M. Trubek, *Law as Problem-Solving: Standards, Networks, Experimentation and Deliberation in Global Space*, 21 TRANSNAT'L L. & CONTEMP. PROBS. 359 (2012).

He then started working with M. Patrick Cottrell, a political scientist now at Linfield College, and observed that the problems seen in the EU were also evident across other areas of global governance. It seemed to him that what was implicit in the IILJ inter-institutional relations project, although it was not articulated that way, was the idea that we are in a world where there are more complex problems, more 'wicked problems' and more multi-level problems. The term 'wicked problems' evolved as a term of art in the UK, and was used to describe problems that cut across traditional boundaries of agencies and institutions.[36] These were more general conditions of global governance today, throughout the global arena. Much of what had been heard today confirmed that.

Returning to the topic of development assistance, we could look at four or five areas of what was discussed at the conference that fit the 'wicked problem' need for law as a problem-solving institution. On official development assistance (ODA), the move to mutuality and donor-driven projects meant that there must be more of a dialogue and less of a hierarchical relationship between donor and donee. He added that the program-type lending in the World Bank did not strike him as such a new development, because he had done similar projects as a USAID official in the 1960s. Many of the issues around experimentation, measuring and stakeholder participation were more important in the development arena today. On public-private partnerships, the ideas of revisability and negotiability fit well there, because good fit was precisely what we wanted in that field. He referred to work by Mario Schapiro on the system set up by BNDES for venture capitalists, which is exactly this model of law as problem-solving.[37] Overall, it seemed to him that the idea of law as problem solving was a relevant tool that could be used in this study of inter-institutional relations (collaboration, cooperation or *non*-cooperation).

He then summarized five major features sketched in his article with M. Patrick Cottrell that seemed general to these processes as they had observed them around the world:

(*a*) they employed standards, not fixed rules;

(*b*) they stressed experimentation and learning;

(*c*) they relied on networks and multiple stakeholders for a variety of reasons;

(*d*) they made norms flexible and revisable, using data and indicators to measure progress for agreed-upon goals and to test whether experimentally-determined solutions are actually working; and

(*e*) proceduralism to structure relationships, not determine outcomes.

2.7 *Megan Donaldson (LL.M. '10), J.S.D. candidate, New York University School of Law*

Megan Donaldson provided an overview of work done with Benedict Kingsbury on infrastructure governance.[38] In that work, they had been trying to think about how words, as opposed to numbers, might play a role in inter-institutional interaction. The thinking there was that there might be a way in which using particular vocabularies to describe the world, or to describe norms or reforms, might play a role in knitting together institutions or regimes, government partners, NGOs and various other actors. These interactions would primarily take place by appealing to individuals within those institutions or sites who have been trained

36 C. West Churchman, *Wicked Problems*, 14 MGMT. SCI. B141 (1967).

37 Mario Schapiro, *Development Bank, Law and Innovation Financing in a New Brazilian Economy*, 3 L. & DEV. REV. 78 (2010).

38 Megan Donaldson & Benedict Kingsbury, *Ersatz Normativity or Public Law in Global Governance: The Case of International Prescriptions for National Infrastructure Regulation*, 13 CHI. J. INT'L L. (forthcoming 2013).

professionally or socialized into seeing the world through particular expert languages. Their work so far had been focused on the vocabulary associated with 'good governance' found in advisory or technical material and guidelines, tracing within these what functions as a hybrid vocabulary or 'bridging language' which had some affinity with both key terms in public law, but also the more managerial language of economics. Even within legal vocabularies, there were different varieties: the languages of rights and regulation, showing different worldviews.

The key point from this work was that these vocabularies were being used to unite different constituencies, but around a very shallow consensus. There was no suggestion that this was deliberately done, but it was probably done out of the need to connect different audiences and different institutional sites.

2.8 *Valéria Silva, Global Research Fellow, New York University School of Law*

Valéria Silva provided an overview of her work on intellectual property rights enforcement at the multilateral level.[39] She explained that the broad context was that there had been a shift in economic power from the World Trade Organization (WTO) under the TRIPS Agreement, stemming from the G8 countries' focus on intellectual property enforcement as a priority. The G8 countries had embarked on a strategy of formulating standards outside the WTO. In contrast to straightforward 'regime-shifting', the new element of this particular strategy was simultaneous coordination across different regimes. In terms of agents of this strategy, we see *public-private partnerships*, where private actors are brought in to create soft law standards, as well as *networks of domestic enforcers*. A third type of agent is the *secretariat*. She referred participants to a detailed comparative table in her paper which depicted soft law created at the World Customs Organization. These soft law standards were effectively 'TRIPS-plus' standards. She observed that it was relatively easy to create 'TRIPS-plus' standards in these other organizations because national officials in delegations to those organizations tended to know less about intellectual property rights.

From the national level, the dynamics of this strategy came full circle when national IP enforcement norms created in this way were brought back to the WTO. There was now a trend at the WTO to bring national policies within the national treatment provision in Article III:4 of the GATT.[40] She concluded by noting that this was a very complex issue, but that she was unable to complete the picture during her presentation due to lack of time.

Benedict Kingsbury observed that Valeria's work showed a very interesting pattern of pathways, and referred participants to Valeria's full draft paper.

2.9 *Laurence Boisson de Chazournes, Professor of International Law and International Organization, University of Geneva*

Laurence Boisson de Chazournes provided a brief overview of inter-institutional relations in the field of climate finance. She observed that there had been a proliferation of

---

[39] Valéria Guimarães de Lima e Silva, *How to Reshape Treaties without Negotiations: Intellectual Property Enforcement as a Case Study of Global Governance by Stealth* (Apr. 16, 2013), *available at* http://www.iilj.org/research/documents/PaperIPenforcementVSNYUGlobalFellowsForum2013.pdf.

[40] Article III:4 of the GATT reads:

> The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

financing mechanisms that had been established at the multilateral and national levels. The question here was how they related to each other, especially in light of the establishment of the Green Climate Fund.[41] What was interesting about this field was that states, for the first time, were aware that there was a proliferation of institutions—and therefore, a risk of creating competitive standards for attracting funding in the field of climate finance. As such, the instrument establishing the Green Climate Fund explicitly states that the Board of the Fund should develop relationships with existing and future climate finance mechanisms.[42] This was a regulatory device developed to manage relationships between these various financing mechanisms.

One further feature, not referenced so far in the day's discussions, was that some of these financing mechanisms had been deliberately established on a temporary basis. It seemed to her that this was also another issue worth thinking about: *questions of rationalization of overlapping mechanisms, and extinction of some existing mechanisms.* Another way of looking at the relationship between these financing mechanisms lay in the *granting of observer status*. This was an interesting laboratory, where states were aware of growing proliferation, and the need for finding new pathways to better coordination.

Conclusion

Benedict Kingsbury observed that the afternoon's discussions had shown that there was a research field to be developed in the area of inter-institutional relations. There had been several case studies presented that were promising, and began to throw up some commonalities or sets of materials that should be incorporated into a unified account. He welcomed suggestions and ideas for further research. Finally, he invited those already working on papers in this area to keep the IILJ informed.

Report prepared by Davinia Aziz (LL.M. '09), Institute Fellow, IILJ
April 26, 2013

41 Green Climate Fund, *Homepage*, http://gcfund.net/home.html.

42 Green Climate Fund, *Governing instrument for the Green Climate Fund*, paras. 32-3, http://gcfund.net/fileadmin/00_customer/documents/pdf/GCF-governing_instrument-120521-block-LY.pdf.