

Northwestern Journal of International Law & Business

Volume 17

Issue 1 *Winter*

Winter 1997

Toward a Comparative Analysis of Institutions for International Economic Integration

Joel P. Trachtman

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njilb>



Part of the [International Law Commons](#)

Recommended Citation

Joel P. Trachtman, *Toward a Comparative Analysis of Institutions for International Economic Integration*, 17 *Nw. J. Int'l L. & Bus.* 351 (1996-1997)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Law & Business by an authorized administrator of Northwestern University School of Law Scholarly Commons.

INTRODUCTION

Toward Comparative Analysis of Institutions for International Economic Integration

Joel P. Trachtman

*Chair, International Economic Law Interest Group
American Society of International Law*

This issue is devoted to the publication of papers presented at the 1996 annual conference of the International Economic Law Group of the American Society of International Law. This conference presented an opportunity for scholars from different countries and backgrounds, with expertise in different types of international economic integration, to assemble and compare notes. The articles in this issue represent the results of their research and discussion.

This project requires justification, even defense. What would be the value of comparing institutions, for example, from the European Union to those of the North American Free Trade Agreement or the World Trade Organization? Are these entities comparable on any dimension? Do the tremendous differences in the goals of these entities, combined with the tremendous differences in their composition, structure and legal culture, make folly of any attempted comparison?

In his keynote address at the conference, Joseph Weiler warned of the dangers of false cognates in comparative study, but also sug-

gested the value of comparison. He did so by analogizing comparative study to the way in which a child may learn from his or her parents. Children may learn from the mistakes of their parents, and as they mature, they may learn that their goals are not so different from those of their parents. In considering the European Union as a model, we should not be intimidated by its success. NAFTA, MERCOSUR, APEC and others will be measured by their own goals, in their own context. Of course, the goals of these entities may change as they mature.

A related area of discussion at the conference addressed the comparability between constitutional federalism and international integration. Some participants felt these things wholly incomparable, while others felt that the difference was one of degree, rather than one of kind. In the former perspective, the domestic constitution is qualitatively different, with far deeper communitarian potential. In the latter perspective, the U.S. Constitution (for example) has no mythical quality, but is simply the product of long experience, debate and nation-building, and reflects a much denser social contract than any extant examples of international integration. Ernst-Ulrich Petersmann pointed out that the "constitutional" principles of the European Union are based on domestic constitutionalism. On the other hand, the mythicization of the domestic constitution seems to be an outgrowth of a romantic mythicization of the state.

Weiler provided a concise and salient intellectual history of integration studies relating to Europe. This intellectual history was chastening for the other participants in the conference, as was Weiler's reminder to consider the facts of integration, in addition to the perception of integration and its place in intellectual history.

The main question asked at the conference was what is the relationship between legal institutions and integration goals? In a sense, this is a trick question, as there are no agreed integration goals: each person and each state enters society to maximize their individual goals. Institutions are created to facilitate the achievement of each participant's national goals.

Given these difficulties, the articles in this issue represent a remarkable collection of useful analyses of legal institutions for international economic integration, covering a wide variety of subject areas and using different theoretical and methodological tools. They do not answer questions such as "should international economic law have direct effect" or "what legislative capacities should be assigned to international economic organizations?" Such questions may only be

answered in specific contexts. However, they begin to suggest the complexity of the answers to these questions, and the diversity of the theoretical perspectives and methodologies that may be applied to answer these questions.

The articles in this issue appear in the order in which they were presented at the conference. Thus, after Joseph Weiler's keynote paper (in which he kindly invited me to join as co-author), this issue begins with theoretical and interdisciplinary papers by Ernst-Ulrich Petersmann and Joel Trachtman. The subsequent group of papers, by Ronald Brand and Matthew Schaefer, address domestic effects of international economic law. The third group, with papers by Mary Footer and Paul Stephan, examines the problem of allocation of legislative competences and institutional structures for legislation, including problems of federalism, subsidiarity and legitimacy. The fourth group of papers address a problem that will be the focus of the International Economic Law Group's next conference: the institutional problem of relating trade values to other social values, including trade and the environment. Jeffery Atik and Jeffrey Dunoff wrote papers included here. The fifth group of papers address the role of dispute resolution mechanisms in integration, with papers by Arie Reich and Cherie O'Neal Taylor. The last group of papers considered more broadly how institutions may be related to integration goals, as well as the problem of merging institutions for international economic integration. This group includes papers by Fred Abbott, Merit Janow and Sol Picciotto.

Unfortunately these papers cannot convey the full complexity of the interaction, commentary and critique that took place at the conference, including presentations and commentaries by Kenneth Abbott, Frank Garcia, Helen Hartnell, Daniel Partan, Joel Paul, Amelia Porges, Anne-Marie Slaughter, Alan Swan, Alan Sykes, Mark Warner and Stephen Zamora. Many thanks to all these scholars for contributing their time and insight to this project. Thanks also are due to Nadine Mery, Charlotte Ku, Marilou Righini and Cara Schiffman of the American Society of International Law for their excellent assistance in organizing the conference. Finally, I wish to express gratitude to the editors of the *Northwestern Journal of International Law and Business* for their diligent and thoughtful editing of our work.